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Canada's First Nations: Ottawa Lays Bare the Lie It Calls "Reconciliation"

Canada and British Columbia send police to arrest Wet'suwet'en leadership opposing pipeline construction on their land.

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The Canadian state today is in the throes of a historic crisis of its own making, as it stands off against the Wet'suwet'en Nation, an Indigenous nation in northern British Columbia (BC) that is blocking construction of the Coastal GasLink (CGL)[1] pipeline through their land (called the Yintah). The CGL pipeline would bring fracked gas from northwestern British Columbia to a planned LNG Canada liquid natural gas terminal on the BC coast at Kitimat that is to be built by an international fossil fuel consortium.[2] Condensate, a byproduct of the fracking, will also be used as diluent needed to send tar sands oil through another planned pipeline, the TransMountain Expansion pipeline.

On February 5, after Canada and BC would not concede on any point, talks with the Wet'suwet'en hereditary chiefs broke down, and the following day, heavily armed RCMP were sent in. Wet'suwet'en hereditary chiefs and their supporters were arrested and violently removed from their lands. In the run-up, the RCMP had imposed an unprecedented and unconstitutional "media exclusion zone" in an attempt to prevent incendiary images of the violent police action from getting out, an attempt that ultimately failed. Solidarity actions erupted across Canada, encompassing road and rail blockades, occupations and sit-ins, and blocking off the BC legislature. Solidarity from the Mohawk nation at Tyendinaga resulted in Canada's busiest passenger rail corridor being shut down.

In many locations, standing injunctions and preemptive injunctions have been used to clear protests, but these have continued to be organized. Early on February 22, Ontario Provincial Police (OPP) moved in on the Tyendinaga railside encampment, but in response, a number of other blockades and occupations sprouted across the country. The mobilizations show no sign of ending soon.

Seeking to discredit the Wet'suwet'en traditional government and their supporters, the coordinated messaging of colonial governments and ruling class media has centred on disingenuous arguments that the Wet'suwet'en are "divided" – therefore the colonizer must decide! Some Indian Act bands on the pipeline route have consented to the project, but the traditional government of the Wet'suwet'en has not. And while the Ottawa-imposed Indian Act administration of the Wet'suwet'en may support the pipeline, its remit does not run to title and rights, which are the purview of the hereditary chiefs, a fact that Canada and BC know well. Nevertheless, despite lacking consent, the NDP-Green government of the province of British Columbia decided to plough ahead with the project, issuing all permits required and ante-ing up $5.35-billion in direct subsidies alongside a federal tax break of $1-

billion. Courts granted injunctions against the Wet'suwet'en, once again deeming resource extraction of greater importance than the well-being and wishes of Indigenous communities.

For fractions of Canada's ruling class, this carbon extraction project is a matter of economic and political urgency. In elite political circles, Alberta's perennially offside politics are suddenly being framed as a national unity crisis of the highest importance, allegedly requiring both the federal government and Alberta to desperately expand Alberta's carbon export capacity at any cost in order to address Alberta's economic crisis, which is largely the result of collapsing demand for its expensive and dirty petroleum output. Large sums of money, including public pension fund monies and private capital, have already been committed to these heavily subsidized fossil fuel projects.

Canada's Stubborn Unwillingness to Deal with Indigenous People's Title and Rights

Yet the deeper challenge to Canada's wholeness in this crisis lies in the in-built contradictions of the colonial Canadian state that Wet'suwet'en resistance has made concrete and highly visible. Central to Canada's extractivist political economy is "Crown title," the claim of jurisdiction over Indigenous lands. The supposed legitimacy of Crown title rests on two half-inconsistent principles. The first is the "doctrine of discovery," by which European colonizers arrogated to themselves the right to claim as their own any lands where there were no Christian inhabitants. The second is the Royal Proclamation of 1763, which requires the Crown to negotiate treaties with Indigenous Peoples before settling their lands. Into the mix is a growing body of Canadian and international law that recognizes the continuity and priority of Indigenous rights and land title where these have not been truly consensually ceded in Treaty.

The Wet'suwet'en have not signed any treaty with Canada. Their title in the land has never been removed, and this is a fact that will not go away, yet a fact that Canada cannot properly reconcile itself to without fundamentally changing laws on resource and land development and governance, and abandoning its policy toward Indigenous Peoples that goes back 170 years. Far from being caught unawares, the Canadian state apparatus knows what changes need to be made to truly achieve the "reconciliation" it preaches, as can be shown by a brief history of Canada's refusal to budge on the core issue of recognizing Indigenous title.

In 1996, the Royal Commission on Aboriginal Peoples (RCAP)[3] as part of its comprehensive recommendations called for an overhaul of government policy on Indigenous land rights and jurisdiction. In particular, they called for an approach that recognized Indigenous title and did not make title claims prohibitively expensive and burdensome for Indigenous Peoples. It also argued for interim relief based on title without this depending on title being proved in court. And it called for policy alternatives that would allow Indigenous Peoples to retain title, and to ensure that any negotiated extinguishment of title would truly involve informed consent and deliver additional benefits – rather than merely the necessary baseline of viability that governments have withheld as a pressure tactic.

In 1997, the Delgamuukw decision of the Supreme Court, specifically in relation to the Wet'suwet'en Nation, recognized that Indigenous Peoples had retained title unless explicitly extinguished. (Bear in mind that in historic as opposed to modern treaties, the validity of cession and surrender clauses is dubious as there is multiple reinforcing evidence – oral tradition, treaty commissioner diaries in Treaty 9, eyewitness testimony, and the Paypom treaty record – across numbered treaties these clauses were not in the oral agreements but

were tacked on in Ottawa after signatures had been collected or in some cases forged.)

In 2007, the Declaration on the Rights of Indigenous Peoples (UNDRIP) was passed at the UN. Its bedrock principle is Free, Prior, and Informed Consent (FPIC) for development on Indigenous lands. In subsequent years one federal government has signed on to the treaty, and several provincial governments have passed aspirational motions declaring their respect for the principles of UNDRIP. Most recently, British Columbia passed legislation implementing UNDRIP in law, and the federal government has promised to do the same. Yet none of these has given effect to the core principle of FPIC. BC claims UNDRIP is equivalent to the much weaker "duty to consult" under which Indigenous Peoples do not have a "veto" on development on their lands.

In 2015 the Truth and Reconciliation Commission (TRC), formed to address the causes and long-term consequences of Canada's genocidal residential schools system, released its final report. Among its calls was recognizing Indigenous title by default and reversing the burden of proof onto those who would seek to limit title. Prime Minister Justin Trudeau promised to fully implement the TRC recommendations.

Despite this history, no government has recognized Indigenous title, and Canada's policy on Indigenous lands has not been changed.[4] The RCAP recommendations were shelved in toto, UNDRIP's bedrock principle of FPIC was slipped out of implementing legislation, and the TRC call for default recognition of title and reversing the burden of proof was simply ignored.

De Facto Extinguishment of Indigenous Title, By Hook and By Crook

Instead, the federal government has stuck to its policy which in its modern form dates back to the 1970s, but which is a direct continuation of the approach taken to Indigenous title since the mid-19th century. This contemplates as the only viable policy the de facto extinguishment of Indigenous title everywhere, by hook and by crook. The contemporary incarnation of this policy is the Comprehensive Claims Policy, which is the umbrella framework for modern treaty processes whose core policy goal and non-negotiable precondition for agreement is extinguishment of title, in contravention of UNDRIP and against the calls of RCAP and the TRC.

For Indigenous Peoples who enter it, the modern treaty process is a long drawn-out affair of many-year negotiations, with government providing money to pay Indigenous-side negotiators and consultants who have a vested interest in continuing the process. Despite this, the final agreements all conform to a template – extinguishment of title, the ending of distinct "Indian" status for individuals and communities, the municipalization of communities and their subordination to provincial regimes rather than being recognized as a third order of government, and the retention of a small fraction of their territory (5%) as their municipal land base, with a retained economic interest in an additional small sliver of their original territory. (In the Orwellian language of Indian Affairs bureaucrats, extinguishment today is camouflaged as "modified rights.")

Out of final settlement monies lawyers (who have a vested interest in the process) take a huge chunk. In the approvals process, government rather than playing a neutral role actively intervenes by funding and supporting the Yes side with intelligence and PR money. If the vote says No this is never final – they push for do-overs until they get a Yes, but there is no do-over allowed on a Yes. At the local level this can involve brutal intimidation campaigns toward those dissenting from a Yes. Yet these agreements are so inherently

unappealing that Canada has succeeded in getting a Yes from only very few communities.

The only option that Canada officially contemplates for Indigenous Nations wishing to retain title is litigation. Title cases require years of evidence collection, tens of millions of dollars and a decade or more in court – because the government's strategy (as most defendants' – but the government is supposed to have a 'trust relationship' toward Indigenous people!) is to appeal everything it can, including procedural issues, and drag it out as long as possible. There are 200 Bands in BC alone. The BC Courts told one community in the pipeline for a title case that the courts can manage at most two simultaneous title cases because of their size and complexity. This means that it would take up to 1000 years for the courts to deal with all title cases in BC. Meanwhile, Bands are not provided with litigation budgets to fight Ottawa (Ottawa sets the budgets for most Bands) except in limited circumstances where government is compelled, and unlike the extinguishment processes, no help is forthcoming for title cases. The government strategy is one of attrition, part of which is literally "waiting for the evidence to die," that is, elders and their often distinctive knowledge of land use and occupancy. Another part is willfully denying Indigenous communities adequate services, and engineering poverty conditions that are intended as a pressure pump to drive outmigration and encourage bendability to Canada's will.

Canada and the provinces are not good faith actors. All the words about reconciliation and recognition are fake, for non-Indigenous public consumption. This is not a policy that seriously contemplates Indigenous people retaining title. There has been absolutely no change by any government, Conservative, Liberal, or NDP on this core aspect of Indigenous-Canada relations, which underpins and motivates all other colonial policy and action. Allowing Indigenous Peoples the possibility of a "no" on development is so far anathema to governments that they could not even contemplate the suggestion of alternative pipeline routes from the Office of the Wet'suwet'en. Consent is not consent when "yes" is the only answer allowed. Consent is not "try for consent, otherwise do it anyway." The possibility of a "no" is essential to informed consent.

Recognizing Indigenous Title and Rights – and upholding FPIC – are Canada's only way out

Yet despite all Canada's attempts and its endemically Orwellian rhetoric on Indigenous rights, Indigenous Peoples are still here. Today as a result of the internet and social media, Indigenous people and nations are networked across Canada and North America. Decades of movement building and grassroots education and organization have laid the groundwork for today's resistance. Indigenous intellectuals and journalists can now disseminate their message through social media and independent media, even while mainstream media continue to reflect the blinkered perspectives of their tiny social world. Younger generations who are cutting their teeth on climate change activism also understand solidarity more fluently, and are very conscious of Indigenous rights and the colonial character of the settler state.

This has resulted in an uprising that is the nightmare of Canada's security state and political and economic elites, one they cannot get out of until they own up to the choice before them and reckon with what they have so far willfully postponed. There can be no "reconciliation" until Canada "gets over it" and breaks with colonial domination and theft as its core policy toward Indigenous people by recognizing Indigenous title and fully implementing UNDRIP, including the essential principle of Free, Prior, and Informed Consent.

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Notes

1. CGL's major investors are KKR, an American investment firm that has partnered with NPS, a Korean public sector pension fund; and AIMco, which manages public sector funds in the province of Alberta, where the bulk of Canada's dirty tar sands oil is mined.
2. Shell (40%), Petronas (25%), PetroChina (15%), Mitsubishi (15%), and KOGAS (5%).
3. Formed after the Kanehsatake resistance of 1990, and Canada's militarized response to it.
4. For more information on this issue, see "150 Years of Canadian Colonization."

Featured image is from The Bullet

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