



Resisting colonial jurisdiction Defending Wet'suwet'en territory from fossil capital

After Canada's rail network was shut down by indigenous and allied land defenders in the struggle against the Coastal GasLink fracking pipeline project on Wet'suwet'en territory, a draft agreement stalled due to Covid-19 but the pipeline project pushes ahead. **Charlie Powell** reports.

Since 10th February this year, indigenous land defenders and allies have successfully shut down Canada's rail network in direct action against the state's continuous encroachment on unceded Wet'suwet'en territory. The government of British Columbia has repeatedly used intimidation and violence to remove indigenous people from Unist'ot'en territory in attempts to clear the way for fossil fuel pipeline construction. Following a wave of arrests in January and February, the call to 'shut down Canada' was followed by actions across the country. Over six rail blockades were set up, as well as road blockades and a weeks-long occupation of British Columbia parliament buildings led by indigenous youth.

By mid-February, blockades to shipping had stalled the activities of over 60 international cargo vessels along the coast of British Columbia, unceded Coast Salish territory. Almost all of Canada's rail network was affected, with Via Rail, one of the largest train operators, forced to dispense hundreds of thousands of dollars in refunds. The scale of these actions has caught the attention of international media for the first time on this issue, despite the best attempts of Wet'suwet'en land defenders to call on international scrutiny and solidarity



against the occupying Canadian government.

These actions have led to the beginning of crucial talks between government and indigenous representatives. A draft agreement between Wet'suwet'en hereditary chiefs and the Provincial and Federal Government has been drawn up, but the process of consultation and ratification within the Wet'suwet'en nation has been placed on hold due to the COVID-19 crisis. However, Coastal GasLink is continuing construction of the pipeline on unceded Wet'suwet'en territory despite the public health risks of pushing ahead with construction and keeping workers in man-camps on the territory. They have said that non-essential workers are working from home, claiming that ongoing construction is an essential service. The urgency with which they are pursuing construction is not surprising, given both the mounting international pressure against their project and the recent US Federal court decision to revoke the permits of the Dakota Access Pipeline. At present, there is little prospect that the Wet'suwet'en struggle against Coastal GasLink will see any court decision along the lines of this landmark victory for the Standing Rock Sioux.

Using colonial law to enforce colonial jurisdiction

The current struggle centres on the Coastal GasLink pipeline project, a state-backed fracking pipeline which intends to carry natural gas to a processing facility on the Pacific coast. Construction of the pipeline is underway, despite the fact that large sections of it cross through Wet'suwet'en territory without the consent of all indigenous stakeholders. Some consent was granted by elected chiefs, a system of governance imposed on First Nations by the Indian Act 1876, but consent has not been granted by the five Wet'suwet'en hereditary chiefs who hold Aboriginal Title over the land through which the Coastal GasLink pipeline intends to build. This includes the area of the Morice River south of Houston through which Coastal GasLink intends to build belonging to the Unist'ot'en House Group, affiliated with Dark House of the Gilseyhu (Big Frog) clan. They constructed a camp on their lands which they have been occupying since 2010, and this is now effectively under siege by the police. The supreme court of British Columbia handed down an injunction on the 31st December 2019 restraining the Unist'ot'en from barring access to pipeline constructors on their own lands.

The British Crown never conquered or made a treaty with the Wet'suwet'en. The governance system and land law of the Wet'suwet'en is an unbroken tradition and had legal recognition even under British law during the original colonisation of British Columbia. It exists as a matter of Canadian Law today, is recognised as predating colonisation, and is part of the Constitution Act, the highest law of Canada.

The legal basis on which the Provincial Government of British Columbia claims jurisdiction over the land and the authority to grant access to Coastal GasLink without the consent of Hereditary Chiefs is, quite simply, a policy of denial. Despite never having had jurisdiction, even under its own laws, over indigenous lands, the colony of British Columbia began passing its own land laws over them in the 1860s. This has continued to the present day. A 2004 Canadian supreme court ruling refers to this as *de facto* control over the territory. This

Left: Chief Howihkat (Freda Huson) in ceremony while the armed Royal Canadian Mounted Police (RCMP) raid the Unist'ot'en camp to enforce the Coastal GasLink injunction.

Above: Indigenous-led rolling blockade in Ontario; banner reads 'NO PIPELINES: Stop RCMP invasion on indigenous lands'.

recognised that the authority by which the provincial government dispossesses first nations and grants access to their lands is not based in any established legal authority, but simply in the fact that that is what it has done for the past 160 years.

The provincial government has made no attempt to justify its infringement of Wet'suwet'en Aboriginal Title over the land in this case. Furthermore, the provincial government itself unanimously passed a bill committing it to the principles of the UN Declaration on the Rights >>>



>>> of Indigenous Peoples, which it is now clearly violating. While the legal situation may seem neither here nor there to the politics of colonisation, it actually amounts to a nakedly authoritarian declaration of state power justified by state power. In continuing to exert *de facto* control over Wet'suwet'en land despite the legal contradictions inherent in doing so, the units of armed police which are the bottom line in any question of state power become the main argument by which British Columbia reproduces itself.

On Monday 10th February a convoy of armed Royal Canadian Mounted Police (RCMP) invaded Unist'ot'en land, battered through the gates of the camp, and arrested three Unist'ot'en matriarchs during a ceremony to call on Wet'suwet'en ancestors and honour missing and murdered indigenous women, girls and two-spirit people. Freda Huson (Chief Howilhat), Brenda Michell (Chief Geltiy), Dr Karla Tait, and four indigenous land defenders were forcibly removed from the territory. Police tore down the red dresses hung to hold the spirits of victims of violence, and extinguished the ceremonial fire.

This is one of many sets of arrests, including incursions onto Wet'suwet'en territory, to have taken place over the past year. On 7th January 2019, highly militarised RCMP units conducted a raid on the Unist'ot'en camp. On 22nd January Victoria City Police arrested thirteen indigenous youth who peacefully blocked the entrance to the Ministry of Energy, Mines and Petroleum Resources. On 13th January, RCMP set up an exclusion zone around the Unist'ot'en camp without legal precedent or justification. The exclusion zone is now lifted, but not before more arrests were made of supporters camped around the edges of the zone.

'It's a whole damn army up there. They've got guns on, they've got tactical gear on. They look like they're ready for war.' Wet'suwet'en hereditary Chief Woos (Frank Alec).

Many of these arrests have led to no charges, again confirming that they are being used primarily as a tactic of violence and intimidation quite apart from the particularities of law. The RCMP have intimidated members of the press, threatened them with arrest, and removed them from several sites before making arrests. The RCMP have also admitted surveilling Wet'suwet'en people with aerial vehicles, and sending in snipers with scoped rifles to observe land defenders. One video released on 15th February clearly shows an RCMP officer pointing a gun at unarmed land defenders.

Fighting back

The central means of resistance in the Wet'suwet'en struggle against colonial dispossession and fossil capital has been reoccupation of their ancestral lands. The Unist'ot'en camp is located right within the 'energy corridor' through which three pipelines intend to build, effectively blocking their path. This measure was taken in order to protect the land, the wildlife and the water table from the environmental damage of inevitable pipeline spillage. Since 2010, a healing centre has been built on the land, providing a space for indigenous people to heal from colonial trauma by reconnecting with the land. The camp is home to members of the Unist'ot'en house group and hosts other indigenous allies as well as non-indigenous supporters.

Unist'ot'en jurisdiction over the land is exerted through manned road blockades which require 'free, prior and informed consent' before entry onto the land. This is an effective means through which Coastal GasLink prospectors and other fossil extraction companies have been prevented from accessing the land and has functioned in a similar way to the occupation of the *zone à défendre* in France, occupied by its own residents since 2009.

In early January, Wet'suwet'en hereditary chiefs issued an eviction notice to Coastal GasLink, requiring them to leave the territory. RCMP then set up the exclusion zone around the territory and created their own blockades, preventing Wet'suwet'en and their supporters from accessing the camp



with essential supplies. From 6th February, the Unist'ot'en camp was under siege.

Since RCMP's 'major enforcement operations' of the injunction against the Unist'ot'en on 10th February, a backlash of direct actions in solidarity with the Wet'suwet'en has exploded across Canada. Rail and road blockades were undertaken by supporters in Vaughan; by Tyendinga Mohawk near Belleville, Ontario; by Anishinaabe in Magnetawan territory; by Gitxsan land defenders in New Hazelton; and by land defenders in unceded Kwikwetlem territory, Metro Vancouver.

On 17th February, demonstrators blocked access along the US border at the Niagara falls bridge. Most of these blockades have now ended, but the Mohawk blockade continues, as they

demand that no trains cross their territory until the RCMP leave Wet'suwet'en territory. The Ontario police liaison tried to offer gifts of maple syrup to the land defenders, in combination with the threat of enforcing an injunction that has been ruled over them.

Between these blockades of shipping, rail, road, and occupations of government buildings across the country, a huge amount of political and economic pressure has been placed on John Horgan, premier of British Columbia, and the coloniser establishment more generally. As mass movements go, this

one has seen a relatively small number of people achieve mass disruption through their solidarity. In the face of severe police repression, this should be recognised for the huge achievement that it is in the struggle against colonial violence and fossil capital in Canada.

'We are not protestors' – The politics of land, planet, and the rule of law

'We're not a protest camp; this is our home. And they are coming to invade my home today, and that gate is my door. In

'Resistance in their struggle against colonial dispossession and fossil capital has been reoccupation of their ancestral lands'



2019 we saw violence at the hands of the police, where they used brutal force, and we saw this morning they are wearing tactical gear... we are willing to face that violence in order to expose the RCMP for who they really are.’
Chief Howihkat (Freda Huson)

A key aspect of the politics of the Unist’ot’en land defenders is their position in relation to the land they occupy: while the courts and mainstream press in Canada describe them as protestors occupying land scheduled for pipeline use, the Unist’ot’en insist that they are First Nations making use of land held in common by their house group, as they have done since before the colonisation of British Columbia.

The Unist’ot’en camp website does articulate a climate politics, rejecting the touted economic benefits of pipelines bringing jobs to indigenous lands: ‘there are no jobs on a dead planet’. However, concerns about fossil capital and emissions are secondary to the twin issues of colonial dispossession and ruination of the local environment which are the key concerns of the ‘no pipelines’ campaign being fought by the Unist’ot’en. In fact, Wet’suwet’en Hereditary chiefs proposed an alternative, less destructive route for the pipeline which also travelled through their lands but along already-disturbed areas, avoiding the salmon spawning areas that the Wet’suwet’en rely on. This route was dismissed by Coastal GasLink as too costly and impractical. The Unist’ot’en camp is not protesting a government policy of investment in destructive fossil fuels: it exists in the struggle against the ongoing mechanisms of genocide and dispossession against indigenous peoples in North America.

The recent explosion of action in solidarity with the Wet’suwet’en has complicated the politics of land defence in a way which is already being exploited by pipeline-backers. Amongst a coalition of First Nations, supporters of indigenous land rights, and anti-fracking environmentalists, there is a range of priorities at stake. The charge levelled against them is the same charge that the courts levelled

Armed RCMP officers with dogs stand on Unist’ot’en lands, while officers remove red dresses used in the ceremony.

against the Wet’suwet’en: that they are using the concept of Aboriginal Title as a political counter to advance a radical environmentalist politics. Some members of the elected band councils (the semi-democratic system of governance established by the Indian Act) who consented to the Coastal GasLink pipeline have spoken up about the wealth being brought to indigenous communities by the pipelines and the risk of inflamed tensions bringing harm. At this stage, conservative and liberal interests can seek to co-opt the aesthetic of indigenous solidarity by claiming the Unist’ot’en and their allies are acting without mandate against the interests of First Nations across Canada. These commentaries are without material analysis of what is at stake and seek to downplay the contradictions of colonial jurisdiction in Canada which may now face a reckoning.

Responses so far

The politics of the land defenders amounts to a rejection of the totalising tendency of capitalism, and for this reason, right-wing commentators are calling the Wet’suwet’en and their supporters ‘illegals’ and describing their actions as an ‘insurrection’. This is not only due to the scale of disruption caused by direct action but also due to the pressure that Wet’suwet’en claims put on the contradictions which underpin the Canadian state’s attempt to force through the interests of fossil capital with little legal justification.

Justin Trudeau recently said ‘We recognise the important democratic right – and will always defend it – of peaceful protest. But we are also a country of the rule of law, and we need to make sure those laws are respected’. In the legal context as it stands, this amounts to a statement that Canada is a country of settler-colonial dominion which needs to make sure that that dominion is respected.

One of the most overlooked aspects of the Canadian government’s behaviour in all this is its championing of the rights of fossil capital. Most reporting takes it for granted that there are certain laws which the state must uphold in order to be consistent with itself. This has been shown to be untrue, as the provincial government is, in fact, ignoring important sections of Canadian Law, as well as the United Nations Committee on the Elimination of Racial Discrimination which has urged it to change course.

Those who accept that the government prioritises the needs of business wherever it can often make the tacit assumption that the government must be acting to safeguard the economy. However, economic research suggests that the massive drop in natural gas prices in the US and Asia over the past two years will render the Coastal GasLink project a huge waste of public money, and possibly even a stranded asset, as green energy prices move to undercut the fossil fuel industry. Allowing this construction to continue during the present global health crisis demonstrates further commitment to allowing the corporate interests behind Coastal GasLink to have their way, despite fresh risks to inhabitants of Wet’suwet’en territory and even to their own workers.

It recently came to light that corporate lobbyists sought to effectively abolish Aboriginal Title by pushing for the government to adopt a ‘cede and surrender’ approach to indigenous lands. This points to an even more malicious tendency than basic profiteering: an ongoing ideological commitment to the mechanisms of colonial control and resource extraction, regardless of the prospect for sustainable profit. This commitment requires the eradication of dissenting groups, especially where land use is concerned. It is a truth self-evident to those who experience colonial violence but impossible for Canadian civil society to accept: reconciliation is dead.

Charlie Powell is a freelance journalist and rank and file activist in both the IWGB Union and the London Renters Union. This article is adapted from a previous version published by RS21 on 17th February 2020: www.rs21.org.uk/2020/02/17/solidarity-with-the-wetsuweten. For more information about the legal situation of First Nations in Canada, visit First Peoples Law at www.firstpeopleslaw.com