

Chapter 2

DISCOVERING ANCESTRAL RIGHTS

The year 1760 marked England's victory over the French in North America. At that time, King George III issued his instructions on the administration of the new colonies by means of an official document, the *Royal Proclamation of 1763*. This edict of the king and the various treaties concluded with the Europeans are constantly cited by the Aboriginal peoples in their movement to assert their ancestral rights and their distinct status.

Should the Aboriginal peoples be referring to such old documents? Some would say that it is opportunistic to resort to dusty old texts like proclamations and treaties. Nothing could be further from the truth.

THE ROYAL PROCLAMATION AND THE DOCUMENTS OF THE PERIOD

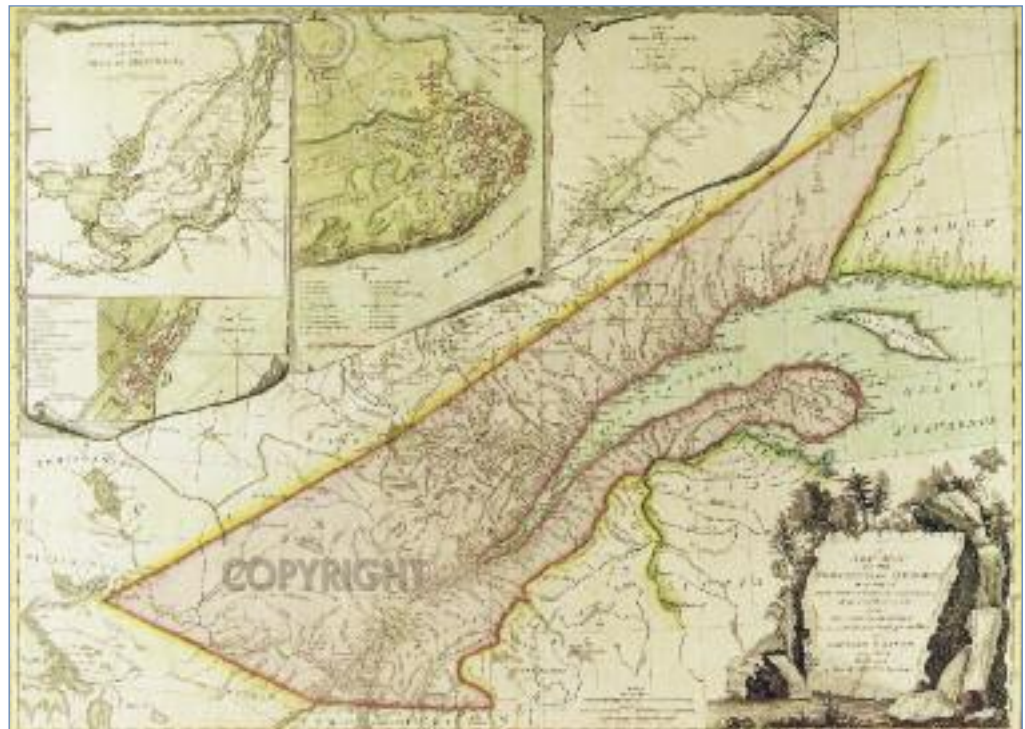
The *Royal Proclamation of 1763* was actually the country's first constitution. A constitution is a set of basic texts that determine a country's form of government, and hence the Proclamation contains the historical foundations or basis of our relations with the Aboriginal peoples. In the eyes of the British, these peoples were of the utmost importance, and for this reason more than a third of the Proclamation is devoted to a detailed description of relations with the Aboriginal peoples.

Moreover, the highest courts in the land have often referred to the Proclamation as the "Magna Carta," the Great Charter of Rights of the Aboriginal peoples. Many Aboriginal chiefs have also considered it as such.

Although certain provisions of this royal edict are no longer

The province of Quebec following the Royal Proclamation of October 7, 1763

A map by Jonathan Carver, published in The American Atlas, London, 1782



valid today (the limits of the colony of Quebec as it existed in 1763, for example), the provisions concerning Aboriginal peoples have never been abolished. Hence, in legal jargon, they still have force of law in Canada. In addition, the treaties, which we will come back to later, were derived largely from instructions expressed by the king in this official document.

Given the importance of the Proclamation, it is not surprising that recent texts make reference to it. The *Canadian Charter of Rights and Freedoms*, enacted in 1982, for example, speaks of the “rights or freedoms that have been recognized by the *Royal Proclamation of October 7, 1763*” and the “rights or freedoms that now exist by way of land claims agreements” (s. 25). In addition, the Canadian Constitution of 1982 recognizes and affirms the “existing aboriginal treaty rights of the aboriginal peoples of Canada...” (Part II of the Constitution).

In short, the documents of the period, regardless of their vintage, are still current. Recent documents have confirmed their value and importance as the constitutional basis of our

relations with the Aboriginal peoples. Therefore, the Aboriginal peoples are not referring to them opportunistically. They are right to refresh our memories.

**EXTRACTS FROM THE ROYAL PROCLAMATION
7 OCTOBER 1763**

“... And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, **that the several Nations or Tribes of Indians** with whom We are connected, and who live under our **Protection**, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds...

“And whereas great Frauds and Abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests and to the great Dissatisfaction of the said Indians: In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no private Person do presume to make any purchase from the said Indians of any Lands reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement: **but that, if at any Time any of the Said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that Purpose by the Governor or Commander in Chief of our Colony respectively** within which they shall lie...” (*Royal Proclamation of 1763*; our emphasis)

But what is so important about this precious 1763 document? Above all, the Proclamation acknowledges Aboriginal groups as organized societies with which treaties must be negotiated. The key elements of the document are as follows: the acknowledgement of the status of “nations and tribes,” and thus as politically distinct groups; the acknowledgement of the Crown’s responsibility to provide “protection”; and the establishment of a treaty procedure to obtain “consent” for land settlement.

Thus, the wishes expressed by King George III would give rise to the conclusion of numerous treaties and deeds of conveyance affecting Aboriginal lands. This was precisely what would happen after the creation of the Canadian Confederation in 1867, for such a vast country could not be established without negotiations with and even a form of consent from the Amerindian nations occupying the territory. We will see a little further on that this “consent” was very relative and most often obtained through confusion and ignorance. Despite this, the construction of the railway, the massive

arrival in the West of colonists from the East, and the development of certain resources necessitated the conclusion of treaties.

We should not forget that the Aboriginal peoples are not the only ones to refer to very old documents to affirm their distinctness. For Francophone Quebecers, in particular, the *Quebec Act of 1774* is just as important a reference in the history of their political and legal institutions as the *Royal Proclamation of 1763* is for the Aboriginal peoples. It should be noted that, despite the conquest by the British, the Quebec Act guaranteed the French Canadian colonies their freedom of religion and permitted the re-establishment, in particular, of French civil law. In short, there is nothing bad about having a good knowledge of your history. Moreover, the first colony of Quebec was created by the *Royal Proclamation of 1763*.

A RELATIONSHIP BASED ON ALLIANCES AND TREATIES

The conclusion of treaties is both a very old and a very modern way of establishing peaceful relations between peoples and nations. A treaty implies a consent, a voluntary adherence, a reciprocal acknowledgement, and a mutual respect by the parties. In North America, the conclusion of treaties was a well-established practice in the history of relations between European nations and Aboriginal peoples.

MONTREAL CELEBRATES THE 300TH ANNIVERSARY OF THE GREAT PEACE OF 1701

On August 4, 2001, Montreal will be the scene of large-scale festivities to mark the 300th anniversary of the signing of a major treaty concluded in 1701 between Governor Caillière, representing the French Crown, the representatives of the Five Iroquois Nations and the representatives of over 30 Amerindian nations allied with the French. This peace and friendship treaty ended 100 years of war with the Iroquois.

Known by the name of the Great Peace of Montreal, this treaty was signed at a grandiose event attended by over 1,000 Amerindian ambassadors held in a town of just 3,000 inhabitants. Among the principal makers of the Great Peace, the Huron Chief Kondiaronk played a decisive role only to pass away during the event. A state funeral was celebrated in his honour.

In a work on the Great Peace of Montreal, the historian Gilles Havard (2001) admirably describes a great moment in Franco-Amerindian relations that deserves to be restored to our collective memory.

An extract from the peace and friendship treaty signed in Montreal on 4 August 1701. The totemic emblems of thirty-nine Amerindian nations appear at the bottom of the document; the signature of the architect of the Great Peace, the Huron chief Kondiaronk (also known as The Rat), is at the bottom left.

National Archives of Canada, C 137797



An Amerindian chief and the Sieur Louis-Hector de Caillière exchange wampum necklaces during a ceremony commemorating the 300th anniversary of the Great Peace of Montreal.

Photo: René Fortin, Corporation des fêtes de la Grande Paix de Montréal



“Treaty” means a formal agreement or accord between nations or states that are seeking to reconcile their interests and aspirations. Treaties have often taken the form of military alliances in which the parties undertake to support and assist each other. Several treaties were concluded to end hostilities and set out the method of establishing peace and amicable relations. Commerce was also a major concern, since war and commerce were closely linked in the battles waged by the large powers (the French, English, and Dutch) to ensure their hegemony over the territory. As Chapter 5 will explain, treaties would cover Aboriginal lands and land titles at a much later date.



From the initial contacts, the practice of alliances and treaties was essential. To settle the lands and develop the fur trade, close and harmonious relations with the various Aboriginal peoples had to be developed.

Nicolas Vincent Isawanhonhi, Grand Chief of the Lorette Huron, holds the wampum necklace that he presented to King George IV of England in 1825.

Unknown artist, Archives nationales du Québec, Québec City

THE COVENANT CHAIN

The tradition of the covenant chain began at the time of the initial contacts between the Dutch colonists and the riverain Indians in the Hudson River region. In 1618, these two groups entered into an alliance, represented by a Dutch ship attached to a tree, first with a cord and later with an iron chain. The cord represented an alliance between equals, and the iron emphasized the alliance's solidity. Even though the Mohawks took the place of the riverain Indians and the British replaced the Dutch, the covenant chain remained the symbol of the political alliance established in the region. But the iron chain became more refined in the language of ceremonial practices and, by the beginning of the 18th century, it had become a silver chain.

(Fredrickson and Gibb 1980, 10–11)

authorization to settle on Aboriginal lands and organize the fur trade, in which the Amerindians would play a crucial part. It seems that this authorization was obtained. In exchange, the Montagnais chief Anababijou obtained assurance of French military support in the campaigns led by his nation against its enemies, the Iroquois.

Such an alliance was not an isolated event. In the ensuing months, the King of France conferred the following powers on his lieutenant general, the Sieur des Monts, who had the charge of representing him: to deal with and contract for the same purpose peace, alliance and confederation, good friendship, correspondence, and communication with the said peoples and their princes or others having power and commandment over them, and to maintain, keep and carefully observe the treaties and alliances concluded with them, provided they observe such treaties and alliances on their part (Grant 1904–1911, 491).

A POLICY THAT CONTINUED UNDER THE BRITISH REGIME

The procedure advocated under the French Regime was perpetuated under the British Regime. In fact, the British authorities had followed the same procedure for a long time. A tradition of friendship pacts had developed in the colonies of New England and New York and was symbolized by the so-called "covenant chain." Even today, representatives of the Mohawks and other members of the Iroquois Confederacy remind us of this early

Just before the Conquest, a series of peace and friendship treaties was also concluded by the British, in what were later to become the Maritime provinces. A treaty concluded with the Micmac of Nova Scotia in 1752 renewed certain promises made in 1725 and 1726 and affirmed the Micmac' "free liberty to hunt and fish as usual." Only a few years ago, the Supreme Court of Canada confirmed that this document, despite how old it was, was still valid as a solemn undertaking that the parties had never renounced.

The climate of uncertainty created by the Conquest of 1760 also led the British authorities to expend extra effort on the conclusion of treaties. William Johnson, an important figure who was appointed Superintendent of Indian Affairs, increased the number of congresses and held councils that would result in numerous treaties: Swegatchy (August 1760), Caughnawaga (September 1760), Fort Pitt (September 1760), Detroit (December 1760), Albany (June 1761), Niagara (July 1761), and again in Detroit (August–September 1761) and Caughnawaga (July 1763). These meetings gave rise to intense diplomatic activity. At the Niagara Council of July 17 to August 4, 1761, for example, twenty-four Amerindian nations were present. Numerous treaties were signed or former alliances renewed at this council.

Under the British regime, however, as we mentioned previously, the *Royal Proclamation of 1763* would mark a turning point in the nature of the accords concluded. First, the Proclamation would confirm that the Aboriginal peoples had an incontestable right over the lands. Here was recognition, in black and white! However, despite the apparent generosity of the document, the colonial authorities would use it as an instrument of dispossession. From that point on the treaties would become the

IN 1761,

WONDERFUL PROMISES TO THE MICMAC

"Protection and allegiance are fastened together by links, if a link is broken the chain will be loose. You must preserve this chain entire on your part by fidelity and obedience to the great King George the Third, and then you will have the security of this royal arm to defend you.

"I meet you now as His Majesty's graciously honoured servant in government and in his royal name to receive at this pillar, your public vows of obedience to build a covenant of peace with you, as upon the immovable rock of sincerity and truth, to free you from the chains of bondage, and to place you in the wide and fruitfull field of English liberty.

"The laws will be a great hedge about your rights and properties. If any break this hedge to hurt or injure you, the heavy weight of the laws will fall upon them and punish their disobedience."

Nova Scotia Governor Jonathan Belcher addressing the Micmac at Halifax, 1761, at ceremonies renewing the Treaty of 1752.

(Reported in Richardson 1989, 73)

MORE TREATIES

AT THE TIME OF THE BRITISH CONQUEST

Above is an extract from a peace and friendship treaty concluded in Niagara between the Huron of Detroit and William Johnson, representative of the British Crown, on July 18, 1764. At the time of the 1760 Conquest, the British authorities stepped up their efforts to conclude treaties. William Johnson, who was appointed Superintendent of Indian Affairs, increased the number of congresses and councils, and this would result in numerous treaties such as the one mentioned above. The document consisted of five articles spread over just four pages.



National Archives of Canada, C 135290

process used by the Crown to extinguish the land titles of the first inhabitants. Once this extinguishment was obtained, the territories could then be opened up to settlement. And the Crown reserved for itself the right to conclude treaties. After the “peace and friendship treaties,” a new generation of treaties, the “land treaties,” took shape. In Chapter 5, “Sharing Territory,” we will see how it was possible to conclude numerous land treaties bearing on a large portion of Canadian territory, but not the territory of Quebec. This glance back

THE SEVEN FIRES CONFEDERACY OF THE ST. LAWRENCE VALLEY

A Valuable Political Alliance

[TRANSLATION] “At the time of the French and English regimes in Canada, Amerindians from Quebec forged a singular political alliance known by the written Euro-American tradition as the Seven Nations



A street in Kahnawake (formerly called Caughnawaga) at the turn of the century

Postcard, collection of Pierre Lepage

of Canada. This alliance consisted of the Catholic Amerindians from the villages of the St. Lawrence Valley: Wendake, Long Point, Wôlinak, Odanak, Kahnawake, Kanehsatake, and Akwesasne. This Confederacy represented the alliance among the nations, that is between the Aboriginal councils

or governments of each village. The pact was federative because there was a central political organization, the Grand Council of Kahnawake, which shared various jurisdictions with the various Confederacy members, which in turn were assured in principle of both cohesion and self-government, without jeopardizing the identity of the allied communities. Hence, when these Amerindians referred to the Confederacy, they were alluding to unity and common representation. The political organization of the Amerindians of Quebec was structured in the 17th century, circa 1660. The alliance was broken in the 19th century, circa 1860” (Sawaya 1998, 14).



Amerindians of Lower Canada.

Author: Th. Kammere according to C. Krieghoff (A. Borum), Archives nationales du Québec, Quebec City

The recent work of the historian Jean-Pierre Sawaya (1998) reveals to us this little-known facet of the political history of the Amerindians. The Seven Fires Confederacy consisted of the “domiciled Indians,” so named under the French regime and denoting Amerindians of the missions established in the proximity of Montreal, Trois-Rivières and Quebec City. In this alliance, the “Great Fire of Kahnawake” held a central position leading political and diplomatic relations with the other governments of northeastern America (ibid., 167). The Confederacy played a valuable role, in particular in the settlement of several territorial disputes. Internally, the member nations also used the Confederacy to settle their own disputes. This was, in particular, the case of the territorial sharing among Confederacy members and the respective use of hunting grounds

and resources. Regarding the actual importance of the Confederacy, the researcher has noted that the Seven Fires maintained continuous political and diplomatic relations, first with the French and then with the British, and also with the Wabanaki Confederacy, the Iroquois Six Nations Confederacy and the various Great Lakes confederacies (ibid., 167).

at history will provide us with more information on the origin of current land claims and, in particular, give us a better idea of their scope. But before doing this, we should look more closely at how the British Crown and later the Canadian Government absolved themselves of their responsibility to ensure the “protection” of the Aboriginal nation. We will see that a major shift had occurred in the administration of Indian Affairs.

AMERINDIAN ARCHIVES

Wampum beads were used as official archival documents and served to officialize treaties between Amerindian nations or treaties that these nations concluded with European nations. They were also used to mark various social and political events of the Amerindians. Wampum is a bead made of sea shells. By extension, necklaces, belts and other objects made of these beads are also called wampum.

Six Nations chiefs explain the meaning of the wampum necklaces that they have been entrusted with.

*National Archives of Canada,
C 85137*



The colour of the beads used, the number of rows, their lengths, as well as the symbols and motifs reproduced all have their own significance. These genuine Amerindian archival pieces are also guarded preciously. With the Seven Fires Confederacy of the St. Lawrence Valley, for example, Kahnawake acted as wampum keeper (Sawaya 1998, 113). Wampum necklaces could also be guarded by individuals to whom the

power to interpret these agreements or historical facts was transmitted. This is the case of William Commanda, an Algonquin elder from Maniwaki who has three wampum necklaces in his possession. He is vested with the title of “keeper of the wampum.”

FOR FURTHER INFORMATION

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Photo: Pierre Trudel

