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First Nations in Canada: When Property Law Does Not Apply

Andrew Flood

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Normally the settlement of claims to property are something the court system takes very seriously. The very foundation of capitalism after all is that some person can claim ownership of a piece of land, and through that ownership charge others rent to use it.

Or that ownership of machinery can be used to take most of the value of what the workers using the machines produce to sell for profit. Obviously such a system depends on the courts and the threat of violence to prevent those actually doing the work or living on the land telling the 'owner' to get lost.

The major exception is when those with the legal claims are from the First Nations, in particular when the claim is one of collective ownership by a community to the land. Then rather than usual pattern of careful investigation and prompt decisions we see the most absurd 'sales' treated as valid, legal documents all but torn up and legal processes drawn out for decades without conclusion. Meanwhile the courts are used to suppress the protests of those who appear to have the best legal claim to ownership.

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In 1995 Tyendinaga Mohawks submitted an official land claim which included the gravel quarry worked by Thurlow Aggregates. It took till 2003 for the claim to be acknowledged as legitimate by the Canadian government. Yet this did not halt the quarrying, the Ontario government continued to renew the license to Thurlow and thousands of truckloads of gravel continued to leave.

Another occupation began February 2006 when members of Six Nations reclaimed the Douglas Creek Estates bordering Caledonia. Their claim is based on the fact that the so called agreement where they were said to have surrendered this land was obviously invalid. Yet far from waiting on the sidelines until the courts resolved this the police in April moved in to evict them.

So why don't the Canadian courts jump to the defense of indigenous property rights in the manner they would if workers occupied a factory or tenants refused to pay rent to a landlord?

Fundamentally they face the problem that courts all over the Americas face. Capitalism in the Americas was built out of a massive theft where the existence of the indigenous populations who were living on the land was not even recognized. Indigenous nations that tried to defend their usage were murdered. Many were enslaved in the mines and the estates of the new owners. Across the America's any legal system that recognized the de facto claim to the land by those who had been living on it would undermine the base of North American capitalism.

Historic conditions in Canada meant that here more than elsewhere the colonial power was forced to concede some recognition that there were people already living on the land. Legal treaties recognizing this are thus more common and of quite recent origin. Yet at the same time a significant wing of capitalism in Canada makes it profits from the massive extraction of resources from the land covered by such treaties.

A speedy and fair resolution of the land disputes would be a major problem for these corporations and the courts and government know this. This is why last August Canada was one of only four countries to vote against a UN declaration on indigenous rights.