

Reading Guide for 30 January:

The Royal Proclamation (1763)

The Royal Proclamation (RP) is not a “treaty” but in fact a “proclamation” by the King, largely written for his British subjects following the defeat of the French at the Plains of Abraham, which ensured that henceforth it would be a “British” North America. The Proclamation outlines in part what British policy would be going forward with respect to Indigenous peoples.

- So what are some of those principles?
- Indigenous Peoples have a love/hate relationship with the Proclamation. So what’s to love? What’s to hate?

John Borrows: Wampum at Niagara: The Royal Proclamation, Canadian Legal History, and Self-Government (1997)

Recall that the RP, as a “proclamation” by the King, did not have any Indigenous input. Borrows argues that Indigenous input came a year later when the British met representatives from many Indigenous nations and Indigenous Peoples gave their understanding of the RP, such that the RP can only be considered a “treaty” after Indigenous understandings are added to the mix.

- How did Indigenous delegates respond to the RP?
- What principles did they emphasize?
- What did they say about their ongoing sovereignty?

The Marshall Decisions: Johnson v M’Intosh (1823)

I’ve already alluded in class to the Marshall Decisions – decisions of the US Supreme Court when John Marshall was Chief Justice – that defined Indigenous policy in the US and have been followed by many other nation states around the world (including Canada). *Johnson v M’Intosh* is the first of those. I’ve highlighted the section breaks in yellow.

- The first section – “Prior History” -- gives you the background to the case in the 24 (numbered) paragraphs. So what is that background?
- The next section, after you see “Syllabus,” “Keywords” and “Counsel,” gives you the arguments put forth by the “plaintiffs,” i.e., by Johnson et al and their legal team. What are their arguments? Who are they citing to justify their position?
- Then comes the “defendants” -- M’Intosh et al -- and their arguments. What are they arguing? What legal sources and principles are they citing to justify their position?
- And finally, you see the decision of the court written by Chief Justice Marshall. When there are disagreements in the court you would see both the majority and dissenting opinions of the Justices, but in this case the court was unanimous, so there is just the one opinion. Who won? What arguments is the court agreeing with? Which legal sources are they citing to justify their decision? What are the land rights of the Indians? Do you see “doctrine of discovery” anywhere?