

The Laws and the Land

The Settler Colonial Invasion
of Kahnawà:ke in
Nineteenth-Century Canada

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Introduction

In geopolitical terms, the impact of settler colonialism is starkly visible in the landscapes it produces: the symmetrically surveyed divisions of land; fences, roads, power lines, dams and mines; the vast mono-cultural expanses of single-cropped fields; carved and preserved national forest, and marine and wilderness parks; the expansive and gridded cities; and the socially coded areas of human habitation and trespass that are bordered, policed and defended. Land and the organised spaces on it, in other words, narrate the stories of colonisation.

– Tracey Banivanua Mar and Penelope Edmonds

From the vantage point of the colonized, a position from which I write, and choose to privilege, the term “research” is inextricably linked to European imperialism and colonialism. The word itself, “research,” is probably one of the dirtiest words in the indigenous world’s vocabulary. When mentioned in many indigenous contexts, it stirs up silence, it conjures up bad memories, it raises a smile that is knowing and distrustful.

– Linda Tuhiwai Smith

One of my first experiences in Kahnawà:ke came as a student in 2006, when the elder Tionerahtoken A. Brian Deer informally welcomed me to the community by taking me for coffee and giving me an extensive tour in his minivan. I was concerned about my positionality as a white settler outsider who was interested in doing historical research on Kahnawà:ke, and I asked Brian for his opinion on what

Kahnawà'kehró:non (people of Kahnawà:ke) would think about my plans to look into the history of land surveying and property.¹ He surprised me by saying that my topic would seem obscure to most people, that I shouldn't worry too much about it, and that I should instead focus on being a responsible, accountable researcher. Looking back now, I realize that Brian knew full well my topic was potentially controversial and deeply connected to important and possibly divisive issues such as race, land, inequality, and membership. He also knew that I would make mistakes, but he chose to encourage me anyway. That meeting was the beginning of a mentorship and friendship that lasted until his death in January 2019.

Brian was an unusual and talented person: a kid with a lung condition who was told he wouldn't live past sixteen but proved everyone wrong; a community historian who didn't consider himself a historian; an avid hockey fan with a bachelor's degree in mathematics; a film buff who owned and ran a video store; a professional librarian who in the 1970s developed a new library classification system for Indigenous libraries, now known as the Brian Deer Classification system. Brian taught a regular course at Concordia University on Indigenous religions and wrote articles and reports on topics ranging from Rotinohsion:ni diplomacy to the history of the Kahnawà:ke sewer system.² For our first meetings, I often brought research questions or particular archival tidbits to discuss, and I would get frustrated when he sometimes didn't seem very interested and wanted to talk about something else, whether it was the Kanehsatà:ke Resistance (Oka Crisis) or the Latvian national hockey team. I think this was his way of teaching me to put my agenda aside and listen.

Years later, when I was planning my dissertation defence (a kind of accountability process to my academic community), I asked Brian and his brother Oskentona Philip Deering how I could be accountable to Kahnawà'kehró:non while completing my work. They told me that decades before, when they still regularly invited outsiders into longhouse meetings, people like me would be given a few minutes during a social event to publicly explain their work. Afterward, anyone could talk with the speaker about it. Since this is no longer done, they suggested I present my work on local radio, in the Kahnawà:ke newspaper, and with a public presentation at the library. That summer, I shared my work on the *Party Line Talk Show* of K103.7 and gave a formal presentation at the Skawenniio Tsi Iewennahnotahkhwa (Kahnawà:ke Public Library). When a reporter for the newspaper the *Eastern Door* asked Brian for a comment, he said, "I've met many researchers over the years and it's refreshing to meet someone who's interested in Kahnawà:ke without an agenda."³ I was surprised

by his remark, since I definitely did have an agenda, but I understood it to mean that he saw me as willing to listen and to change it if necessary – to be accountable.

Brian was one of several people in Kahnawà:ke who took an interest in me and my work, who set aside time to teach me and mentor me (see Acknowledgments). I am deeply grateful to all of them, whether or not they knew they were my teachers. Brian later supported me and my career by writing letters of recommendation for dozens of university departments where I applied for faculty positions. I hope this book honours his memory, and I continue to strive to be worthy of his trust in me, as well as the many others who trusted me with their time, energy, and knowledge.

I have opened *The Laws and the Land* with this story about Brian because his comment about agendas gets to the heart of the colonial problem I want to address. Settlers have been coming to Kahnawà:ke for centuries with agendas, and their actions have often caused incredible harm. Their agendas have not always been explicitly to harm, but even many well-intentioned settlers did great damage because they were not willing to listen or take Kanien'kehá:ka points of view seriously. Sometimes it was white men who married into the community and then refused to live according to Kahnawà:ke laws so that they could enrich themselves (Chapter 2). Sometimes it was missionaries who preached their truth rather than listen for the truth of others. It was storytellers like me – anthropologists, historians, journalists – who came in with their minds already made up, saw what they expected to see, and reported their “findings” back to their audience. It was Indian agents who imposed the agenda of the Department of Indian Affairs (DIA), or their own personal agendas, and meddled in every aspect of Kahnawà:ke lives.⁴ In the period covered by *The Laws and the Land*, the DIA was defined by paternalism: officials projected an unshakable certainty in Indigenous people's helplessness and savagery, and in their own ability to identify and solve Indigenous problems for them. In writing this book, I have striven to avoid this colonial hubris but acknowledge that I may have failed in ways that escape my attention. As a white, cis-gender man living in a settler colonial state, I continue to cause harm in ways I do not yet fully understand, but I have tried to remain accountable to Kahnawà:kehró:non in ways that I hope will make this book more valuable, helpful, and true.

The Laws and the Land tells the story of a settler colonial state (Canada) operating on Indigenous lands and its invasion of one Indigenous community (Kahnawà:ke) living on a tiny portion of its vast traditional territory (Figure 0.1). Kahnawà:ke is an Indigenous community and nation, part

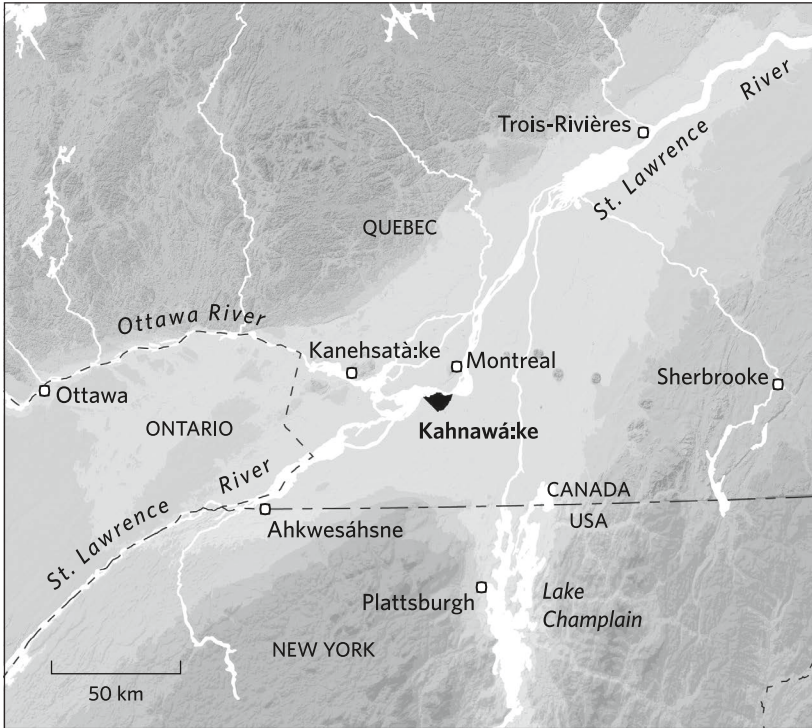


FIGURE 0.1 Kahnawà:ke in regional context. Kahnawà:ke and Montreal are near the northern boundary of the historical Kanien'kehá:ka homeland. | Map by Eric Leinberger.

of the Kanien'kehá:ka (Mohawk) Nation and Rotinonhsión:ni (Haudenosaunee) Confederacy. The invasion described here was not conducted with soldiers and guns (although the threat of military violence always lurks); it is an invasion of colonial values and laws, and it was headed up by bureaucrats, Indian agents, politicians, land surveyors, and businessmen.⁵ The same battle also raged within the community, as Kahnawà:kehró:non disagreed about how to respond to colonial advances and how best to defend their nation. This book is thus a story of colonial interference in Indigenous lives, rooted in the idea that settlers and settler governments have all the answers and licence to do what they want to Indigenous people. Colonizers believed it was their right and duty to impose their laws on Indigenous peoples and lands, even while Indigenous peoples continued to assert their own laws and values.

The Laws and the Land is an account of colonial harm. Although colonizers often had “good” intentions, meaning they intended to impose

their idea of “good” on colonized people and lands, it is the story of the dramatic failure of these intentions to bring about improvement in Indigenous lives. The rhetoric of good intentions has too often distracted historians from seeing the harm for what it was.⁶ There was no benefit or improvement. It is also a story of Indigenous resistance to settler colonialism, of an Indigenous nation that collectively refuses Canadian laws and rejects the conditions imposed on it. But the focus here is on the colonial invasion: How are colonial laws imposed? When does this occur? What does the transition look like, and how long does it take? What happens when people do not know which laws apply? What if some people continue to live by Indigenous laws while others adopt colonial laws? How does the state respond to Indigenous resistance and refusal? These are some of the questions explored in this book, which presents an Indigenous community governed by its own leaders and laws that in various circuitous, chaotic ways came to be partially governed by Canada under the rubric of the *Indian Act*.

In her essay “Unmaking Native Space,” historian Paige Raibmon calls for a genealogical approach to studying and understanding the history of settler colonies. This approach combines the study of settlement history and that of Indigenous dispossession, two fields that do not generally engage with each other. The tendency rather is for certain historians to examine the history of settlers and settlement, whereas others concentrate on Indigenous history in a colonial context. Raibmon argues that contextualizing the way in which settlers interacted with what was for them a new land within a larger history of violences toward Indigenous peoples can produce a fuller picture of colonial geographies (including Indian reserves and homesteads), colonial processes (including intermarriage and racism), and the “figurative kinships” between countless great and small events and actions.⁷ *The Laws and the Land* aims to contribute to just such a discussion. My own ancestors were indigenous to Europe, and I lived as a guest on Rotinonhsión:ni and Algonquin territory while writing most of this book. Thus, I invite readers not to interpret it as a Kanien’kehá:ka history of Kahnawà:ke – it is not. Of course, it is a contribution to the historical writing on this community, but its focus is on the fraught relationship between Kahnawà:ke and Canada, and it probably says as much about Canada as it does about Kahnawà:ke. Although it contains much Indigenous history, it is also a history of Canadian settlers and our relationship with First Peoples on their lands – a genealogical approach to understanding our shared history and differing responsibilities.

A SETTLER COLONIAL “FRONTIER”

Situated only a few kilometres from Canada’s largest city, Montreal, nineteenth-century Kahnawà:ke was one of the most populous and influential Indigenous communities in the country. Yet, despite being so close to the heart of Canadian economic and political life, it was one of the few places in the densely populated St. Lawrence Valley of the 1880s that had never been systematically surveyed or mapped for its internal boundaries. The border or “frontier” between Kahnawà:ke and Canada thus represents an important, if ambiguous, dividing line between Indigenous and settler, between colonized and colonizer, and between spheres governed under Indigenous laws and those governed under colonial laws. It is perhaps unexpected to read a book on the “frontier” (a space of settler colonial violence and Indigenous dispossession) that is set in the St. Lawrence Valley of the nineteenth century. In the United States, “the Frontier” is often visualized as a wide line drawn on a roughly north-south axis that, through time, moved west from the Appalachian Mountains to the Mississippi and across the Great Plains along with waves of white settlers. In Canadian history, such a visualization is complicated by the geographical fact of the Canadian Shield, which put a thousand kilometres of rock between the fertile soils of southern Ontario and the Red River Valley, but many Canadians still have a similar concept in their minds as they imagine their own history.

But the frontier was never just a line. There are always many frontiers, and they have never been straight or straightforward; they did not move at a steady pace or in only one direction; and they can look very differently across time and space. Historian Frederick Jackson Turner famously declared in 1893 that the American Frontier was closed, and he publicly worried how the nation would fare without what he considered its democratizing and liberating effect.⁸ Turner might have been surprised to learn that today the field of settler colonial studies (which itself is built on decades of research by Indigenous scholars) is premised on the idea that the Frontier never closed, that the work of settler colonialism continued long after settlers took most of the land, and that settler colonialism exists in both the past and the present. In other words, the Frontier as Turner saw it (capitalized, in the singular) is a limiting concept, because all of the land is Indigenous land, settler colonialism is everywhere, and Indigenous people continue to build their nationhoods in ways that defy typical “Frontier” thinking. I think of frontiers (lower case, plural) simply as

places where the forces of settler colonialism meet the forces of Indigenous sovereignty. In this definition, a frontier can be a well-known event such as the Kanehsatà:ke Resistance (Oka Crisis), but it can also be a sidewalk conversation between strangers, a tense moment in a classroom, or the physical boundary around Kahnawà:ke.

Historian Patrick Wolfe makes a useful distinction between two kinds of frontiers. He describes the demise of the Frontier (massacres, removals, armed conflict) as a moment when “elimination turned inwards.” This was not the end of the invasion but simply the beginning of a different one:

The western frontier met the one moving back in from the Pacific, and there was simply no space left for removal. The frontier had become coterminal with reservation boundaries. At this point, when the crude technique of removal declined in favour of a range of strategies for assimilating Indian people now that they had been contained within Euroamerican society, we can more clearly see the logic of elimination’s positivity as a continuing feature of Euroamerican settler society.⁹

The end of the Frontier was the end of a particular kind of settler territorial expansion but just the beginning of countless new frontiers and forms of invasion into Indigenous lives and land, as well as Indigenous resurgences and assertions of sovereignty. If we wish to understand Kahnawà:ke (and everywhere, really) as part of a frontier where Indigenous people constantly confront all manner of settler colonial forces, we must put aside the heavy burden of the stereotypical Frontier – a lawless “west,” where cowboys and cavalry battle “Indians” in a tragic, endless, repeating dance of death. I agree with Wolfe that it is useful to think of settler colonialism as “a structure, not an event,” meaning that the settler invasion can occur in any geographical location and never really ends (as we know it thus far).¹⁰ Instead, the invasion turns itself into bureaucracies, systems, and mindsets, hiding its true self behind justification stories, failed memory, and bald-faced lies. As such, settler colonialism is a profoundly modern phenomenon, not a historical land-grabbing prelude to the modern reality, and it should not be conceptualized only as a struggle between Indigenous peoples and settlers but as a tension within the minds and hearts of settlers and Indigenous people alike. Wolfe argues that settler colonialism is actually integral to modern nation-states and the modern international order because it builds and maintains chains of command and international

market forces, and depends on modern racial ideologies that are incongruously synched with the rhetoric of democratic liberal individualism.¹¹

Anthropologist Ann Laura Stoler suggests that settler colonialism, like other types of colonialism, can be understood as “the effect of a failed or protracted contest over appropriation and dispossession that is not over when the victories are declared, killings are accomplished, and decimation is resolved as the only ‘solution.’ Settler colonialism is only ever an imperial process in formation whose security apparatus confirms that it is always at risk of being undone.”¹² Settler colonialism, in other words, is the settler invasion and everything that comes after, including the continuing attempts of the settler polity to naturalize, indigenize, and justify itself.¹³ Furthermore, the colonization of Indigenous lands and peoples was not as complete as many metanarratives of the Frontier make it out to be. Indigenous peoples have continued to build their nationhoods, and nation-states continue their attempts to co-opt and undermine them. The struggle persists to this day. *The Laws and the Land* is situated within the ongoing settler colonial invasion, which Indigenous peoples and their allies still resist long after most settler narratives have placed the Frontier firmly in the past, rather than in the unfolding present.¹⁴

I agree with several of my colleagues and students who point out the danger of fatalism in formulating settler colonialism as a structure, not an event, and the hopelessness inherent in the suggestion that we cannot escape our settler colonial predicament. But I also stand with Indigenous peoples and decolonial settlers in rejecting that hopelessness and cynicism. I also share the concerns of many Indigenous, Black, and racialized scholars that the relatively new field of settler colonial studies still foregrounds white scholars and does not adequately recognize the work of Indigenous scholars who have been pursuing similar approaches for decades. I also share the perspective of many scholars in Indigenous studies and Black studies who have pointed out that settler scholars, and particularly white scholars (often historians), tend to naturalize and understate the violence of settler colonial conquest. This can be seen in common features of historical writing, such as the passive voice in which a scholar describes genocidal violence against Indigenous people or in the assumption that colonization and imperialism were somehow inevitable and natural. The tendency of white scholars to portray settler colonial violence and Indigenous death in what they might describe as “neutral” or “unbiased” language is particularly telling, because the violence in question was unprecedented in its scale and horror, so much so that words are often inadequate to describe it. As Tiffany Lethabo King states:

Because conquest ushered in such a world-altering rupture, it is almost impossible for the human imagination to fully conceive of the reach of its violence. Beyond the unfathomability of the scale of conquest's historical violence, the fact that its violence does not cease makes it even more difficult for the critical imaginaries that produce critical social theories to contain it or find the appropriate level of abstraction or texture to make it legible.¹⁵

King does not advocate for an abandonment of settler colonial studies per se but instead points toward the often unacknowledged work of Indigenous women scholars in laying the groundwork for the field. In particular, she refers to Hawaiian political scientist Haunani-Kay Trask, one of the first to use the term “settler colonialism,” who explicitly argues that genocides of all kinds are central to settler colonial processes.¹⁶ Rather than focusing on the damage and destruction suffered by Indigenous communities in settler colonial contexts (as white scholars have often done), King points out that Indigenous scholars “direct our attention to the methods and processes of genocide that settlers/conquistadors use to self-actualize.”¹⁷ *The Laws and the Land* follows her lead by eschewing a focus on settler massacres of Indigenous people in favour of describing the actions that directly contribute to genocidal processes, settler benefit, and Indigenous death. In other words, this approach refuses the sensational to concentrate on the systemic elements of settler colonization.

The definition and use of the word “genocide” are hotly contested among some scholars in Canada.¹⁸ In this book, I employ it in accordance with the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which states that

genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
 a. Killing members of the group; b. Causing serious bodily or mental harm to members of the group; c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d. Imposing measures intended to prevent births within the group; e. Forcibly transferring children of the group to another group.¹⁹

When I mention attempts to destroy Indigenous nations (as political entities), I am usually referring to part c. of the United Nations definition, but historians have written about all five variants in Canadian history. Many Indigenous people and scholars recognize that a central goal of settler colonial states has been the elimination of Indigenous peoples – some

use “genocide” (or a qualified version of it, such as “cultural genocide”), some use “ethnic cleansing,” and others use “elimination.”²⁰ I have opted for “genocide,” “attempted genocide,” and “genocidal” because these seem to me the best descriptors for what happened and because so many Indigenous survivors feel that they best describe their experience.

In *Mohawk Interruptus*, Kanien’kehá:ka anthropologist Audra Simpson describes the historical and contemporary disposition of Kahnawá’kehró:non toward colonial intrusions as “refusal.” They “have survived a great, transformative process of settler occupation, and they continue to live under the conditions of this occupation, its disavowal, and its ongoing life, which has required and still requires that they give up their lands and give up themselves.”²¹ Yet, despite the overwhelming power imbalance and explicit genocidal intentions of the Canadian state, Kanien’kehá:ka continued to be themselves. “They refuse the ‘gifts’ of American and Canadian citizenship; they insist upon the integrity of Haudenosaunee governance,” which sometimes manifests in a refusal to vote and pay taxes.²² My research and analysis follow Simpson’s work by holding that, in her words,

[Kanien’kehá:ka] are Indigenous nationals of a strangulated political order who do all they can to live a political life robustly, with dignity as Nationals. In holding on to this, they interrupt and fundamentally challenge stories that have been told about them and about others like them, as well as the structure of settlement that strangles their political form and tries to take their land and their selves from them.²³

I have frequently seen this “refusal” among many Kahnawá’kehró:non, who steadfastly and creatively refuse colonialism, even when the consequences are unpleasant or terrible. This book includes many such examples and further contextualizes Simpson’s analysis of the history of Kahnawá:ke and of Canadian settler colonialism.

The Laws and the Land also builds on the important work of Rotinonhsión:ni historian Susan Hill, whose book *The Clay We Are Made Of* traces the relationships between Canada and Six Nations of the Grand River.²⁴ Hill uses archival sources to offer detailed accounts of Canadian efforts to dispossess and destroy Six Nations through the nineteenth and twentieth centuries, and focuses on the actions of Rotinonhsión:ni to maintain their governance structures and lands. Both this book and Hill’s give a history of Rotinonhsión:ni relationships with colonial governments, and both concentrate thematically on law and land. This book is

very different from Hill's, however, in that hers is a history of her own Indigenous nation in relation to the settler state, whereas mine is a history of the settler society in relation to an Indigenous nation. My hope is that the two books can be read alongside each other and that they complement each other.

ENVIRONMENTAL HISTORY AND LEGAL HISTORY

Environmental historians have often emphasized the agency of nature in shaping the decisions of human beings, but *The Laws and the Land* is more about the kind of agency that humans are able (and unable) to express through laws and practices related to the environment. Of course, environments and other-than-human creatures always shape human behaviour, but the focus here is on human beings interacting with each other politically and environmentally as they shape their environments. Kahnawà:ke, like many Indian reserves, is a kind of bio-geographical island in that its ecological communities look quite different from those outside its borders (Figure 0.2). This is due less to geographical factors than to cultural and political ones. For example, there is no environmental reason why the Châteauguay suburbs should stop abruptly at the Kahnawà:ke border or why farmlands become forests when they reach the reserve's eastern boundary. Nevertheless, the boundaries of Kahnawà:ke are today inscribed on the land, testifying to the importance of history and law in shaping landscapes. As historians Tracey Banivanua Mar and Penelope Edmonds put it, the lands themselves “narrate the stories of colonialism.”²⁵ Environmental history is the story of human beings in relationship with other-than-human creatures and forces; this book is an environmental history because it discusses a human story in relationship to particular places, forests, fields, animals, and plants.

The narrative of *The Laws and the Land* unfolds in the context of nature and in relationship to other-than-human creatures, but it does not begin in a “wilderness” – in fact, Indigenous people have been trying to teach settlers for centuries that none of their lands are “wilderness,” places that are untouched by humans. Instead, Indigenous people have been, and continue to be, engaged in ancient and ongoing relationships with creatures and places throughout their homelands.²⁶ Environmental historians have more recently recognized the deeply problematic nature of settler conceptions of wilderness: one common Western understanding is that a pure and good environment is one without humans, that human presence and



FIGURE 0.2 This satellite image of Kahnawà:ke clearly shows the outlines of today’s “reserve,” a dark-green, triangle-shaped territory amid suburbs and farmland. | Map screenshot, accessed on 4 March 2021, copyright 2020, Google.

interaction are inherently negative.²⁷ Indigenous stories about human relations with other-than-human creatures tell a different story: one of intimate relatedness. The story here unfolds in a landscape that humans have inhabited and intimately known for thousands of years.

The “frontier” in *The Laws and the Land* is not a geographical boundary or an ambiguous space of conflict between Indigenous and settler cultures; rather, the narrative unfolds in the space where Canadian colonial governance and law meet Kanien’kehá:ka governance and law. This book is a legal history because it shows how these two legal traditions interacted in a colonial context. Anishinaabe legal scholar John Borrows argues that Indigenous legal traditions have always been practised in the country currently known as Canada, and he summarizes Canada’s long tradition of recognizing and affirming the existence and legitimacy of Indigenous law. Borrows sees Canada as a legally pluralistic state where “civil, common and indigenous legal traditions organize dispute resolution in different ways, though there are similarities between them.”²⁸ In this view, Canada is a place where different legal traditions are constantly interacting, where ancient Indigenous legal orders come into contact with newer settler legal systems in many ways over time and space.

Although settlers repeatedly declared and insinuated that Indigenous peoples had no government or law, their own actions contradicted these assertions. Europeans arriving in North America understood that they had entered a complex and sophisticated Indigenous socio-legal landscape, and even if they disliked doing so, they adopted Indigenous diplomatic and legal practices.²⁹ Canada's history of negotiating international treaties with Indigenous nations (despite the many problems and illegalities associated with treaty making) is itself an affirmation of Indigenous sovereignty and a continuation of international diplomatic relations that date back to first contact.³⁰ Add to this the fact that Canadian settler courts have repeatedly acknowledged the existence and importance of Indigenous legal traditions. Thus, settlers' own historical legal engagements with Indigenous peoples give the lie to pronouncements that Indigenous peoples do not constitute real nations with real legal orders.³¹

I follow Indigenous legal scholar Val Napoleon in using the term "legal order" for Indigenous law, which is "embedded in social, political, economic, and spiritual institutions." This is in contrast to "legal system," which describes state-centred (in this case, mostly Canadian) legal systems in which "law is managed by legal professionals in legal institutions that are separate from other social and political institutions."³² Law itself is something that people do together; it is how they govern themselves.³³ Recently, Napoleon told an allegorical story involving discussions between murdered Indigenous women, highlighting moments and spaces when laws fail to do what they are intended to do, or when there are gaps in laws. Debbie, one of the murdered women in the conversation, says that "today the problem is that while our laws have not gone anywhere, they have been undermined – there are gaps, and there are distortions. Where there are gaps in our laws, and where Canadian law has failed, these are spaces of lawlessness, and violence happens in these spaces."³⁴ *The Laws and the Land* is situated in one such space. It is about what happened when two legal traditions met in a colonial context over the course of the nineteenth century, the lawlessness and violence that happened in the gaps, and the distortions that emerged.

Kahnawa'kehró:non are a part of the Rotinonhsión:ni Confederacy, a political federation many centuries old. Some consider it to be the oldest continuously functioning democracy in the Americas. A central part of the legal framework that holds the confederacy together is the Kaianerehkó:wa, the Great Law of Peace, often referred to as the Rotinonhsión:ni constitution. With the explicit goal of allowing people to live together in peace, it lays out the legal framework for managing territories and

boundaries, interacting with others based on kinship responsibilities, relating to the land both individually and collectively, and choosing and replacing leaders.³⁵ Rotinonhsión:ni are also part of a complex international political system that pre-dated contact with Europeans and employed wampum as mnemonic devices. The place of Kahnawà'kehró:non in this confederacy through the eighteenth and nineteenth centuries was complicated by internal disagreements over the kinds of relationships with colonial powers that would produce the healthiest outcomes for Rotinonhsión:ni nations and communities. Kahnawà:ke, along with other Indigenous villages of the St. Lawrence Valley, allied itself with France, whereas some southern Rotinonhsión:ni communities favoured Britain. Similar divisions emerged later when Kahnawà:ke was among Rotinonhsión:ni communities allied with the British, whereas some southern Rotinonhsión:ni allied with the United States. These divisions often had damaged Rotinonhsión:ni political and interpersonal relationships. Even as they often managed to avoid fighting each other, they sometimes found themselves on opposite sides in colonial wars.³⁶ Some of these broken ties between Rotinonhsión:ni nations and communities have been restored or are in the process of being restored today. During the entire period covered by this book, however, Kahnawà:ke continued to govern itself according to the principles of the Kaianerehkó:wa and even established a powerful regional confederacy called the Seven Nations of Canada, including Abenakis, Algonquins, and Wendats of the St. Lawrence Valley.

The Laws and the Land is set at a historical moment when Kahnawà:ke was geographically and politically distant from southern and western Rotinonhsión:ni nations, and it is difficult to know exactly how Kahnawà'kehró:non saw themselves in relation to the rest of the confederacy at the time. We do know that Kahnawà:ke leaders saw their people as a sovereign nation, and colonial authorities largely agreed until the late eighteenth and early nineteenth centuries, often accepting Indigenous laws and the authority of Indigenous leaders. This book begins at the historical moment when this mutual respect and balance of power began to break down, and it follows through to the ways in which Canada imposed its own laws on Kahnawà:ke: it concentrates on the years 1790 to 1900. Audra Simpson summarizes the current situation thus:

The Mohawks of Kahnawà:ke are nationals of a precontact Indigenous polity that simply refuse to stop being themselves. In other words, they insist on being and acting as peoples who belong to a nation other than the United States and Canada. Their political form predates and survives

“conquest”; it is tangible (albeit strangled by colonial governmentality) and is tied to sovereign practices.³⁷

The Laws and the Land tells the story of Canada’s legal and environmental conquest of Kahnawà:ke, a conquest that succeeded in some ways and failed in others. It also tells the story of the many Kahnawà:ke responses to these incursions. The following section considers the ways in which the Department of Indian Affairs (DIA) operated in the nineteenth century and the ways in which I have approached this topic as a historian. I often use the past tense here to describe colonial phenomena, but I invite the reader to remember that most of these continue to this day in some form.

THE DEPARTMENT OF INDIAN AFFAIRS AND SETTLER COLONIALISM

While writing this book, I struggled to find a true and useful way to think about morality in the story I wished to tell. Not every story needs to be about good and evil, but I do see colonialism in those terms. That is not to say that the history of colonialism is a simple story of good and evil or that all people fall starkly on one side or the other, but simply that settler colonialism harms Indigenous peoples – by definition, it attempts to destroy and replace them – and I consider that evil. The colonial evil described here is one that colonized people around the world will probably recognize. At its most extreme, it results in massacres, stolen children, genocide. Yet even when the genocidal elements of settler colonialism are less obvious (in, for example, the imposition of patriarchy, Christianity, capitalism, and representative democracy), the impacts are still destructive and deadly – they still serve the same ultimate goals.³⁸ The story here is not simply one in which two societies come into conflict, and I do not see my job as a historian as “telling both sides,” as if there were a moral equivalent.

Recognizing settler colonialism as evil or wrong, however, should not be confused with applying a simplistic or naive analytic framework to a complicated subject. The point of the book is not simply to condemn what happened but to better understand how it happened. For example, I delve deeply into the contradictions of Canadian colonialism: into the ways it has been both honest and dishonest, non-violent and violent, orderly and disorderly, constructive and destructive. It should also be understood that this account of colonialism is not so much one of individual people

who are “bad” and other people who are “good” but of a conflict that occurs in every sphere of life, where everyone takes part in some way and where different sides of the conflict may play out within a single individual. Another complicating aspect is the bureaucratic nature of many of the colonial processes described here, which became more pronounced over time. It is not that bureaucracy is necessarily bad or good but that its growth allowed for new kinds of surveillance, intrusion, and oppression. Readers may also want to remember that settler colonialism can be recognized just as much in its “successes” (assimilation, dispossession, enfranchisement, racialization) as in its “failures” (the survival and thriving of Indigenous peoples, the ability of many to maintain a land base, the refusal of many to be defined in colonial terms). The evil described here is thus not simply a monstrous, well-organized, irresistible machine (although surely it sometimes appears that way to those who suffer under it) – it is also wracked by contradiction and weakness, which themselves can become sources of oppression for colonized people.

Sociologist and lawyer Yael Berda discusses aspects of the Israeli permit regime, which restricts Palestinian people’s movements, in terms of “effective inefficiency.” For Palestinians who live under Israeli colonial administration, the difficulty of navigating the constantly changing bureaucratic landscape amounts to “bureaucratic cruelty” in which “conflicting decisions created recurring moments of disorientation and alienation.”³⁹ The *Indian Act* and the way in which the DIA implemented it had a similar impact on First Nations people. DIA governance has sometimes been effective and brutal in accomplishing its explicitly racist goals, but it has also been marked by inconsistency, confusion, inefficiency, and contradiction. Berda argues that these seeming weaknesses of the colonizing legal regime can further remove the agency of colonized people, who cannot find ways to navigate a legal system that is often contradictory, constantly changing, and impossible to understand. In the Israeli context, even fighting against the permit regime appeared to give it legitimacy and power: “Taking on any part of the permit regime, including petitioning against it, meant it solidified its ad hoc activities into a legitimate institution; created a jurisprudence around it; normalized the completely impossible, absurd, and unacceptable situations; and rendered it part of the repertoire of the security justifications that made it grow.”⁴⁰ In Canada, Indigenous resistance can similarly be viewed as futile at certain moments: the power imbalance was so great that even strong resistance could often lead to deeper colonial intrusions. In the words of historian Keith Smith, “while the DIA regularly spoke of promoting self-sufficiency, it took nations of independent peoples

and enmeshed them in a web of regulation, restriction, and incompetent, inadequate, and inappropriate ‘assistance.’”⁴¹

A key way in which the DIA accomplished its goals was by identifying Indigenous leaders who would cooperate with it and undermining those who would not. The band council system of governance established in the *Indian Act* was designed to project a semblance of representative democracy while ensuring that the department could eliminate or sideline oppositional leaders.⁴² On the other hand, Indigenous leaders were often confused as to what was expected of them and what *Indian Act* law meant for them in practice. DIA officials were often equally confused, working as they did in an understaffed and underfunded environment, tasked with implementing contradictory policy goals. But of course they did not have to live in the chaotic conditions they facilitated. In a colonial context, such confusion tends to benefit the colonizing agenda, as Berda points out for the Palestinian context. It also worked this way in Canada, which is one of the truths I wish to show. *The Laws and the Land* demonstrates the “effective inefficiency” of Canadian colonialism, dogged as it was with contradiction and absurdity but nonetheless effective in undermining Indigenous sovereignties.

In the decades following Confederation, the DIA expanded from a department employing only a handful of officials to a multitiered, hierarchical system that generated voluminous records. The volume of its correspondence doubled in the 1870s and 1880s, and doubled again in the 1890s.⁴³ The Victorian society that produced the department believed itself to be at the pinnacle of civilization. It was simultaneously enthralled by its own romantic conception of Indigenous people and disgusted or horrified by actual Indigenous people and societies. What was holding Indigenous people back from progress, believed the Victorians, was their aversion to individualism and private property. Furthermore, DIA officials were active proponents of common racist stereotypes about Indigenous people, as for example, that they were lazy, prone to alcoholism, and unable to manage their own affairs. Like many white elites at the time, they saw plow farming as a solution to the “Indian Problem” because they believed it would teach private property, sedentarism, Victorian gender roles, and capitalist work habits. Agriculture and Christianity together would lead Indigenous people toward “civilization,” by which Victorians meant assimilation.⁴⁴ I use the past tense here, but I want to remind readers that these racist beliefs are still common everywhere, from newspapers to textbooks to dinner tables. They were institutional dogma at the DIA – it did not matter whether reality lined up with belief; officials were

expected to make these assumptions about their “wards.”⁴⁵ In the case of Kahnawà:ke, DIA officials did not care that Kanien’kehá:ka already had their own legal orders and leaders; that they already farmed; that their literacy rates were similar to those of neighbouring settler populations.⁴⁶ Indian agents still spoke about them as savages who were, at best, partway down the path toward civilization.

In many historical narratives (in Canada and elsewhere), settlers are cast as largely innocent parties in their relations with Indigenous peoples. Authors of these histories find ways to excuse settlers for any harms they caused, blame Indigenous people for their own defeats, losses, and deaths, and see tragic outcomes as natural and inevitable.⁴⁷ Recently, many settler historians have tried to do more to reveal the imbalance of power and the asymmetry of harm and benefit, but some still attempt to excuse settler colonial harm, sometimes by pointing to supposed misunderstandings, by suggesting that both sides were equally responsible for particular conflicts,⁴⁸ or by doubling down on the “good intentions” of the perpetrators. In *The Laws and the Land*, I follow a growing number of Indigenous and settler scholars who discuss Canada in the context of global settler colonialism, racism, white supremacy, and imperialism, and do so in the global context of anti-colonial struggles and Indigenous resurgences. I am not trying to show “both sides” of the conflicts between Canada and Kahnawà:ke – I show the ways in which settler colonial processes, and resistance to them, played themselves out in this particular time and place.

ORGANIZATION OF THE BOOK

This book is organized roughly chronologically. [Chapter 1](#) describes some of the pre-contact and early-contact Rotinonhsión:ni ways of living on and sharing the land. It gives an overview of the history of Kahnawà:ke, its origins within the French colonial seigneurial system, the roots of current land claims, and elements of Rotinonhsión:ni environmental law and governance. [Chapter 2](#) focuses on early-nineteenth-century formulations of Kahnawà:ke law and the dominant (but always contested) legal system in place throughout most of the nineteenth century, contrasting it with the growing power of the colonial state and its interest in constructing a polity based on the sanctity of private property. Kahnawà:ke laws treated the community’s immediate land base as a Dish with One Spoon, a Rotinonhsión:ni metaphor (also shared by other Indigenous nations of the region) for an ecological commons where individual land-use rights

were limited and of a non-commercial nature.⁴⁹ This chapter discusses how the chiefs defended their nation, laws, and values when a small number of acquisitive Kahnawà:ke men began to oppose them and the legal framework they represented. [Chapter 3](#) delves into some of these conflicts in the 1820s and 1830s, many of which centred on questions of race and belonging. This period saw massive influxes of settlers who appropriated Indigenous lands; thus, many Indigenous people could not access their lands and found themselves in crisis. During this period, Indigenous peoples lost a great deal of political influence, since colonial governments increasingly saw them as weak and doomed to extinction. Canadian colonial law and Kahnawà:ke law coexisted uneasily, and the power dynamic became increasingly asymmetrical.

Covering the years 1850 to 1875, [Chapter 4](#) begins with the completion of the first railway to bisect Kahnawà:ke and the abolition of the seigneurial system. Kanien'kehá:ka recognized that these developments, coupled with much more intrusive Indian laws and the rapid growth of Montreal, represented serious threats to the integrity and viability of their community. The chapter reveals the continuity of Kahnawà:ke law and land practices in the face of these pressures, as well as the exasperation, concern, and decisions of Kanien'kehá:ka leaders who feared that their nationhood would end. After attempts to move the entire community elsewhere failed, Kahnawà:ke again reoriented their resistance efforts toward defending their existing territory and jurisdiction. [Chapter 5](#) focuses on the chaotic environmental and social consequences that followed the increased DIA interference of the 1870s. With the ascendant DIA constantly undermining the political power of chiefs but unwilling or unable to step into the void it created, Kahnawà:ke were unsure of who would enforce laws and which laws those would be. The resulting confusion, though caused by the department, served to confirm its stereotypes about lawless "Indians," which were used to justify the Walbank Survey, the subject of [Chapter 6](#). The survey was an attempt by the Canadian state to radically transform the community and landscape of Kahnawà:ke. From the perspective of state officials, it was largely a failure, but it did succeed in freezing previously dynamic lot lines and implanting, albeit imperfectly, some of the private property norms contained in the *Indian Act*. [Chapter 7](#) covers the last fifteen years of the nineteenth century with the imposition of the band council system and DIA attempts to gain political control. Although its efforts succeeded to some extent, this chapter shows the ways in which Kahnawà:ke refused its control and continued to live according to their laws.

The transition from Kahnawà:ke law to *Indian Act* law was not seamless or linear. The process took decades and involved many people and situations. Nevertheless, the results year after year tended to benefit Canada's settler colonial project and undermine the sovereignty of Kahnawà:ke. Although this study demonstrates the power of the early Canadian nation-state to transform Indigenous communities and lands, it also reveals the disorganized, inconsistent, and contradictory ways in which that power was brought to bear. It shows how the people of Kahnawà:ke survived, adapted, endured, and sometimes even thrived despite colonial incursions. But in the final analysis, *The Laws and the Land* is a historically based argument for a return to Indigenous self-government and an indictment of the DIA, which claimed to serve the interests of Indigenous communities but in reality sought their destruction.

Although the book follows chronological order, some chapters discuss overlapping years. Some are pegged around major events, such as the construction of the first railroad or the Walbank Survey, but in other cases I did not feel that this was necessary. Part of the historian's job is to distill an infinitely complicated past into a comprehensible narrative, but I hope that this book gives readers a sense of the multiple stories and competing timelines in this and every story.

SOURCES

The Laws and the Land draws on a number of archival sources, including the records of the Department of Indian Affairs, personal papers, period newspapers, travel literature, censuses, legal records, maps, government reports, and a broad array of judicial sources. I conducted the largest part of my research at Library and Archives Canada, particularly with Record Group 10, the records of the DIA. These include correspondence between Indian agents, department officials, and their superiors, as well as petitions, newspaper clippings, letters from third parties, and maps. There are advantages and problems with each of these types of materials. Documents produced by the DIA tend to obscure as much as they reveal. In a number of cases, my own interpretation of a set of texts changed dramatically over time based on further experience and knowledge gained elsewhere. Among the material written by DIA officials are letters and petitions written by Kanien'kehá:ka themselves, sometimes in Kanien'kéha (the Kanien'kehá:ka language). I have used these whenever possible to provide Kahnawà:ke perspectives. However, they were usually crafted to appeal to the sensibilities

of officials who knew little about, and had little sympathy for, Indigenous points of view. Thus, I have understood that many such documents produced by Indigenous people in the records of the DIA may not express the true feelings and beliefs of their authors but may have been pitched to achieve a desired result.

DIA officials, including Indian agents, were often motivated by a need to make themselves look good, cover up mistakes, or justify decisions. In the climate of institutionalized racism that characterized the department, it was exceedingly easy to blame lazy, vindictive, and obstructionist “Indians” for any problem. The correspondence of department officials and Indian agents is saturated with negative stereotypes and racist assumptions that are easy for an experienced researcher to recognize, but the silences are more difficult to identify. Topics such as women’s work and leadership or small-scale gardening are rarely mentioned, but I have tried to highlight them whenever possible. Finally, it is also important to note that DIA records, by their nature, highlight conflict instead of harmony. Thus, the action in this book turns on a number of conflicts over land, and readers will be left with a picture of Kahnawà:ke as less peaceful than it probably really was.

As I researched and wrote this book, I spent a lot of time in Kahnawà:ke and spoke about my archival findings with a number of Kahnawa’kehró:non. I often gained valuable insights in this way, and I found that these conversations gave me important added insight into my archival sources. I did not conduct formal interviews but have drawn from a few taped and transcribed oral histories conducted by others.⁵⁰

ORTHOGRAPHY

I have had to make some difficult choices regarding terms and orthography and have done so in consultation with a number of Kahnawà:ke readers, especially language teacher and community historian Kahrhó:wane Cory McComber. The archival texts I consulted most frequently refer to the residents of Kahnawà:ke as Caughnawagas, Iroquois, Sauvages (in French), and Indians, but I have used Kahnawa’kehró:non (People of Kahnawà:ke), Kanien’kehá:ka (People of the Flint, Mohawk), and Rotinonhsión:ni (Haudenosaunee, Iroquois). I have generally opted for proper nouns that are in use today and correct according to current Kanien’kéha spelling conventions. I have not changed proper nouns that appear in quotations. Since the use of Indigenous language terms for self-identification is an important

part of Indigenous political and cultural resurgence, and some colonial-origin proper nouns seem to be falling out of favour with Indigenous people, I have made language choices along those lines.⁵¹

In most instances, I refer to nineteenth-century Kanien'kehá:ka by their Kanien'kéha names when these are known, and if I know their English/French names I have included these in parentheses at first appearance. In the case of multiple spellings, I opted for what appears to be the most common one. When a name is given in the Walbank Survey, I adopt that spelling because the names in the survey were recorded by a single person (Owakenhen Peter Stacey) in a consistent way. I did not alter them to reflect the spelling norms of today. I transcribed English-language quotations much as they appear in the original, and I included spelling and grammar irregularities without always flagging them. To make *The Laws and the Land* more accessible to those who do not read French, including many Kahnawa'kehró:non, I have translated French quotations into English, giving the French original in an endnote. Unless otherwise noted, all translations are my own.

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