Prospecting, Expanding, Restoring: Law and Extractivism in the Anthropocene

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1 Sedimented Injustice

In 2012, Australian mining magnate and billionaire Gina Rinehart published an 'ode to mining' (Rinehart 2013). Opening on 'a globe … sadly groaning' from 'debt, poverty and strife', *Our Future* insists the situation of the benighted 'billions' can be solved only through the dubious solace of 'resources buried deep beneath the earth … the world's poor need our resources: do not leave them to their fate' (Rinehart 2013). But this bright future for humanity is blocked by 'political hacks' practicing the wrong kind of extraction: they 'dig themselves' out of government debt by 'unleashing rampant tax' (Rinehart 2013). Rinehart's poetic verve was fuelled by law; a profits tax levied on non-renewable resource income (*Minerals Resource Rent Tax Act (Cth)* 2012). Fortescue Mining's constitutional challenge to the tax failed in the High Court (Clark 2013). The tax itself was also a failure: far from generating tens of billions in revenue, increases in Australian State mining royalties and new tax deduction claims by mining companies reduced that to a scant few million dollars before it was repealed by the Abbott Government in 2014. But while it still posed some meagre threat to Australian mining riches, Rinehart arranged for *Our Future* to be engraved on a plaque set into a 30-tonne iron ore boulder moved from the Pilbara and placed in the Coventry Square Markets in Morley,

Perth as a monument to Australian extractivism (Pearlman 2012). The hubris of those states, institutions, corporations and human beings that have contributed most to catastrophic climate change is captured in Rinehart's poem and its monumental form.

The Anthropocene is – or should be – a moment of reckoning for human hubris and epistemological hegemony. As an established discursive concept, if not a new geological epoch, the Anthropocene foregrounds human impact on the earth (IUGS 2024; Damianos 2024) and prompts a reckoning with the 'sedimentation of colonial power' (Povinelli 2021: 20). For Elizabeth Povinelli, the Anthropocene explicitly names the historical enmeshing of extractivism, politics and law, drawing attention to the political economy and ecology by which matter becomes material in the ancestral catastrophe of late liberalism (Povinelli 2021: 16). This catastrophe emerges not as a series of geographically disparate calamities open to the 'perpetual horizon' of technocratic solution, but instead as a manifestation of a sedimented injustice – that is, the legacy of the racial and colonial histories that contorts 'all forms of existence … to capitalist extraction' (Povinelli 2021: 27, 9). An embodiment of extractive accumulation herself, Rinehart's *Our Future* trumpets the blustering outrage of laissez-faire capitalism that fuels a 'perpetual extraction machine' (Povinelli 2021: 37).

This special issue, which emerges from a workshop on "Law and Extractivism in the Anthropocene",[2] explores the extractive machinery of late liberalism through the prism of law. In its practice and institutions, law materially manifests the ontologies and epistemologies that underpin historical and contemporary modes of extractive imperialism and capital accumulation (Chagnon et al. 2022: 765). The impetus for the collection, and the workshop that preceded it, was an interest in how the material and discursive violence that extractivism relies upon and the epistemological frame and ideological assumptions that sustain it have generated certain dominant understandings of the world and contributed to its precarious ecological conditions. This reckoning also prompts questions about what it might mean to repair

these harms and make the world otherwise (Táíwò 2022).

The contributions to this issue grapple in a range of ways with these significant and urgent questions. After unpacking some of the complexities of the concept of 'extractivism' and its relationship with law, we introduce the articles through the sketched stadial lifecycle of the mine. This extractive sequence has remained remarkably consistent throughout history: prospecting, expansion and restoration. Prospecting collects three pieces focused on unearthing the historical and ideological origins of extractivism. Expanding includes two pieces that traverse present currents and instantiations of extractivism and law in projects across the world. Restoring comprises three pieces that reflect on the possible future courses that anti- and post-extractivist orders might take.

2 Extractive Logic

Extractivism is an 'organising concept' of our times (Chagnon et al. 2022). The etymology of the term extraction can be traced to the Latin 'extraher', meaning 'to pluck with violence' (Pasternak et al. 2023), yet the recent popularisation of the term can be attributed to Latin American social movement struggles against '*extractivismo*' (Riofrancos 2017; 2020). Extraction therefore refers to practices of unsustainable taking from the natural world, whereas extractivism can be understood as an ideology and a cultural logic that emerge from and entrench those practices (Szeman and Wenzel 2021). More broadly construed, extraction is best understood as a *relation*: it is a 'specific *way* of relating to nature' that is non-reciprocal and orientated towards the accumulation of capital and fixed on short-term profit (Scott: 124 2021). In effect, the extractivist economy turns on appropriation, nonreciprocity, depletion, and subjugation (Chagnon et al. 2022: 760–61; Gudynas 2018). Its ideology and practices are entwined with ongoing colonialism and imperialism, as well as the entrenched operations and politics of capitalism across time and space. It has produced a racialised global political economy, characterised by the removal of raw materials from the Global South for processing and consumption in the Global

North, reproducing relations of dependency, unequal development and uneven accumulation. Understanding the increasingly intense struggles between states, transnational corporations and local communities over land and place requires an understanding of the dynamics that have shaped the global extractivist economy. Far from easing the lot of the 'billions … pleading to enjoy a better life' (Rinehart 2013), the global extractivist economy entrenches inequality.

The past decade has seen growing scholarly interest in critically interrogating extractivism, including in legal scholarship. The contributions to this special issue foreground the importance and urgency of examining extractivism in this moment of 'triple planetary crisis' (UNEP and ISC 2024). Moreover, the Anthropocene prompts a critical reflection on our present and the conditions that have created it, while also offering an invitation to rethink conventional legal categories (Birrell and Dehm 2021). It draws attention to how unsustainable resource extraction underpins the current planetary crisis. The 2024 Global Resources Outlook shows that the extraction and processing of material resources – including fossil fuels, minerals, non-metallic minerals and biomass – accounts for 55 percent of greenhouse gas emissions, and up to 60 percent if land-use change is considered (Bruyninckx et al. 2024). The science is clear that the vast majority of remaining fossil fuel reserves need to stay underground, unextracted, in order meet the Paris Agreement objectives of limiting warming to 1.5 degree Celsius above pre-industrial levels (Paris Agreement; Welsby et al. 2021).

Nonetheless, many governments around the world remain 'locked into' a fossil fuel economy and are planning fossil fuel extraction – and in some cases expansion – that exceed the allowable 'carbon budget' (SEI, Climate Analytics, E3G, IISD, UNEP 2023). Global resource consumption reflects extreme global inequalities: 'High-income countries use six times more materials per capita and are responsible for ten times more climate impacts per capita than low-income countries' (Bruyninckx et al. 2024: xiv). Additionally, the 'triple planetary crisis' is being used to legitimate and justify new forms and frontiers

of extractivism, due to increasing demand for rare earth elements and critical minerals that are needed for renewable forms of energy generation, as well as semi-conductors and cyber-physical systems. For example, the International Energy Agency has predicted that annual demand for lithium – a key element in batteries used for electric vehicles and energy storage – will grow by a factor of 40 by 2040 (compared to 2020 levels) (Sinclair, Pepper, and Hayward 2024). Increasingly, the discourse of a 'green economy' is being used to legitimate and justify an expansion of extractivism into new terrains, including 'remote' Indigenous territories, the deep sea and even outer space.

In this moment, there is a pressing need to critically interrogate the role of law in authorising, enabling and legitimating extractivism. The extraction of parts of the natural world as 'resources' is extensively regulated, but in practice it is often punctuated by regulatory and enforcement gaps that enable and perpetuate environmental and social harms. The contributors to this special issue examine not just specific regulatory mining codes, but also the legal scaffolding that sustains an extractive economy. These critical accounts examine how laws have and continue to authorise and enable extractivist practices and relations.

3 Extractive Sequencing

The extractive sequence of the conventional mining cycle – prospecting, expanding, restoring – thematically organises the contributions to this special issue. Each explores, from a different point of departure, how an extractive legal order is authorised by specific representational practices, knowledges and assumptions. This includes consideration of the role of mapping, aesthetic practices and rhetorical discourses in constructing an extractive legal imaginary, in which the natural world is presented as inert, and its despoliation is premised on a hierarchical distinction between life and nonlife.

The geographical focus of the issue traverses the Global North and Global South, including Australia, Canada, India, and Kenya, while also engaging global perspectives. These cross-jurisdictional discussions illuminate local specificities while also offering productive comparisons

and the identification of globalised trends. Furthermore, contributions explore how the laws that authorise extraction are themselves globalised or have been transplanted.

While most of the contributions engage with the conventional and emerging objects of extraction – minerals and fossil fuels, as well as agriculture and forestry – the persistence of colonial relations and forms of exploitation is a central theme, given the dynamics of the extractivist economy are premised on the dispossession of Indigenous and First Nations peoples. Unresolved questions concerning contested authority, legal pluralism, and plural sovereignty in settler-colonial contexts provide critical threads throughout.

A Prospecting

Prospecting precedes extraction: it informs an assessment of the feasibility of an extractivist project while also, often simultaneously, operates to produce on the ground the conditions for its viability. It is in this exploration stage, one industry webpage suggests, 'where the magic happens' (*K2fly* 2024). Rather than understanding prospecting simply as a technical process of mapping, sampling and analysis to identify deposits, here we engage with prospecting as the work that goes into making certain lands and resources 'extractable', by generating an 'extractive imaginary' (Ranganathan 2019) underpinned by theological, scientific and bureaucratic discourses that have been marshalled to present extractivism as providential, necessary and inevitable.

Martin Clark's engagement with the late 1650s writings of English republican radical theorist James Harrington reveals the profound entrenchment of the extractivist frame in the history of Western legal thought. He takes his title, '" Nature is of God': Land, Money, Empire and Extraction in James Harrington's Legal Thought, 1656-60", from Harrington's 1659 collection of political aphorisms, and unpacks this enigma by tracing an early form of extractivism in Harrington's changing uses of the concept of 'nature'. Harrington's most well-known work, *Oceana* (1656), uses botanical and natural metaphors to articulate its messianic vision of imperial expansion through laws that reorganise

land tenure, assimilate territory and extract resources. In his late 1650s agitational works, Harrington offers a range of religiously-inflected reiterations of this imperial duty, more systematically connecting nature and empire through divine and natural law. Finally, in his last, unpublished work, *The Mechanics of Nature* (1660), Harrington offers an early account of 'animal spirits' as a divine command that humanity work, animalistically, to extract. For Harrington, creating justice meant a duty to perpetuate imperial expansion that was, ultimately, a duty to extract.

This work of prospecting is never done; indeed, its constancy connects historical waves of colonisation and extraction of resources with more recent geopolitical and legal developments. This point is aptly illuminated by Lee Godden. Her contribution, entitled 'Frontier Extractivism: Climate Change and Indigenous Dispossession,' exposes the legal continuum between frontier encounters between Indigenous peoples and European colonisers in the Australasian-Pacific region and contemporary fossil fuel expansion projects in the Northern Territory of Australia. Godden's analysis shows how the 'propertisation' of the Earth was central to producing resource alienability, and contrasts 19th century legal developments that produced a market-orientated protection of commodified property with the settler-colonial relegation of Aboriginal and Torres Strait Islander peoples' 'mere subsistence rights'. Godden re-reads the landmark *Mabo (No 2)* case in a way that is attentive to how the recognition of native title rights further entrenched Crown control over resource rights. Applying these insights to contemporary challenges, her article examines the intensification of water and energy extraction in the Northern Territory, especially in large-scale gas extraction in Betaloo Basin, which will contribute significantly to global emissions. The historical continuities identified prompt a 're-reading of the Anthropocene', which foregrounds Indigenous resource dispossession as an underlying driver of the climate crisis and, consequently, as productive of the degraded ecological and atmospheric conditions that define the Anthropocene. Her compelling analysis shows how a just energy transition must grapple with and contest the colonial and postcolonial resource regime and recognise Indigenous

resource sovereignties.

The continuities between historical practices and the contemporary expansion of extractivism into new frontiers is also the focus of Kate Jama's contribution, entitled 'Visions of Extraction: Maps, Law and the Ocean". Jama shows how certain representational practices, specifically evolving cartographic techniques, have and continue to facilitate colonial relations of exploration and extraction. Jama begins her story with an account of how early colonial maps presented an imaginary of the surface of the ocean as an empty, open space that allowed for the transportation of commodities between the imperial metropole and colonised lands. Subsequently, she traces how the introduction of bathymetric mapping made possible the expansion of this extractive imaginary to the actual ocean floor itself, by exposing the contours and limits of the continental shelf. Jama's analysis reveals the co-productive relation between cartography, the production of space, and the authorisation of extraction in new frontiers. Yet, she also foregrounds different legal imaginaries of the sea and the seabed that are not premised on the epistemological position of an external, objective and authoritative cartographer, concluding with a poetic reminder of how Indigenous ways of knowing the ocean are entwined with complex relations between humans, water, earth and more-than-human beings.

Together these three interventions remind us of the need for historical work to trace the deep entrenchment of extractivism in (post) colonial legal regimes and Western legal thought, and show how the imperatives of an extractive economy drive repetitive cycles of expansion into new frontiers.

B Expanding

In the contemporary moment, we bear witness to the significant expansion of extractivism. This expansion relies upon and mobilises the conceit of the frontier: that is, the construction of certain spaces as lawless, empty wastelands, and in need of improvement and development. The representation of certain territories as frontiers often ignores and overrides the jurisdictions and laws of the peoples that have inhabited and cared for the land. Simultaneously, the representation

of space as a frontier authorises the construction of infrastructure to facilitate extraction in the name of development, while also authorising the expansion of new legal and regulatory regimes that enable extraction, all premised on the ideology of improvement (Bhandar 2018) in places imagined as 'lawless'.

Dayna Scott provides a critical interrogation of new extractivist frontiers in the so-called 'Ring of Fire' in the far north of Ontario, Canada. In her contribution, entitled 'The Power of "Net Zero": Seductive Dispossession on the Critical Minerals Frontier', Scott shows how new discourses of 'net-zero' and the climate transition are legitimating new frontiers of extraction and justifying the fast-tracking of new critical minerals mining. Scott's nuanced socio-legal insights draw on years of community-engaged work alongside the Neskantaga First Nation, a small remote Anishinaabe community in Treaty No. 9 territory. She shows how these news forms of 'green extractivism' replicate earlier extractivist practices, by denying and seeking to override the inherent jurisdiction of Indigenous peoples. Accordingly, for Scott, the rush towards a green economy is a driver of ongoing Indigenous dispossession. Scott's account is a crucial cautionary tale about how 'the power of net-zero' perpetuates 'the extractive frontier, even into the post-extractive moment'. By cautioning against the seductive power of 'green extractivism', she foregrounds and acknowledges never-ceded, ongoing Indigenous jurisdiction over Indigenous territories and commits to the sustained work of building economies based on logics of human and ecological flourishing.

The animating concern of Doris Buss's contribution is the tension between the promise of legal formality for artisanal and small-scale miners, and the impossibility of its realisation. Her contribution, entitled 'The Case of the Impossible Mining License: Legal Rituals and "Responsible Mining"', draws on extensive fieldwork with independent, artisanal gold miners in western Kenya to understand what having a license means to those who have been excluded from regulatory systems. By situating these ethnographic insights within a broader historical account of the transnational policy assemblage on

responsible mining and its profusion of initiatives to include artisanal and small-scale mining populations within formal transnational policy and economic structures, Buss tells a complex story about the paradox at the heart of this almost universally promoted rule-of-law 'solution'. She identifies a ritualistic quality to these repeated cycles of law reform that are, as she describes them, both 'bound to fail yet so urgent in their necessity': despite their repeated failures these demands for legalisation and formality persist with a 'soothing repetition, familiarity, and hope that this time will be different'.

Together, these pieces highlight the crucial role that law plays in enabling and facilitating the expansion of extractivist practices. Law legitimates extractive industry incursions into new frontiers, while also consolidating and normalising such expansion by seeking to regulate the inevitable harms that arise. The promise that law can regulate to mitigate the harms of extraction, however – much like the promise of formalisation – is forever deferred.

C Restoring

Extractivist projects leave in their wake contaminated soils and toxic tailings; even if extractivism could be ended, the task of clean up inevitably remains. The question of reparative justice has become increasingly urgent in recent years. Rather than thinking about a 'just transition' to a low-carbon society as a narrow technical challenge, scholars and activists have highlighted the need for 'reparative transformations' to challenge the 'powerful persistence of neo-colonial relationships of exploitation and expropriation' (Fitz-Henry & Klein 2024). The uncertain role of law in restoring, repairing or rehabilitating the harms caused by extractivism resonates throughout the special issue, and is most explicit in the contributions of Theodora Valkanou, Sakshi, and Arpitha Kodiveri and Danish Sheikh. These authors query whether the articulation of new legal principles and rights, practices of judicial listening, attentiveness and care, and the public performance of law as an act of resistance, give rise to legal relations that are less extractive, or perhaps even reparative.

In 'Agrarian Extractivism, Peasant Culture and Law from Below',

Theodora Valkanou is cautiously optimistic about the progressive possibilities of new normative developments, such as the legal acknowledgement and protection of peasant cultures under the *United Nations Declarations on the Rights of Peasants* (UNDROP). She shows how the current global food system has, since the 1970s, become increasingly dominated by forms of 'agrarian extractivism': corporate-controlled, large-scale, intensive monocrop production of food that is dependent upon chemical inputs and is destined for export. For Valkanou, extractivism in food systems turns on profound ecological degradation and peasant dispossession, where the modes of socio-economic organisation and ways of life of traditional agricultural cultures are transformed. Valkanou is attentive to how law and legal regulation have created the conditions for agrarian extractivism, especially the World Trade Organization's 1994 Agreement on Agriculture, which inaugurated an international market for food regulated by international trade norms. She proposes a reimagination of legal frameworks to advance counter-hegemonic visions through the development of new international legal instruments like UNDROP, as a powerful tool to upend peasant subjugation and reverse the legacy of inequitable and unsustainable food systems. In contrast to the denigration of peasant culture as backward or inefficient within dominant paradigms, she suggests that the recognition of peasant culture as worthy of international legal protection in the Declaration enables the reclamation of traditional ways of life. Consequently, counter-hegemonic forms of law and legality can play an important role in consolidating alternative non-extractivist modes of interaction, and international law is central to the urgent task of structurally transforming global food systems.

The dual capacity of courts to impede, but also facilitate, the acknowledgement of Indigenous sovereignty within settler-colonial contexts is the focus of Sakshi's contribution. In 'Mining Sovereignties in Courts: Voicing Plural Sovereignties in Juridical Space', she reads two recent decisions by the Federal Court of Australia – *Tipakalippa v National Offshore Petroleum Safety and Environmental Management Authority* and *Munkara v Santos NA Barossa Pty Ltd* – alongside a recent

decision by the Supreme Court of British Columbia, *Teal Cedar Products Ltd v Rainforest Flying Squad*. Sakshi contends that while courts are given the opportunity to be 'epistemic allies' to Indigenous peoples and could exercise their juridical function in ways that undermine coloniality, courts often fail to take up this invitation. These cases all concerned struggles over extractivism, in which First Nations groups brought actions against corporate actors and the settler-colonial state: Australian litigation brought by Tiwi islanders against Santos, in respect of an offshore gas development project in the Northern Territory, and Canadian litigation brought by Teal Cedar Corporation against First Nations and non-Indigenous environmental activists in respect of old-growth logging in Vancouver in the Fairy Creek watershed on Pacheedaht territory. Sakshi shows how despite the broader failures of 'reconciliation' policies in both Australia and Canada, settler-colonial courts can contest ongoing coloniality by listening to Indigenous voices and acknowledging Indigenous expertise, and can demonstrate a willingness to understand and accommodate claims about past and continuing injustice. However, she also highlights the limitations of courts as a vehicle for epistemic justice, where the 'judicial path to justice is slow and contingent'. In closing, she acknowledges that strategic engagement – in practice and in academic scholarship – with settler courts is imperative.

Taking up an 'idiom of repair', Arpitha Kodiveri and Danish Sheikh ask whether law, and its public performance as an act of resistance, can repair relationships between Adivasi communities and the Indian state, which have been harmed by struggles over forest rights and extractivism. Their contribution, entitled 'Beyond the Extractive Imaginary: Stories of Repair from Forest Rights Agitations in India', draws attention to the consequences of deploying certain idioms to describe anti-extractivist struggles. While the language of mobilisation highlights the construction of a counter-hegemonic imaginary and the language of resistance foregrounds refusal, an idiom of repair can reveal the malleability of law and its potential responsiveness to those excluded from its protections. Moreover, the language of repair foregrounds 'the troubling question' of what is lawful. This

contribution tells a story about the struggle between the state and forest-dwelling communities, with a focus on the Pathalgadi movement in Sundergarh, a mineral rich forested district in northern Odisha. The authors consider efforts to repair the law, as evidenced by interventions by the state and countered by the public inscription of provisions of the Indian Constitution on stone tablets. This public performance of law functioned as a reminder to the Indian state of its constitutional obligations to recognise Adivasi sovereignty and as a counter to the exclusion of forest-dwelling citizens from decision making and constraints on the exercise of forest rights. Drawing on fieldwork notes, Kodiveri and Sheikh read these tablets as 'objects of repair' that embody practices of memory and memorialisation, while also offering an invitation to dialogue as an exercise in relational repair. In response, the Indian state has continued to violently repress Adivasi communities, thereby reinforcing extractivism and undermining this possibility. The authors suggest that the state's refusal to engage does not negate the significance of the reparative invitation, but instead foregrounds the 'resilience and ingenuity of Adivasi communities navigating a complex and often hostile legal environment'. This contribution emphasises how the construction and contestation of an extractive imaginary emerges from struggles on the ground, but also from the methods and modes of description adopted by scholars seeking to understand these struggles. This serves as a prompt to scholars to take responsibility for academic accounts, which carry interpretative power, while also contributing to stabilising or unsettling material possibilities.

By focusing on the possibilities of reparations and rehabilitation, these contributions may be unduly optimistic about the possibilities of law. Yet, they also remind us of the urgency of paying attention to and cultivating such – perhaps more nascent and fragile – possibilities. The Anthropocene sharpens this focus, prompting a shared consideration of how we might build the conditions for collaborative survival in the aftermath of extractivism and capitalist destruction (Tsing 2015).

4 Beyond Extractivism

Read together, the contributions to this special issue offer a breadth of perspectives on the inception and perpetuation of pervasive legal imaginaries of extractivism. The historical processes of prospecting that have preceded the realisation of the contemporary extractive impulse, the continued expansion of extractive frontiers into new territories in pursuit of critical minerals for the energy transition, and the restorative possibilities of reading struggles on the ground through an idiom of repair all animate our shared inquiry into how law authorises extractivist relations.

Rinehart's poetic plea for extractivism concludes with the demand that 'our resources' be free to be used by the 'world's poor', a utopic vision realisable only through 'special economic zones and wiser governments', which must be delivered 'before it is too late' (Rinehart 2013). For Rinehart, harm to the prosperous and poor alike should be remedied by entrenching a nationalist political ideology. In the decade since Rinehart penned 'Our Future', this parochialism has led to the continued expansion of resource extraction, and the accompanying march toward climate and ecological catastrophe. Governance has faltered, as national and global leadership has failed to galvanise collective change by reneging on climate pledges and targets, allowing and supporting new extractive projects concealed by a greenwashing agenda, and increasingly militant responses to climate activism. The contributions to this special issue offer a prescient warning in this context, urging a radical reappraisal of the global extractivist order and offering new pathways for undertaking the creative and strategic work of building and enacting non-extractivist legal orders.

Endnotes

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2. A second special issue prompted by the workshop is under development for the *Journal of Law and Political Economy*.

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