

Conflict in Caledonia

Aboriginal Land Rights
and the Rule of Law

LAURA DEVRIES



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Law and Society Series

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Geography of the Six Nations' Grand River Territory in southern Ontario. The dispute on which this book centres is located in the town of Caledonia, indicated in larger type (map created by Lara Hoshizaki and used with permission).

Introduction

Many centuries ago, six nations united to form the Haudenosaunee Confederacy. Representatives from each of the nations – Mohawk, Seneca, Cayuga, Onondaga, Tuscarora, and Oneida – formed the Confederacy Council, a political structure that allowed for national and individual autonomy if consensus could not be reached on a particular course of action. The Haudenosaunee decided that their lands would be united: a “dish with one spoon” for each to use responsibly and with an eye to future generations. They were extremely successful in war and were a force to be reckoned with, both by other First Nations and by the Europeans who eventually arrived on Turtle Island, which they had renamed North America.

These Europeans – initially the Dutch and later the French and British, in turns – eagerly sought trading and military alliances with the Haudenosaunee Confederacy, which they referred to as the League of the Iroquois. At first, the settlers were few, and the treaties, both in word and in outcome, were mutually agreeable. The British and the Haudenosaunee decided on a relationship that was best symbolized by two boats travelling down the same river – together but independent. Years of interdependence in economy and battle culminated in the Haudenosaunee providing assistance to the British during the American War of Independence. However, treaties that were increasingly broken by the British eventually compelled a large number of Haudenosaunee, led by Joseph Brant, to migrate from what had just become the United States of America to a more northern part of their traditional territory in what is now southern Ontario. They had become wary of European promises, the latest being a pledge by the British to compensate

them for any losses of land they might suffer as a result of their alliance in the American War of Independence. It appeared, however, that the British intended to see this promise through. In 1784, Lieutenant Governor Frederick Haldimand issued a proclamation – expressed in terms that reflected the new arrivals’ ways of noting ownership – that recognized a stretch of land along the Grand River, from source to mouth, totalling about one million acres, as Haudenosaunee territory.

Although this area was only a tiny fraction of their original land, the Haudenosaunee believed that with this recognition the covenant of alliance with the British would be restored and the settlers’ incursions would cease. Unable to pursue their traditional mix of farming and hunting due to the reduction in their territory and the increasing presence of immigrants, the Haudenosaunee decided to lease some of their land to generate monetary income for themselves and their descendants. Despite promises to the contrary, however, and even despite further military assistance to the British during settler uprisings, the Haudenosaunee found that many European squatters were settling on their land without property title or permission from either Six Nations or the colonial government. This squatting was illegal under British law, but the government in London was unable or unwilling to ensure that local colonial officials enforced this law. Many squatters were eventually given title to the land by the colonial government, and many of the land leases were somehow treated as sales, even though payments never appeared in Six Nations’ trust fund accounts. Over time, through fraud, neglect, and outright theft, the Haudenosaunee of the Grand River Territory once again found themselves hemmed in on all sides. Settler societies were constantly growing, and the Haudenosaunee generally got the short end of the legal stick. At the same time, options for physical resistance were limited.

The British and subsequent Canadian governments have long maintained that in 1841 they succeeded in solving the problem once and for all by arranging a “general surrender” of land from Six Nations. This adjustment reduced the Grand River Territory to a postage-stamp-sized reserve. Six Nations has contested this surrender ever since. At first, opposition consisted of petitions, letters, delegations to colonial governments, both local and in London, and the like. Later, in the 1970s, Six Nations was among the first Native groups to press its land claims through official Canadian channels. Six Nations has also submitted twenty-eight claims of fraud, theft, and non-payment for lands ranging from the town plot of Brantford to those acres flooded during the building of the Welland Canal. One of these claims has been settled, in favour of Six Nations, and the others either are still in process

or are yet to be addressed. While the disputes are stalled, Ontario has continued steadily to sell land to settlers, who now hold title under Canadian property law and have built farms, villages, towns, and cities on what Six Nations considers its own sovereign lands.

The Haudenosaunee have never agreed to be part of Canada but have been forced over the years to at least pay lip service to its laws and customs. All the while, Six Nations' trust funds have been diverted to support Canadian projects. In 1924, the RCMP raided the Confederacy council house and, supported by a small minority of Six Nations people, installed a new "elected" band council approved by the *Indian Act* in place of the Confederacy.¹ Until 1960, it was illegal for Natives to raise money for the purpose of litigation against the Crown. In the 1970s, when the government finally introduced a land claims process, hopes for fairer dealings glimmered, but this process has proved to be largely ineffectual.

The Six Nations Reserve is located between the town of Caledonia and the city of Brantford (which, ironically enough, is named after Joseph Brant). Both places are now thoroughly entangled in Canada's dispute with Six Nations. In February 2006, a contingent of Haudenosaunee physically occupied a half-built housing development in Caledonia called Douglas Creek Estates, halted construction, and renamed the land Kanonhstaton, "the protected place." The land developers, Don and John Henning of Henco Homes, found themselves painfully enmeshed in an unresolved land dispute. At the local courthouse in Cayuga (a town named for one of the six nations), the Hennings sought and received an injunction against the protesters. The protesters refused to obey it and leave the property. In April, the Ontario Provincial Police were sent in to remove them, but this effort failed. Indeed, the attempt motivated the protesters to block the main road through Caledonia as well as the highway bypass skirting the town – a serious obstruction to all who lived there as well as to anyone driving south. Negotiations to address the unresolved claim commenced, with the Confederacy Council recognized as the representative of Six Nations. Soon afterwards, the barricades were removed, and the Ontario government purchased the land from the developers. Only a nominal contingent of protesters remains on Douglas Creek Estates.

Five years after this particular land-related protest was launched (there have been others involving Six Nations over the years), negotiations seem to be on semi-permanent hold. Protests and construction stoppages have spread south from Caledonia to the town of Hagersville and west to Brantford. The Elected Band Council of Six Nations has resumed litigation against Canada, demanding a formal and complete accounting of land leases, sales, and trust

fund monies that were to have been held for Six Nations. The Confederacy Council continues to seek resolution through negotiation, but momentum has waned on all sides.

Why is it essential to make sense of this moment? Why present this land dispute as especially important to Canada? Why maintain that the conversations echoing throughout are crucial to our understanding of law and society in this country? Some might contend that Six Nations should forget about it – that what is done is done – while others argue that ownership simply needs to be resolved by checking the records, and others might go slightly further (as I initially did) and suspect that clashing conceptions of land ownership are complicating the dispute. The first attitude is essentially a modern-day version of the racist *terra nullius* or “empty land” doctrine to which the arriving Europeans resorted in order to delegitimize other civilizations; the second relies too heavily on the accuracy and fairness of documents written and managed by the colonial government; and to move toward the third is to comprehend only one small part of the differences between Haudenosaunee and Canadian ideas about society, law, and territory.

We stand at a critical juncture. Disputes such as this one have enormous power to shape the country that Canada is still becoming, at a time when First Nations across the continent are asserting their rights to land and self-government. The contest over this piece of land in Caledonia – a charming small town like so many others in southern Ontario – tells us things we need to face about our past and offers insights, even illuminations, into what might yet be. I argue in this book that the things we say about the world – the claims we stake and the truths we make – are more than mere words. They shape both legal and physical landscapes.

In the following chapters, I will be exploring in depth the story I have just summarized. It is a powerful and fascinating one, and I have elected to use it as the backbone of my argument (though not always chronologically), hoping to satisfy those readers who want to learn more about what happened during the dispute. The tale is gripping regardless of one’s level of interest in (or indifference to) the accompanying discussion, which will apply insights from activists, scholars, lawyers, and philosophers of various stripes. Quite simply, I find the story of the dispute, as well as others’ ideas about various aspects of the history, law, people, and geography involved, to be captivating. I may perhaps be predisposed toward fascination because of my upbringing on the original Haldimand Tract. However, I also believe that the issues raised in what appears to be a contest over land speak powerfully not only to Canadian relationships with First Nations more broadly (to which many, if not most, people in Canada can relate) but also to familiar discourses

regarding national identity, multiculturalism, law, and human rights. In delving into this dispute, I learned a lot about who I am and how I see the world, about the cultural milieu in which I find myself, and – by extension – about how the parties involved in this dispute are motivated and informed by the societal and cultural conversations in which they have been raised to participate.

If only for the insights that we can glean about ever-mesmerizing human behaviour and culture and how these translate into histories, societies, and law, the story is an absorbing one. Importantly, however, I believe it is one that primarily offers Canadians reasons to think about things differently rather than to congratulate themselves. I also consider it extremely important to try to understand how things have happened – that is, the mechanisms of law and action or inaction by which injustice was enabled – thus, to better understand our country and to better equip ourselves for transformative change. Having had the privilege of spending two years learning about the moment in which we find ourselves, I wanted to be part of the ongoing dialogue about how we humans shape our societies. My aim has not been to write a destructive book, to provide a laundry list of problems, or to propose impossible changes to life in this country. Rather, it has been to offer a closer look at Canadian society from the perspective of the uncommon ground in Caledonia. The words exchanged during and about this dispute reveal injustice and denial, which are major components of the founding of Canadian law and society, and point to a new way forward. I describe how the shaping of our society by old ideas and clichés, translated into law, continues to this day, although often sneaking in just below the surface of events, and I show that this process is neither natural, inevitable, nor acceptable. Neither Canada nor Six Nations is inherently bad or intrinsically virtuous – to simplify either entity in this manner would be to make caricatures of both of them. Human societies, being comprised of wondrously complex and inventive human beings, are neither predetermined nor simple. Our history is messy and still happening, and *we are part of it* – this is the ever-crucial positive side of the coin of critique.

The “rule of law” is a concept dearly held by many Canadians, whether they would articulate it using that phrase or not. However, these three words are often invoked insensibly of the context in which they exist, ignoring the ways that “the law” came to be and the people whose own laws were ignored in the process. The “rule of law” cannot be a self-justifying phrase, so that anything decreed “by law” is unquestioningly also taken to be “right” or “good.” The Supreme Court of Canada has interpreted the phrase to mean that all exercises of legitimate public power must have a source in law and

that every state official or agency is subject to the constraints of the law. Over time, the Court has fleshed out these ideas more specifically, most recently describing three principles. First, the law is supreme over government as well as individuals. Second, the rule of law requires the creation of an actual system of law that preserves and embodies the more general principle of normative order. Finally, relationships between the state and individuals must be regulated by law.² One of the main themes of this book is an exploration of how people on both sides of the dispute in Caledonia have used the phrase “rule of law” and how the idea of “the law” has been historically developed and applied. Law does not emerge in a vacuum.

Given the stated values of this country – peace, order, and good government – Canada can and must pay more attention to the divide between its principles and its actions. Surprisingly, I have learned that the historical events on which this dispute turns are often surprisingly absent in recognized and passed-on accounts of Caledonia. Geography, meanwhile, bears evidence of history – we can literally see its workings on the land. Kanonhstaton, “the protected place,” was first snatched from a future as the Douglas Creek Estates by a handful of protesters. I use the two names interchangeably because its future, which is as yet undetermined, serves as a powerful proxy for the undecided, but inevitably intertwined, futures of Canada and Six Nations. The story of this moment and how it came to be is the foundation for my argument, and the fascinating people involved serve to illuminate it. To smooth the path for those less saturated by the events of the past four years in Caledonia, I have included in the appendices both a timeline of events and an index of the key persons.

In Chapter 1, I set out the reasons for the title of this book while introducing some of the pivotal events, characters, and ideas in the dispute, explaining how the term “rule of law” has come to be used on both sides as justification and explanation for actions and stances. Chapter 2 explores the significance of land in national imaginations and identities, demonstrating that Canada’s development has been predicated on legislations of dispossession that to this day reverberate tenaciously in land management policy – legislations that inspired the Caledonia occupation. Chapter 3 delves into Canadian multiculturalism as it plays out in this small town, showing how notions of normalcy and rationality, which are assumed to be properties of Caledonia and Canada but not of Six Nations or of other First Nations asserting their land rights, are mobilized in support of prejudicial governance and non-functioning claims systems. In Chapter 4, I juxtapose Haudenosaunee ideas about land ownership and sovereignty with an exploration of how ideas about political legitimacy and the right to interpret history have been contested in this dispute. These lines of questioning are continued in

Chapter 5, which examines the differing visions for justice in this dispute as well as the possibilities for achieving a mutually satisfactory resolution both in Caledonia and in conflicts elsewhere. Possibilities for rethinking sovereignty over land and law are introduced in Chapter 6, which examines the opportunities for change that are inherent in the Canadian Constitution. I wrap up both story and argument in the conclusion.

“Rule of Law”

1

The Ontario Provincial Police (OPP) had an unusual assignment on 20 April 2006. Almost two months earlier, a group of protesters from the Six Nations Reserve had occupied a housing development site in the small but growing town of Caledonia. Asserting that the land belonged to the Haudenosaunee people and describing their actions as a “reclamation,” the protesters, led by two young women named Dawn Smith and Janie Jamieson, had shut down work on this latest expansion of suburbia and were refusing to leave the contested site until the land dispute had been addressed by the federal government. The task facing the police was to “remove” them. They stormed the site shortly after 4:30 that morning and at first succeeded in pushing back the occupants. However, calls for help soon brought many hundreds of Six Nations people to the site, and in the end the police themselves retreated from Douglas Creek Estates. This literal battle for ground would play an immeasurably formative role in the dispute. In material terms, it would shape the actions taken later, including the construction of barricades blocking entry to the site and the physical confrontations between the protesters and the citizens of Caledonia. In discursive terms, it would structure dialogue patterns by reinforcing both sides’ earlier viewpoints and by creating space for new narratives to emerge.

A popular view of history is that it is over and done, so that all that is left from it is for us to accept and live out its legacies. The events of the past are indeed powerfully reflected in this dispute – but there is also an opportunity to shape the future through our words and actions. I turn to these opportunities for change in the last chapters of this book. However, it is first crucial

to understand how yesterday's stories are retold, referred to in shorthand, and reinvented to become the events of today, which is perhaps part of the reason why we have the eerie feeling that this dispute is "nothing new." And it is also important to ask why events of this kind seem so sticky, tangled, and persistent.

Contrasting stories of the attempted removal of the protesters, as told by those involved, serve as a launch pad for our search for answers. Although the provincial and federal governments were reluctant to publicly refer to the "Caledonia situation" as a dispute over land, their reticence was not shared by the OPP, who assumed the right to step in when "objective" law demanded it.¹ The OPP's post-raid press release began with an emphasis on success, noting that the police had arrested and removed sixteen protesters: "At approximately 4:30 a.m. today, teams of officers trained in the safe orderly removal of protesters attended the Douglas Creek Estates, Caledonia and removed the protesters. Officers were required to use the least amount of force that was necessary in order to affect some of the arrests."² This description avoided characterizing the amount of force that actually *was* used to "remove" the protesters. The press release continued: "The site was secured, however a short time later the site was re-occupied. During this time three OPP officers were injured and required medical attention. Our officers showed tremendous restraint while confronted by the protesters with weapons which included axes, crowbars, rocks and a various assortment of make-shift batons."

These statements conjure up notions of violence, militancy, and the deviance of those acting beyond the law. Indeed, Six Nations protesters and the hundreds of supporters mobilized from the reserve after the OPP arrived did deviate from Canadian law when resisting the officers. Their views about the need for the reclamation, however, differed from those of the police. In praising its officers for their "restraint," the OPP was suggesting that other options had been available. The officers could have responded, presumably, by fighting the protesters to the death using the automatic weapons they had stashed in nearby vans, or they could have given orders for the snipers hiding behind bushes to shoot, instead of merely pepper spraying, tasing, and kicking protesters and striking them with batons. In concluding with the statement: "We ask everyone to work with us in restoring calm," the OPP was dodging responsibility for disrupting the peace that had largely prevailed prior to the raid. In effect, the police action was an assertion of Canada's claim to the (battle)ground and to the sovereignty and legitimacy of the Canadian nation-state.

The idea of "land as battleground" was stated much more explicitly by Six Nations representatives – after all, the land and their efforts to reclaim

it were thoroughly implicated in their existence (and recognition) as a sovereign people. The raid conjured up memories of two previous police actions. In 1924, the RCMP had taken over the Six Nations' council house, deposed the traditional hereditary Confederacy Council, and installed the Elected Band Council in its place. A 1959 attempt by supporters of the Confederacy to retake the council house was similarly quelled by the RCMP. This 2006 raid heightened the distrust of the police felt by many at Six Nations, who viewed it as a declaration of war and as a manifestation of continuing attempts at cultural (and thus literal) genocide.³

The protesters declared that police intervention – which the OPP had promised not to initiate without warning – had disturbed a previously peaceful occupation. Some angry protesters set fire to piles of tires and dropped a van from a nearby highway overpass to the road below. Ruby Montour, a vocal protester who later became a much recognized figure at protests on building sites beyond Caledonia, highlighted the significance of the raid and the attention paid to the reclamation and Six Nations' political rights after the roadblocks had gone up. "It's history in the making," she contended: "It's the first time we've been listened to."⁴ Confederacy Chiefs Allen MacNaughton and Leroy Hill were disgusted with the unexpected police action, which occurred almost immediately after they had finished talking with government officials late into the night. Hill, however, pointed out that at least the failed raid and resulting blockades would grab the government's attention: "We come from a long tradition of diplomacy and using a good mind and resolving things at the table. We predict they'll be listening to us a little better [at meetings]."⁵

Before the raid, entry to the disputed site had been blocked only at its front gate. Soon afterwards, protesters erected barricades blocking Argyle Street, the Highway 6 bypass, and the nearby Canadian National railway line, asserting that their safety was at risk. This chronology – OPP raid, *then* barricades that inconvenienced Caledonia – is often neglected in recollections of the occupation. The raid still echoed strongly on its first anniversary. Hazel Hill, another prominent Six Nations voice, compared it again to the 1924 imposition of the Elected Band Council, a "forced armed invasion of the RCMP against the Haudenosaunee on the direction of the Crown,"⁶ and asserted that it was proof that the Crown intended to deprive Six Nations people of their collective future.⁷

For many Six Nations people, the raid and the reclamation have re-emphasized the common bond they have outside of Canada. Although not all Six Nations citizens agreed with the occupation strategy, many viewed the reclamation effort as a crucial time in Six Nations' ongoing, still-being-created history.⁸ The injured bodies of protesters and officers, the weapons

used on both sides of the skirmish, the fires burning along the railway tracks, and the barricades erected on the roads around the site proved to be powerful images for those who supported the reclamation as well as for those who did not. A pictorial history of the raid clearly depicts a battle, referring to "lines of defence," "war," OPP "sharpshooters" hidden in the bushes, "our nation under attack," and Caledonia "under siege" by blockades.⁹ Cayuga Chief Cleve General said he "never thought I would live to see the day we would stand up for who we are."¹⁰ As Janie Jamieson summarized it, "we were fighting for our existence."¹¹ For the protesters, the landscape was firmly tied to identity and future. However, the OPP's effort equally marked the space as one of rights and belonging, sovereignty and law – in short, as a territorial battleground.

What do these different stories tell us? How does what is said (or left unsaid) about the police operation enlighten us as to the roots of this dispute? And what does it tell us about the possibility of resolution? Would the police have been called to take action if politicians had not described the occupation so emphatically as criminal? Indeed, the OPP's failure to oust the protesters seems to have strengthened the emphasis on the "rule of law" by inflaming already aggrieved protesters. Once the barricades were up, Caledonians' frustrations were directed toward what was perceived to be neglect of the rule of law. As the title of this book suggests, these three small words have the power to conjure up entire ways of being.

A Common Tale?

The police raid propelled the protest into local and national public awareness. In fact, the occupation had been launched two months earlier, on 28 February 2006, with broadcasters reporting on a strategically planned "occupation" by Haudenosaunee protesters of a half-finished forty-hectare housing development in Caledonia called Douglas Creek Estates.¹² The protesters had (re)claimed the land as their own, asserting that it had never been surrendered to the Crown to be sold to third parties and that action was necessary, following years spent waiting for Canada's land claims system to address major thefts and fraudulent "sales" of land.¹³ Many non-First Nations Caledonians and other Canadians across the country reacted with shock and feelings of betrayal. In their view, Canadian land title meant ownership and the fact that the developing company had paid for the property "fair and square." What might it signify if First Nations people could invade and seize land at will, apparently without consequences?

Yet should the events really have been surprising? Physical and discursive expressions of First Nations' "land claims" in the forms of demonstrations, declarations, and scholarship on the subject have been mounting in frequency

and are an ever-increasing presence in the Canadian political landscape, forcefully disrupting Canadian cultural imaginations based in history long past and harmony in diversity predicated on the ongoing denial of First Nations' rights.¹⁴ Years after the beginning of this protest, negotiations between Canada and Six Nations drag on without appreciable progress, when they are held at all. Why are the two sides so unable to resolve the issue? Is it possible that they have such differing perceptions of the dispute? The word "reality" assumes singularity, but when we pay attention to the past and present historical, geographical, and cultural accounts provided by those contending for the land, we notice that possibilities for more than one "reality" exist. What circumstances underpin this conflict? How are its origins shaping its outcome?

In this book, I argue that this publicly conducted dispute over land exposes ongoing historical erasures in Canada as well as many easy assumptions that we have made about Canadian law and society. Explicitly or otherwise, Canada and Six Nations concur that the land at issue in Caledonia is not simply land. It is bound up in the imaginations and realities of each party's identity, economy, societal organization, and legal regime – indeed, in the status of both Canadians and Haudenosaunee as externally legitimated cultures and nations. What is not held in common, however, is the recognition afforded to each party. The conflict calls into question Canada's self-image – its very identity as a just nation – thereby exposing obstacles to honourable and honest relations with the First Nations within its borders. It highlights the imperative for a new approach to dispute resolution – indeed, a new relationship – since the ability to sustain Canadian society now depends on our ability to rearticulate what this society actually is. The story to be told – and *we are all telling stories* – could begin at any number of places. I will be telling this story while gradually unmapping the histories and discourses surrounding the dispute, exposing, examining, and questioning the "common place" assumptions and imaginaries that delineate Canadian geographical and political spaces both past and present.¹⁵

Framework

Since much of this book touches on cultural identity, it is only fair to open this section by delineating my own. I am the product of several generations of American-Dutch immigrants on my mother's side, and I am two Canadian generations from the Netherlands on my father's. I was born in Hamilton in 1982, a few months after Queen Elizabeth II signed the *Canada Act* that brought our newly minted Constitution into effect, and I have always claimed

my Canadian-ness unabashedly.¹⁶ My world was Dutch Reformed: I was peered by fellow grandchildren of immigrants steeped in the theology of Calvin, the politics of conservatism, and an ethic championing family values and honest hard work. In terms of geography, my family's postal address was Caledonia (which lay twelve kilometres southeast of our rural home), our phone number was listed in the directory for Ancaster (ten kilometres north-east), and we voted and paid taxes in Brantford (fifteen kilometres west).

Officially, I grew up very nearly centred between these three places, while attending school in Hamilton and church in Ancaster. In actuality, though, we were just a few kilometres north of the Six Nations Indian Reserve. Yet when I was growing up, I "knew" very little about Six Nations. Walking in the fields behind our house, we would find sharpened stones that my father would identify as arrowheads, so I was aware that other people used to live there. From the years before status cards were regularly checked, I remember occasionally filling the car's tank with tax-free gas at the Six Nations Reserve, so I knew that the rules were different. It is not that negative things were said about Six Nations; it is just that, generally speaking, my world paid very little attention to the nearby reserve.

Beginning in secondary school and as I entered university, I grew more aware of the complexities of Canada's history of, and relations with, the nations that first inhabited North America (previously known as Turtle Island). By the time the long-fused bomb of Six Nations' unaddressed land-related disputes with Canada finally detonated in 2006, I was beginning to suspect that there was more to the story than was commonly acknowledged. Deep-rooted differences between "us" and "them" were palpable, and I was becoming curious about the possibilities for mutually satisfactory resolution. It is understandable that Six Nations' conceptions of the dispute differ from those of the surrounding settler societies, but given two hundred years or so of "shared" history, why do such strong disparities persist? How do history and geography intertwine to form the spaces and ideas that we now perceive as "commonplace"?

Cultural frameworks such as the one I have described earlier – those that my settler-descendent peers and I take for granted – are in fact crucial to how Canada's political and physical spaces have been demarcated. Beliefs that reaffirm national imaginaries of innocent multiculturalism, individual rights, progressive development, and "peace, order, and good government" through the "rule of law" also infer particular definitions of "normalcy" – definitions that exclude those who dare challenge what is perceived as normal. These societal conversations (that is, discourses) do not arise independently, but,

rather, are shaped by long histories of entanglement and difference, legal and moral justificatory regimes, and physical practices that stake claims to land and rights. Canada's ongoing debate over First Nations' rights is an intensely public one in many ways. Most people have an opinion on the subject, and many hold strong views. We base our opinions on information and world views gleaned from our personal experiences and identity, from the opinions of acquaintances, friends, and reporters, and from what is said publicly both about, and as part of the debate among, those involved.

Discourse does not merely reflect different perspectives shaped by identity and power situations. It represents possible worlds and is inevitably tied to projects for change in particular directions.¹⁷ Words are not simply words – for example, how people use language to classify things, events, or people as “normal” or “abnormal,” “acceptable” or “unacceptable,” has powerful real-world consequences because “discourses help to produce the very categories, facts and objects that they claim to describe.”¹⁸ In legislating, policing, and imposing borders, rendering judgments, and setting negotiation constraints; in ascribing “lawlessness” and “abnormality” to Six Nations; and in myriad other ways of classifying what is “normal” and “acceptable” in Canadian terms, Canada has imposed the ground rules for the dispute over Douglas Creek Estates. These ways of describing and dealing with the dispute serve ongoing colonial agendas that have set the dispute's “shape” and that have prioritized Western frameworks for individual (property) rights, economic growth, and development. These frameworks are then legitimated by injecting the language of tolerance, multiculturalism, progress, objective law, and other “imaginaries.”

When people communicate – be it through spoken or written words, advertisements, photographs, or videos – they are constantly envisioning a project, which can be to entertain, inform, or propagate a viewpoint. It does not matter whether their intentions are conscious or unconscious, explicitly stated or only implied. The crucial point is that the context of the communication is inseparable from the communication itself. Norman Fairclough maintains that to understand the importance of discourse we need to see the cycle involved.¹⁹ Discourse is conditioned by society, and, in turn, it constitutes society.²⁰ Struggles between opposing persons or groups, then, consist at least in part of claims to a universal status for opposing representations of the world – claims expressed both through what is said and what is left unsaid.²¹ Discourse analysis can take many forms, from detailed linguistic breakdowns to broader characterizations of frame, tone, assumptions, and message. My work falls into the latter category. This book dissects the public communications and negotiations that were generated

by the Caledonia dispute and examines the common sense "logics" implicated in the impasse.

I began my research with two questions in mind: How have Canadian and Haudenosaunee values regarding land been acted upon, and publicly elucidated, in the communications and negotiations of the Douglas Creek Estates land dispute; and what insights can be generated from this dispute for the relationship between Canada and Six Nations? I found more than just the "simple" cultural, economic, or spiritual differences in their ways of viewing land. Although these differences were visible throughout the conflict, ongoing conversations deliberately invoking or muffling historical contexts of relationship, sovereignty, law and order, and orderly society were at least as loud and clear.

Given that the Caledonia dispute is still "hot" and given as well the growing urgency of First Nations' land and resource issues across the country, I will be treating my analysis as a launching point from which to discuss Canadian-First Nations relationships more generally. Caledonia serves as an ideal case study. The (apparently) bounded geography of the lands under dispute, the long history of interactions with Six Nations, and the considerable size and influence of Six Nations itself, work together to highlight land and resource issues in a powerful way. The discourses enacted around this dispute are illuminative not only in terms of what has made the Caledonia conflict so fractious but also as an illustration of the erasures and omissions that have shaped the geography and politics of the Canadian nation.

To chart the discourses that have established the parameters of the dispute, I have worked from unclassified texts such as newspapers, press releases, information pamphlets and posters, official position statements, letters, legislation, jurisprudence, "advocacy" texts, and statements of claim – materials that any interested party will have already seen or can easily find. This approach was chosen for several reasons. First, the public face of communication and negotiations is the one that is primarily used in shaping public opinion, which, in turn, can or cannot provide impetus to address Aboriginal-Canadian differences. Second, the Haudenosaunee people in general, and especially Six Nations, have been studied by anthropologists, historians, and legal experts for centuries. Although some of these research relationships have had positive aspects, many Six Nations people are understandably wary of possible misrepresentation and appropriation of their cultural and intellectual property. In addition, in-depth interviews with select individuals in the Caledonia and Six Nations communities would have simplified personal agenda-pushing on both "sides," making a candid analysis more difficult. Finally, for this study of the public discourses constituting a

dispute over the resource of land, a much broader informational scope was appropriate than that which would have been possible to generate from interviews limited by time constraints and availability, willingness, and especially the “representativeness” of the possible informants. Although I was given unfettered access by various community members to many less public documents, most notably meeting minutes for the negotiations between Canada and Six Nations, I have chosen not to directly utilize these texts in my analysis. However, they have provided insights that confirm the more public face of the deliberations.

Stories and Labels

I begin the story in February 2006 when the protest first began and end the main body of my investigation in December 2007, by which time communications had plateaued both in tone and volume. My protagonists are “Canada” and “Six Nations” – each a heterogeneous people with a unique history and perspective, working together to build a group identity and discourse. My account gives voice to both official and unofficial spokespersons: for Canada, these include various municipal, provincial, and federal officials as well as the OPP; on Six Nations side, we hear from the on-the-ground protesters and their spokespersons, the Confederacy Council, elders and clan mothers, and the elected band chief.²² I do not try to delineate the positions of the “majority” of either the Canadian or Six Nations people but, rather, those of the official stakeholders (and sometimes gatekeepers). Whether, for instance, individual government officials privately believe that Six Nations has been wronged or not becomes less important than the messages they publicly propagate. These are the meanings conveyed to the public – the messages that affect public opinion and that in some cases inspire individual grassroots action and reaction. Internal differences of opinion within various arms of the Canadian state or within Six Nations, while sometimes strategically highlighted, can also be suppressed in crucial ways. Caledonia, Six Nations, other indigenous nations, and Canada are not homogenous entities – indeed, memberships can be confusingly mixed by blood, by habitat, and by loyalty – and they contain both supporters and opponents of the reclamation, each for its own reasons. More importantly, although many of these people have clearly stated viewpoints in this dispute, I have not accorded them positions of representativeness. Many of these figures, however, will be introduced along the way, as the discourses built around, and responding to, their activities and identities are revelatory in their own right. Likewise, in using the labels “Canada” and “Six Nations,” I do not seek to conceal divergences of viewpoint. Indeed, I will argue that the ways

in which political difference is mobilized are important expressions of both parties' identities and, it follows, their approaches to the dispute.

Contesting visions of the land and its (re)claimants are starkly evidenced in the referents Kanonhstaton and Douglas Creek Estates; protesters and protectors; reclamation and occupation; reserve and territory; and settler and Natives, First Nations, indigenous peoples, Haudenosaunee, Iroquois, and Six Nations of the Grand River Territory. These competing names, heavily weighted with truth claims, are easily noted by casual observers. In the end, I seek to chart public characterizations of the dispute by the parties directly involved because these characterizations are evidence of a competition over the land itself – and, it follows, of the terms by which law and society operate: its terms of ownership, its history, its markings through stories and symbols, and its place in the mobilizations of relationships, cultures, citizenship, politics, values, and justice. All of my analyses are, of course, open to further discussion and dispute.²³ My intention is to write a "counter-story" that challenges Canadian imaginaries of objective law and order, of a nation, and of a land shaped by immigrants. According to Richard Delgado, "stories, parables, chronicles, and narratives are powerful means for destroying mindset – the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse take place ... Ideology – the received wisdom – makes current social arrangements seem fair and natural ... Stories can shatter complacency and challenge the status quo."²⁴ My deeply implicated position in this dispute makes me want to go further, in the belief that "we participate in creating what we see in the very act of describing it."²⁵ I seek to tell a story that shows how this dispute over land in Caledonia, Ontario, is very much about the right to shape both political and physical landscapes – to show that "the law" does not exist outside of societal influence but, instead, both reflects and influences Canadian societal trajectories.

It is easy to first assume, as I did, that the dispute is about differing cultural visions over the piece of land and the means of its possession. This is certainly one aspect of the dispute. However, Kanonhstaton, "the protected place," stands for more than just land in general. The discourses surrounding the dispute tie together justice, law, nature, Six Nations, indigeneity, Canada, history, geography, economy, culture, and identity in powerful ways. I argue that the ways in which the Canadian government has dealt with the dispute are working to erase Six Nations as a rightful actor in the past, present, and future of the Grand River landscape and to form a discursive and physical space that is helping to extend colonial history and law into the present.

“Rule of Law”

Colonial legal forms continue to shape Canadian society according to settler norms, which still largely ignore First Nations’ land rights. One result is that the Canadian government has created a literal and figurative battleground on which third parties such as the Henning brothers, owners of Henco – the developers of Douglas Creek Estates – have been placed between Six Nations and the Crown. Labelling the reclamation “illegal” has made the equation with “wrong” an easy (albeit illogical) leap, and, as a result, the protesters’ actions were quickly constructed as immoral. Haldimand County had given Six Nations notice of the subdivision plan, and the land was privately owned. According to Canadian law, there was no problem. Indeed, there was every logical reason for Henco to proceed with construction despite the outstanding land claim, especially considering the past record of government inaction on issues of disputed title. Six Nations again cautioned both Henco and Haldimand County Council several months beforehand that the ownership of the Douglas Creek Estates lands was in dispute. Yet provincial and municipal land policy meant that the developers were in the right as the possessors of provincial title. Haldimand Mayor Marie Trainer’s early comment neatly summarized local sentiments: “Somehow we have to get back to the rule of law in Haldimand County ... It’s so upsetting to everyone. It just seems a disrespect for the laws and Canada.”²⁶

The physical occupation of Douglas Creek Estates had begun on 28 February with the arrival of the Six Nations Land Claims Awareness Group, headed by Dawn Smith and Janie Jamieson, although, as detailed in later chapters, Six Nations’ attempts to gain attention for their unresolved land claims had begun much, much earlier. At Henco’s request, an interim injunction was issued against the protesters a few days later on 3 March, and the injunction was confirmed by Ontario Superior Court Judge David Marshall a week after that. Owner Don Henning correctly pointed out: “We’re sympathetic to Six Nations and some of their historical causes [but] *we* have done nothing wrong or illegal. The real dispute is with the federal government.”²⁷ In a 16 March hearing that confirmed the initial injunction, Justice Marshall stated that “the question of the ownership of the land is not the essence of why we are here today. We are looking at the issue of contempt and the right of the owner to access his land.”²⁸ Haldimand County Council felt similarly. As Councillor Buck Sloat put it (with unintended irony): “The longer this goes on the harder it will be to resolve. They are breaking the law. The occupation of someone else’s land is illegal.”²⁹ After the government issued a moratorium on construction at Kanonhstaton, the Hennings’ lawyer commented: “My clients are law abiding. Clearly these protesters are breaking

the law and at the end of the day, the government is capitulating. And that makes my client furious."³⁰

Six Nations would often rearticulate this "rule of law" discourse, pointing out that the Haudenosaunee had their own system of law and that Canada was breaking its own law by failing to pay for lands, by continuing to develop on disputed lands and by failing to consult First Nations in resource management decisions. Ipperwash Park, a land dispute involving the Ojibway of Stoney Point in 1995, during which protester Dudley George was shot by an OPP sniper, undoubtedly cast a shadow over the reclamation. When the Ipperwash Inquiry concluded in August 2006, Mayor Trainer grumbled: "Two-hundred per cent, it's affected us. It's why everyone is so afraid to enforce the rule of law for everyone, because of what happened there. They don't want to see it happen here."³¹ As Sloat put it,

I don't believe a resolution will ever be accomplished by more and more long, drawn-out negotiations with the protesters ... We are constrained in our freedom to express ourselves or act resolutely by the sensitivities of those who are politically correct or endlessly patient ... I want to be sure that the laws applied to them are the same laws, which would penalize me – or anyone else on Canadian soil – if I committed such outrageous acts.³²

The "rule of law" was also one of the preferred tropes of Toby Barrett, Conservative Haldimand member of provincial parliament (MPP), when it came to criticizing the Ontario Liberals:

When faced with difficult issues, government must always remember that the rule of law is not negotiable. The rule of law is of particular interest along the Grand River and across sand country. Illegal land seizures, the illegal tobacco trade, and the burden of government regulation have done more than cripple our area's economy – they have caused many to wonder whether we are all governed by the same set of laws ... Last summer, after purchasing the occupied land at Caledonia, Premier McGuinty sent taxpayer-funded lawyers to court to then legalize the land occupation ... Aboriginal people have many legitimate grievances [but] government should pursue civil remedies against those who lead protests that cross the line between free speech and disregard for public safety and the rule of law ... It's time for all elected representatives to view the rule of law as non-negotiable – and to keep that in mind when confronting new issues as they arise.³³

In placing the apparently inflexible “rule of law” above consideration, Barrett was displaying a surprising lack of awareness of Six Nations’ frequent assertions that, in fact, they do *not* believe themselves to be governed by Canada’s laws. While this logic does not excuse any violent actions taken by some who have affiliated themselves with the protest (many of whom were not from Six Nations), it is nonetheless important to recognize the distinction between *illegal* and *immoral*. Some actions taken by protesters, and some taken by Caledonians, were both illegal and wrong by anyone’s measure. On the other hand, the protest itself, while unquestionably illegal according to Canadian law, must be understood in light of the history that has led up to it as well as the fact that there would be no chance of Six Nations regaining title once the disputed land was developed into homes, even if land claims processes one day found that their claim was legitimate. Barrett’s comments also fail to consider that Canadian law also requires payment for purchases of land – a requirement that has not been followed in most cases of Aboriginal land seizure.

There have been occasional limits to local politicians’ tolerance of these statements. When John Tory, the leader of the provincial Conservatives, declared that he wanted to have a “friendly but firm chat” with the leaders of Six Nations, saying that “we cannot have a situation like that, where people take the law into their own hands,” Brant County MPP Dave Levac (whose riding includes Six Nations) retorted: “I believe that John Tory is trying to make a false accusation that there is not one law ... In fact, there have been charges laid and Native people jailed. There is one law and it is being respected.” Lloyd St. Amand, Brant federal member of parliament, pointed out that “the phrase ‘friendly but firm’ ... smacks of the parental, paternalistic approach by some public figures which has advanced nothing whatsoever ... This is adult to adult, people to people.”³⁴ Often, however, the law has been invoked as its own justification, without regard to its history and construction or whether it reflected principles of justice. For instance, the federal response to the Confederacy’s account of the history of the Douglas Creek lands professed to be “bound by our understanding of Canadian law,”³⁵ and Ontario negotiator Jane Stewart declared that “Ontario stands behind its land and property management system.”³⁶ These were circular arguments in that they did not account for how the law had been shaped. The government was insisting that its hands were tied – but who else is responsible for the law?

After issuing repeated injunctions and arrest warrants for the protesters, Justice Marshall delivered a lengthy ruling on 8 August 2006.³⁷ It opened: “Ladies and gentlemen we speak of the Rule of Law. This case deals with an issue that is arguably the pre-eminent condition of freedom and peace in a

democratic society. It is upheld wherever in the world there is liberty." He later continued: "The citizens of Caledonia may well ask why – why should I pay a fine which a judge has ordered when, on Douglas Creek Estates, the protesters do not have to obey the court's order? To that person, this court has no teeth. To that person, this is not a court at all." Still later, he declared:

It is common knowledge that the people of Caledonia, after 5 months of occupation, have seen security in their town replaced by lawlessness; protestors in battle fatigues, police officers in riot gear, and uncertainty of their future. Their property values reduced, racial relations with the neighbouring native people destroyed after many years of peaceful co-existence. It is a sad, sad result on both sides but one that might be avoided in future by proactive, quick settlement of land claims and, as well, by the crown and the police responding quickly to this court's reasoned orders.

Justice Marshall called for a suspension of negotiations "until the barricades are removed from Douglas Creek Estates and the rule of law restored to that property."³⁸ The judgment sparked an immediate reaction from protesters, who moved a downed hydro tower close to Highway 6 and threatened to pull it over the road should the government heed the judge's order,³⁹ declaring that "Marshall has no jurisdiction. This is a federal issue and he is an Ontario court judge."⁴⁰

The Ontario Court of Appeal later ruled the occupation legal. Ontario had by this time bought the property from the Hennings, who then attempted to drop their injunction. Justice Marshall vowed to continue, however, arguing that "the dissolving of the injunction doesn't deal with the matter of contempt and the rule of law in Caledonia."⁴¹ To Hazel Hill, however, Justice Marshall was "trying to hang onto some fictional power over this whole land reclamation when common sense should tell him that his part was over the day Henco was bought out, and when you really look at it, the OPP did enforce his injunction on April 20th." She also hinted at a possible conflict of interest, in that Justice Marshall lived on land falling within the Haldimand Tract: "Perhaps it is not the foundation of society that he is worried about, but something a little more personal."⁴² In response to these and other criticisms, Justice Marshall contended: "The land I own was acquired through the legal system ... It's the only legal system we have here."⁴³

The Ontario Court of Appeal definitively overturned Justice Marshall's orders in December 2006, pointing out that the Supreme Court of Canada had repeatedly recommended negotiation over litigation "to reconcile the

claims of our aboriginal communities with the rights of the Crown” and that “many considerations are at play beyond the obligation to enforce the law,” including Aboriginal and treaty rights, constitutional rights, property rights, the right to protest, and the government’s obligation to consult and accommodate in cases of unresolved land title.⁴⁴ The court concluded that “the immediate enforcement and prosecution of violations of the law may not always be the wise course of action or the course of action that best serves the public interest.”⁴⁵ The court also pointed out that Justice Marshall had placed the onus on the OPP to play judge and jury in deciding which demonstrators were in contempt of court, so that the protesters were found guilty of criminal contempt merely by virtue of arrest, with no opportunity to contest their conviction.⁴⁶ In response to the appeal court’s final ruling, Mayor Trainer declared: “It’s illegal. It shows two rules of law – you and I couldn’t stay there illegally but they apparently can. That’s what’s irritating for everyone.”⁴⁷

Six Nations, however, repeated that it had its own system of law. Janie Jamieson had, in fact, begun the occupation under the assumption that Canadian law did not apply to the protesters: “Ontario Provincial Police officers mean nothing to us. We are governed only by the Great Law. It is only out of respect that we allow them to be here.”⁴⁸ When presented with the first injunction, Dawn Smith asserted: “I am an ally to you, not a subject.”⁴⁹ The papers were burned in a campfire at the protest site,⁵⁰ and the protesters refused to leave.⁵¹ Following contempt-of-court orders at the end of March, Jamieson repeated: “That’s the Canadian court system, that’s not us. That just has no bearing on why we are here.”⁵² She also called attention to what she viewed as Justice Marshall’s hypocrisy. In his 2002 local history book, he had acknowledged the existence of the Haudenosaunee people’s organized system of law when the Europeans arrived.⁵³ Allen MacNaughton pointed out that though the imposition of the Elected Band Council in 1924 implied that Six Nations must adhere to Canada’s Constitution, “we’re not for that. We are our own people. We have our own constitution.”⁵⁴ Hazel Hill put it more bluntly in one of her newsletters: “JURISDICTION. What part of WE ARE NOT CANADIAN, is it they don’t understand. And how do you get it through their thick skulls that the laws of Canada do not apply. We are a Sovereign Nation.”⁵⁵

Reclamation leaders also pointed out that “under that Great Law, we have a duty, we are obligated to protect the land. We’re not obligated to uphold that provincial law, that injunction.”⁵⁶ They recognized, though, that Six Nations’ laws and beliefs, such as the Dish with One Spoon wampum that includes rights and responsibilities to protect the land, create direct conflict

with Canadian law.⁵⁷ Six Nations negotiators were at the table only out of respect for alliances made with the British Crown by their ancestors, "so when they talk about their policies needing to be followed, and only their policies, that doesn't bode well for the future of these negotiations."⁵⁸ The Confederacy Council's position on its land rights is perhaps best addressed in its land rights statement, which was adopted in council on 4 November 2006, affirming its historical ties with the Grand River Territory, the relationship between Six Nations and the Crown, and a desire to return to the relationship of respect that existed in the early years of foreign settlement.⁵⁹ Six Nations also maintained that Canada was and had been breaking its own "rule of law." In the land rights statement, the Confederacy Council explains:

We want the land that is ours. We are not interested in approving fraudulent dispossessions of the past. We are not interested in selling land. We want the Crown to keep its obligations to treaties, and ensure all Crown governments – federal, provincial, and municipal – are partners in these obligations. We want an honourable relationship with Canada.

That relationship, however, must be based on the principles that were set in place when our original relationship with the Crown was created. *That is the rule of law that we seek.* It involves the first law of Canada – the law that Canada inherited from both France and Britain. It is the law of nations to respect the treaties, to not steal land, or take advantage of indigenous peoples by legal trickery. As the Supreme Court of Canada has frequently stated, where treaties are involved, the honour of the Crown is always at stake.

We seek to renew the existing relationship that we had with the Crown prior to 1924. That relationship is symbolized by the *Tehontatenentson-terontahkwa* ("The thing by which they link arms") also known as the Silver Covenant Chain of Peace and Friendship. Our ancestors met repeatedly to repolish that chain, to renew its commitments, to reaffirm our friendship and to make sure that the future generations could live in peace, and allow the land to provide its bounty for the well-being of all the people. The Covenant Chain symbolizes our treaty relationship, also symbolized by *Tekani Teyothata'tye Kaswenta* (Two Row Wampum) which affirms the inherent sovereignty and distinctness of our governments. An essential part of this relationship is our commitment to resolve matters through good-faith negotiation between our governments, including consultation on any plans which might affect the other government or its people.⁶⁰

The various claims that were lodged asserted that over the past two hundred years not only had much of the land purchased or leased from Six Nations not been paid for, but much of it had also been outright stolen and that the funds that did accrue had been fraudulently managed. Contraventions were repeated every time Canada failed to consult and accommodate First Nations with lands under claim. Information pamphlets circulated to raise awareness of Six Nations' land claims referenced the Supreme Court of Canada's decisions in *Haida Nation v. British Columbia*, *Taku River Tlingit First Nation v. British Columbia*, and *Mikisew Cree First Nation v. Canada*, which mandate consultation and accommodation of First Nations when development is proposed on land where an unresolved land claim exists.⁶¹ As the protesters saw it, consultation and accommodation were not courteous gestures. Rather, they were required under Canadian law for any project on disputed land, be it a mine, a highway, or a housing development such as Douglas Creek Estates.⁶² The complications of the Supreme Court of Canada jurisprudence on this subject, and the fact that the disputed land was no longer owned by the Crown, were not viewed by the protesters as good enough reasons to refrain from taking a stand at Douglas Creek Estates. Another information pamphlet, calling for a moratorium on development on disputed Six Nations' lands until resolution was achieved, detailed the significant efforts made by Six Nations to have its land rights addressed, including a request for an accounting of lands and assets from the Crown, litigation, and exploratory talks.⁶³

These differing ideas of the meaning of "rule of law" also meant that each group viewed the physical manifestations of the other's beliefs as aggression toward itself. For Canada, Six Nations' flags, protests, and picket signs constituted direct action against both the developers and the laws of Canada. For Six Nations, the continued issuance of building permits signalled a denial of its own nationhood, law, and land rights as well as a need for places to grow. They repeatedly pointed out the Crown's responsibility to stop municipalities from issuing illegal development permits on disputed land while land claims processes were stalled.⁶⁴ Allen MacNaughton has called attention to the irony that "Canada and Ontario see the civil actions our people take against development on our lands as direct action that threatens the talks. However, they do not see that their developers are committing the same kind of action on our lands."⁶⁵ Elected Band Chief Bill Montour observed that direct action seemed to be the only way to be noticed by the provincial and federal governments: "Even though they say they don't want to negotiate over barrels of guns and barricades and stuff like that, they keep on with development and it's just a farce."⁶⁶ Likewise, the Caledonia Citizens Alliance also noticed that playing "hardball" was the only surefire way of gaining

the government's attention.⁶⁷ As Confederacy Chief Arnie General put it, the sooner "the citizens of Caledonia would start to realize that they are on native land ... I think we would have, we would have a better understanding of each other's ways. I mean, we're not here to kick them out, I think that's the farthest thing from our minds."⁶⁸ Differing concepts of what "the law" demands, however, resulted in continuing conflict over development that spread beyond Caledonia.⁶⁹ Even in the early days of the Caledonia protest, General had acknowledged that the protesters might not be able to stop the Douglas Creek Estates development, but added: "I'm not saying there aren't other developments we can stop." Six Nations' land was being stolen "all up and down the Grand River ... and the government will not sit down and talk with us."⁷⁰ Neighbouring municipalities and towns, especially nearby Brantford, were immediately aware of the implications of Six Nations' protest at Kanonhstaton. Discussing an upcoming city planning meeting in June 2006, a Brantford city councillor pointed out that "if the focus is on land, notification and development, I don't know why we wouldn't invite our neighbours at Six Nations. The Confederacy and the elected council should be at the table. If I was them I'd be upset. We're all members of the Grand River family. We all share the same space. We need to hear all the perspectives."⁷¹

Some kilometres upriver, the city of Kitchener's chief administrative officer recommended stopping work on environmental assessments for projects until First Nations' communities had been consulted. A councillor visiting from Haldimand County, however, advised that there was no need to stop development: "This would close the door on a lot of projects. Where does it end? Where does it stop?" The proposal was turned down by a show of hands.⁷² In Haldimand, too, there was concern about the potential for further disputes with Six Nations. At a county meeting in late July 2006, one of the councillors, discussing a letter from the Six Nations Elected Band Council regarding possible land rezoning for another development in Caledonia, asked: "I'm a little concerned about just ignoring it. Are we setting the developer up to get into a Douglas Creek type situation?" Another individual noted that, although the Haldimand County Council would back the developers, recent months had shown that the county must have a paper trail for every decision. It was agreed that "all we're trying to do is protect the interests and residents of the county."⁷³

The question "Where will it end?" might well have been asked by Six Nations, which was wondering whether development on disputed lands would ever cease. In Caledonia, Kitchener, and Brantford, at least, it appeared that concern was not strong enough to warrant actually changing "the law." Although the councillors' concern at times appeared genuine, it became

clear that the needs of Six Nations were being considered only when solutions were simple and convenient. Echoing sentiments expressed in Caledonia, Brantford Mayor Mike Hancock called Six Nations “neighbours” and “friends,” and he cited “many common interests and priorities such as tourism and economic development.” He also hoped to see “land claims and treaty issues dealt with and resolved to provide certainty in our relationship.”⁷⁴ The bottom line, however, was that efforts to “consult and accommodate” had better not actually stop projects from going ahead. The non-binding 1996 Grand River Notification Agreement, which asked that parties in the “Notification Area” inform one another of projects, had proved inadequate.⁷⁵ Increasingly common, protest signs put up by Six Nations people in Brantford were a clear sign of frustration over unaddressed land disputes and illegal development. As Leroy Hill explained, “the fact of the matter remains that most of Brantford is Six Nations’ Land (except for the 50 acres that has been paid for).”⁷⁶

In the spring of 2007, when protesters forced work to stop on a development site in Hagersville, a small town south of Caledonia, Six Nations’ spokesperson Clyde Powless pointed out that “we’re not against development, but we should be consulted, especially when we say we’re negotiating on the very lands that are being developed. That’s a slap right in the face.” The developer, Dan Valentini, sounded oddly like Henco had a year earlier: “I can’t blame the natives because if they have a claim, clearly something exists. They’ve been trying to reach out to the government to settle this and it hasn’t been settled. I’m caught in the middle. But I think as Canadians, we’re all caught in the middle.” Dawn Smith was coy when asked whether the protesters’ actions had been sanctioned by the Elected Band Council or by the Confederacy Council: “They didn’t tell us not to.”⁷⁷ Citing “lawlessness” and “unacceptable behaviour [that] will not be tolerated,” Ontario Minister Responsible for Aboriginal Affairs David Ramsay called a temporary halt to negotiations.⁷⁸ Mayor Trainer took the protest as a sign that Six Nations planned to cause a ruckus across Canada, claiming that “all of Canada is on their radar screen”⁷⁹ and calling Caledonia a “pilot project for Natives to see what they can get in occupations across the country.”⁸⁰

Despite repeated letters to local councils explaining how Six Nations’ land rights had been ignored,⁸¹ and despite meetings with developers to explain issues of disputed land,⁸² development continued in Caledonia. The Canadian government’s position as to the law regarding disputed lands placed developers in direct conflict with frustrated Six Nations protesters.⁸³ One awful result was a violent altercation at another development site in Caledonia. Builder Sam Gualtieri was severely beaten, with lasting repercussions to his health and ability to work, by several people insisting that the

land on which he was building a house for his daughter belonged to them. Three youths were arrested for the attack, and Gualtieri cited the incident as evidence that Native children "are growing up hating us."⁸⁴ The violence was quickly and rightly denounced publicly by Six Nations' Elected Band Council and Confederacy Council as well as by the Ministry of Aboriginal Affairs. This incident is much more complicated than any one explanation can account for – and the violence can never be justified. The attack is deeply troubling not only for its brutality but also because the actions of these youths were, inevitably, used to justify claims of the general lawlessness of Native people, the illegitimacy of the protest, and so on, thus perpetuating a cycle of simplistic responses. These actions could have occurred whether or not the attackers were simply "bad apple" opportunists looking for trouble (as no one will likely ever know), their attack was truly motivated on some level by concerns over land rights, their own lives had been marred by violence or other circumstances, or any combination of these possibilities. Hazel Hill, for her part, maintained that Canadian policies were creating divisions within Six Nations as to the most appropriate way to address continuing encroachment.⁸⁵

Demonstrations also began in Brantford. In August 2007, a group of about ten Six Nations protesters stood with placards and banners at a busy corner while city trucks hauled fill material from the area. "It's contempt of court to develop on land where a claim exists," Jamieson explained again. Holding up placards, which stated, for example, "Break a Treaty, Break a Law" and "We Are Not Terrorists," they repeated their worn refrain. One pamphlet distributed at various demonstrations explained: "The government is not telling people that they're involved in land that's under claim. They're trying to hoodwink their own people. We tried to tell them in Haldimand-Norfolk but they didn't listen and it's developing into the same situation here. Brant County is known for its farmland and the government is set to destroy it. Once that land is gone, there's no getting it back."⁸⁶

The expansion of protests to locations other than Douglas Creek Estates has been the unmistakable result of fundamentally clashing perspectives on what the "rule of law" calls for. Ontario property law is at odds with Haudenosaunee ideas of law as well as with Supreme Court of Canada decisions. Six Nations' "rule of law" discourse highlights several things: first, the continuing violation by Canadians of their own law; second, a call for justice and the "right thing"; and, third, the direct conflict between regional planning on the one hand and, on the other, the need to resolve Six Nations' land claims according to Canadian law. These ideas are often explicated more simply on placards with messages such as: "You Cry Rule of Law so Honour our Treaties and Leases!!"⁸⁷ The issue of law is also tightly linked to

the perception that the Canadian government is trying to permanently undermine Six Nations' culture and subjugate it as a nation. As one protester put it, "they want us to go away, but we won't. We can't. To us, it's black and white. We're not going to win in the white man's courts, because it's the white man's law."⁸⁸

Canada's account, meanwhile, both discursively and physically consigns Six Nations and the Douglas Creek Estates occupation to outside "the" (Canadian) law, again in furtherance of Canadian projects and values. This dispute over unsurrendered land is also a dispute over the legitimacy of Haudenosaunee law – a dispute that in turn revolves around questions about (un)surrendered sovereignty. Genuine dialogue is complicated by these opposing ideas about what "lawlessness" and the "rule of law" actually mean. The material consequences of this clash are everywhere: handcuffs and bodily injuries on defiant protesters (both Six Nations and Caledonian), zoning changes from Brant County to Brantford city land, and ever-expanding suburbia.

A Cautionary Tale

"Rule of law," indeed – which law is to be recognized? How did such different pictures of "the" law come to be? What do these vastly dissimilar discourses say about the dispute and about Canadian-First Nations relationships? And how might we go about searching for peace and resolution in this clash and in others like it? I have written this book to try to answer these questions. But how did the prospects for mutually agreeable solutions look at first glance? The federal government's "fact finder," Michael Coyle, was speedily dispatched for a preliminary investigation of the dispute and issued his eerily predictive report on 7 April 2006, less than six weeks after the reclamation began.⁸⁹ He opened his report by outlining his perceptions of the positions of the various "stakeholders" involved: the protesters at the site, the Confederacy chiefs and clan mothers, Henco, the Elected Band Council, the OPP, and the provincial and federal governments. Advancing his views as to what should or could be done to resolve the dispute, he titled the first option – continuing to urge an end to the protest and relying on existing processes to address Six Nations' land grievances – "Maintaining the Status Quo." His predictions as to the likely failure of this approach proved prescient:

This approach might be embraced by those who believe that the government should not be seen to reward those involved in unlawful actions. Such a concern is understandable, but offering no response to the continuing occupation means that the police may soon have no choice but

to intervene. As two recent enforcement actions in relation to native occupations show, police intervention poses a risk to human lives, both for the occupiers and the police. If the occupation ends in police intervention without any prior constructive response to Six Nations' concerns from Canada, the atmosphere for future discussions and community consideration of settlement proposals could be jeopardized.

Finally, pursuing such an approach would not directly address the underlying grievances, either in connection with the Plank Road lands or Six Nations' claims generally ... Failure to quickly address Six Nations' land grievances leaves the likelihood of future occupations near Six Nations. Equally important, disputes over Six Nations' land rights have festered unresolved for a very long time. Neither litigation nor the Specific Claims process has proved capable thus far of resolving any of the claims, much less resolve them quickly. The exploratory discussions appear positive, but under this route alone the bulk of Six Nations' claims will remain unresolved for a further decade or more. *The present situation offers the opportunity to adopt fresh approaches.*⁹⁰

The second option, which Coyle clearly advocated, was titled a "Commitment to Enhanced Dialogue." It included suggestions to expand the mandate of the discussions; to investigate the possibility of addressing Six Nations' claims comprehensively and at the same time, rather than individually; to develop formal mediation processes to assist in negotiations; to address Six Nations' land base concerns with flexible regulations governing additions to reserve lands; and to renew the relationship between the Crown and Six Nations. Despite the "risk" of being viewed as catering to "illegal" protesters, he called for recognition and restoration of the Haudenosaunee-Crown alliance relationships.⁹¹ He concluded: "In the end, of course, the success of any dialogue will depend on the ability of all parties to listen with respect and work to become 'at one mind' – a concept familiar to the traditions of all parties."⁹² In short, Coyle was asking the parties to recognize one another's differing discourses and "rules of law." He correctly foresaw that without such mutual respect, resolution of the dispute would prove elusive.

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