

The Caledonia Occupation

James C.B. Lawson

On February 28, 2006, Six Nations members occupied a 40-hectare construction site in Caledonia, Ontario. During the ensuing occupation, they have blockaded nearby roads and railways, and disrupted local power generation. A polarizing confrontation with their non-aboriginal neighbours has been the result. These events at Grand River, whose population of nearly 22,000 makes it Canada's largest reserve, arise from deep historic conflicts with the Canadian state.

By all accounts, the titular owner of the disputed site, Henco Industries, acquired deeds to the land in an orderly manner and properly registered its plans for a subdivision in 2005. The proposed Douglas Creek Estates were purchased from a local farmer in 1992. Henco's adherence to conventional legality gives the Caledonia crisis the surface appearance of an irrational outburst over a routine moment in the creeping suburbanization of rural southern Ontario.

But the Six Nations have long contested the Crown's right to deed lands in the area, and clearly pressed Henco to desist. Their legal case contests the legitimacy of much earlier negotiations in the mid-19th century. These talks concerned the much larger (385,000 ha) Haldimand Tract, a land parcel reserved for the Six Nations that had run the full length of the Grand River. The Six Nations had gained the Tract much earlier, on the basis of representations made immediately after the American Revolution. These in turn had their roots in an even deeper legacy of European contact and war. But in the Crown's view, the talks in the 1830s and 1840s ended these Six Nations' rights to all but a small reserve.

HISTORICAL BACKGROUND

The earliest Six Nations homeland, in what is now upper-state New York, was located along critical geopolitical faultlines, first of Anglo-French and then of Anglo-American rivalries. Founded in pre-contact times, the Confederacy came

to threaten the settlements of New France, at the same time as their growing enmity with the Wendat Confederacy (Hurons) guaranteed a French trading monopoly deep into the interior.

In 1784, the Haldimand Tract was guaranteed to Six Nations allies of the British Crown in the aftermath of the American Revolution. It originally ran 20 km wide along the Grand River. First, the Six Nations exiles claimed rights in southern Ontario by right of their conquest of rivals there during the 1640s. Nearly a century of subsequent use and forced intermarriages had reinforced these ties. Six Nations use of these lands was increasingly disrupted in the 18th century amidst famine, war, disease, and the influx of Mississauga Anishnabe (Ojibway) from the northwest. But the Six Nations exiles also had moral claims to these lands as British allies who had suffered major costs for their alliance.

In the later liberal reformist uprisings of 1837-8 in Upper and Lower Canada, southwestern Ontario had become a frontier settlement area, and a growing stronghold for liberal sentiments. Above all, the wave of newcomers sought easier access to secure property rights to land. Both moderate and radical reformers had denounced Crown land reserves of all kinds – whether for elite land speculators, for naval timber supplies, for First Nations, or for the established church.

Thrown on the defensive on this point by the unrest of the 1830s, the Crown came under liberal influence, and in particular sought to have the Six Nations sell lands all along a planned Plank Road. That settlement road later became Highway 6. Subsequent Crown arguments cite a framework agreement in 1841 and a controversial 1844 document from much of the Six Nations leadership that purportedly accepted land transfers. But another Six Nations stream of opinion had wanted the Plank Road corridor leased on their behalf. Crown policy at the time opposed such arrangements. The current legal controversy rests on whether the purported agreements were legitimate.

Within the First Nation today, land and political autonomy remain sensitive issues across the political spectrum. Some of the more militant voices align themselves with the traditional leadership structure of the Haudenosaunee Confederacy. The elected council was forcibly imposed by Ottawa in 1924, a traumatic event accompanied by arrests, the confiscation of historical records, and a sharp restriction of aboriginal political rights.

In 1995, the Six Nations filed a statement of claim in Ontario Superior Court in relation to about half of their outstanding claims against the Crown. In 2004, this court case was suspended, launching three-way negotiations over a smaller initial subset of files. At the time of the occupation, progress had been unremarkable.

RECENT EVENTS

The February take-over of the Douglas Creek Estates site soon evolved into a lengthy occupation. On March 10, 2006, Henco won an Ontario Superior Court injunction against the protesters, for which penalties were sharply increased later in March. The occupation continued. By late March, the traditional Haudenosaunee Six Nations Confederacy wrote to federal and provincial authorities, demanding faster action on the outstanding cases.

On April 4, nearly 500 primarily non-aboriginal residents protested, the first major mobilization against the occupation. The principal substantive complaints stressed the disruptions to everyday life and traffic, the economic impact of construction delays, and incidents of public disorder.

Discussions were accelerated, focusing particularly on the 'exploratory resolution process,' launched in 2004. On April 5, a joint statement announced progress on the two most advanced cases. On April 13, an interim agreement was announced on a 'new understanding' between Ontario and the Six Nations.

On April 16, an important internal rapprochement occurred. After an emer-

gency meeting with the traditional Haudenosaunee Six Nations Confederacy, the Six Nations' Elected Council ceded the leadership role in negotiations. The following day, incoming federal Indian Affairs minister Jim Prentice and provincial Aboriginal Affairs minister David Ramsey demanded an end to occupations, but fundamentally accepted Confederacy involvement.

Ramsey's statement was accompanied by a joint federal/provincial settlement offer. It included political funding for both Six Nations institutions and for economic development; an end to local conversions of disputed lands to suburban use; and a list of Ontario Crown holdings that could offset land withdrawals from the local municipal land base in any settlement.

Surprisingly, the Ontario Provincial Police conducted an early morning raid on April 20, and arrested 16 protesters. The raid was clearly intended to enforce the court order, but in fact merely hardened views and broadened the crisis. By mid-morning, a larger, re-energized group had re-occupied and reinforced the site. Other protesters blockaded a local rail line, Highway 6, and a local bypass to the highway. A wider network of militants launched sympathy protests. Kanienkehake ('Mohawk' – one of the Six Nations) protesters briefly blockaded Montreal-area traffic. Overnight, other protesters from Tyendinaga in eastern Ontario impeded freight and passenger traffic between Toronto and Montreal.

With little prospect of overcoming Six Nations opposition without further escalation, the OPP now agreed not to enter key areas. Discussions accelerated. By April 22nd, with both police and protest lines maintained, the Six Nations, provincial, and federal parties had agreed to re-launch negotiations.

But with the prospect of continued, mounting costs on the ground during these negotiations, local non-aboriginal residents intensified their own protests. On April 24, a local rally drew about 3,000, and later that day, nearly 100 police officers blocked a smaller group of militants from rushing the Six Nations barricades.

The Ontario government then took steps to reduce third-party costs, offering to compensate Henco and other local businesses for losses. On April 26, a tripartite

statement highlighted efforts to resolve the dispute, and on April 30, former Liberal premier David Peterson was appointed provincial facilitator.

Restraint extended to the municipality. When Mayor Marie Trainer of Haldimand County spoke publicly about local frustrations, she demanded the Six Nations consider the daily travel obligations of non-aboriginals with jobs. By implication or inference, aboriginal protesters did not face such obligations: that is, she was seen to be saying they did not work. Forced to apologize, the mayor ceded her public roles on the file to a deputy.

Contradictory commitments to negotiations clearly affected both camps. On April 28, some 500 people attended a second rally against the occupation. Many Six Nations members avoided patronizing Caledonia businesses, intensifying the local economic impacts. A flyer supposedly recruiting for the Ku Klux Klan was exposed as a hoax. On May 4, Railink sought a second injunction against the railway blockade. On the 19th, a small counter-blockade closed off access the Grand River reserve.

But during May, the tide of events generally favoured negotiations. On May 16, the protesters partly re-opened the Highway, and facilitated local traffic behind their barrier. On May 19, Ontario offered to suspend construction on the site indefinitely. Police were allegedly expected not to wear protective riot gear.

On May 22, Six Nations protesters finally lifted their roadblock entirely, but some local non-aboriginal protesters blocked all Six Nations traffic in response. The Six Nations side abruptly re-established their own barricades. For the first time, they dragged a hydro tower frame across the highway, and used heavy equipment to dig up part of the asphalt. The two protest camps clashed directly, exchanging blows and racial insults. Nearby, a local Hydro One transformer was heavily damaged by fire, cutting off electricity to several thousand townspeople and businesses. Provincial police struggled to separate the two sides, later reinforced by Ontario's emergency task force.

The following day, representatives from both sides ceremonially initiated a partial stand-down. But as talks were

slowly re-established over the following days, the costs for local residents mounted. Some local residents and businesses organized in favour of a crackdown. On May 29, David Marshall, the judge who had issued the original injunction against the construction site protesters, also ordered a multi-party meeting to explain the disregard of his injunction.

But Justice Marshall's unusual move soon proved to open up new pressure points in favour of a resolution. While local residents at the meeting called on the OPP to reinforce the injunctions, the judge moved only to recall the parties in mid-June. Marshall also formally joined calls for Ottawa to play a more active role.

Relations on the ground remain delicate. In reply to local questions about their neutrality, police announced an extensive list of protest-related investigations: one footbridge had been burned, a nearby Hydro One line vandalized, and several sites looted. As late as June 4, a police car strayed into an agreed no-go area, and was immediately surrounded. On June 5, email messages were intercepted that called for non-aboriginal residents to block a lacrosse match at the Grand River reserve. On June 8, another violent incident led to the filing of attempted murder charges.

ANALYSIS

Several factors have contributed to the recent tensions at Caledonia. First, the Six Nations' case does not fit conventional administrative categories for handling land disputes. Second, even tractable land disputes in Canada currently face long negotiations.

Third, the dispute is taking place in Canada's agro-industrial centre, adding to the economic and political costs of any settlement the First Nation would accept. Fourth, this location also raises the costs of interim embargoes on Crown land deals with third parties during negotiations. Without such embargoes, non-aboriginal interests are more often drawn into the dispute, just as replacement workers can intensify labour disputes.

Several features of the conflict deserve wider attention. First, it draws public attention to a unique history of internal colonialism and resistance. At the same →

time, it speaks to issues affecting much broader alliance networks: hence, a June 7 solidarity rally could draw 100 chiefs from across Ontario. Third, this crisis provides discouraging insights into polarizing inter-ethnic divides, as well as law-and-order ideologies, can be used to invoke the interests of much broader communities. These themes can be mobilized particularly rapidly when aboriginal protest (for example) impinges directly on 'third-party' interests.

Finally, in the latter respect, the crisis exposes the moral complexity of calls for peaceful negotiation. On the one hand, such calls do speak to human tendencies toward peaceful settlement of disagreements, mutual respect, and potentially cooperation. On the other hand, such initiatives also speak to state and civil-societal pressures to contain and to mystify fundamental social conflicts that a crisis has exposed. More precisely, formal negotiations have been more than a desirable *outcome* from land conflicts. They also form a *backdrop* for avoiding the cost of settlement.

The role of third parties in the latter situation is critical. *During* crises, governments have commonly off-loaded the costs of continued crisis onto third parties. In a sense, the high visibility of protest in many aboriginal land cases (just as with labour disputes) can mobilize the non-protesting third parties as a kind of spontaneous human shield for the status quo. *Between* crises, however, the benefits these same third parties gain from the absence of either crisis or reform constitute a latent force for inertia – for forgetfulness and further delay. For many decades, the capacity of senior governments to under-fund and draw out the pace of land negotiations has thus contributed to the continued marginalization of many First Nations across Canada – surely a profound inconvenience of its own, but one with less electoral weight. This dynamic also increases pressures on negotiators for the protesters to accept and even impose sub-optimal settlements when settlements become unavoidable.

But this observation hardly means that such crises are comfortable times for government leaders. The political stakes for the sitting Liberal provincial government have been substantial. In the Caledonia case, the provincial state has increasingly

been caught three ways, with roles as a party to the land dispute, as a guarantor of public order, and as a supposedly neutral arbiter in disputes amongst its supposed subjects. Local calls for the OPP to restore 'law and order' have called the neutrality of the police into question. But a crackdown to restore the status quo threatens merely to intensify and broaden aboriginal resistance. For example, on May 31, Six Nations information pickets were established upstream at the Brantford casino, emphasizing related claims over that land parcel.

On the one hand, the provincial Liberals had gained some partisan advantage from launching an investigation into the 1995 death of Dudley George at Ipperwash Provincial Park. George's death had occurred during an abrupt police crackdown on a similar First-Nations occupation. The inquiry uncovered some evidence for the persistent allegations (still denied by former premier Mike Harris) that the previous Progressive Conservative government had ordered or influenced the tactical change. On April 21, George's family spoke publicly on the Caledonia crisis, calling for a peaceful resolution, official restraint, and serious government negotiations. As a consequence, the current provincial government cannot afford to crack down without losing support from its more progressive wing.

On the other hand, the Liberals are also in electoral danger from the provincial Conservatives for unrelated missteps in fiscal, electricity, and industrial policy. The government cannot be seen to be indifferent to the practical and financial costs of the drawn-out blockades, nor can it allow aboriginal or non-aboriginal defiance to slip out of control. A key part to Ontario's approach to this contradiction has therefore been interim compensation for local businesses, including Henco.

The provincial opposition is predisposed to favour a stronger law-and-order approach to these events. The Progressive Conservatives even had the legislature pass a non-binding motion on June 5 calling for an inquiry into Ontario's role in the dispute. They are also politically aligned with the federal Conservative government. With different institutional and political interests in the dispute, the federal Conservative

government has also sought to place responsibility for a breakthrough on Queen's Park. In objective terms, a passive federal role builds momentum behind a law-and-order constituency that broadly favours the Conservatives, and also conforms to the philosophical hostility of many key federal ministers and advisors towards any expansive view of 'special' aboriginal rights.

On the Six Nations side, the dispute has apparently contributed to moderating decades-long internal divisions over questions of political institutions and degrees of political autonomy. These internal rifts contribute to a broader crisis of governance, which has both external and internal consequences. Six Nations communities have hotly debated the dividing lines between the militant defence of political and economic sovereignty, support for traditional political institutions, and merely destructive behaviour. This internal debate is conducted alongside adverse economic and political conditions, and has long been complicated by the historical failure of the dominant society to address and resolve its historic complicity in undermining Six Nations institutions.

Capitalist accumulation still depends on reliable property rights and stable government, but it was not born, at least in North America, in the presence of either. Exclusive Crown sovereignty; and the misplaced feudal presumption, inscribed in the sinews of Canadian law, that all North American land rights flow from the Crown: both are imposed fictions. Many indigenous peoples still retain economic interests and political commitments that routinely conflict with both. In a confrontation with the state and capital on their traditional lands, First Nations can therefore expect a very wide range of the dominant society's local interests to gravitate into opposition. The vast political challenge, both for First Nations and for solidarity groups, is to build up countervailing political consciousness in the dominant society – and ultimately economic interests – that in a crisis will instead choose a different course. **R**

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We Didn't Learn *this* in History Class

Anne MacMeekin

You may be hearing about the Six Nations land dispute in Caledonia, Ontario in the news. The land, which was expropriated from them in the 1840s had been leased and expropriated, promised and repealed repeatedly, until Six Nations filed a land claim in 1987. Unresolved five years later, a company named Henco Industries purchased some of the land from a farmer and have now begun to build a \$6 million subdivision on it, known as Douglas Creek Estates.

After some legal wrangling over injunctions and the OPP's reluctance to remove anyone occupying the land, police moved in to clear the protesters on April 20th, the 52nd day of the occupation. The solution just isn't that simple.

I visited the protest site on the 58th day of the occupation of the reclamation site to find out firsthand, what was happening. The young Six Nations people were friendly but nervous, courteously letting local traffic pass through the Highway 6 blockade with only a momentary delay. They had reason to be nervous. Only two days before that, an angry group of local residents stormed to the barricade, hurling racial slurs and threats. Not only are these insults common, but Haldimand Town Council had to put a gag order on their mayor for making stereotypical remarks to the media about the Six Nations people.

While I was there I had a chance to do a quick interview with Floyd (last name withheld by writer), to better understand some of the issues:

Anne: The Charter of Rights says that the process of due justice cannot erode Aboriginal rights in a land claim. How is it that Six Nations people were removed from the occupation site last week?

Floyd: The OPP were following a provincial court order. The OPP were threatened with contempt of court, even though they resisted the order as long as they could.

A: When Henco bought this piece of land, wouldn't they have done a title search and discovered the unresolved land claim?

F: Land *purchases* go through the provincial government. Land *claims* are handled by the federal government. One side doesn't know what the other side is doing.

A: I understand there is a Haldimand Agreement from the Crown to protect native lands from encroachment. Why isn't that being enforced?

F: Again, the three levels of government are not cooperating.

A: Who is ultimately at fault in this land dispute?

F: The federal government is responsible. This land and lands across Canada has been removed from native peoples and they were never compensated. If you add it up, the ensuing debt is in the billions.

A: How do you think this issue will be resolved?

F: The Ontario government, the Canadian government and the Confederacy (Chiefs and Clan Mothers) each formed a committee to draft their own proposals. Then they will meet to exchange their proposals.

A: Are the people feeling positive about it though?

F: I think that they are. You know there was a rumour that there is a native burial ground site here. Surveyors are trying to detect evidence. If they find it, that changes the parameters of the land claim.

A: There have been solidarity pickets in other areas like Kingston. Does that help?

F: Absolutely, we appreciate the support. These problems have been brewing for 200 years in this country.

A: Is there anything CAW members can do to help?

F: Of course, they can come by. Buzz Hargrove spoke out and he wrote a letter to the Prime Minister. He's your president, right? (CAW flags flanked the entrance to the blockade).

It seems like almost all concerned citizens and the affected groups agree that all government levels need to act quickly. I read a well-written commentary in the *Toronto Star* that suggested that the government pay Henco for their investment immediately and preserve the site until all parties have come to a settlement. On the 59th day of the occupation, the McGuinty government offered Henco interim financial assistance. The construction company should not suffer due to the government's deliberate longtime inaction, nor should Six Nations be denied their ancestral land.

The issue is complicated and simple at the same time. Historical events have disadvantaged the Aboriginal peoples since Europeans arrived. "Every year, the Canadian Human Rights Commission reports that the treatment of aboriginal peoples in Canada violates domestic and international human rights" [*Toronto Star*, Apr. 26, 2006]. The supposed lack of communication and cooperation between the governments are suspect to those who would question the motives.

Before I left Caledonia that day, word was spreading that sounded as if evidence of the native burial site might indeed have been discovered. **R**

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