

Book Review – *Rachael Lorna Johnstone & Anne Merrild Hansen, eds, Regulation of Extractive Industries: Community Engagement in the Arctic*

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The Arctic has generated a great deal of focus in recent years, particularly because the effects of climate change are transforming the region much faster than elsewhere in the world.¹ Indeed, the Arctic's ecospheric transformation indicates the possibility of a complete and irreversible climatic shift across the planet, especially as melting permafrost has the potential to release upwards of four times the amount of greenhouse gas as compared to how much has been released between the Industrial Revolution and now.² Further, this transformation is quickly altering the Arctic's delicate tundra ecosystems, including the region's food chains, physical topography, and organic composition as a whole, through broad biochemical changes and the loss of biodiversity.³ Importantly, these climatic and biosphere changes are also contributing to difficulties experienced by Indigenous peoples with traditional subsistence-based lifestyles.⁴

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¹ The recent Arctic Monitoring & Assessment Programme (AMAP), a working group of the Arctic Council, recently stated that the Arctic is warming three times faster than the rest of the planet and that this can have a massive effect on the global climate system. See AMAP, "Arctic Climate Change Update 2021: Key Trends and Impacts" (2021), online: <www.amap.no/documents/download/6730/inline> at 2-4.

² See Ed Struzik, "How Thawing Permafrost is Beginning to Transform the Arctic", *Yale Environment* 360 (21 January 2020), online: <e360.yale.edu/features/how-melting-permafrost-is-beginning-to-transform-the-arctic>.

³ *Ibid.*

⁴ See e.g. George W Wenzel, "Canadian Inuit subsistence and ecological instability— if the climate changes, must the Inuit?" (2009) 28:1 *Polar Research* 89; Katie J Moerlein & Courtney Carothers, "Total Environment of Change: Impacts of Climate Change and Social Transformations on Subsistence Fisheries in Northwest Alaska" (2012) 17:1 *Ecology and Society* 10.

The Arctic is also estimated to possess a significant amount of the earth's remaining oil and natural gas resources, in addition to various mineral deposits such as precious metals, diamonds, among others.⁵ The effects of climate change are expected to enable greater access to the Arctic's natural resources in the not-too-distant future, and this prospect has engendered significant attention by resource development actors, including corporations and governments.⁶ This interest in the Arctic has also led to a parallel growth in academic attention, especially from those who study the geostrategic interests of nation-states.⁷

With respect to the interests of law practitioners and legal theorists, the academic focus in the Arctic thus far has largely centred on the lengthy processes associated with legal claims by states to their extended economic zones through the *United Nations Convention on the Law of the Sea* (UNCLOS).⁸ In contrast, while the relationship between local communities and the extractive industry has generated a substantial body of research elsewhere in the world, Arctic communities have been given scant attention in terms of their engagement with states and firms on extraction projects.⁹ This absence is felt strongest by Indigenous communities, who are disproportionately burdened by Northern extractive projects and are poised to be among the most negatively affected by development in the future, especially in the context of the COVID-19 global pandemic.¹⁰

Regulation of Extractive Industries: Community Engagement in the Arctic is a scholarly book edited by Rachael Lorna Johnstone and Anne Merrill Hansen that begins to attend to this gap, featuring a collection of thirteen chapters from authors with diverse backgrounds, including law, business, consulting, history, public policy, among others. The book offers an important contribution to the field of Arctic community engagement and resource development.¹¹ While several chapters are focused on the various laws and legal regimes that are relevant to the

⁵ See Caroline M Rixey, "Oil and sustainability in the Arctic Circle" (2016) 44:4 *Denv J Intl L & Pol'y* 441; Nikolai Melnikov, "Methodological Approaches for Feasibility Study of Potential Development of Arctic Mineral Deposits" (Paper delivered at 17th International Multidisciplinary Scientific GeoConference SGEM 2017), (2017) 17:1.3 *International Multidisciplinary Scientific GeoConference: SGEM* 549.

⁶ See Lassi Heininen, ed, *Future Security of the Global Arctic: State Policy, Economic Security and Climate* (Basingstoke, Hampshire: Palgrave Macmillan, 2016).

⁷ See Marc Lanteigne, "The changing shape of Arctic security", *NATO Review* (28 June 2019), online: <www.nato.int/docu/review/articles/2019/06/28/the-changing-shape-of-arctic-security/index.html>.

⁸ See Jon D Carlson et al, "Scramble for the Arctic: Layered Sovereignty, UNCLOS, and Competing Maritime Territorial Claims" (2013) 33:2 *SAIS Rev Intl Affairs* 21; Lars Kullerud et al, "The Arctic Ocean and UNCLOS Article 76: Are There Any Commons?" in Paul Arthur Berkman & Alexander N Vylegzhanin, eds, *Environmental Security in the Arctic Ocean: NATO Science for Peace and Security Series C: Environmental Security* (Dordrecht: Springer, 2013) 185.

⁹ See Rauna Kuokkanen, "At the intersection of Arctic indigenous governance and extractive industries: A survey of three cases" (2019) 6:1 *Extractive Industries & Society* 15.

¹⁰ See Warren Bernauer & Gabrielle Slowey, "COVID-19, extractive industries, and indigenous communities in Canada: Notes towards a political economy research agenda" (2020) 7:3 *Extractive Industries & Society* 844.

¹¹ See e.g. Aniekam Udofia, Bram Noble & Greg Poelzer, "Community Engagement in Environmental Assessment for Resource Development: Benefits, Emerging Concerns, Opportunities for Improvement" (2015) 39 *Northern Rev* 98; Igor A Osipov, "Negotiation strategies and agreement-making models in large-scale resource development projects in Yamal, Arctic Russia" (2012) 41:5 *Nordia Geographical Publications* 9; Emma Wilson & Florian Stammler, "Beyond extractivism and alternative cosmologies:

engagement of Arctic communities, the edited volume draws from a number of fields that also consider the situational contexts of communities, including their geographies, histories, and experiences with the extractive industry.

The volume resists easy disciplinary categorization as a whole. Like the Arctic itself, the collection of chapters represents the intersection of multiple fields that are best considered through their relationality to one another rather than as discreet contributions. This interdisciplinary lens is especially true with respect to issues of governance and law, which includes the local, national, regional, and international scales, while the relevant actors range from individuals, civil society groups, Indigenous peoples, corporations, governments, non-governmental organizations, and international organizations.

Overall, *Regulation of Extractive Industries: Community Engagement in the Arctic* is an excellent addition to the growing body of recent literature on the Arctic. More specifically, the volume's strengths lie in its highlighting of an interdisciplinary approach to researching community engagement by extractive firms and governments in the Arctic, making the volume accessible to a breadth of scholarly audiences interested in the legal and normative regimes at play. Indeed, as Arctic research has remained rather insular and discreet between the academy's respective fields, this volume offers an interesting example of how such interdisciplinary collaboration might continue, while maintaining a thematic core.

Unfortunately, the volume's weakest aspect is its limited engagement with the international dimension of extractive development, save for James Mitchell's historical case study examining extractive development in Shetland (Chapter 10), which captures the global structural dynamics occurring at the time, including the Organization of the Petroleum Exporting Countries (OPEC) crisis, conflict in the Middle East, and the UK's reliance on oil imports.¹² The international aspect also relates to the colonial dimension of resource development, with Johnstone and Hansen's contribution (Chapter 6) standing out for its demonstration of how historical colonial patterns are transmitted to the present and how they can affect engagement with development actors.

Greater attention towards the international dimension of extraction could have led towards more consideration of the political economies governing extractive development, especially in Part II. This attention would have also complemented the focus on legal issues in several chapters, which relate to how extractive actors are expected to behave in terms of the constraints imposed on them by legal regimes. However, the legal dimension does not address the question of *why* governments and firms behave the ways in which they do – this would seem an important issue, given the overwhelming amount of evidence provided by the contributors that demonstrates a general lack of concern or regard for local communities by these actors.

Arctic communities and extractive industries in uncertain times" (2016) 3:1 *Extractive Industries & Society* 1.

¹² As Mitchell states, "Geopolitical developments resulted in oil prices quadrupling over the winter of 1973/74. The National Union of Mineworkers (NUM) had gone on strike in 1972 and 1974, adding to the UK Government's energy crisis." See James Mitchell, "Participation in a small archipelago: The Shetland negotiations" in Rachael Lorna Johnstone & Anne Merrild Hansen, eds, *Regulation of Extractive Industries: Community Engagement in the Arctic* (London & New York: Routledge, 2020) 225 at 227.

The core of the volume is largely on the constraining function of law and other normative regimes rather than the structural motivations governing development behaviour by powerful actors. While profit is their obvious motivation, this interest also intersects with a host of issues centred on colonialism, imperialism, and capitalism that are only touched upon rather than substantially engaged with. Given the historical and the ongoing relationship of Indigenous communities to colonialism, which frames the encounters between local communities and the extractive sector, the structural aspect could have been teased out better in more of the chapters, and linked to other literatures in the Arctic genre. Attention to systems and structures is especially needed given that “the scope and nature of the relationship between extractive industries and Indigenous governance remain an understudied research area.”¹³

These issues become especially apparent in Penny Norton’s chapter, which offers a framework of engagement with local communities for actors within the extractive industry. While there are superficial elements of the framework that address the interests of local communities and Indigenous communities in particular, Norton’s framework is explicit in its positionality with respect to serving the interests of the extractive sector over the interests of local communities. Norton’s chapter is inadvertently reflective of a number of systemic issues plaguing relations between local communities and the extractive sector and thus is given extra critical attention towards the end of this review.

In sum, the Arctic’s diversity as a dynamic social, political, and economic space creates a complex array of theoretical and empirical issues, particularly regarding extraction and community engagement. Credit must be given to the volume’s editors, who are effective at teasing out the general themes and significance of each section in both their introduction and especially their concluding chapter (13). Unlike some edited volumes where the editor’s role can seem perfunctory, Johnstone and Hansen’s voice is clear in their analysis of the volume’s contributions and their significance to community engagement.

1. OVERVIEW

Regulation of Extractive Industries is divided into three thematic parts, bounded by an introduction and a concluding chapter both written by the volume’s editors, Johnstone and Hansen. Part I, *Participation in principle*, is composed of three chapters (2, 3, 4) and is the most focused section with respect to its consideration of legal theory and may be of special interest to those interested in Indigenous legal perspectives. These chapters are directly concerned with the legal and institutional regimes governing Arctic community engagement with special attention paid towards the rights of and responsibilities that are owed to Indigenous peoples by governments and extractive firms.

Part II, *Participation in practice*, is the most substantial section with six chapters. This section is principally concerned with case studies that individually examine a specific community and/or national context in relation to their experiences with consultation, engagement, and development. This section is the most empirical of the three, with many of the chapters drawing from site-based evidence and social science methodologies.

¹³ Kuokkanen, *supra* note 10 at 15.

Part III, *Participation improved*, contains three chapters (including the concluding chapter by the editors) that speak directly to what governments and extractive actors *should* do with respect to consulting and engaging with local communities.

Having outlined the volume's sections, this review will now turn towards a more in-depth consideration of those chapters that may be of particular interest to legal scholars and practitioners, namely Part I (Chapters 2-4), Chapter 9, and Chapter 11.

Part 1 of the volume is focused on the theoretical basis of legal regimes, and several concepts that frame the interaction of the extractive industry with local communities *in principle*. In contrast, Chapter 9 offers an empirically focused examination of actual case law surrounding community engagement in Canada's North *in practice*. Lastly, Chapter 11 offers a comparative examination of the legal regimes governing Canada and Norway through a critical lens and makes recommendations to *improve* community participation.

2. COMMUNITY ENGAGEMENT IN THEORY AND PRACTICE

Part I's key contribution is a synthesis of the extensive legal regimes and normative standards governing community participation in development projects. Emma Wilson (Chapter 2) in particular does a good job of providing a concise summary of the major international laws, frameworks, and articles governing best practices for governments, corporations, and other actors that engage with local communities, and specifically with Indigenous peoples. Wilson's discussion on the role of international institutions such as the United Nations (UN), the Organization for Economic Cooperation and Development (OECD), and the International Labour Organization (ILO), as well as legal frameworks such as the *Universal Declaration of Human Rights*, *Indigenous and Tribal Peoples' Convention, 1989* (ILO Convention 169) and the UNCLOS are demonstrative of the complex matrix of institutions, legal regimes, and frameworks governing Indigenous consultation and engagement. The importance of the question of *who* counts as Indigenous is made apparent from both a legal perspective and with respect to the principle of self-determination (a theme taken up by Julia Loginova and Wilson in Chapter 7). Wilson also effectively demonstrates how international law and governance mechanisms are always evolving in relation to one another, and how communities within different national contexts may appeal to various avenues of both hard and soft law in their engagement with governments and development actors.

While Wilson's chapter effectively outlines the legal context for Indigenous engagement by development actors, it is a surface-level sketch of the broad international legal regimes governing engagement between the extractive industry and local communities. Wilson emphasizes the distinct consideration afforded to Indigenous peoples within these regimes and the institutions that underpin them, such as the UN. Consequently, Wilson's chapter is largely schematic in its orientation by virtue of the number of institutions and frameworks that are detailed in her overview.

In contrast, Johnstone (Chapter 3) and Karin Buhmann's (Chapter 4) contributions are more focused on specific aspects of those regimes. Specifically, Johnstone concentrates on the issue of Free, Prior, and Informed Consent (FPIC) whereas Buhmann examines the issue of risk-based due diligence as a requirement of the OECD's *Guidelines for Multinational*

Enterprises, which is related to both the UN *Guiding Principles Reporting Framework* and the UN's *Protect, Respect, and Remedy* framework.

Both Chapters 3 and 4 offer more nuanced and complex theoretical discussions of these frameworks, with Johnstone's chapter offering the added benefit of using Greenland as a case study to examine the role of FPIC. Greenland is an interesting and challenging case in terms of its demographic makeup and relationship to the Kingdom of Denmark. Demographically, those that self-identify as Inuit compose the dominant social group. Politically, Greenland exists in a de facto form of self-management through the *Self-Government Act* even though it is still under the purview of the Kingdom (i.e., Greenlanders hold Danish citizenship).

The question for Johnstone is whether the *Self-Government Act* eliminates the need for FPIC by making it redundant at the community level. Johnston's analysis is important in that it points out the paradox created by the *Self-Government Act*, arguing that Greenlanders now actually enjoy comparatively fewer rights when it comes to their role in extraction projects, as compared to when Greenland was more directly managed by Denmark.

Additionally, Johnstone is one of the few authors of the volume to address the issue of expertise and the prioritization of Western epistemology over local knowledges in consultation practices, thereby mimicking and reproducing colonial practices. Theoretically, Johnston explains the logic behind *UN Declaration on the Rights of Indigenous Peoples* and FPIC very well, as well as the difference between appealing to protection under human rights frameworks (the protection of individuals by virtue of being human) and the protection of *peoples*, for example under ILO Convention 169 (which includes culture, history, and ways of life threatened by colonization, making such protection additive to human rights frameworks). There is a different ontological starting point for each appeal to rights even though human rights are often used to defend Indigenous rights. Whereas human rights apply to *all people* as individuals based on their *being* human, "[t]he application of FPIC as a *right* pivots on *indigeneity*" and is "not a right that is available to all communities."¹⁴ As Johnstone further explains, Indigenous rights incorporate the issue of Indigenous sovereignty, including the occupation of Indigenous territory through colonial practices that dispossess Indigenous peoples of their land and ways of life. Consequently, FPIC is a right of the community and has no ontological basis in the individual.¹⁵

This difference of ontology underlying the two rights regimes becomes more apparent through Buhmann's analysis, which indicates that corporations have a legal responsibility as governance actors to respect *human rights*. The requirement to respect human rights is present even in contexts where there may be gaps between national and international law, either in theory (the letter of the law) or practice (the implementation of law), indicating that a human rights framework is able to fill the legal gaps by virtue of its universal application reifying an individualist ontology. Buhmann notes that while disregarding human rights frameworks may not result in significant or any legal penalties for extractive firms, violating those terms may affect a company's social licence to operate (SLO). Both Johnstone and Buhmann effectively

¹⁴ Rachael Lorna Johnstone, "What is required for free, prior and informed consent and where does it apply?" in Rachael Lorna Johnstone & Anne Merrild Hansen, eds, *Regulation of Extractive Industries: Community Engagement in the Arctic* (London & New York: Routledge, 2020) 47 at 49.

¹⁵ *Ibid.*

demonstrate how hard and soft law can operate through legal and normative instruments to benefit local and Indigenous communities affected by development.

However, Buhmann's consideration of the instrumental value of the SLO may be grossly overstated, especially with respect to extractive projects that are often located far away from the industrial-urban cores of settler-colonial societies. Though, Loginova and Wilson do show in their chapter how such a licence can matter to development projects in terms of the broader norms of conduct substantiated by that licence. Risk-based due diligence and the SLO theoretically function as constraining instruments of firm behaviour, by virtue of their ability to affect a company's potential to raise capital, function efficiently, and ultimately make a profit if their behaviour is seen by a society to violate that licence. As Buhmann argues, "[r]eputational damage, whether caused by media or civil society reports or critical statements from [National Contact Points], has the potential to affect a company's social licence to operate."¹⁶

The issue with this assertion is that the SLO is never fully defined and there is minimal consideration with respect to *who* is able to provide the legitimacy on which an SLO is dependent on. For example, can a legitimate claim to an SLO be granted if the wider society gives their consent to development, even if they are not part of the affected local community? This question also raises issues concerning who is able to make an effective challenge to a company's reputation and how to evaluate such claims relative to a company's possession of an SLO – what determines legitimate practices that lay "behind an SLO veneer of respectability?"¹⁷

This concern is echoed by other authors, who note the great deal of critical literature on the theoretical and empirical validity of the SLO concept, especially as the focus on local communities must be situated in relation to national and international scales and actors.¹⁸ There are a number of competing interests in extractive development outside of the interests of local communities, indicating that a local community's denial of an SLO may not stop development.

Further, there is evidence that demonstrates the power asymmetries between local Indigenous actors and the behemoth that is the state-capital-industrial complex backing extractive development, particularly in contexts where extraction is significant to a country's economic profile – as is the case with Canada.¹⁹ As recent history has shown, the profit motive is an especially powerful impetus to repress local Indigenous voices that do not agree with an

¹⁶ National Contact Points are government-supported offices that promote the effectiveness of OECD guidelines and are required for all OECD members. Functionally, "[National Contact Points] also serve as a key remedial institution for the [UN Guiding Principles on Business and Human Rights]." Karin Buhmann, "Meaningful stakeholder engagement as an aspect of risk-based due diligence between the economy, politics and law" in Rachael Lorna Johnstone & Anne Merrild Hansen, eds, *Regulation of extractive industries: community engagement in the Arctic* (London & New York: Routledge, 2020) 78 at 92, 94–95.

¹⁷ Martin Brueckner & Marian Eabrasu, "Pinning down the social license to operate (SLO): The problem of normative complexity" (2018) 59 *Resources Policy* 217 at 217.

¹⁸ See Michelle Voyer & Judith van Leeuwen, "'Social license to operate' in the Blue Economy" (2019) 62 *Resources Policy* 102

¹⁹ See Anna Stanley, "Aligning against Indigenous jurisdiction: Worker savings, colonial capital, and the Canada Infrastructure Bank" (2019) 37:6 *EPD: Society & Space* 1138.

extractive project, especially when coupled with state support.²⁰ Violence, especially violence instrumentalized through colonial structures of settler occupation and exploitation, may be tacitly supported and legitimated by the wider society, who can benefit extensively from such practices. Extractive zones are often intensive sites of political contestation with different groups claiming legitimacy in their support or opposition to extraction. Consequently, an SLO should not be understood to automatically translate to enhancing community agency or contributing to broader community struggles, especially Indigenous struggles against settler-colonial enterprises.

The issues with the SLO are mirrored in Johnstone's chapter, which explains how FPIC may offer an important and useful framework for proactive engagement with Indigenous communities, though there is no indication that a company or state has to recognize that consent or the right to withhold it. FPIC does not give a legal veto mechanism to Indigenous communities, unless it was mentioned in a legal document such as a land claim agreement, consultation policy, or other legislation. It is also unclear whether FPIC gives Indigenous groups a de facto veto mechanism through a firm's SLO. In short, there is a tendency within Part I of the volume to emphasize the protections that regimes and legal frameworks *should* offer but less of a discussion on what may be missing or the challenges and limitations to the implementation of those frameworks.

The issue of discrepancy between the law's theoretical and de facto application with respect to the protections of Indigenous communities reflects the differences between an Indigenous worldview and the Canadian state law. For example, Gordon Christie argues within the Canadian context that "a liberal vision underlies and animates the law, and that while grounded in this vision, the law cannot protect the interests of Aboriginal peoples."²¹ The liberal character of the law within Canada and other Western states also reflects the shared interests between international regimes, states, and extractive firms in terms of the exploitation of resources for economic gain. From a political economy perspective, the needs of capital are inherent to the state form and prioritize business interests over local concerns when they conflict.²² An analysis of the law which neglects the underlying character of the law and its origin within a historical context of social and political forces becomes one of theoretical function and about the intent behind the letter of the law – rather than of the law as a set of discourses produced through and imbued with relations of power.

However, the volume's interdisciplinary character is able to partially address this issue. Specifically, Part I's overemphasis on the theoretical function of the law relative to its actual implementation is balanced by the chapters in Part II and in Part III. While the contributions in Part II are concerned with case study examinations and are empirically focused on how they address the gaps in and consequences of community engagement by the extractive sector,

²⁰ See e.g. Tyler McCreary & Jerome Turner, "The contested scales of indigenous and settler jurisdiction: Unist'ot'en struggles with Canadian pipeline governance" (2018) 99:3 *Studies in Political Economy* 223; Nick Estes, *Our History is the Future: Standing Rock versus the Dakota Access Pipeline, and the long tradition of Indigenous resistance* (London, New York: Verso, 2019).

²¹ See Gordon Christie, "Law, Theory and Aboriginal peoples" (2003) 2 *Indigenous LJ* 67 at 68.

²² See e.g. David Szablowski "“Legal Enclosure” and resource extraction: Territorial transformation through the enclosure of local and indigenous law" (2019) 6:3 *Extractive Industries & Society* 722.

Part III is principally concerned with addressing these gaps through improved frameworks for consultation.

Within Part II, Chapter 9 by Nigel Bankes stands out for his detailed discussion of case law. While Part I is largely concerned with the law as written and the theoretical application of these international regimes and frameworks, Bankes' examination of land claim agreements in Canada offers an evolutionary account of case law that has developed at the national level – in response to Canada's constitutional protections and international regimes. Bankes' analysis is particularly unique within the volume for its detailed focus on litigation that mobilizes the constitutional rights and protections afforded by international legal regimes, rather than on the regimes themselves.

Bankes argues that the existence of a significant body of case law is indicative that governments and extractive companies may not be living up to the standards set forth by national and international frameworks, thereby instigating litigation by communities and civil actors. Whereas the other empirical chapters focus on the contextual circumstances of local communities and their relationship to the extraction industry more broadly, Bankes' chapter demonstrates how communities and civil actors are able to effectively mobilize the courts and demonstrate their own agency. Bankes inverts the analysis from a top-down approach (focusing on the responsibilities development actors have towards communities) to a bottom-up approach (how Indigenous peoples and civil actors respond when development actors do not uphold their responsibilities).

However, while Bankes forcefully demonstrates how the law may be mobilized by civil society actors to serve their interests, Bankes never comments on the limitations to such engagement. As mentioned, there are notable gaps in resource capacity and expertise between communities and civil society actors compared to governments and extractive firms. It is this power differential that may contribute towards the failure of governments and extractive companies to live up to the expectations set forth in national and international frameworks in the first place. This reality does not undermine Bankes' empirical focus on the positive lessons gleaned from case law, but does suggest strategic limitations to mobilizing the law for grassroots interests when competing with the entrenched and well-financed interests of the extractive sector.

Part III directly addresses gaps in community engagement and makes recommendations for improved participation. Within this Part, Chapter 11 by Eduardo Guedes Pereira and Marianthi Pappa stands out for its focus on the gaps created by existing legal regimes for Arctic communities. Pereira and Pappa's comparative examination of Canada and Norway is largely focused on the legal regimes of those states rather than their application through empirical examination. However, in line with that Part's motif, the authors are explicit about the deficiencies in those frameworks and point towards the challenges for an Arctic extractive governance regime, given the different national contexts outside of Canada and Norway.

Pereira and Pappa offer a particularly good critique of the limitations to public consultation as a framework for democratic engagement. However, Pereira and Pappa's analysis is problematic because there is little discussion of the power asymmetries and interests driving a great deal of the conflicts between local communities and development actors. Had the

authors given more consideration to the dynamics undercutting more equitable participation practices in the first place, their proposals could have been more focused on addressing the problems posed by these dynamics with specific pathways to implementation. While Pereira and Pappa's recommendations for improved participation (transparency, inclusivity, broad participation) are sound from a normative standpoint, it's not clear *why* resource development actors (including governments) would adopt such principles if they are seen to undermine a firm's bottom line or a government's national interests.²³

This chapter shows how reading the volume holistically gives a better sense of how the law and civil action more broadly may be mobilized in support of local communities and especially Indigenous peoples. Pereira and Pappa's recommendations are not without merit, but simply lack a more nuanced discussion, within the confines of the chapter itself, of how they can be implemented.

3. OTHER CONTRIBUTIONS

There are too many additional chapters to review individually, however there are several that merit particular attention, especially with respect to how they read against the law-focused chapters discussed above.

Both Anna-Sofie Skjervedal (Chapter 5) as well as Johnstone and Merrild (Chapter 6) focus their analyses on Greenland. Skjervedal's examination of Greenlandic youth engagement with the extractive industry is interesting for its focus on an often neglected, yet very important subgroup in political decision making. Like other chapters in Part II, Skjervedal notes that extractive consultations are fraught with issues and that they rarely engage with a community well, let alone with youth directly. Importantly, Skjervedal's use of a photo forum on Facebook to solicit youth engagement with her study is novel, as are her findings, which suggest that the environment, culture, identity (identifying as a "true" Greenlander vs. Dutch), travel, education, and the future more broadly all factor heavily into the group's thoughts of and engagement with the extractive sector.

Like the findings of other authors in the volume, both studies found that those surveyed did not necessarily oppose development per se, but have mixed feelings towards the industry and its effects on the future of Greenland. Johnstone and Merrild underline a spatial component of their study results, finding that there is significant divergence of attitudes particularly viewed in relation to Greenland's social demographic characteristics. The authors find that the most significant differences of attitude are between those in the Greenlandic capital of Nuuk and the peripheral communities in the north and east. Notably, these areas also map out Greenland's colonial history. Above all, Skjervedal reveals just how defective consultation processes can appear in practice, whereas Johnstone and Merrild expose the lived realities of many Greenlanders, including the prevalence of housing and food insecurity, the lack of broadband connectivity, and the reliance on traditional lifestyles including subsistence hunting.

The interaction of local communities with the practices of development actors, including that of epistemic communities like scientists and engineers as well as company representatives,

²³ The normative requirement of possessing a social licence to operate may address this problem. However, as noted above, there are reasons to be weary of this argument since an SLO could be provided by actors with values and goals that stand in contradiction to those of a community affected by resource extraction.

creates a host of issues when coupled with those lived realities. The authors' findings in these chapters lead to nuanced and complex analyses that do not lead to easily identifiable recommendations for policy. The strength of these findings is that they demonstrate the messy empirical reality that legal regimes often confront, even when those regimes are well intended.

Despite the strength of Skjervedal's analysis, there are several issues that merit attention. From a methodological standpoint, selection bias may inform a great deal of the results, as Skjervedal notes that a significant number of those that signed up for the photo forum did not actively participate. This low attendance rate leads to questions about the wider engagement of youth and other community members who are underrepresented in consultation processes. It is also interesting that Skjervedal notes that those who did contribute to the study often felt they were unwelcome in Greenland following their studies in Denmark, indicating the potential overrepresentation of those with higher education. This aspect is unfortunately not commented on by Skjervedal, nor does she much discuss the wider social divisions that underpin these experiences (such as indigeneity and class), which are important for capturing true inclusivity in consultation processes.

4. A FRAMEWORK FOR ENGAGEMENT

If Part II points towards the challenges and deficiencies of consultation in practice, Part III confronts these challenges head on. In particular, the practice of consultation is explicitly considered from the standpoint of industry in Norton's (Chapter 12) analysis of the challenges confronting consultants, which also includes her strategic framework for best practices. Incidentally, Norton's is the most problematic chapter of the volume from a critical perspective. Norton's framework for strategic consulting incorporates local experiences in promoting a more inclusive consultation process, such as scheduling meetings outside of berry picking times. More generally, Norton's framework offers an agenda that is likely to be of some interest to consultants of resource development actors engaging with local communities and other stakeholders. However, Norton's framework is limited because it is written from that narrow industry standpoint, and there is minimal consideration of the problems that may be inherent to its framework in the first place.

Norton supports a more "scientific" form of consulting in which data is gathered and analyzed using the newest technologies and methodologies, which are then used to inform best practices. While Norton's chapter considers the engagement of local communities broadly rather than Indigenous communities specifically, there are important issues unique to Indigenous peoples and knowledges that Norton does not adequately consider or discuss. For example, Norton never examines the potential conflict between Indigenous knowledges and the scientific epistemology that informs her consulting framework. Other researchers from various fields have pointed out the ways in which Indigenous knowledge systems are often treated in one of two ways: either they are seen as inferior to Eurocentric systems in terms of productivity and their ability to promote advancement, or they are "bridged" with Eurocentric discourse and practices, particularly in scientific fields.²⁴ "Bridging" in this context generally

²⁴ See Marie Battiste, "Indigenous Knowledge: Foundations for First Nations" (2005) 1 WINHEC: Intl J Indigenous Education Scholarship; Nicole Latulippe & Nicole Klenk, "Making room and moving over: Knowledge co-production, Indigenous knowledge sovereignty and the politics of global environmental change decision-making" (2020) 42 *Current Opinion in Environmental Sustainability* 7.

refers to the notion that Indigenous knowledge systems can be complementary to Western systems (especially scientific empiricism) in order to strengthen a field of evidence for decision making.²⁵

While Indigenous knowledge systems are not homogenous, in Canada and other settler-colonial societies Indigenous knowledge is inseparable from the people, the environment, their way of life, and their relationship to the environment. In short, within Indigenous knowledge, ontology (what is), epistemology (how we know), methodology (how we do), and axiology (ethics) are inseparable.²⁶ In contrast, Eurocentric discourses and practices, including Norton's strategic consulting framework, maintain a distinction between subject and object that is in many ways a contradistinction to an Indigenous worldview.

For example, Norton states that “[d]evelopers lacking specific experience of Arctic communities should seek local advice on tactics which have particular local appeal such as story-telling and other oral forms of communication.”²⁷ The notion of seeking “local advice on tactics” and instrumentalizing forms of Indigenous knowledge like story-telling as a “tactic” indicate the ways in which scholars coming from Eurocentric knowledge systems understand and appropriate particular elements of Indigenous knowledge for Western purposes.²⁸ While the theoretical, political, and ethical discussions on the notion of “bridging” Indigenous knowledges with Western knowledges are far from settled, the fact that Norton never considers these issues is a glaring oversight, especially with respect to the engagement of Arctic communities.²⁹

The issue of this approach for Norton's argument is that she positions the process of consultation as inherently top-down, where local communities are *objects* of study and manipulation rather than lively bodies of people to *engage with*. Norton's framework from the outset reinforces a pre-existing power asymmetry between local communities and extractive actors, particularly between Indigenous communities and non-Indigenous groups.³⁰ Consequently, any consultation process, no matter how well-intentioned it may be, begins with the power of the consultant as a representative of the extractive complex to be able to enter *into* a community. Norton assumes that, through a standardized strategic approach to consulting that enables the consideration of the contextual specificities of a project, the affected community and the various stakeholders will automatically begin a more symmetrical and organic exchange of dialogue and information. This kind of exchange may occur in some cases, but Norton's framework underplays the conflicts that may arise as a result of distrust, and the

²⁵ See e.g. Steven M Alexander et al, “Bridging Indigenous and science-based knowledge in coastal and marine research, monitoring, and management in Canada” (2019) 8:1 Environmental Evidence (for a meta review of efforts to bridge Indigenous and local knowledge with science-based knowledge in coastal and marine research).

²⁶ See Latulippe & Klenk, *supra* note 24 at 8.

²⁷ Penny Norton, “Achieving excellence in public participation” in Rachael Lorna Johnstone & Anne Merrild Hansen, eds, *Regulation of Extractive Industries: Community Engagement in the Arctic* (London and New York: Routledge, 2020) 265 at 273.

²⁸ See Deborah McGregor, “Coming full circle: Indigenous knowledge, environment, and our future” (2004) 28:3-4 American Indian Q at 399.

²⁹ See Latulippe & Klenk, *supra* note 24 at 7.

³⁰ See McGregor, *supra* note 28 at 398.

real risk of exploitation through that power differential, especially those that are underpinned by colonial relationships and practices.

Consequently, Norton's argument for "symmetrical dialogue" rings hollow and is manifested in her definition of consultation itself via the Aarhus Convention. Norton notes that the Aarhus convention is not binding in all Arctic regions, but "it is an important benchmark by which public participation can be measured."³¹ Further, "consultation is not a referendum" in that "neither consultation nor public participation results in a definitive decision but the notion that public participation *can* benefit planning decisions is unequivocal."³² According to Norton, within the consultation process, "questioning must be tightly controlled to avoid discussion focusing on larger and potentially controversial issues. Moreover, Norton emphasizes that "the consultation mandate should clearly stipulate that it is not within the remit to consider *whether* the development is to go ahead, but *how*."³³

This outlook on the role of questioning turns consultation into a purely technical exercise, where community knowledge is instrumentalized towards potentially shaping an extractive project *post priori* rather than an offering an ethical position on the merits of the extraction project itself. Further, if consultation is not a veto mechanism and does not guarantee anything other than potentially informing a planning decision, power is decisively in favour of the development actors rather than the community. Overall, these facts are problematic when considering extractive actors' claims of engagement with local communities, as the consultation framework itself stipulates a particular type of interaction from the outset. This kind of interaction negatively affects longer-term processes of engagement, which is an issue Norton never addresses – she instead treats it as a distinct and separate concept, thereby negating the issue of ongoing consent.

Had Norton better addressed the limitations to her framework and reflected on those limitations through the lens of power (who has it, who does not, how is it applied), she could have commented on how strategic consulting can still lead to better results for both communities and extractive actors. As it stands, consideration of power are inadequately addressed and potentially amplified through her framework, leading to the accusations of the tokenism and "box-checking" that she wished to avoid through her strategic framework in the first place.

Norton's call for symmetric dialogue is further undermined by her own language. For example, she refers to negative consultation responses as the result of "pressure groups" and "activists" rather than as potentially legitimate views of the community, which can then be externalized from that community by analysts.³⁴ If anything, the idea of outside activists "pressuring" local communities to react negatively towards development is challenged by Mitchell's study of Shetland (Chapter 10). Mitchell demonstrates the role that outside interests on the side of development play in negotiations and the ways in which they are able to co-opt local interests (in the Shetland case, it was a group of Scottish bankers hidden behind a layered network of corporate entities and local political elites).

³¹ See Norton, *supra* note 27 at 266.

³² *Ibid* at 266–267.

³³ *Ibid* at 272.

³⁴ *Ibid* at 281.

Norton also emphasizes the role of novel technologies, such as social media and other internet platforms in expanding engagement and reaching difficult-to-access groups. While technology may be useful in some areas, other authors note the difficult conditions of the Arctic, including the lack of access to broadband networks, which is a fact only casually addressed by Norton.³⁵ Like with her flattening of power between local communities and extractive actors, this oversight does not necessarily nullify the value of Norton's strategic framework as a whole, but it points towards the difficulties of implementing it in Northern communities where, as mentioned earlier, people are often struggling with food, housing, and water insecurity, in addition to lacking access to reliable internet connectivity.

Again, Norton's framework is not without merit and it is obvious that she has incorporated local considerations of Indigenous communities. Unfortunately, her constant instrumentalism, her technological fetishism/determinism, and her overly broad calls to account for "the local" makes her framework feel superficial. Lastly, her instrumentalism is echoed in her constant references to these practices as "tactics," causing her framework to appear manipulative rather than inclusive.

5. FINAL THOUGHTS

Regulation of Extractive Industries is a theoretically diverse and empirically rich contribution to the field of Arctic studies that should find interest in a broad audience. The volume as a whole points to a number of issues that are not commonly discussed even in the critical literatures, such as indigeneity as a legal status, the complex and evolving relationship between Greenland and Denmark, and the effects of the interaction between different legal regimes at different scales, among many others.

The volume also makes a very good case for why development actors, particularly corporations, would want to engage in consultation and engagement with local communities. For example, Loginova and Wilson show that even in a non-democratic country such as Russia, the international connections that make up the extractive sector (expertise, transnational firms, global supply chains, export and import markets, etc.) can also create a strong normative-structural incentive to adopt best practices. Insufficient consultation and engagement with a community can be costly in terms of political, social, and financial capital, especially as the normative basis of the SLO may shift rapidly to expose previously accepted practices as objectionable, especially those practices that exploit marginalized peoples.

The volume's strongest feature is that it highlights the complicated and dynamic views within communities and within extractive development more broadly. Subjective reality is not singular or clear-cut, especially as opinions and experiences are not static over time. The contributing authors demonstrate that effective and inclusive consultation at the earliest stages of a project is important, but so is the ongoing processes of engagement. The experiences of communities with extractive development cannot be foretold *a priori* even in the best of circumstances and planning.

Consequently, as the editors note in the final chapter, a great deal of work remains to be done with regards to enhancing consultation and making extractive projects more considerate and inclusive of the communities affected by those projects. While in their conclusion, Hansen

³⁵ *Ibid* at 279—280.

and Johnstone do not lay out a precise research agenda (and a more defined research program would have been a welcome addition here), they point to the issues of ongoing consent and the ways in which community opinion changes over time as important matters that require further attention by researchers, policymakers, and extractive firms.³⁶ Broadly, the authors note that the volume's contributors indicate a greater need to approach communities as heterogeneous and dynamic entities. Studying such communities within an evolving context makes adopting both legal and normative standards defined by international regimes, such as FPIC, a complicated but important endeavour.³⁷

In sum, *Regulation of Extractive Industries* is a worthwhile and interdisciplinary scholarly contribution to a regional field that will only grow in importance as governments, corporations, and communities all race to stake and defend their claims in the Arctic.

³⁶ See Rachael Lorna Johnstone and Anne Merrild Hansen, "Arctic voices: Strategies for community engagement" in Rachael Lorna Johnstone & Anne Merrild Hansen, eds, *Regulation of Extractive Industries: Community Engagement in the Arctic* (London & New York: Routledge, 2020) 286 at 295.

³⁷ *Ibid.*