

**1492 Land Back Lane: An Exposure of Systemic Colonial Infrastructure Infringing on
Haudenosaunee Land Rights**

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This paper aims to draw attention to the conflict between Haudenosaunee Land Defenders against Foxgate Developments construction plans. It will consider the relationship between colonial governments (in this case, the government of Canada) and its capitalist values via resource-extractive corporations. This paper will attempt to illustrate colonialist denial of Indigenous peoples' inherent treaty rights for the purpose of private profit and infliction of harm against Land Defenders through a historical lens.

The McKenzie Meadows development project was a 218-unit residential development plan run by a joint venture between Ballantry Homes and Losani homes, known as Foxgate Developments (Foxgate). It was designed and partially constructed over unceded Haudenosaunee agricultural land, specifically part of the Haldimand Tract (Gignac, 2021). This development was a capitalist venture, attempting to profit off the sale Haudenosaunee land and private homes.

The Haldimand Proclamation was issued by the governor of Quebec in 1784 that allotted 385, 000 hectares of land to the Haudenosaunee as compensation for allying with the British during the American Revolution¹. Within the tract sits the Six Nations of the Grand River (Six Nations) reservation, the largest populated reservation in Canada, with about 13 000 members (Gignac, 2021). While the reservation sits on a very small percentage of the area, the Haudenosaunee own the entire Haldimand Tract.

Foxgate and Six Nations both believe they are the legal, rightful owners of the land. Foxgate attested the land was legally purchased through the Haudenosaunee band council (Taekema, 2021), but the Haudenosaunee Confederacy Chiefs Council (HCCC) say they have documentation proving that a squatter on their territory illegally sold the land to a settler, who then received a land patent in 1853 from the colonial authorities (Barrerra, 2020b). The land

¹ See Appendix for map of the Haldimand Tract and the Six Nations reservation.

discrepancy hints at the history of colonial land theft, which will be explored later in more detail, as will the discrepancy between the band council and the HCCC.

As construction by Foxgate began, the HCCC called for this development as well as all plans for development along the Haldimand Tract to stop immediately, stating that Foxgate did not obtain consent for the project, and illustrating that developers routinely develop plans without proper consultation and due process that should be accorded the HCCC (Taekema, 2021, & Barerra, 2020b). Foxgate continued their project despite these calls to cease their construction.

McKenzie Meadows Development was renamed 1492 Land Back Lane, a reference to the year Christopher Columbus landed in North America, and the subsequent colonization from invading Europeans (Gignac, 2021). Land Defenders set up a camp and occupied the development site for months, forcing the suspension of development and preventing further theft and degradation of their land (Taekema, 2021, & Gignac, 2021). On August 5, the Ontario Provincial Police (OPP) raided the camp, with a senior officer suggesting that protesters may escalate in “retaliation” (Barerra, 2020b). This particular use of the word “retaliation” serves to distort the image of the protester’s peaceful occupation while simultaneously justifying police presence and their potential future use of more violent measures against the protesters.

The OPP raid and arrest of protesters triggered road blockades by the protesters (Barerra, 2020b & Taekema, 2021). Six Nations members used heavy machinery to dig up access roads, including a CN railway track, and used dirt and concrete barriers to block development. (Barrera, 2020a). This prevented all traffic, including more heavy machinery and delivery of construction equipment, from entering and exiting the site.

Foxgate filed a statement of claim with the provincial courts to sue for damages, targeting officials that allowed the protests to continue and claiming the Land Defenders were illegally

occupying the development site. (Taekema, 2021). Foxgate won an injunction against the camp (Barerra, 2020a). The road blockades also became problematic for the surrounding non-Indigenous township, and Haldimand County also filed and won an injunction against the camp and road blockades (Barerra, 2020a). Although some individual people in the county supported the 1492 movement, the injunction makes it clear the county was only interested in resuming their life as normal.

The OPP, now armed with a court injunction, used tasers and rubber bullets against the Six Nations members, with the OPP stating they used “appropriate non-lethal force” (Barrera, 2020a). Despite the threat of arrest and the new threat of physical harm with weaponry by police, protestors remained at their camp, continuing to put themselves in harms’ way for the sake of the land. Barerra (2020a), wrote, “Crown-Indigenous Relations Minister Carolyn Bennett’s office said in an emailed statement that it wants to meet with the community “at the earliest opportunity.” Nothing arose from Carolyn Bennett’s statement.

Skyler Williams, spokesperson for the camp, said, “It’s another example of the OPP coming in here with violent acts of aggression against people that are just occupying their traditional territory. I think all of us are quite sick of it.” (Barrera, 2020b). Ontario Superior Court Justice R. J. Harper, the judge that granted the injunction against the camp, accused Williams of disobeying temporary injunctions and refusing to adhere to, what Williams called, a “colonial” court system. This response from the Ontario courts suggests an expectation of Indigenous nations and peoples to adhere to their rulings, implying their absolute rule of law. Skylar Williams, however, asserts a very different view: “Understand that we are a nation unto ourselves, we’re not Canadian citizens. We’re Haudenosaunee people and need to be treated as such.” (Taekema, 2020). Harper and Williams illustrate two very different understandings of

Haudenosaunee law; this difference can be extrapolated to help explain the divide and conflict between colonial governments, private corporations, and the sovereignty of Indigenous nations over their lands.

Cayuga Snipe Chief, Deyohowe:to, was asked about the enforcement of the Haudenosaunee moratorium that prohibits all further land-use change without the consent of the HCCC; he said the HCCC was committed to peacefully resolving issues but made mention of a new generation of Six Nations that are taking land rights issues “in their own hands” (Taekema, 2021). Younger generations are adjusting their responses and tactics to racist and oppressive colonial systems, building on the experience from older generations.

Despite the physical and legal tactics used against them, the Land Defenders were able to celebrate a victory in July 2021 when representatives of McKenzie Meadows announced the cancellation of their development project (Gignac, 2021). Although this represents a triumph, the Haudenosaunee’s fight to protect their land and rights is illuminating of the tactics employed by capitalist ventures, supported by colonial governments protecting their financial stakes.

The mid-1800’s saw European settlers landing in the Grand River Valley, and the Canadian government recommended the Haudenosaunee sell outstanding acres to the government to protect the land on their behalf, in exchange for money and an 8000-hectare reservation; the Haudenosaunee assert they did not sell their land but leased it (Gignac, 2021). Much of Indigenous lands are held in trust with colonial governments, an attempt on behalf of the government to pacify Indigenous resistance to land theft while effectively severing Indigenous control over their own territories.

When the Indian Act was formed, it attempted to dissolve Indigenous forms of governance, including the creation of elected band councils: The Haudenosaunee have their band

council (which is administratively bound to the Canadian government) as well as the Haudenosaunee Confederacy (Gignac, 2021). It is not uncommon for the band council to be at odds with the HCCC over land discrepancies. While the HCCC publicly opposed the development and supported the 1492 Land Back Lane movement, band council had already accepted payment from Foxgate for two housing developments in 2019 (Gignac, 2021). The HCCC is very clear about their expectations when it comes to their jurisdiction over land rights and relationships, displaying their “Eight Points of Jurisdiction” and a “Land Rights Statement”, directed at any/all who intend to consider Haudenosaunee territory for land uses (HCCC, 2021).

The HCCC argue that development is destroying Haudenosaunee lands, particularly without their consent, including rendering the land inaccessible and unusable for future generations. (Taekema, 2021). Developers are continuing to disregard the process and need for consent before trespassing on and destroying Haudenosaunee (and, generally, Indigenous) lands. Corporations must follow the process outlined by the Haudenosaunee Development Institute (HDI). (Taekema, 2021).

A resident from Caledonia called Prime Minister Justin Trudeau to come down to the site and take responsibility for resolving the conflict (Barrera, 2020b). Non-Indigenous residents are frustrated with the conflict that is disrupting their lives. While not taking sides, they are pressuring the government to facilitate a resolution. The mayor of Haldimand County also called on the federal government for allowing the situation to escalate for decades and ignoring the voice of the Six Nations. (Barrera, 2020b). Some Six Nations members asked for the elected council Chief Mark Hill to take a stronger hand in working with the federal government to help the movement. (Barrera, 2020b). Some members are unhappy with the elected council’s position and want to see a stronger, more unified stance with the HCCC.

Issues regarding Haudenosaunee land are the women's responsibility. They claim the injunctions and colonial court procedures violate their inherent land rights and responsibility to future generations. (Deer, 2020). Ellen Gabriel, a Mohawk activist, sees the same pattern of corporate entitlement, land abuse and lack of consent from her experience in the Oka Crisis, and the ongoing dispute over the construction of the Coastal GasLink pipeline through Wet'suwet'en territory. Another dispute over this same Haldimand Tract included the Douglas Creek Estates development in 2006 that lasted two years. The spokesperson for this protest, Janie Jamieson, said, "Players change in the political scene, but the history remains the same." (Deer, 2020). A group of Haudenosaunee women wrote a formal statement through the Yellowhead Institute, voicing their support for the 1492 Land Back defenders by explaining their role as stewards of the land, and how the court system denies their inherent rights, criminalized their role, and violates Haudenosaunee Law (2020). European colonial systems are inherently heteropatriarchal. Colonial infrastructure, based on systems of oppression that place straight, white men above everyone else, undermine not only Haudenosaunee governance and law, but also Haudenosaunee women's roles and responsibilities.

These disputes are a select few of the countless examples of devious methods corporate entities use to bypass treaty obligations and consent. Jahan & Mahmud (2015) define capitalism as "an economic system in which private actors own and control property in accord with their interests... The essential feature of capitalism is the motive to make a profit." Blakemore discusses colonialism as the control and suppression of a people and/or area for the purposes of exploitation, often forcing the implementation of the colonizer's own cultural values (2019). Capitalism and colonialism fuel each other through the funding of and protection for acquisition of stolen property. Intimidation and violence are accompanying tactics to force compliance.

Consent should not be a difficult concept, and yet corporations seeking consent for resource-extraction seem to make it so, perhaps because their appeals to violate the land for privatized profits are at odds with the Haudenosaunee relationships and values. Foxgate Developments ignored the process of consulting with the HCCC, and discussed only with the Haudenosaunee band council, hoping to (and did) broker a deal for land development, taking advantage of their position as representatives of the Haudenosaunee as well as their obligations to the Canadian federal government. As Gary Pritchard (personal communication, November 9, 2021) explains, consent through coercion and duplicity does not equal consent.

Beverly Jacobs, who practises law in her Six Nations of the Grand River homes community, believes that court injunctions and other orders against Land and Water Defenders stem from a lack of education and understanding of history and worldview. She is combating this by educating her law students at the University of Windsor, hopeful that a new generation of law practitioners will approach future land disputes with a better understanding of Indigenous relationships and rights to their lands. (Deer, 2020). Estes writes, “Critics in the federal government viewed treaty claims as mere rhetoric.”² (2019). The movement towards legal accountability for private corporations may prove to make bypassing Indigenous policy and procedure much more difficult for corporations. New generations, whether law students or activists, are coupling the experience of previous generations with new skills and tactics to force recognition and compliance to the rule of law of sovereign nations.

² Although Estes refers to the government of the United States of America, a parallel may be drawn to the Canadian government that has the same history of ignoring and undermining treaties and treaty rights with Indigenous nations.

Appendix



Figure 1: CBC News, accessed October 21, 2021, Dan Taekema, April 20, 2021;

<https://www.cbc.ca/news/canada/hamilton/haldimand-tract-development-moratorium-1.5993081>

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