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Abstract

Drawing on unpublished material on the history of the Culbertson Tract, records obtained through access to information requests, and firsthand knowledge from the community, we trace Mohawk legal and extralegal strategies aimed at reclaiming the Tract to show how Canada legitimizes and manages the continued dispossession of land from the Mohawks of Tyendinaga. Through the criminalization of community members opposing settlement terms under the land claims policy, we conclude that the policy of extinguishment contained in the land claims policy is furthered by policing resistance with the use of security forces on the ground.

Keywords: colonialism, security, criminalization, Indigenous, property, Specific Claims, Tyendinaga

Résumé

S'appuyant sur des documents inédits sur l'histoire du secteur Culbertson, des documents obtenus suite à des demandes d'accès à l'information, et la connaissance de première main de la collectivité, les auteures examinent les stratégies judiciaires et extra-judiciaires Mohawk relativement à la parcelle de Culbertson afin de démontrer comment le Canada gère et rend légitime la dépossession de ce secteur des Mohawks de Tyendinaga. Nous concluons que la politique de l'extinction contenue au sein de la politique sur les revendications territoriales est supportée par la criminalisation des membres de la communauté s'opposant aux protocoles d'ententes et par l'utilisation de forces policières sur le terrain.

Mots clés : colonialisme, sécurité, criminalisation, Autochtones, propriété, revendications particulières, Tyendinaga

Property rights can seem geological in the way that they sediment the norms and values of a place. If you could slice through a map of the Culbertson Tract—not across the page, but through the paper, the way you would smash open a rock in order to trace its past—you would find the archaeological record of Iroquois lifelines, a trail of footprints belonging to pale and sickly men, the remnants of Mississauga tenancy, then Mohawk return and settlement, and finally, the gradual white squatter encroachments populating the land. You could observe how the residuals of time cling and clump together to form history.

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The Culbertson Tract spans two jurisdictions: the southeastern part of the Township of Tyendinaga and most of the town of Deseronto, both located within Hastings County in the province of Ontario in what is now known as Canada. These jurisdictional scales are not simply widening concentric circles of administrative authority, but a dense geography of interlocking socioeconomic and political institutions regulating the boundaries and conditions of life on Indigenous[1] land. As Mariana Valverde writes, definitions of jurisdiction usually refer to divides of territory and authority; however, "jurisdiction also differentiates and organizes the 'what' of governance—and more importantly because of its relative invisibility, the 'how' of governance."[2] In this paper, we examine the "how" of settler colonial governance evident in contemporary contestations over Indigenous lands. Specifically, we are interested in how the Specific Claims policy of land claims settlement and the deployment of security forces against Indigenous resistance work together to maintain and justify the expropriation of Mohawk land at Tyendinaga.[3] We argue that Canadian land claims policy consolidates and accelerates the assimilation of Indigenous peoples and lands by coercing them to negotiate under policies that lead to the extinguishing of Aboriginal titles, and by deploying the security arm of the state against community members defending their lands against this political technique of dispossession. In justifying the use of force, the state must figure Indigenous sovereignty assertions as existing "outside" the bounds of reasonable recognition of Aboriginal rights.[4] This configuration, in turn, creates a space of exception for the state to act against "unlawful" resistance.[5] These dynamics create a particular spatial context of property relations that reveals not just an empty stage where conflict plays out, but the production of the colonial landscape itself. Together the use of force and the claims negotiation are key mechanisms of pacification that produces and secures the property interests of the settler state[6] and perpetuate the violence of earlier periods.

To understand how these techniques work in practice, we explore their application 'on the ground' in the case of a land claim filed by the Mohawk community of Tyendinaga. We begin with an overview and critique of the Specific Claims

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1 In this article we use the term "Indigenous" to refer to the original peoples and governments of these lands and the term "Aboriginal" when attached to government policy, e.g. Aboriginal treaty rights or in titles of statutes. Occasionally, we have used the term "First Nations" to describe those peoples formerly described as "Indians," as the key constituents of the land claims policy.

2 Mariana Valverde, "Jurisdiction and Scale: Legal 'Technicalities' as Resources for Theory," *Social and Legal Studies* 18 (2009): 144.

3 Tyendinaga is also known as the Mohawks of the Bay of Quinte (MBQ). These names are used interchangeably throughout the paper.

4 See Anna Zalik, "Protest-as-Violence in Oilfields: The Contested Representation of Profiteering in Two Extractive Sites," in *Accumulating Insecurity*, eds. S. Feldman, C. Geisler, and G. Menon (Athens: University of Georgia Press, 2001), 264; and Glen Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6 (2007): 4.

5 For discussion on the relative location of violence and the law in liberal society, see Nicholas Blomley, "Law, Property, and the Spaces of Violence: The Frontier, the Survey, and the Grid," *Annals of the Association of American Geographers* 93, no. 1 (March 2003): 121–41.

6 On pacification, see Mark Neocleous, "War as Peace, Peace as Pacification," *Radical Philosophy* 159 (2010).

branch of land claims policy and of its related land-based policies, the Additions-to-Reserve policy and the newly created Specific Claims Tribunal Act. Drawing on unpublished material on the history of the Culbertson Tract, records obtained through access to information requests, and firsthand knowledge from the community, we then trace Mohawk legal and extralegal strategies aimed at reclaiming the Tract to show how Canada legitimizes and manages the continued dispossession of the Culbertson Tract from the Mohawks of Tyendinaga. Through the criminalization of community members opposing settlement terms under the land claims policy, we conclude that the policy of extinguishment contained in the land claims policy is furthered by policing resistance with the use of security forces on the ground.

The Tyranny of Specific Claims: Recognition vs. Return

Until 1973, no mechanism existed in Canada through which Indigenous peoples could grieve, let alone retrieve, unsurrendered lands and territories. The 1973 *Calder*[7] decision recognized that Indigenous peoples' inherent rights to land—Aboriginal title—predate and survive European settlement.[8] That same year, Indian Affairs Minister Jean Chrétien announced a new policy to address the *Calder* precedent. The policy's stated intent was to provide an avenue for the negotiation of claims where Canada accepted an "outstanding lawful obligation to a First Nation."[9] This included claims for Indigenous territories not subject to existing treaties or legal frameworks ("Comprehensive Claims") and for lands within treatied and untreatied territories that had been wrongly surrendered or expropriated ("Specific Claims"). The policy reflected not simply a recognition of responsibility, but also a willingness to negotiate regarding land claims of Aboriginal title.[10]

The *Calder* precedent further influenced the federal government in 1974 to set up an Office of Native Claims (ONC) at Indian and Northern Affairs Canada (INAC)[11] to deal with outstanding claims and to negotiate new ones. However, eight years later the government was forced to acknowledge widespread failure of the land claims policy.[12] Out of 250 claims submitted, only 12 had been settled.[13] The new claim evaluation process introduced by the government, however, failed to address concerns, and more criticism and reports followed, including the 1983 *Penner Report on Self-Government*, which issued a strong recommendation for a

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7 *Calder et al. v Attorney General of British Columbia* [1973] SCR 313.

8 Emma Butt and Mary C. Hurley, *Specific Claims in Canada* [Publication No. 2006-18-E] (Ottawa: Library of Parliament, April 1, 2006), 2.

9 Michael Coyle, *Addressing Aboriginal Land and Treaty Rights in Ontario: An Analysis of Past Policies and Options for the Future* (Toronto: Ipperwash Inquiry, 2005), 38. http://www.attorneygeneral.jus.gov.on.ca/ inquiries/ipperwash/policy_part/research/pdf/Coyle.pdf.

10 See "Statement made by the Honourable Jean Chrétien, Minister of Indian Affairs and Northern Development on Claims of Indian and Inuit People," *Communiqué* (Ottawa: Department of Indian Affairs and Northern Development, August 8, 1973).

11 As of June 13, 2011, the Government of Canada changed the title of the department from INAC to Aboriginal Affairs and Northern Development Canada (AANDC). We use INAC throughout this paper to reflect that the majority of our sources reference INAC.

12 In response, the government issued the 1982 report, *Outstanding Business: A Native Claims Policy – Specific Claims* (Ottawa: Minister of Supply and Service, 1987).

13 Butt and Hurley, *Specific Claims in Canada*, 3.

new claims policy and emphasized the need for the process to be sheltered from political intervention.[14] While the House Standing Committee on Aboriginal Affairs acknowledged the intense dissatisfaction with the claims policies, it made no specific recommendation other than to suggest neutral party monitoring or management of the process.[15]

Far from going away, the malfunctioning land claims policy landed on the international stage in 1990 in a spectacular display of state violence. Four years earlier, the Specific Claim of the Mohawks of Kanehsatake had been rejected. In an effort to protect their lands, and with all other "democratic" channels to obtain their rights closed, the Mohawks erected barricades around their sacred burial ground, known as The Pines, which was in danger of being mowed under for nine additional holes of golf.[16] The "Oka Crisis" renewed calls for innovation to the claims commission. In December of that year, the Assembly of First Nations' (AFN) Chiefs Committee on Claims submitted a report prepared for the Minister of Indian Affairs recommending fundamental reforms to all federal claims processes. Several initiatives followed, including the introduction of an interim Indian Specific Land Claims Commission (ICC) with powers limited to reviewing claims and making recommendations. But proving once again its intractability to change, a decade later the Annual Report of the ICC (2000–2001) observed that the Specific Claims process remained "painfully slow" and "in grid-lock."[17]

In 2007, Indigenous communities leveraged their land-based grievances onto national and international stages through occupations and blockades. In the case of the Iroquois community at Grand River, tensions over contested land boiled over on more than one occasion to produce physical altercations between Indigenous and non-Indigenous groups. A few hours east, Tyendinaga targeted the country's busiest rail corridor and national highway—vital pieces of Canada's economic infrastructure—for interruption and stoppage. Also in 2007 came the release of the *Ipperwash Inquiry Final Report*, invoking somber reminders of the 1995 shooting death of Indigenous land claims protestor Anthony (Dudley) George. Prepared by Justice Sidney Linden, the report contained cautionary and compelling arguments for the expeditious treatment of Indigenous land claims.[18]

Considering this political landscape, it is perhaps not surprising that Indigenous land claims inspired more attention than usual. In May 2007, Jim Prentice, the Minister for Indian Affairs, pledged a power shift in Ottawa that would supposedly have the government "initiate full institutional reform, and create a fully independent land claims tribunal."[19] By August 2007, the Conservative Government

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14 House of Commons, *The Report of the House of Commons Special Committee on Indian Self-Government*, (Ottawa: House of Commons, 1983). [Penner Report]

15 See Butt and Hurley, *Specific Claims in Canada*, 4.

16 Gail Guthrie Valaskakis, *Indian Country: Essays on Contemporary Native Culture* (Waterloo: Wilfrid Laurier University Press, 2005).

17 The ICC Annual Report 2000–2001 was tabled in the House of Commons March 22, 2002, (Ottawa, Indian Claims Commission, 2002).

18 Ontario Ipperwash Inquiry, *Report of the Ipperwash Inquiry* (Toronto: Ministry of the Attorney General, Queen's Printer for Ontario, 2007), 79.

19 CTV News Staff, "Ottawa to Give More Power to Land-Claims Panel," *CTV News* (May 17, 2007) http://www.ctv.ca/servelet/ArticleNews/ print/CTVNews/20070517 land_claims.

released an action plan entitled *Specific Claims: Justice At Last*, boasting "four interdependent pillars" of impartiality and fairness, greater transparency, faster processing of claims, and better access to mediation.[20] In November 2007, Bill C-30—An Act to Establish the Specific Claims Tribunal and to make Consequential Amendments to Other Acts[21]—was introduced, receiving royal assent on June 18, 2008.[22] The Act creates an independent adjudication tribunal—free from the conflict of interest perceived in the negotiations process—with the authority to make binding decisions on the validity of Specific Claims and to award settlements to a maximum of $150 million administered from a dedicated fund, which is capped at $250 million per annum. Significantly, the Act includes a clause designating private property to be immune from expropriation when a specific claim has been verified on lands owned by "third parties."

Four years into the mandate of *Justice At Last*, Indian Affairs Minister John Duncan fêted his party, declaring that the claim backlog had been reduced almost by half, and proclaiming that the Conservatives had ushered in a "cultural shift" in Indigenous land disputes.[23] Indeed, some Band chiefs have expressed support for the revamped policy. However, the experiences of Bands unwilling to trade a cash settlement for the formal surrender of territorial lands have proven less rosy. These Bands continue to find their desire for land return eclipsed by a system geared exclusively towards monetary compensation. Leaving aside the complex technical questions of restitution, the principles of return could draw from wrongful loss, prior occupation, spiritual belonging and cultural survival, and political aspirations, but need not be universal values. For these Bands, the government's rhetoric of justice has given way to frustration. Much of their concern centres on the body ostensibly designed to create and safeguard impartiality and fairness within the specific claims system: the adjudicative tribunal.

The government construed the tribunal as an option investing First Nations with the power and freedom to choose arbitration if they were not satisfied with INAC's treatment of a claim at the negotiating table.[24] Indigenous organizations charge, however, that in practice it is the government that is benefiting the most from the tribunal's existence. According to the Union of British Columbia Indian Chiefs (UBCIC), the government "abandoned all pretence of working to achieve negotiated settlements" once the tribunal was created.[25] "Canada's strategy," writes the UBCIC, "appears to be aimed at transferring the large backlog of unresolved specific claims away from Indian Affairs [. . .] onto the back of the new Specific Claims Tribunal."[26]

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20 Indian and Northern Affairs Canada (INAC), *Specific Claims: Justice at Last* (Ottawa: Ministry of Public Works and Government Services Canada, 2007), 9–10.

21 2d Sess, 39th Parl, 2007.

22 *An Act to Establish the Specific Claims Tribunal and to make Consequential Amendments to Other Acts*, SC 2008, c 22.

23 John Ivison, "'Tories' 'Cultural Shift' on Native Land Disputes," *National Post* (August 6, 2011) http://www.nationalpost.com/opinion/columnists/Tories+Cultural+shift+native+land+disputes/5214844/story.html.

24 INAC, *Specific Claims Action Plan–Frequently Asked Questions* [Fact Sheet] (2010) http://www.ainc-inac.gc.ca/al/ldc/spc/jal/faq-feng.asp.

25 UBCIC, Nlaka'pamux Nation Tribal Council and Alliance of Tribal Nations, *Canada's Undermining of the Specific Claims Process* (Vancouver: UBCIC, 2011), 2.

26 Ibid., 4.

Several lawyers representing Indigenous land claimants share the UBCIC's view, noting that the government's practice of making "take it or leave it" settlement offers, cancelling meetings, and arbitrarily terminating negotiations have become commonplace.[27]

But the key issue here is not only that the nature of the tribunal is to deny the return of Indigenous lands—a procedure heralded by policy makers as one of "justice" and empowerment—but that the path of recognition need only tread in one direction. Whereas Indigenous lands have been subject to expropriation through historical land theft and "allowable" infringements to this day,[28] the lands of private Canadian citizens are off the table for negotiations even where those lands were illegally surrendered. In 2008, Chuck Strahl, the Minister for Indian Affairs, reflected, "You can't fix all the past wrongs. All you can do is negotiate what the wrong was and what the federal government can do in terms of financial compensation."[29] Strahl's comments leave no doubt as to the government's preference for financial compensation. Less frequently articulated, though, is the reasoning behind such positioning. Denielle Boissoneau-Thunderchild offers one explanation for the government's penchant for financial settlements:

> The harsh reality is that, under the current specific claim compensation practices of Canada, buying out the interests of a vulnerable First Nation is cheaper than buying out the interests of third parties. In this way, Canada places its own financial interests ahead of First Nations.[30]

Buried in the "new" Specific Claims policy is the ongoing privileging of settler property rights that the policy is ostensibly meant to rectify.

We can understand the push towards this policy as designed to pacify resistance and fold Indigenous peoples' interests into those of the state. Glen Coulthard theorizes that "the reproduction of a colonial structure of dominance like Canada's rests on its ability to entice Indigenous peoples to come to *identify*, either implicitly or explicitly, with the profoundly *asymmetrical* and *non-reciprocal* forms of recognition either imposed on or granted to them by the colonial-state and society."[31] It benefits the Crown to pursue financial settlement in land claims, yet so does preservation of the "fictive coherence of settler nation-states"[32] ensured through these politics of recognition. Pacification in this case means imposing the transactional relation of property ownership onto Indigenous peoples through the policy of

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27 Josh Grummett, "Feds Ending Negotiation on Specific Claims," *APTN National News* (July 25, 2011) http://www.aptn.ca/pages/news/2011/07/25/sources-feds-ending-negotiation-on-specific-claims/.

28 See *Delgamuukw v British Columbia* [1997] 3 SCR 1010 at para 162–169. The Supreme Court of Canada found that Aboriginal Title may be infringed by the federal or provincial governments provided that (1) the infringement furthered a compelling legislative objective, and (2) that the infringement be consistent with the special fiduciary relationship between the Crown and Aboriginal peoples.

29 Stephen Petrick, "No Special Treatment for Claim," *Timmins Daily Press* (June 24, 2008), accessed July 12, 2012, http://www.thedailypress.ca/ArticleDisplay.aspx?archive=true&e=1086429.

30 Denielle Boissoneau-Thunderchild, "The Expectation of Justice," *Indigenous Law Journal* 5 (2006), 11.

31 Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6 (2007), 439.

32 Alyosha Goldstein, "Where the Nation Takes Place: Proprietary Regimes, Antistatism, and U.S. Settler Colonialism," *South Atlantic Quarterly* 107 (2008), 833.

financial compensation. Indeed, it would appear that the government's strategy on land claims is specifically designed to constrain Bands whose visions of land restoration are twinned with aspirations of political and jurisdictional authority. Boissoneau-Thunderchild argues that present-day land claims policy operates on an unwritten requirement that "modern surrenders" must be obtained "in order to settle the Crown's historical breach."[33] Expanding on the same theme, Andrew Orkin writes, "The Crown is now exploiting the almost universal duress of indigenous poverty and desperation to extract new agreements. [. . .] The Crown is now seeking certainty, finality, liquidation, and extinguishment."[34]

Canada's existing colonial property regimes are enacted and imposed by the force of law, but it is only through Indigenous acquiescence that they are finally legitimated. Financial settlements predicated on a Band relinquishing any further claims, not only to the lands in question, but also to any substantial political decision-making authority within the claim area, provide the government with stability and closure. Furthermore, severing Indigenous interests in land invariably opens up vast geographic landscapes to speculation, investment, and resource extraction. Companies can pursue capital projects unfettered by Indigenous claimants, a "duty to consult," or the possibility of physical impediments in the forms of blockades or occupations.

How the specific claims policy is structured to achieve this in practice—how it maintains and solidifies Indigenous land dispossession and how it consolidates and expands fee-simple tenure on and, by extension, capital access to, Indigenous lands—requires further concrete examination.

Tyendinaga Mohawk Territory

Losing the American colonies in the American War of Independence (1775–1782) broke all of the Crown's promises to their Mohawk allies who fought bravely alongside British soldiers. The protection of Mohawk territory south of the Great Lakes and the 45th parallel had been assured and presumed with Loyalist victory,[35] but Britain had gambled with lands not her own. On May 27, 1783, Mohawk Chiefs Joseph Brant (Thayendanegea) and John Deserontyon lodged a protest with Lieutenant Governor Frederick Haldimand concerning the partition of their lands.[36] Haldimand responded by deeding the Six Nations Chiefs approximately 93,000 acres of land on territory the British had recently purchased from the Mississaugas.[37] Deserontyon took 7,000 acres of land between the Gananoque and

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33 Boissoneau-Thunderchild, "The Expectation of Justice," 1.

34 Andrew Orkin, "When the Law Breaks Down: Aboriginal Peoples in Canada and Governmental Defiance of the Rule of Law," *Osgoode Law Journal* 41 (2003): 451.

35 See declaration by Frederick Haldimand, April 7, 1779, (NA "Claus Papers" MG 19 F1 Vol. 2, C-1478, 89–90,).

36 Donald Bourgeois, "The Six Nations: A Neglected Aspect of Canadian Legal History," *The Canadian Journal of Native Studies* 6, no. 2 (1986).

37 See Copy of Deed from the Mississaugas, May 2nd, 1784, OA, (RG1, A-I-l, Vol. 2, 145); see also the Simcoe Deed, No. 3 1/2 ("We . . . Do give and grant . . . that District or Territory of Land being parcel of a certain District lately purchased by Us of the Mississauga Nation") Canada, Department of Indian Affairs, *Indian Treaties and Surrenders*, *From 1680 to 1890*, 2 volumes (Ottawa: Brown Chamberlin, 1891; Toronto: Coles, 1971. Vol. 1,.7–8); see also the Haldimand Papers (15th March 1784), (NAC RG 10, Vol. 10027, C-1060, 166–67).

Trent rivers on the Bay of Quinte—which would become known as Tyendinaga Mohawk Territory—and Brant took up residence with his followers on the Grand River, now the Six Nations reserve.

The 1793 Simcoe Deed, also known as Treaty 3 1/2, confirmed the deeding of this territory to Chiefs Brant and Deserontyon.[38] However, according to Sidney Harring, in the context of the 1763 *Royal Proclamation*'s restriction on the alienation of Indian lands without both Crown and Indigenous consent, the Simcoe Deed "restricted the terms of the original grant in limiting the right of the Six Nations to sell the land."[39] Unlike the vigorous demands of Chief Brant at Six Nations of Grand River to dispose of their land as they wished (i.e., without Crown consent), in Tyendinaga Chief Deserontyon disavowed those who considered selling any part of what came to be known as the Mohawk Tract. However, the nineteenth century bore a tremendous toll of land loss at Tyendinaga. In addition to alleged surrenders, lands were leased, squatted upon, and sold under terms in violation of the *Royal Proclamation*. One such case of illegal sale took place on the Culbertson Tract.

Located in what is now Southern Ontario, Chief Deserontyon and his people's land was originally referred to by settlers as the Mohawk Tract, and later, as Tyendinaga Mohawk Territory.[40] The territory is located approximately thirteen kilometers east of Belleville and approximately eighty kilometers west of Kingston. The Culbertson Tract covers the southeastern part of the Tyendinaga Township in Hastings County and over 70 percent of the town of Deseronto. This land was once inhabited by Chief Deserontyon's farm, occupying the eastern edge of the territory, until it was passed down to his grandson, John Culbertson, son of the Chief's daughter and a Scottish fur trader.

Culbertson built a wharf on the waterfront and took efforts to improve the land, but eventually he ran into financial troubles.[41] On August 20, 1829, Culbertson obtained a Quit Claim Deed for his grandfather's farmland from Peter John, the oldest son and heir at law of Chief John Deserontyon,[42] and a few years later, on January 10, 1832, a deed of confirmation was signed by the Chiefs of the MBQ.[43] By 1836, Culbertson had registered this Quit Claim at the Registry Office in Belleville. His petition included the Quit Claim Deed, Chief Deserontyon's will

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38 Canada, Department of Indian Affairs, *Indian Treaties and Surrenders, From 1680 to 1890*, 2 volumes (Ottawa: Brown Chamberlin, 1891; Toronto: Coles, 1971. Vol. 1, 7). For a longer-term account of Iroquoian tenure to that land that preceded Mississauga tenancy, see Joan Holmes and Associates, "Mohawks of Bay of Quinte Resource Harvesting Activities: Final Report," May 1999, 3–6.

39 Sidney L. Harring, *White Man's Law: Native people in nineteenth century Canadian jurisprudence* (Toronto: University of Toronto Press, 1998), 39.

40 Referred to hereafter as Tyendinaga.

41 Deseronto Archives Department, "History," *Town of Deseronto*. http://deseronto.ca/community/archives-history/.

42 The Quit Claim Deed was certified by an Indian Officer in Toronto, July 20, 1836.

43 The Mohawk Council Resolution (January 10, 1832) states, in part, "We do hereby Acknowledge remised released and forever Quit Claim And do by these presents remit release and Forever Quit Claim unto the aforesaid John Culbertson his heirs and Assigns forever all That parcel of tract of land owned by Captain John Deserontyon, deceased, as aforesaid and in His Last Will and Testament willed the Under mentioned land to his Grandson John Culbertson as Aforesaid" (NA RG10 Vol. 7540, File 29034-3, C-14, 810).

(in which Culbertson's grandfather granted him the land on March 20, 1810), and other documentation to support Culbertson's request to receive a Crown Grant of the land willed to him in his grandfather's estate.[44] One year later Culbertson received Letters of Patent from Sir Francis Bond Head (a Crown grant) for approximately 827 acres of that same land deeded to the Mohawks by Simcoe.[45] He received five dollars in return for surrendering the land.[46]

The Tyendinaga Mohawks claim they never surrendered this land to the Crown before it was patented to John Culbertson. Records show that at least as early as 1933, the Tyendinaga council was requesting an inquiry from Indian Affairs into the disputed sale of the Culbertson Tract.[47] Council minutes from 1935 show the oldest living chiefs at the time to have alleged that John Culbertson was "born illegitimate," thus "in order that he have possession of the land in accordance with the will, a quit claim deed for the 800 acres was given him by the Chiefs of the Mohawk band."[48] But Culbertson never had the authority to cede or surrender the land, which is the land of the Mohawk nation. In legal terms, the Tyendinaga Mohawks transferred a share of their property interest to Culbertson by way of a Quit Claim Deed, but the land transfer to the Crown violates the terms of the *Royal Proclamation* codified in the 1876 *Indian Act* (with subsequent amendments pertaining to land transfers in 1952 and 1988).[49] No "private sales" of Indian land are allowed, which Culbertson's sale amounted to without the consent of surrender from the band.

In the Spirit of Justice: The Necessity of Extra-Legal Measures

Despite the establishment of the Specific Claims process in 1982, there were few political or legal channels by which the Tyendinaga Mohawks could appeal this grievance.[50] Indeed, it was not until further policy changes were enacted in April 1991 that pre-Confederation claims such as the Culbertson Tract were accepted for consideration.[51] In 1995, the MBQ Band Council submitted a land claim to

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44 See Tyendinaga Agency, "Correspondence Regarding an Assigned Letter Assumed to be Written to the Indian Affairs Department by Mrs. Jacob Powles Regarding a Land Purchase by her Son-in-Law John Culbertson" (RG10, Indian Affairs, Vol. 2746, Reel C-11273, File 146,801); Tyendinaga Agency, "Enfranchisement–Culbertson, John A." (RG10, Indian Affairs, Series B-3, Vol. 7255, File 8034-125); and Certificate of recommendation signed by the Sheriff and seventeen Justices of the Peace and others (NA RG10 Vol. 7540, File 29034-3, Reel C-14, 810).

45 See Tyendinaga Agency, "Surrender of a portion of land on the reserve to John Culbertson" (RG 10, Indian Affairs, Vol. 7540, Reel C-14810, File 29, 034–33).

46 See Correspondence between the Department of Indian Affairs, from J. C. Caldwell, Director, DIA, Land and Timber Branch (Ottawa) to G. M. Campbell, Esq. Indian Agent (Deseronto) on June 24, 1933 where Caldwell describes the "nominal sum" which Culbertson obtained for his lands (NA RG10 Vol. 7540, File 29034-3, C-14, 810).

47 Ibid. See also Correspondence between H. J. Eade, Indian Agent (Deseronto) to Departments of Mines and Resources, Indian Affairs Branch (Ottawa) on June 7, 1935 and November 19, 1937 (NA RG10 Vol. 7540, File 29034-3, C-14, 810).

48 See Band Council Minutes, Vol. 6 (June 1935) Tyendinaga Records, Mohawks of the Bay of Quinte.

49 *Indian Act,* RSC 1952, c 149; *Act to amend the Indian Act (designated lands),* SC 1988, c 23, s 10.

50 Honourable John Munro, Minister of Indian and Northern Affairs, "Outstanding Business–A Native Claims Policy," May 13, 1982, Catalogue No. R15-2/1982.

51 Samantha Craggs, "Three Land Claims Means Years of Research," *Belleville Intelligencer* (June 23, 2007).

INAC under the Specific Claims policy. Alleging that the Culbertson had been wrongly ceded in 1837, the Band sought full restoration of the land as well as compensation for loss of use. In November 2003, the federal government verified that the MBQ's claim was legitimate, acknowledged an "outstanding lawful obligation" to remedy the wrong done, and opened negotiations with the Band.[52] Despite government affirmation of the legitimacy of the claim and despite several years of negotiations, the resolution sought by the Mohawks—the return of the Culbertson Tract—remains elusive as reclamation is prohibited when the land has come under private ownership. Thus, while the Crown has found sufficient cause that the land was improperly transferred some 150 years ago, it will not consider land return as a form of redress. The Specific Claims policy states:

> At present, private property will not be on the table, nor will private property owners be asked to sell their land unwillingly. *If land changes hands as a result of a settlement under the new process, this could only happen on a willing-seller/willing-buyer basis*.[53]

As recently as 2005, INAC acted as the "willing-buyer" of lands to be repatriated to First Nations, including Tyendinaga.[54] However, since 2007 and the establishment of the Specific Claims Tribunal, INAC's interpretation has reversed to refuse any responsibility for land purchases. An INAC bulletin on the Culbertson Tract reads:

> In the case of a land-related claim like this one, a negotiated settlement would provide the First Nation with financial compensation for past damages. If it chooses to do so, any First Nation in Canada may use its monies, including any money from a claim settlement, to buy land on the open market.[55]

The notion here is that the Band must transform itself into a realtor to achieve land restoration.

Moreover, even if the Band could negotiate a financial settlement that provided it with the economic security to confidently adopt the role of the "willing-buyer," INAC offers no guarantees about the eventual designation and status of purchased lands. Under Canada's Additions-to-Reserves Policy, "the First Nation must consult with neighbouring municipalities and the province before any land can be given reserve status."[56] Here lies the crux of the matter. For the Band, contemplating the purchase of claimed lands cannot be reduced to merely a question of economics. Even as the pursuit of a land claim is presented to the Mohawks as the avenue for dealing with outstanding land grievances, claims policy *reinforces* the terms of their dispossession. The Additions-to-Reserves policy ensures that existing settler power relations are safeguarded as affected

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52 Government of Canada quoted in Amnesty International Canada, *Police and Government Handling of Tyendinaga Land Protests a Threat to Human Rights* (Amnesty International Canada, August 6, 2010), ms in possession of the author.

53 INAC, *Specific Claims Action Plan–Frequently Asked Questions* (emphasis added).

54 Samantha Craggs, "Land Claim Winding Down," *Belleville Intelligencer* (June 2, 2007).

55 INAC, *Factsheet–The Culbertson Tract Specific Claim* (July 2008) http://www.aadnc-aandc.gc.ca/eng/1100100030437.

56 Ibid.

municipalities influence the determination of Indigenous political and land rights. Citing consultations with "neighbouring municipalities" as a precursor to attaining reserve status effectively empowers the town of Deseronto with a veto over the MBQ claim. Deseronto's Main Street, town offices, and places of business are located on wrongly acquired Mohawk land. This is a formidable incentive for the town's citizenry and governing council to rationalize the Culbertson lands as rightfully naturalized—over time and through usage—as part of their jurisdiction. Moreover, relinquishing these lands would involve the divesting of more than half of the town's property tax base. Finally, the retrenchment of the federal government—invested with fiduciary obligations to Indigenous peoples, as recognized by Canada's courts[57]—in effect downloads power onto provincial and municipal jurisdictions, acting to divest the Canadian state of its responsibility to historic agreements.

Further complicating matters, the MBQ have not been alone in staking ownership to the Culbertson Tract. In 1979, Thurlow Aggregates was granted a quarry license by the Ontario Ministry of Natural Resources to mine aggregates from a plot they bought on the Culbertson Tract. Despite confirmation of the validity of specific claims and active negotiations, there is no requirement that "development" activities cease on the land. According to reports, the license allows Thurlow Aggregates to remove 100,000 tons of gravel yearly, roughly 300 truckloads a month, from the First Nations' territory.[58] As Mohawk spokesperson Shawn Brant points out, Thurlow was literally taking the land away from the community.[59]

On November 15, 2006, thirty people from Tyendinaga began their reclamation of the Culbertson Tract.[60] A one-day protest of a proposed $30 million condominium development turned into a violent confrontation when a convoy of military trucks, apparently training new drivers, drove through the protest site. Initially the developer backed off, but despite the Mohawks' warnings that the land was theirs, in January 2007 the developer announced his intentions to break ground, bringing the Mohawks back to the site.[61] According to Brant, it was at that time that the Mohawks decided they needed an offensive strategy, rather than remain constantly engaged in defensive protest of each new development.[62]

The Thurlow Aggregates quarry, located in the centre of the Tract, was soon served a sixty-day notification to leave the premises. Brant said, "We told them that we would not allow for the further indignity to continue, that we had people sitting at a negotiating table with the federal government and negotiating lands while it was literally being trucked away under our noses."[63] On March 10, 2007, sixty days after Thurlow Aggregates was served their notification and had continued their operations, a contingent of the Tyendinaga Mohawks moved into the

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57 See *Guerin v The Queen*, [1984] 2 SCR 335, where the Supreme Court of Canada confirmed that the federal government has a special duty to act in the best interests of Indigenous peoples.

58 Naomi Klein, "Not a Mine, A Metaphor," *The Globe and Mail* (May 4, 2007). A21.

59 OCAP Radio, *Interview with Shawn Brant* (March 23, 2007) http://www.radio4all.net.

60 Samantha Craggs, "Heated Confrontation with Mohawks at Development," *Belleville Intelligencer* (November 15, 2006).

61 OCAP Radio, *Interview with Shawn Brant*.

62 Ibid.

63 Ibid.

quarry.[64] They blocked the entryway, and about 150 people set up a main camp near the gates and another camp adjacent to the excavation pit. After securing the quarry, they invited the community to come in and support the reclamation.[65]

The Mohawks soon discovered that the quarry harboured a very dirty secret. When removing planks of wood for firewood, they came across "old washing machines, leaking industrial batteries, oil filters, hydraulic fluid, bed frames, antifreeze."[66] They found that the waste was not confined just to this spot, discovering "piles of hastily covered junk, some of it half-burned, much of it toxic, including broken up pieces of asphalt from the highway."[67] The quarry had become a dumping ground for toxic waste and industrial garbage.[68] Yet the provincial government asserted that the license was beyond their jurisdiction to revoke,[69] so in the spring of 2007, the Mohawks announced a campaign of "economic disruption" to reclaim their lands and to protest what seemed like a never-ending process of negotiation with the government.[70]

Since then, a number of altercations have taken place. In April 2008, for example, the quarry was surrounded by Ontario Provincial Police (OPP) officers, and OPP Commissioner Julian Fantino threatened to move in and take everybody out, leading to a weekend of intense standoffs and arrests. That same month, a Kingston realtor publicly stated his intentions to begin construction on the Tract but was thwarted when the Mohawks responded by closing the roads adjacent to the proposed site, which they held for several days.[71]

Meanwhile, the elected Chief and Council of Tyendinaga negotiated with the federal government as unrest was growing in the community. Chief Don Maracle insisted that barricades were not supported by his Band Council,[72] but according to Brant, many in the community felt that the Specific Claims process had tied their hands while the provincial and municipal governments exploited the land.

The role of the Specific Claims policy, according to Brant, is a pacifying process meant to institutionalize dissent while justifying the criminalization of inevitable frustration:

> The process of Specific Claims isn't designed to resolve claims, it's meant to give an avenue to disputes, take it off the streets, and put it into a process, so that the powers that govern that, can say—this is the process, you signed on to the process to have this claim looked at, and by god, you'll work within

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64 CBC News, "Mohawk Protesters Take over Deseronto Quarry," *CBC News* (March 23, 2007). http://www.cbc.ca/news/canada/ottawa/story/2007/03/23/deseronto-quarry-070323.html.

65 Ibid.

66 Naomi Klein, "Not a Mine, A Metaphor."

67 Ibid.

68 According to community members, Ministry of Environment staff denied these allegations following a visit on June 28, 2008 to the quarry. Copies of their report could not be obtained by the authors.

69 CBC News, "Ontario Won't Shut Quarry at Centre of Aboriginal Protests," *CBC News* (April 23, 2007) http://www.cbc.ca/news/canada/ottawa/story/2007/04/23/deseronto-070423.html.

70 CBC News, "Native Blockade Organizer Warns of 'Escalating' Actions," *CBC News* (April 22, 2007) http://www.cbc.ca/news/canada/ottawa/story/2007/04/21/native-blockade.html.

71 CBC News, "Mohawk Protesters Set up Blockade in Eastern Ont. Town," *CBC News,* (April 21, 2008) http://www.cbc.ca/canada/ottawa/story/2008/04/21/ot-deseronto-080421.html.

72 See the Chief's comments in Brock Harrison, "CN Rail Sues Mohawks; Company Launches Suit Over Rail Blockades," *The Kingston Whig-Standard* (May 10, 2007).

> the process. And so when people become frustrated and no longer accept that as a legitimate way, and as a dignified way [to negotiate], then we're looked at as the militants, the small radical fringe groups, those that don't want a peaceful resolution, but only seek a violent end, and that's not the case.[73]

Creating these property "outlaws" is in fact an essential and hidden implication of the Specific Claims policy. Without careful analysis of the ways criminalization and land claims policy work together, the colonial property relations here may be obscured to the general public.

Resistance and Criminalization

While the specific claims process is one part of the pacification project of Canadian Aboriginal policy, forms of repression, to which we can apply the shorthand "criminalization" techniques, are another. These techniques include the arrest and prosecution of Indigenous people engaged in direct action, but also discursive representations of Indigenous land defenders by media, police, and security agencies as "criminals," "extremists," "militants," and "terrorists." These conflations provide justification for ongoing surveillance of Tyendinaga and other First Nations. Working in tandem, the coercive mechanisms of criminalization complement the tyranny of the specific claims policy regime to produce the property relations of colonialism. Faced with a stalemate in their legal and policy pursuits for re-possession of the Culbertson Tract, the Tyendinaga Mohawks employed a range of extralegal strategies to disrupt the spatial production of the colonial landscape. Whereas non-Indigenous people were politically entitled to lands legally belonging to Mohawks, Mohawk bodies were deemed "out of place"—and ripe for eviction and expropriation—when appearing in these locations.

Between December 2006 and March 2010, Tyendinaga Mohawks engaged in numerous acts designed, wholly or in part, to assert right and title to the Culbertson lands. Some of the activities undertaken at Tyendinaga included: posting public signage proclaiming Mohawk title to the lands; providing written handouts announcing Mohawk title to passers-by; closing roads, impeding construction and development throughout the Culbertson; reclaiming parcels of Culbertson land through occupation; erecting permanent and semi-permanent structures on "occupied" land; and blockading rail lines and highways, including the Trans-Canada. As Nicholas Blomley writes, establishing a blockade on contested land

> has a symbolic effect to the extent that it marks out two spaces. In an immediate sense, it maps out a boundary and . . . distinguishes an "Indian" space from a "Euro-Canadian" space . . . To the dominant society, [it] is an assertion of place, implying a Native rejection of generations of systemic racism, territorial dispossession, and economic marginalization. To the FN [it] is one of shared aspirations and identity as well as principled defiance.[74]

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73 OCAP Radio, *Interview with Shawn Brant*.

74 Nicholas Blomley, "Shut the Province Down: First Nations Blockades in British Columbia," *BC Studies* 111 (1996), 24.

For many in Tyendinaga, the "space" that was in need of demarcation included virtually the entire town of Deseronto. Employing a broad and highly adaptable interpretation of the "blockade," Mohawk resistance responded to a community mandate known as "Not one more shovel in the ground," which gave voice to the Mohawk position that all land development should be halted pending the resolution of negotiations.[75] As a result, all development throughout the Culbertson was targeted for interruption and stoppage.

These militant attempts to secure some equal negotiating ground with the federal or provincial governments evoked a full security response from the state. According to information obtained from the Ministry of Community Safety and Correctional Services, by November 2006, the OPP had adopted the title "Project Culbertson" as a means to "administratively record information and costs associated with day to day police operations in relation to incidents occurring in this geographical area."[76] Records obtained through access to information (ATI) requests reveal that more than 600 officers, logging upwards of 137,000 hours of work, were deployed under Project Culbertson between April 2007 and December 2010, while Project Culbertson expenses exceeded $9 million for the same time period.[77]

During the period of activity described above, police actions drew the attention of Amnesty International Canada, leading the human rights organization to pen an open letter to the Minister of Community Safety and Correctional Services referencing, among other issues, "consistent and credible reports . . . that OPP officers pointed firearms at unarmed protestors and members of their families."[78] Between 2006 and 2010, dozens of Mohawk lives were disrupted by criminal charges, incarcerated family members, court trials, and appearances relating to the Culbertson Tract land protests.[79]

The overall number of arrests at Tyendinaga is difficult to count. Anecdotal evidence suggests that since the start of 2006 until the publication of this article, over thirty people have been charged in connection to the Culbertson Tract. Yet this number is misleading since there were high incidents of re-arrest that would raise the number of charges without affecting the number count of people arrested; some individuals were charged on two to five separate occasions. According to residents, conditions associated with charges have ranged from non-association with co-accused, to curfews, confinement to the territory, prohibition of protest, and red-zoning from the Culbertson Tract and/or on the quarry property specifically. Regardless of their charges, and without exception, protesters' bail

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75 Public Meeting on the Culbertson Tract, Tyendinaga Mohawk Territory, March 19, 2007.

76 Marlene Gillis, "Subject: Request Number CSCS – A-2008-02344 Appeal PA08-314" (Personal correspondence to Stan Jolly, July 31, 2009).

77 Amnesty International Canada, *"I was Never so Frightened in my Entire Life": Excessive and Dangerous Police Response During Mohawk Land Rights Demonstrations on the Culbertson Track*, (Amnesty International Canada, May 31, 2011), 26.

78 Alex Neve, "Ontario's Duty to Ensure Rights are Upheld in Police Response to Indigenous Protest," (Public letter to the Honourable Rick Bartolucci, Minister of Community Safety and Correctional Services, November 12, 2008).

79 Amnesty International Canada, *"I was Never so Frightened in my Entire Life,"* 14–21. Amnesty International Canada notes that over a seven-day period in April 2008, seventeen Mohawks were criminally charged with sixty-one counts of mischief (21).

and probation conditions barred them from setting foot on large expanses of Culbertson lands.[80] By policing the individual bodies at Tyendinaga, the land remained open for exploitation.

The criminalization of activities at Tyendinaga and the discursive conflation with "militancy," "extremism," and "terrorism" has legitimized and normalized intrusive and aggressive state practices in responding to the reclamation while fueling fear among non-Natives. On April 22, 2006, the headline of the *Toronto Sun* read: "'It's rural terrorism,' said one police officer at the scene."[81] Though many accusations of terrorism can be dismissed as the work of white supremacists,[82] it is another matter when police officers depict Indigenous peoples defending their rights as a domestic threat to regional and even national security. According to records obtained through ATI requests, actions at Tyendinaga were topics of ongoing concern for the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS), and the Canadian Forces National Counter-Intelligence Unit (CFNCIU). Weekly RCMP intelligence reports from 2007 kept tabs on Tyendinaga (among other First Nations) and the actions of "militant leader Shawn Brant."[83] Perhaps most telling are threat assessments on "Aboriginal protests" produced by the Integrated Terrorism Assessment Centre (ITAC), housed within CSIS. ITAC's mandate is to centralize and coordinate intelligence relating to *terrorist threats* to national security. According to these reports, threats "of politically-motivated violence, or where protests threaten the functioning of critical infrastructure" fall within this mandate. During the summer of 2007, ITAC reports consistently identified the planned Tyendinaga blockades of the railway and highway as items of concern.[84] Counter-intelligence information reports released by the Department of National Defence (DND) show that the CFNCIU was also collecting information on the "security threat" at Tyendinaga at least as early as 2006.[85]

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80 For example, *Shawn Brant Probation Order*, July 22, 2010 OCJ [In possession of the author, Sue Collis]. The probation order includes an attached *Plan of Survey*, identifying fully one third of Culbertson lands as prohibited to Brant.

81 Joe Warmington, "'It's Rural Terrorism,' Said One Police Officer at the Scene," *Toronto Sun* (April 22, 2006) http://www.torontosun.com/news/canada/2006/04/22/1545384-sun.html.

82 Right-wing and white power groups have also been using the language of "terrorism" to describe spokesperson Shawn Brant and the Tyendinaga Mohawks more generally. On the discussion boards of Stormfront.org, the white supremacy group whose slogan is "White Power World Wide," many referred to the blocking of the railroad as a "terrorist act," and one contributor stated that the "savage Indians must be controlled." A citizens group called "Caledonia Wake-Up Call," established in response to the Six Nations reclamation of the Douglas Creek Estates, has one posting on their website titled "Shawn Brant and the Direct Terrorist Threat to Canada."

83 RCMP Criminal Intelligence, "Aboriginal and Community Public Safety Situation Report: National Implications," (May 9, 2007), obtained through ATI request no. GA-3953-3-04344/09 to RCMP.

84 ITAC, "ITAC Threat Assessment: Aboriginal Protests Summer 2007" [7/30] (May 11, 2007), "Update 1" [07/33] (May 25, 2007), "Update 2" [07/37] (June 7, 2007), "Update 3" [07/41] (June 14, 2007), "Update 4" [07/46] (June 21, 2007), obtained through ATI request no. 117-2008-123 to CSIS. ITAC, "ITAC Threat Assessment: Rail blockade in Deseronto, Ontario" [7/44] (April 20, 2007), obtained through informal ATI request no. AI-2009-00443 (copy of request 2007-00583) to DND. See also Jeffrey Monaghan and Kevin Walby, "Making up 'Terror Identities': Security Intelligence, Canada's Integrated Threat Assessment Centre and Social Movement Suppression," *Policing & Society* (2011) DOI:10.1080/10439463.2011.605131.

85 CFNCIU, Counter-intelligence information report (December 6, 2006), obtained through ATI request no. AI-2009-00442 (copy of request 2007000583) to the DND.

Mohawk policy consultant Russell Diabo has aptly described these tactics as Canada's low-intensity warfare on First Nations. At a 2009 presentation in Ottawa, Diabo asserted that "Canada intensifies its 'war' on a First Nation when a First Nation resists and tries to assert Aboriginal or Treaty Rights over lands and resources beyond what the Crown governments will allow under their restrictive, one sided, self-government and land claims policies." Though he admits it is not a "conventional war" Diabo points to the paper trail:

> If in the end if you still do not believe that the Crown is conducting a legal–political–fiscal "war" on First Nations, look at the recent media reports of the Canadian Security and Intelligence Service (CSIS) spying on the "Native Youth Movement" and the "Native 2010 Resistance," the inclusion of "radical Indigenous groups" in Canada's draft counterinsurgency manual, and the revelations about the Ontario Provincial Police Commissioner, Julian Fantino, using wiretaps and threatening the use of deadly force against the Mohawks of Tyendinaga, including making it his personal vendetta against Shawn Brant.[86]

The fact that direct actions such as reclamations and blockades are the tactics of last resort within a vastly uneven terrain of power does not figure into the mainstream media analysis. Instead, as Augie Fleras and Jean Elliott argue, Indigenous resistance tends to be taken up as examples of the "defiance" and "unreasonableness" of Indigenous peoples, [87] particularly when juxtaposed with the "reasonableness" of the specific claims process and the new "independent" tribunal as legitimate avenues of redress.

Conclusion

This tendency of criminalization is not unique to Tyendinaga lands, but is rather an enduring feature of the state response to Indigenous lands struggles. At Ipperwash Provincial Park in 1995, Indigenous protestor Dudley George had to die to have movement on the Stoney Point band's grievances regarding their confiscated lands. In the case of Kitchenuhmaykoosib Inninuwug in 2008, the elected Chief and Council were arrested, sentenced to six months in jail, and served part of their sentences to stop a platinum mine from being built in their watershed. These are only a few examples among hundreds more. Canada's use of legal mechanisms such as the specific claims process in tandem with police and security forces to repress and pacify Indigenous peoples is widespread, and although understood as such in "Indian Country," this fact remains a largely invisible reality to the majority of Canadians. What Canadians *do* perceive, however, is a criminalized class of Indigenous peoples in Canada. While format constraints limit us from

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86 Russell Diablo, "Canada's War on First Nations" (October 29, 2009), Indigenous Sovereignty Week, Ottawa. See also Kim Peterson, "Land & Jail: Ipperwash, Official Racism and the Future of Ontario," *The Dominion* (September 23, 2008) http://www.dominionpaper/ca/articles/2040. Peterson describes the statements Fantino made to Brant as revealed by transcripts of the OPP wiretaps: "I don't wanna get on your bad side but you're gonna force me to do . . . everything I can within your community and everywhere else to destroy your . . . reputation"; and, "Your whole world's gonna come crashing down on this issue."

87 Augie Fleras and Jean Elliott, *Unequal Relations: An Introduction to Race and Ethnic Dynamics in Canada,* 4th ed. (Toronto: Prentice Hall, 2003), 199.

fully exploring the complexities of these dynamics, we have sought in this paper to make these processes more widely visible by examining how they manifest on the ground in the specific case of Tyendinaga.

In offering financial remuneration as opposed to land restoration to resolve claims, INAC has developed an effective mechanism to not only thwart geographical expansion but also to forestall and diminish the cultural, political, and jurisdictional aspirations of Indigenous peoples. The Specific Claims policy and Tribunal Act would see Bands reduced to Indigenous-owned realty corporations, their political authority collapsed under the assimilationist logic of private property. Multiple, ongoing, and irreconcilable problems with the "proper" procedures have been identified by a wide gamut of politicians, Indigenous organizations, policy-makers, and communities since the introduction of the Specific Claims policy. In taking action outside of the dominant avenues, the Tyendinaga Mohawks have been criminalized for their reclamation of the quarry on the Culbertson Tract. Together with the specific claims process, these mechanisms are a twenty-first century continuation of colonial processes of dispossession. Criminalization leaves the "outlaws" with few directions to take but forward, into whichever practices ensure that lands will not be lost again.[88] The geological nature of property relations means that social relations do in fact add layers over time. Although rocks seem like stable substances, they are in fact perpetually at the mercy of rock-breakers.

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[88] Eduardo Moises Penalver and Sonia K. Katyal, "Property Outlaws," *University of Pennsylvania Law Review* 155 (2007): 1095.