

The Rule of Law and Two Tier Justice: The Roots of Resistance to the Six Nations Reclamation in Caledonia, Ontario

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In February 2006, a small group of Haudenosaunee women from the Six Nations Territory near Caledonia, Ontario occupied a partially constructed housing development known as the Douglas Creek Estates (DCE) on land located at the edge of the town. The forty acre tract of land is subject to the Hamilton-Port Dover Plank Road land claim submitted by the Six Nations to Canada in 1987. Women in the Haudenosaunee culture have responsibility for caring for the earth and protecting the land. Seeing the commencement of the construction of seventy-two new homes on what they believed to be their community's land and frustrated that twenty-eight of twenty-nine claims filed by the Six Nations against the Crown between 1980 and 1995 had yet to be settled, the women decided they had to fulfill their responsibility to protect the land and prevent further erosion to the Six Nations land base. Quickly joined by other members of their community, their occupation of the land gave rise to a conflict between the Haudenosaunee and some of the citizens of Caledonia. As the conflict led to mobilization on both sides, the Ontario Provincial Police were sent into the community to maintain order.

The Haudenosaunee understood that the land in question had been nurtured by their community as hunting grounds prior to the arrival of the Europeans. The British had recognized those lands as part of their hunting grounds in a treaty in 1701; recognition was formalized further when the land was "given" to them by the British as the "Haldimand Tract" after the American Revolutionary War in 1784. For their part, the citizens from Caledonia who involved themselves in the situation saw the occupation as illegal. They felt their town was under siege and that they were being held hostage and living in a state of utter lawlessness. Some even described the reclamation as an act of terrorism. The actions of some Haudenosaunee and other Indigenous activists who blocked local roads around the occupation site, blocked a VIA railway line, started a large tire fire, and dug up a portion of a street along one side of the disputed land with a backhoe were seen as further breaking the law. Some citizens whose homes abut the DCE also reported they were subject to violence, threats, and intimidation by some Indigenous activists. For example, some homeowners stated they had rocks thrown at their houses; some were involved in verbal and physical confrontations with Indigenous activists; and some felt intimidated by activists who shielded their face with a bandana.

In March 2006, two injunctions were issued by the Ontario Superior Court ordering all reclamation activists off the DCE property. The OPP failed to enforce the injunctions immediately and instead, waited until April 2006 to raid the disputed land and forcibly remove Indigenous activists who refused to comply with them. Because of this delay in acting, citizens of Caledonia concluded that the rule of law had broken down, that they were being treated as second class citizens, and that they faced a system of "two tier justice" that provides Indigenous Peoples with preferential treatment under the rule of law. As a response, radical acts of aggression were taken against the reclamation and included the distribution of racist posters throughout Caledonia and the Six Nations Territory that contained a picture of the Ku Klux Klan and called for a meeting to discuss the final solution to the "Indian problem" (Windle, 2006). A citizen of Caledonia also suggested that residents were considering taking up arms to force an end to the occupation (Dobrota, 2006). Mass rallies and marches through town were also held to contest what organizers called the "two tier system of law" in Caledonia (Dawson, 2006).

These responses from the residents of Caledonia are similar to those observed by Furniss (1999) and Mackey (2011, 2005, 2002, 1999), who examined non-Indigenous populations' responses to Indigenous land claims in British Columbia, South-Western Ontario, and upper New York State. The emphasis in these responses on "one law for all" on the one side and on seeing Indigenous land claims as historical anachronisms on the other, takes no account of two

important changes in Indigenous–non-Indigenous relations in recent years. In particular, non-Indigenous Canadians appear not to know about the entrenchment of Indigenous rights in the Canadian constitution in 1982; nor do they seem to be familiar with the tentative steps taken by the Supreme Court of Canada since the 1970s toward underlining Canada’s politico-legal context as one of legal pluralism.

Based on an analysis of the views of opinion leaders in the community of Caledonia expressed during the confrontation with the neighbouring Haudenosaunee community, we argue that there are two distinct and conflicting understandings of the Canadian legal system. The community opinion leaders understand the rule of law to mean that there is one system of law, that equality means that all are treated the same in that system of law, and that having a single system of law corresponds to what it means to be “one people” living in “one nation”. When equality is not applied in this way, then the legal system is seen to be one of “two tier” justice. In contrast, Indigenous Peoples in Canada like the Haudenosaunee see themselves facing and living in a pluralistic legal order. They continue to live by and adapt Haudenosaunee laws in place before contact with European colonizers and settlers. They have developed joint legal arrangements with the colonizers through treaties that are sealed with wampum and other legal documents. They have felt the imposition of the common and civil legal systems of the colonizers, since adapted by the governments of Canada. This argument suggests that resolving conflicts like the one in Caledonia/Haudenosaunee territory will only be successful when all Canadians, their leaders and their judicial systems embrace legal pluralism and develop the negotiating skills and jurisprudence needed for living fully in such a system. We also conclude that political science as a discipline work towards increasing awareness of this understanding in its teaching and research.

We develop this argument in several steps. First, we define the concept of legal pluralism and note its growing importance in governing Indigenous-non-Indigenous relations in Canada. Second, we outline the methodology used to interview opinion leaders in Caledonia. The third section of the paper draws on the interviews to outline the understandings of community members of the concepts of the rule of law, equality, and two tiered justice, followed by a commentary on this thinking. The fourth section of the paper asks why it might be that many non-Indigenous Canadians tend to hold the kinds of views articulated by the interviewees from Caledonia.

Legal Pluralism

The concept of legal pluralism refers to “the existence of a plurality of legal orders” with “each operative within the same social space and each one of which exists independently of the others” (Macdonald, 1998: 4). Macdonald stresses that in arguing for “multiple, overlapping, often non-geographically defined legal systems,” legal pluralism “opens inquiry into the impact of often conflicting implicit normative frameworks” (1998: 6-7). Working with the concept of legal pluralism leads to the hypothesis that “non-conforming behaviour in any particular regime is not simply a failure of enforcement or civil disobedience. It may be the reflexion of an alternative conception of legal normativity” (1998: 7). Thinking this way leads to the question as to whether more energy ought to be directed to informal processes, implicit standards and horizontal processes for dispute resolution (ibid.).

Accordingly, in utilizing the concept of legal pluralism to examine law in the Mohawk community of Kahnawake, Lajoie et al. (1998: 3), note the concomitant presence of several legal orders: federal and provincial, the Band Council (under the *Indian Act*), and longhouses. These

are each institutions with “more or less formalized organs, differentiated or not for exercising the roles of...enunciation, interpretation and application of norms of social order with exclusive authority with respect to the whole community” (Authors translation, Lajoie et al., 1998: 3). Legal pluralist thinking suggests that “normative regimes can never be a relationship of hierarchy, close-integration and vertical discipline” (Macdonald, 1998: 13). Rather it leads to imagining “a process of mutual construction of a normative regime” (ibid.).

Based on extensive research, John Borrows argues that legal pluralism in Canada must embrace Indigenous legal traditions. He defines a legal tradition as “a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the ways law is or should be made, applied, studied, perfected, and taught” (2010: 7). He adds that legal traditions are cultural phenomena; they provide categories into which the “untidy business of life” may be organized and “where disputes may be resolved” (2010: 8). In considerable detail, Borrows discusses legal traditions of First Nations communities across present-day Canada in place before contact with Europeans. He also shows how those traditions are alive and relevant today not only for Indigenous communities but also for the non-Indigenous population (2010: 10). He stresses that these legal traditions are not fixed in the past, but have evolved and been adjusted in response to the vast changes in Indigenous Peoples’ lives arising from imperialism and colonialism. In this respect, these orders continue to shape social relations in Indigenous communities today.

Borrows also notes that over the years the Supreme Court of Canada has recognized the existence of Indigenous law, thereby giving it limited legitimacy. In *R.v. Van der Peet*, the Supreme Court of Canada recognized that Indigenous Peoples have historically possessed and continue to possess legal customs and traditions. The Supreme Court’s ruling in *R.v. Mitchell* also affirmed that Indigenous laws were not extinguished under colonialism (2010: 11). Borrows adds: “Indigenous legal traditions are inextricably intertwined with the present-day Aboriginal customs, practices, and traditions that are now recognized and affirmed in section 35(1) of the *Constitution Act 1982*. In this respect, they are also a part of Canadian law” (2010: 11). But this recognition falls far short of what might be expected if legal pluralism was an integral part of everyday socio-political and legal practice.

The Canadian legal hierarchy places Constitutional law at its apex and customs or customary law are subservient and hence, of less importance. This ordering is significant because most Indigenous law can be categorized as customary and is thus viewed as inferior to that of Canadian Constitutional law. Other historical understandings of law in Canada further repudiate the notion of Canada as a legally pluralistic society that consists, in part, of a system of Indigenous legal traditions. The doctrine of “reception” holds that Canada is a settled territory, meaning that it was considered legally vacant at its foundation. This doctrine thus implies that Indigenous law present at contact included customs “either too unfamiliar or too primitive to justify compelling British subjects to obey them” (Borrows, 2010: 13). Similarly, the European doctrine of discovery, the idea that “Turtle Island” (as present day North America is named in Haudenosaunee sacred stories) was “discovered” by European colonizing forces, presumes Europeans came upon empty lands, that no peoples were living on these lands, and if there were such peoples, they could not have their own legal orders. Like the doctrine of reception, that of discovery presumes, at best, the presence of “inferior” Indigenous laws at first contact. Other justifications for ignoring or dismissing Indigenous law current in the Americas today include that of *occupation*: once one group successfully occupies the territory of another then the laws of

the occupier supersede those of longer-standing inhabitants. There is also the often heard idea that Indigenous Peoples were “conquered” by Europeans and thus no longer had a right to use their own laws. Mackey (2010) notes the prevalence of this argument among non-Indigenous persons living in south western Ontario and upper New York State. This opinion persists despite the fact that the Supreme Court of Canada has stated that Indigenous Peoples were never conquered (Borrows, 2010: 19).

After the entrenchment of Indigenous rights in Section 35 of the *Constitution Act*, 1982, the Supreme Court of Canada began to increasingly recognize Indigenous law. In recognizing it, however, the court often failed to accept that Indigenous law was “living” law. Like other legal traditions, Indigenous laws have changed and adjusted as Indigenous societies have engaged in different ways with European settlers and citizens of Canada. In reflecting on the Supreme Court’s rulings on Indigenous hunting and fishing rights, rulings that are based on practices at the time of contact, Borrows regrets the ignorance of the living character of Indigenous law. “Canadian courts have not yet come to terms with the fact that, like others, Aboriginal people are at once traditional, modern, and postmodern. Physical and cultural survival depends as much on attracting legal protection for contemporary activities as it does on gaining recognition for traditional practices” (2002: 75).

In summary, by the time of the conflict between the Haudenosaunee and some citizens in the town of Caledonia in 2006, there was some recognition by the courts of the presence of Indigenous law in the Canadian legal system. This recognition, however, was not sufficiently expansive that legal pluralism fully accommodated extant Indigenous law in Canada. This lack of recognition was particularly problematic given the long history of the Haudenosaunee in preserving their own laws and in adapting them over time as the presence of Europeans grew in their territories. Few citizens of Caledonia or Ontario more broadly, had heard of the *Great Law of Peace* (Gayanehsragowah), which inspired the pre-contact confederal political governance structure of the Haudenosaunee nor of the Gaiwih:yo (Code of Handsome Lake), the moral code that emerged in the early nineteenth century in response to European settlement.

The Haudenosaunee themselves had articulated this notion of legal pluralism already in the seventeenth century in a treaty with Dutch colonizers and recorded it in the Gahswehda, the Two Row Wampum. “These two rows will symbolize two paths or two vessels, travelling down the same river together. One, a birch bark canoe, will be for the Indian people, their laws, their customs and their ways. The other, a ship, will be for the white people and their laws, their customs and their ways. We shall each travel the river together, side by side, but in our own boat. Neither of us will try to steer the other’s vessel” (Jacobs, 2000: 37). This conception of legal pluralism was to be subsequently endorsed by the British colonizers who displaced the Dutch in Haudenosaunee territories (Miller, 2009: 50). In short, the Haudenosaunee had been articulating and living with the idea of legal pluralism in forming their own confederation of nations and subsequently in their earliest contacts with Europeans.

Methods

A textual analysis was conducted of newspaper articles containing information about the Six Nations reclamation published between March 2006 and March 2007 in *The Hamilton Spectator*, *The Grand River Sachem*, and *The Tekawennake*. *The Grand River Sachem* and *The Tekawennake* are published weekly in the Town of Caledonia and the Six Nations Territory – the two communities directly impacted by the reclamation. *The Hamilton Spectator* is published daily in the City of Hamilton, located approximately ten kilometers north of Caledonia. All three

newspapers devoted a significant amount of coverage to the reclamation. Newspaper articles were used to reconstruct events that occurred during the first twelve months of the reclamation as well as to gauge public attitudes and reactions to it.

A purposive sampling method was employed to recruit twelve non-Indigenous residents of Caledonia (four women and eight men) to participate in semi-structured interviews. Key informants were selected on the bases that they lived in Caledonia during the period under study and were found to have acted in one or both of the following manners. First, key informants made public statements about the reclamation in general news articles, editorials, or opinion letters in at least one of the three newspapers noted above. The views expressed in news articles were interpreted as implicit statements of opposition to Six Nations activism and/or the Six Nations claim to the parcel of land subject to the reclamation. Second, key informants participated in forms of direct action against the reclamation or circumstances they perceived to be related to the reclamation, such as iniquitous “race-based” policing.

A primary limitation of the study is its sample size and sampling method. Given that the small sample size (N=12) represents only a fraction of the total population of Caledonia and that the selection of key informants was limited to individuals identified as having spoken or acted against the reclamation, it is possible the views expressed by key informants may not accurately reflect the general attitudes and opinions of the broader Caledonian citizenry. In fact, some residents of Caledonia expressed direct support for the reclamation while others pressed the Canadian Government to resolve outstanding Six Nations land claims through their participation in the group ‘Community Friends for Peace and Understanding with Six Nations’ (Miller, 2006 and Salerno, 2006). While such advocacy is important, opponents of the reclamation were more vocal and received more media coverage than those who supported the reclamation. Moreover, some individuals who called the reclamation into question issued threats against reclamation activists and engaged in publicly organized rallies to express their opposition (Keefer, 2007).

The study was therefore specifically interested in better understanding the actions and attitudes of individuals who spoke or acted against the reclamation for three reasons. First, opposition to the reclamation led to hostilities between some residents of Caledonia and reclamation activists, which have impacted the previously harmonious and relatively amicable relationship between Caledonia and the Six Nations communities. Second, the rhetoric of “two tier” justice and the rule of law embraced by many individuals that opposed the reclamation opens a discursive space that can racialize Indigenous Peoples. Third, the climate of non-Indigenous public opinion towards Indigenous Peoples and issues can act as a vehicle or an impediment to the settlement of land claims and the decolonization of Indigenous Peoples from intense state regulation (Ponting, 2000). Thus, strong public opposition to the reclamation possesses the potential to thwart the ability of the Six Nations to achieve swift and fair settlements to their land claims throughout the Haldimand Tract.

The Canadian newspaper industry’s coverage of Indigenous protests and collective action has historically been “negative, [and] centred on conflict, disruptions, and crime” (Singer, 1982: 351). Articles about and photographs of the “Oka Crisis,” for example, portrayed Indigenous activists who participated in the blockade at Oka as “unreasonable, bent on hostility and a threat to established order” (Grenier, 1994: 326). Coverage focused on events or activities “in which a real or perceived potential for *physical hostility* exist[ed]” (Grenier, 1994: 327, emphasis in original). Newspaper coverage of the “Oka Crisis” was therefore found to “incite negative feelings about the Mohawks” and to influence public perceptions about the political actions of the Mohawks at Oka (Skea, 1993-1994: 21). Because a number of the study’s key informants

indicated they relied extensively on the media to keep them abreast of new developments concerning the reclamation in Caledonia, it is plausible to contend their views may have been informed or influenced by media portrayals of the reclamation, as in the case of the “Oka Crisis.” While all informants were asked whether their reactions to the reclamation were accurately reflected in the media, the study may also be limited by the difficulty in deciphering the extent to which those reactions were influenced by media portrayals of the reclamation itself.

Indigenous Peoples and the Law: The View from Caledonia Citizens

Although the Supreme Court of Canada has opened up various avenues that have moved Canada closer to becoming a legally pluralist society, knowledge of these movements and an understanding of their implications do not appear to have penetrated very deeply into Canadian society. Some evidence for this conclusion arises out of interviews carried out with opinion leaders in the town of Caledonia related to their understandings of three key concepts: the rule of law, equality before the law, and one tier or two tier justice.

In articulating how they understand what the rule of law means, residents of Caledonia argue first of all, that criminal law should be universal. That is, they contend there should be one code of law that should apply to all Canadian citizens. They add that the law should apply evenly and fairly to all people, whether Indigenous or non-Indigenous, and all people should be treated as equals before the law. Some individuals interviewed granted that the law is not necessarily “black and white”; there is some “grey”. These respondents added, however, that there should be a limit to the amount of “grey”, that is, to the extent to which discretionary decisions can be made with respect to the rule of law. Other interviewees indicated there should be no “grey” area in the law and the police should not be able to use discretion in determining how they will apply the law to any person. One informant explained:

I think everybody should be treated the same way when it comes to the law. There shouldn't be special considerations for people because you know, I'm not only talking about the Natives, you know I don't care what colour you are, why should anyone have a free ride because of some political correctness that we seem to be handcuffed by in this country right now...Everybody should be treated the same. If you try to take advantage of whatever, we'll call it a handicap or whatever your particular niche is to not getting prosecuted, or to getting a free ride because of this political correctness, I think it's wrong...All we're asking for is some kind of balanced approach to law...You shouldn't be more privileged just because you're a visible minority or have a handicap of some sort or you've got a political agenda that the government doesn't want to deal with. I think it should be one rule for everybody. (Interviewee 3, Café Amore, 19 November 2009)

Continuing to think along the lines that there could be only one code or type of law in practice, what especially angered individuals was the perception that different standards of law were being applied to Indigenous activists and the non-Indigenous residents of Caledonia throughout the reclamation. Respondents indicated that both sides were actively protesting, one by occupying disputed land and the other by protesting against the Six Nations land occupation. In their view, it was this perception of an uneven application of the rule of law between Indigenous and non-Indigenous protestors that angered the residents of Caledonia more than the blockades and delays in resolving the dispute. Put simply, some residents argue there is a double standard with respect

to how Indigenous and non-Indigenous Peoples are treated under the rule of law; they claim the law provides preferential treatment to Indigenous Peoples and holds non-Indigenous persons accountable to more stringent criteria. Such a standard is not consistent with the idea of “one rule for everybody.”

Some citizens also indicated they felt that the Ontario Provincial Police (OPP) had been derelict in their duty to uphold the rule of law as they understood it. One of the OPP’s own officers (who is also a resident of Caledonia) stated publicly he was ashamed that OPP officers were treating Indigenous activists “differently” from the non-Indigenous citizens of Caledonia. He added that law and order had “taken a back seat to politics”, and that the OPP had “mishandled the Caledonia situation” and “let down the people of Caledonia” (Clairmont 2006, A2). The officer claimed the public was right to question the OPP’s ability and willingness to uphold the law. He said, “If we’re going to be told not to enforce the law, why even go out there in the first place?... We’re tolerating lawlessness and thuggery...” (Clairmont 2006, A2).

Reinforcing this conception of the rule of law is a particular understanding of the word “equality”, an understanding that departs from what the concept might mean under legal pluralism. Our informants’ particular understanding of equality emerges in their invocation of the term “two tier justice”. One of the respondents defined the term in the following way:

It’s that perception that there’s one set of rules for one set of people and a different set of rules for Native People...It’s like if I commit an offence, however minor it is, speeding or something like that, that I would be treated in a different fashion than someone else from Six Nations would. I haven’t experienced anything like that myself. I guess it’s just in the back of my mind that should something happen, I’ll probably be treated differently being a non-Native person than had I been a Native person. (Interviewee 3, Café Amore, 19 November 2009)

What the people of Caledonia seemed to argue was that two tier justice implies that all people are not equal under the law and that the laws embedded within the Criminal Code of Canada are differentially applied based on one’s race. (Nelson, 2006)

Because the Six Nations assert they are a sovereign nation with their own systems of law and governance, many people of the Six Nations do not recognize Canadian law. Some Caledonian residents counter that the Six Nations merely use this assertion to excuse themselves from the application of Canadian laws, including the court injunction ordering them off the Douglas Creek Estates (DCE) property (Fragomeni, 2006; Jablonski, 2006; Prokaska, 2006; and Sewell, 2006). Others argue that the failure of the OPP to immediately comply with the injunctions issued against the reclamation activists on the DCE and thus, to uphold the rule of law partially illustrates that a two tier justice system exists in Caledonia (Knisley 2006 and Wooley 2006). Caledonians were concerned that two tier justice meant that the right of Caledonian citizens to protection under the rule of law and other civil liberties, were no longer guaranteed (Dring, 2007; McLachlin, 2006, Parent, 2006; and *The Grand River Sachem*, 2006); and that the legal principles of their “free society” had been sacrificed (Sorrell 2006, Vanderwyk 2006, and Vanderwyk and Vanderwyk 2006).

The perception by citizens of Caledonia that there is a system of two tier justice violates in their view, the fundamental Canadian ideal of equality and the notion that all Canadians should possess equal rights. This notion of equality is ahistorical and deliberately overlooks the *suis generis* rights of Indigenous Peoples in Canada, as indicated by one informant who said:

...[T]here's volumes and volumes of history that show how one group swindled another out of their land, especially Native Americans. Yeah, they think they shouldn't have gotten swindled out of it, but if your great, great, great, great, grandfather got swindled, I mean the people that bought Manhattan for a handful of beans, I mean, are they going to go and try to get it back? The Mississauga up here of New Credit have a claim on Toronto. Are they going to get it back? I don't think so...You know, why bother? That's what bothers me. Why don't they just say, to hell with it, why don't we just get on with life? (Interviewee 3, Café Amore, 19 November 2009)

Indifference to the history of Indigenous and non-Indigenous relations permits people to invoke the argument that all people “are the same” and should be treated in the same manner. Embracing the ideals of individualism and individual rights, Caledonian residents argue that no group should be granted special collective rights, treatment, or protections under Canadian law.

This idea has a long legacy in British imperial history, dating back to the liberal democratic principles advanced by Locke who argued that Indigenous Peoples were entitled to rights as individuals, but not collective political protections (Mackey, 2011). The discourse of equality thus supplants the historic and constitutionally entrenched principle of Indigenous rights and seeks to abolish the rights that distinguish Indigenous Peoples from settler Canadians as the original inhabitants of the territory we now call Canada (Furniss, 1999).

From the perspective of Caledonians, however, two tier justice perpetuates a division amongst Canadians along racialized lines and grants special rights and privileges to Indigenous Peoples. They argue that equality is the fundamental basis of Canadian society in the sense that all individuals in Canada should be equal before the law and subject to the same laws on an equal footing. In the spirit of equality, many individuals seek an end to the preferential treatment Indigenous Peoples are perceived to enjoy. Because they believe there is one law for all Canadians, many people interviewed indicated they could not tolerate policies or political actions that contravene their ideas about equality. They believe that separate rights for Indigenous Peoples are unacceptable and that the same rules and regulations should apply to all individuals (Mackey, 2011).

Commentary on the Caledonia Thinking

Interpreting “equality” to mean that everyone in a society should be treated exactly the same is one particular interpretation of the concept. Perhaps more informed by history, another interpretation would suggest that equality means that account must be taken of the long-term effects of an assimilation policy in colonial Canada and later the Dominion of Canada. This assimilation policy contradicted another line of thinking outlined in the *Royal Proclamation* of 1763 that assumed that Indigenous Peoples were formed into self-governing “nations” and had title to land. They could sign agreements to give up that land to the Crown but only if they were negotiated publicly with the state and received compensation for their losses. The *Royal Proclamation* was recognized as part of Canada's constitution in the *Calder* decision of the Supreme Court of Canada in 1973, and then mentioned in Section 35 of the *Constitution Act*, 1982, which also affirms the existence of other rights of Indigenous Peoples.

By the time of the dispute between the Haudenosaunee and the townspeople of Caledonia over a tract of land originally ceded to the former in the Nanfan Treaty of 1701 as hunting grounds and restated in the Haldimand Deed some eighty years later, the constitutional

recognition of Indigenous rights was some twenty-five years old. It could well be that the cautious stance followed for the most part (but not always) by the OPP was based on a recognition of competing legal interpretations about the title of the DCE land. With the killing of Dudley George in 1995 at Ipperwash, Ontario and the violence in the dispute at Kanasetake in 1990 widely criticized in terms of policing, the Government of Ontario and the police might be seen as behaving consistently with the second interpretation of equality noted above. The police might also have been aware that the Haudenosaunee still sought to live by a federal constitution in place before first contact with Europeans. They may also have known that this confederacy was created to avoid both internal conflict among the original five nations of the Haudenosaunee and external conflict with other nations, whether European or Indigenous. In other words, the governments of Ontario and of Canada might have begun to respect the legal pluralism already signalled in Section 35 and in subsequent Supreme Court decisions since the entrenchment of Indigenous rights in the Constitution of Canada. As noted in our discussion of legal pluralism above, such a legal regime would promote more horizontal approaches to resolving disputes and mutual processes for discussing a normative regime.

Implications of the Study

In reflecting upon the results from the interviews with Caledonia opinion leaders in the conflict over a tract of land, we are not at all interested in criticizing those persons. We suspect that their points of view would be widely shared by other communities in Canada living near Indigenous communities where land issues are potential flashpoints. Moreover, their points of view are probably shared by Canadians in urban settings or in rural areas distant from Indigenous communities. We have no reason to assume that the Caledonia residents were more ignorant of constitutional law and nascent legal pluralism steps taken by the Supreme Court of Canada than other non-Indigenous Canadians. More important are the following questions: Why are such views so entrenched in Canadian society? What steps might be taken to ensure that Canadian citizens are better informed? And, what responsibility do political scientists have in the face of this situation?

With respect to the first question, it is important to observe that the *Indian Act* dating from 1876 is still the source of the primary legal framework under which First Nations communities live. The *Act* was put in place to promote the assimilation of First Nations peoples into the body politic and Canadian society. This objective, in turn, was based on assumptions that Indigenous Peoples were inferior, possessed of a child-like intelligence, and were backward, if not savage peoples. Amendments to the *Act* in the first seventy-five years of its existence served the principal purpose of intensifying measures to reach the goal of assimilation; the *Act* became more intrusive and more brutal over this period. It was only in amendments to the *Act* in 1951 that the government took a small step back from these aggressive policies. Accordingly, the adult citizens of Caledonia grew up in an environment where assimilation remained the objective of the Government of Canada. Its continued existence today gives citizens little incentive to think about things differently.

If the *Constitution Act 1867* gives the Government of Canada responsibility for “Indians and lands held by Indians” and that government pursues these constitutional activities through a law like the *Indian Act*, how might one expect the citizens of Caledonia to act? They and their parents, their grandparents, their great grandparents, and their great great grandparents would all have grown up in an environment where the government argued that “enfranchisement” or assimilation into the Canadian body politic is the best policy for “Indians”. Assimilation means

forgetting the differences noted in the *Royal Proclamation* and giving little credence to negotiated treaties that were based on the system outlined in the *Proclamation*. It was only forty years ago when then Prime Minister Pierre Trudeau dismissed treaties as anachronisms and obstacles to the renewed approach to assimilation outlined in his government's 1969 White Paper on the "Indian problem". If "Indians" are supposed to become just like "us", then equality will also mean "treating everyone the same" and making exceptions would be a violation of the "rule of law" and exemplary of "two tier justice". The response by the citizens of Caledonia to the occupation of the very small DCE tract of land in 2006 in the first instance by Haudenosaunee women, was one consistent with the political culture into which they had been born and under which they grew up.

It is not as if there have not been alternative proposals on the table. The *Hawthorn Report* in the 1960s, anchored on the concept of "citizens plus" was a way forward picked up by the Indian Association of Alberta in its response to the 1969 White Paper. The political scientist, Alan Cairns, was to update and to reiterate this approach in publications in the late 1990s and the early 2000s. A still more comprehensive way forward was offered in an in depth and creative report by the *Royal Commission on Aboriginal Peoples* in 1996. None of these alternatives appear to have penetrated the armor of the *Indian Act* and the assimilationist thinking of the Government of Canada and none have been embraced by Indigenous Peoples themselves. Such states of affairs lead to the questions: Could we realistically have expected the citizens of Caledonia to behave any differently than they did in their dispute with the neighbouring Haudenosaunee community? Do not most of us share in the responsibility for what happened there?

Conclusion

The question above can be pushed further: What responsibilities do political scientists, particularly those teaching Canadian politics, have in the face of this shared history? Political Scientists are familiar with the constitution and with the lines of arguments in recent Supreme Court decisions. Nisha Nath (2011) has argued that Canadian political scientists use analytic tools that submerge race, a point relevant to events in Caledonia. Our informants tended to reiterate, without prompting, that their attitudes toward and responses to the Six Nations land reclamation were not a matter of race, but of the law. Do we need discussions in our classrooms of such claims and of the ways in which topics like "race" can be hidden in such a discourse?

Thompson (2008), like Nath, raises an ontological and epistemological concern: She asks how scholars come to know and how they come to acquire knowledge through the political science literature. We can push this concern as a pedagogical one that speaks to not only the impacts of the limitations of the Canadian political science literature on the scholarly community since the general public is not likely to consume the scholarly literature. We can also ask about the impacts on society at large if Canadian political scientists are not taking an active role in promoting topics that are understudied or excluded in both undergraduate and graduate courses in political science.

Thompson states, "The core of the discipline, or the 'mainstream,' is of central concern. The boundaries of the mainstream influence disciplinary thought in a number of ways: they dictate what and how we teach our undergraduate and graduate students, what is published in scholarly journals and books, how job candidates are evaluated, and how English Canadian political science presents its ideas and analyses to the world. While the mainstream may not necessarily be opposed to the study of race and racial consequences in politics, the fact remains

that this subject is understudied in English Canadian political science” (2008: 530). Here Thompson is specifically concerned with the exclusion of “race” from Canadian political science. What is of import to us, however, is her idea that the boundaries of mainstream disciplinary thought – or teaching – in Canadian political science need to be revisited by Canadian political scientists/educators and expanded to include new ways of thinking about Canada according to the “colonial” and “nation-to-nation” paradigms described by Nath (2011).

In summary, we believe that political scientists possess a pedagogical responsibility to better inform and educate the Canadian public about the coexistence and persistence of Indigenous rights and legal traditions and the implications of legal pluralism. Until collective attitudes towards and understandings of such issues are transformed, broader systemic changes that are needed to not only recognize but also to redress settler-Indigenous conflicts and the ongoing colonization of Indigenous Peoples, cannot be achieved.

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