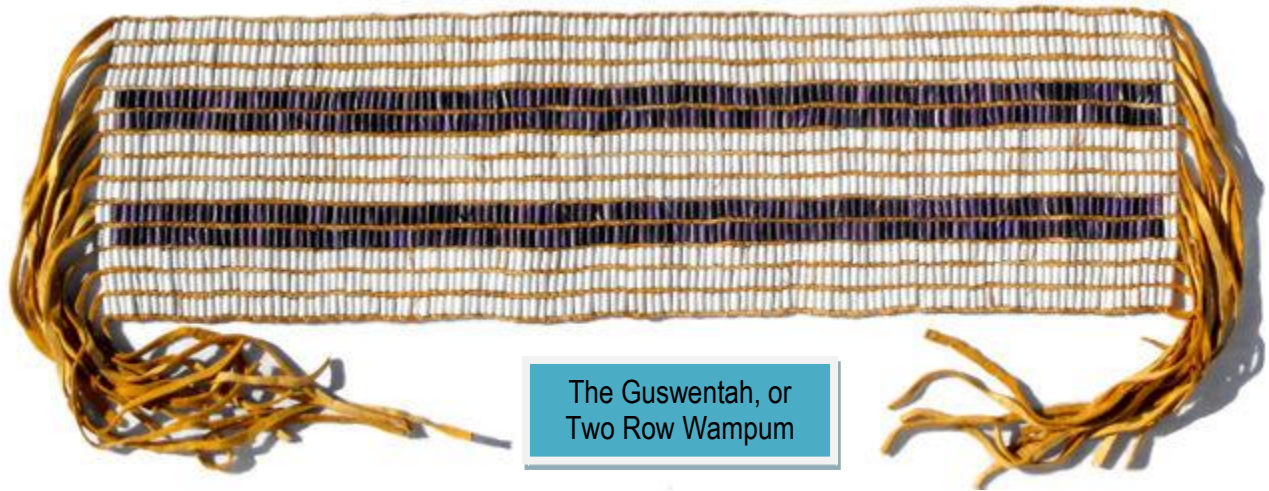


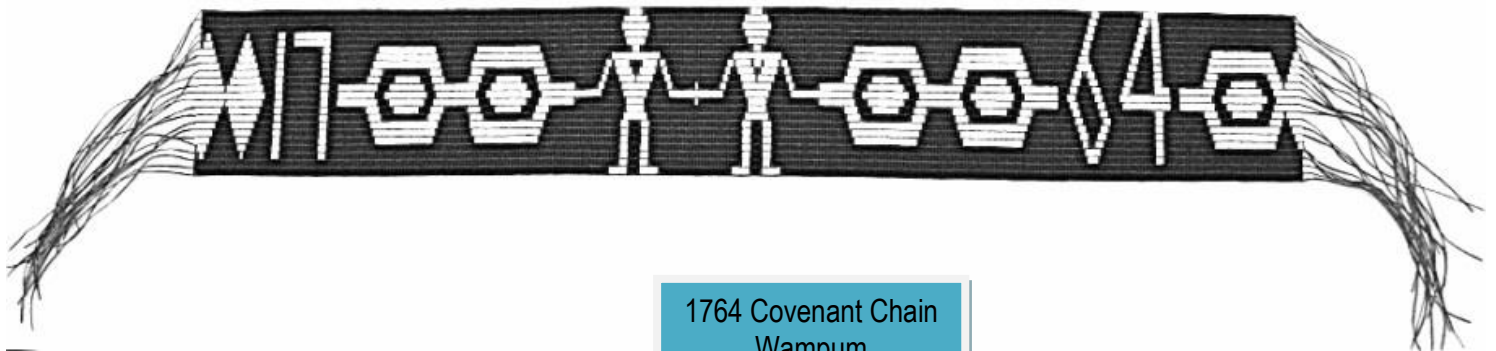
# Indigenous People heading into the Confederation Era Preparing for Cultural Genocide?

Includes information found in *Aboriginal History: A Reader* (Oxford University Press, 2012)

- The Royal Proclamation of 1763, and later Treaty of Niagara (1764), provided the original constitutional framework by which the Crown would relate to the continent's First Nations (as equals and allies). Two interpretations of the relationship:



The Guswentah, or  
Two Row Wampum



1764 Covenant Chain  
Wampum

- When looked at holistically, the Royal Proclamation and the Treaty of Niagara can properly be seen as one of the many "Magna Cartas" that continue to live and grow in these lands. The gathering at Niagara extended the great Silver Covenant Chain of Friendship forged with the Haudenosaunee Confederacy near the east coast into the interior of this continent, bringing with it a familial relationship with the Sovereign. This relationship was supposed to inform future treaties, including the numbered treaties and modern treaties forged with the Crown. It also reinforced that the Treaty relationship is a personal one with the Queen regardless of the government, or political developments, of the day.

- However, there were problems: while the Treaty of Niagara was being negotiated, the power of King George the person was already being curtailed by the emergence of what English political writer Walter Bagehot called the Dignified Crown (the King) and the Efficient Crown (powers now exercised by elected ministers, including the prime minister).
- Since the proclamation, British colonial officials debated on what to do about the “Native Question” – each British North American colony had different perspectives, but they all largely ended up following the same policies of **assimilation into the wider European-Canadian society**.
  - At first, assimilation “was generally understood to mean the First Nations peoples would participate collectively in the developing market society but would, broadly speaking, retain their autonomy.” (Hugh Shewell, *Aboriginal History: A Reader*, 170)
- In Upper and Lower Canada the *Crown Lands Protection Act* was passed in 1839 declaring all Indigenous lands to be Crown land (redefining First Nations as “wards of the state”). A *superintendent-general of Indian Affairs* acted for the Crown.

## Residential Schools

- By the 1830s, 18,000 Aboriginal peoples lived near settlements in Upper and Lower Canada. The *superintendent-general of Indian Affairs* wanted to “civilize” the Aboriginal Peoples using money generated from the sale of Aboriginal lands. This initiates the establishment of compulsory **Residential Schools**.



The Mush Hole

- The Mohawk Institute (called “Mush Hole” by its survivors) was the oldest continuously operated Anglican residential school in Canada. It was established in 1828 as the Mechanics’ Institute, a day school for native boys from the Six Nations Reserve at present day Brantford, Ontario. Three years later, the school took in boarders and girls were later admitted in 1834—this date usually taken as the founding of the residential school. In later years, pupils were drawn from other reserves, such as neighbouring New Credit and more distant Moraviantown, Sarnia, Walpole Island, Muncey, Scugog, Stoney Point, Saugeen, Bay of Quinte and Caughnawaga. In the twentieth century, increasing numbers of orphaned and destitute children were enrolled.
- *The Legacy of School for Aboriginal Peoples* (Oxford University Press, 2003) explains that residential schools “obliterated and replaced First Nation’s ancestry with a rigid code of temporal, linguistic, and religious/moral conduct that fed the political and economic needs of an expanding, colonizing economic Goliath. (36)
  - It was the destruction of “the Self.” (39)
- By 1841, the administration of First Nations peoples was passed from the military to civilian authority (politicians). The new civil administrations that represented and promoted the interests of settlers saw First Nations as a nuisance and barrier to settlement.
- The extermination of the First Nations was considered, but permanent undersecretary of the Colonial Office (the British official overseeing the colonies), Herman Merivale, did not think this was a viable idea. Merivale instead favoured isolation and amalgamation.
  - Merivale argued this would be done through the “euthanasia of savage communities.” (Hugh Shewell, 170-1)

### **Bagot Commission, 1844 (excerpts from the Royal Commission on Aboriginal Peoples)**

- Established by Governor General Sir Charles Bagot, the Bagot Commission collected information from 1842 until its final report was issued in 1844.
- Generally, the commissioners found that there were serious problems with squatters on Indigenous lands, poor records of land sales or leases, and inept official administration of band funds; that the wildlife necessary for subsistence was fast disappearing from settled areas; and that Indigenous Peoples generally were suffering from alcohol abuse.
- To bring order to the development of an “Indian policy” and to end the varying practices in the different colonies, centralization of control over all matters relating to “Indians” was recommended. The belief was that Indigenous Peoples could only be “civilized” when they had been brought into complete relationship with the concept of individualized property.

- Central to this idea was the European belief that people are autonomous, self-contained, sovereign beings endowed with the right to own and exploit property. This concept of the sovereign individual was contrary to nearly all Indigenous cultures and belief systems, which place a far greater emphasis on the collective Society, communal needs, and interconnectivity with the land. (Hugh Shewell, 171)



- Indigenous People were to be encouraged to take up farming and other trades and were to be given the training and tools required for this purpose in lieu of treaty gifts and payments. To combat settler encroachments and trespassing, the Bagot Commission recommended that reserves be properly surveyed and illegal timber cutting eliminated by a timber licensing system.

★ Education was considered key to the entire enterprise; thus boarding schools were recommended as a way of cutting off Indigenous children from their communities and traditional upbringings.

- Christianity was to be fostered.

- The commissioners were concerned that Crown protection of Indigenous land was contrary to the goal of full citizenship in mainstream society. In their view, maintaining a line between Indigenous and Settler lands kept Indigenous Peoples sheltered from various aspects of colonial life such as voting (only landowners could vote at that time), property taxation, and liability to have one's property seized in the event of non-payment of debt. **The Bagot Commission therefore recommended that Indigenous People be encouraged to adopt individual ownership of plots of land under a special “Indian land registry system.” They were to be encouraged to buy and sell their plots of land among themselves as a way of learning more about the land tenure system and to promote a spirit of free enterprise.** However, the reserve system was not to be eliminated all at once — the transition was to be gradual, and in the meantime, no sales of Indigenous land to settlers were to be permitted.
- Crown financial obligations were to be reduced by taking a census of all “Indians” (as defined by the state) living in Upper Canada. This would enable officials to prepare band lists. No “Indian” could be added to a band list without official approval, and only persons listed as band members would be entitled to treaty payments. It was recommended that the following classes of persons be ineligible to receive these payments:
  - all persons of mixed “Indian” and “non-Indian” blood who had not been adopted by the band;
  - all “Indian” women who married non-Indian men and their children;
  - all “Indian” children who had been educated in industrial schools.
- The Bagot Commission led to the creation of a more or less permanent department of government to deal exclusively with “Indians” and “Indian lands.” Today it is *called Indigenous and Northern Affairs* and is still located in the seat of government in the Ottawa-Hull region.

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Something to consider:

**Fee Simple:** Part of *English Common Law*. The greatest possible estate in land, wherein the owner has the right to use it, exclusively possess it, commit waste upon it, dispose of it by deed or will, and take its fruits. A fee simple represents absolute ownership of land, and therefore the owner may do whatever he or she chooses with the land. If an owner of a fee simple dies intestate, the land will descend to the heirs. (West's Encyclopedia of American Law, 2<sup>nd</sup> Edition, 2008)

In English common law, the Crown has ultimate title, meaning that it is the ultimate "owner" of all land. However, the Crown can grant ownership in an abstract entity—called an estate in land—which is what is owned rather than the land it represents. The fee simple estate is also called "estate in fee simple" or "fee-simple title", sometimes simply "freehold" in England and Wales.

# Gradual Civilization Act (1857)

*Enacted by the Province of Canada*

## C A P. XXVI.

An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians.

[Assented to 10th June, 1857.]

**WHEREAS** it is desirable to encourage the progress of Civilization among the Indian Tribes in this Province, and the gradual removal of all legal distinctions between them and Her Majesty's other Canadian Subjects, and to facilitate the acquisition of property and of the rights accompanying it, by such Individual Members of the said Tribes as shall be found to desire such encouragement and to have deserved it: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

**I.** The third section of the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, chaptered seventy-four and intituled, *An Act for the protection of the Indians in Upper Canada from imposition and the property occupied or enjoyed by them, from trespass and injury, shall* apply only to Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown (or which having been so surrendered have been set apart or shall then be reserved for the use of any Tribe or Band of Indians in common) and who shall themselves reside upon such lands, and shall not have been exempted from the operation of the said section, under the provisions of this Act; and such persons and such persons only shall be deemed Indians within the meaning of any provision of the said Act or of any other Act or Law in force in any part of this Province by which any legal distinction is made between the rights and liabilities of Indians and those of Her Majesty's other Canadian Subjects.

*The preamble sums it all up. Read it and write, in your own words, what the purpose of this Act was.*

# The British North America Act (1867) and “Indians” Part of Canada’s Written Constitution

British North America Act, 1867, 30-31 Vict., c. 3 (U.K.) (cont.)

## VI. — DISTRIBUTION OF LEGISLATIVE POWERS.

### *Powers of the Parliament.*

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Prisons.
29. Such Classes of Subjects as are expressly excepted from the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Legislative Authority of  
Parliament of Canada

The Parliament of Canada is the supreme legislative body for the **FEDERAL** government. The British North America act created two separate jurisdictions: the **FEDERAL** and **PROVINCIAL** governments.

What does this do to the Treaties established between the Crown and Indigenous Peoples?