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Commodification of Country: An Australian Case Study in Community Resistance to Mining

Ingrid Matthews¹

We are not given a voice. We'd rather sovereignty which is freedom from commodity chasers
(interview with Gomeroi women, 3 December 2015).

1. Introduction

This chapter examines the resistance to Coal Seam Gas (CSG) mining on Gamilaraay Gomeroi country in north-west New South Wales. The field research findings are set in the context of contemporary neoliberal governance and its foundations in classical liberal democratic theory. The Pilliga campaign is multi-layered and diverse, however, a shared drive is the risk of catastrophic and irreversible damage to the Great Artesian Basin that lies beneath 22% of the Australian continent.

There are campaigns to ban fracking, stop coal mining, and shift to renewables around Australia and world. The Pilliga campaign was instigated by Gomeroi people, sometimes identified as 'traditional owners' in Australia, and most such movements state a commitment to First Peoples rights. Like the Pilliga, the Standing Rock campaign against the Dakota Access Pipe Line (No DAPL) is Indigenous-led, by people of the greater Sioux First Nation. The No DAPL campaign has gained huge momentum and is an international rallying cry for Indigenous rights and climate change activism. Both Standing Rock and the Pilliga Push are emblematic of ongoing Indigenous resistance to colonial settler states and shared environmental values. The unifying theme is *water is life* and shared identity is as *protectors*.

In November 2016, *Forbes* magazine reported that incoming President Trump owns a stake in the pipeline (Daiss, 2016). On 24 January 2017, Trump signed an Executive Memorandum 'ordering the Secretary of the Army to expedite approval of the Dakota Access Pipeline' (The White House, 2017). In the freezing Dakota winter, heavily militarised police fired water

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cannons and rubber bullets into peaceful, unarmed crowds. On 22 February, police and the National Guard systematically and violently dismantled the site.

These events illustrate how state power is aligned with fossil fuel interests and backed by dominant social groups. While Trump is regularly framed as an 'exception' to the forms and conventions of liberal democracy, there is nothing new in a government and militia made up primarily of white men using incumbent power to extend weaponised control over citizens, while further enriching themselves, on stolen land.

In contemporary times, private property tends to be associated with capital accumulation in an economic sense, rather than understood as rights in the political sense. In this context, when state power is deployed to benefit fossil fuel industries, and to dis-benefit people and the planet, we can see the implications of disaggregating the classical conceptualisation of *political economy*. This obscures the concentration and intersection of political and economic power-holders; and perpetuates a veneer of neutrality which enables routine corruption and violence, while propping up the legitimacy of our socio-legal institutions.

One way to penetrate the veneer is to decolonise our thinking. As set out in the chapter 'On Decolonising our Thinking and Cultural Exchange' in this volume, decolonising is an ontological imperative. It is essential to dismantling the 'soft' power of narrative that is used to prioritise mineral wealth over First Peoples rights specifically and democratic rights generally. The 'hard' power of state violence is combined with the 'soft' power of meritocracy mythology (and other lies of liberalism) to delegitimise those seeking to protect land and waters. Resistance movements, particularly non-Aboriginal activists, are not immune to these narratives.

This chapter draws on field work in the Pilliga to examine the ways that neo/liberal ideology normalises and legitimises violent responses to water protectors. It argues for diverse activist elements – as visitors on country, as individuals, as *communities of interest* – to parse the lies of liberalism and operate with an integrity that is defined by integration with, and conformity

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to, the first law of the land. This is an ontological imperative: First Peoples law is of the land and waters that protectors seek to protect.

The findings are anchored to three levels. The first is the sovereign authority of First Peoples, derived from ancient and continuing connection, knowledge and love of country. The second is to analyse commodification of country by the state, and deployment of state resources – new laws, armed force – to safeguard mining interests. Thirdly, communities of interest are examined in the context of universal principle, identifiable from First Peoples' leadership. Where the resistance conforms to the dishonesty of liberal democratic theory, and to the purposes and functions of capitalism, it is inherently conflict-based, and lacks integrity.

2. The Methodological Landscape: Place, Peoples, Principles and Practice

This research was conceived in Sweden² and designed in an orthodox way: field-based observation and interviews, reviewing laws and literature, analysing media content. My initial role, and I am a white Australian, was community liaison-tour guide. This quickly morphed into translator-educator as I became aware of the gap between orthodox understandings of Australian society and local culture. It is easy to forget that Australian-ness is directly traceable to the land and her First Peoples; but it is near-impossible to be on country and not come under the spell of a land definitively shaped by Aboriginal hands (Gammage, 2011).

2.1 Place and Peoples

The research team subsequently spent much of our time informally discussing, reflecting and de-centering anglo-european assumptions with white and Aboriginal friends and family. This network founded a quantum of trust which underpinned our interactions. A pre-existing network is not unique nor failsafe: Nakata observes that an Indigenous intellectual can be 'as much an object of suspicion as a non-Indigenous one' (2006, p. 266). As are Aboriginal people from other parts of the country, we were visitors. I begin by sharing this explanation of the naming of country:

Gomeroi and Gamilaraay are the same thing the name of country here. Its pronunciation of the word changes not the name but in name Gamilaraay has a different meaning. Gamilaraay it means NO MORE this is the name my Gunnedah Red Chief brought to Gomeroi Muri 200+ years ago before European

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*invasion Red Chief speared the corrupted chiefs who messed with LORE
Gamilaraay became a new name for Gomeroi nation. His name still lives on as
does his desire for LORE in his descendants... [original emphasis]*

(interview with Gomeroi women, 3 December 2015).

In the 21st century, this central message of Red Chief has been channelled into the resistance to CSG and coal mining, from internal dialogues on native title rights, to organised actions in the Pilliga and Gunnedah, to the #GamilMeansNo social media campaign. This rallying point is deeply rooted in place, in its very name, and calls on the ancestral strength of a revered leader to speak directly to power of the enduring presence of the Gamilaraay.

These actions and messages assert distinct claims, including the right to meet obligations and duties as custodians. Consumerist cultures tend to see responsibilities as onerous, or the downside of rights. First Peoples, on the other hand, assert meeting their obligations as a right. These obligation-rights can be to speak for country (determine who can enter, or visit specific sites), to look after country (in land management terms, such as seasonal burning), and to protect country from threats and dangers. The Billiga creator story of Gurrea the crocodile, for example, warns off those who would disturb hydromorphic integrity of the Great Artesian Basin.

He is the one to watch out for. Right now Gurrea has been trapped by Waraba the Sword Shell Turtle, or Bells Turtle, who created our aquifers and our law. Gurrea was greedy and caused trouble. He was stopped and banished into an underground lagoon that has no tributaries so he cannot escape. But if they keep digging up the earth and the underground waterways, they risk releasing this dangerous energy which will cause indiscriminate harm to all (Uncle Paul, told to Iris Ray Nunn, 2013).

Crocodile and turtle have freshwater and saltwater families, and thus embody knowledge of salt content and the water cycle handed down from antiquity. Dryland salinity is already a huge problem, caused by overexploitation, using groundwater. Salinity kills ecosystems and renders country uninhabitable for wildlife and unproductive for agriculture. Notably, salinity does not

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directly affect mining productivity, while CSG mining increases the risks of harm, such as cracking bedrock and poisoning the basin.

It is at least officially accepted in Australia that the violent dispossession, the forced removal of peoples from their lands, of children from family, was hugely destructive and violated First Peoples rights. The dispossession was an act of the British Crown (see 4.1), but contemporary narratives consign the crimes of colonialism to the past. This is because of the less palatable reality that state actions such as granting pastoral leases, which are acts of the crown in parliament (see 2.4), currently violate the obligation-rights of First Peoples. So the resistance to mining is on a *continuum* for the Gamilaraay, but is a recent development for farmers and other private land holders. Traditional owners and private property owners (other than miners), may share a unity of purpose, but not necessarily the same values and priorities.

There is an Aboriginal English word *gubba*, meaning white person, which derives from the word 'government'. This etymology points to the fact that surveillance and control of First Peoples, and violation of their rights, is not exclusively a state practice. Rather, the ongoing dispossession is carried out across all levels of government and society, and relies on western epistemologies. As researchers or local residents, miners or police, our interactions with First Peoples are located at what Neale calls the 'perilous interface with the legitimating state' (2013, p. 177). While First Peoples assert their distinct identity – over centuries, and usually at great personal risk – we demand that they 'translate this difference into palatable forms' (ibid). A resistance movement of shared purpose is not immune to these dynamics.

2.1.2 Pilliga Push Base Camp

While on country (in the field), we spoke to Gamilaraay custodians and local residents, farmers, small business owners and local councillors. We visited the Local Aboriginal Land Council (LALC) and the Siding Springs Observatory. We spent substantial time at the Pilliga Push Camp, which was established during the research period. Under Gamilaraay direction, the camp was organised around a culture of respect for the fact that we are all on Aboriginal land. This ethos radiated outward from a sacred fireplace surrounded by a swept dirt floor. An

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artwork was posted at the edge, with the words *YAAMA WELCOME Respect This Sacred Space Talking Circle* and underneath

Food•drink•smoke

free zone

Phones off

Shoes off

- Thanks

The camp infrastructure included a shower, drop toilet, herb garden, kitchen, living area, water tank, solar power trailer and panels, phone chargers, refrigerator trailer, a dance area with speakers, and a booth at the entry gate. The communal area was laid with woodchips to keep down dust in the dry and mud in the wet. Posted away from the yarning circle were housekeeping rules and principles of non-violent direct action (NVDA).

Each action was planned the night before, with discussion of roles and calling for volunteers. The ethos was a flattened hierarchy, individual autonomy, and consensus decision-making. Key questions included whether people were prepared to 'lock-on' to equipment or be arrested. Voluntariness was crucial, as many factors – parenting, paid work – proscribe people from risking arrest.

The camp was a base for almost daily actions around Leewood treatment dam, about 60kms away, throughout the 2015-2016 summer. Success was measured by delaying work, and publicity – whether legacy media coverage or social media reach. The former was directed at safeguarding country and at raising company costs. When the miners were forced to stop work, they were not doing damage to the land and waters; and a mining company is a profit-seeking enterprise, so any additional cost to the company was a win.

Some actions were met with vigorous law enforcement, others were ignored. There was consensus that police were less likely to be heavy-handed when the 'face' of the movement was local and white. The group strategized accordingly, with knitting nanas frequently taking

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the front line. As well as daily forays, there were several mass gatherings, including Gamilaraay-led walk-ons to enclosed lands, cultural workshops, and ceremony.

When police make arrests for trespass, public resources have been allocated to safeguard private property interests. This is no different at sites of protest, despite the fact that peaceful protest is a simple exercise of democratic rights and freedoms, such as speech and assembly. This hard power of police, to arrest and use force, is now further reinforced by new anti-protest laws. As I argue further below (see 4.2), this use of the parliamentary power to make laws is reactionary and disproportionately harsh. The state perceived an existential threat in those who stand up against commodification of country and align with First Peoples.

2.1.3 Communities of Interest

While the campaign is based in and centred on the Pilliga, various networks reach near and far. The Breeza Harvest Festival in Gunnedah presented a chance to consolidate alliances and share stories from the successful Gloucester and Northern Rivers campaigns, and social media is used to build and maintain contacts across the globe. It is beyond the scope of this chapter to analyse all these networks in detail. This section only very briefly touches on the huge amount of work that goes into resisting coal and CSG mining.

Communities of interest are groups who commit resources to a purpose in a shared space (Matthews, 2015). It can describe communities which operate in the physical world, the virtual world, or both. Unlike *stakeholders* or *rational self-interest*, it rejects the language of free market capitalism, which endorses destruction of country as an economic good, and by implication a net social good. These are false claims, built on false economies.

As mentioned, the *water is life* imperative, and the *water protectors* identity, is threaded throughout the campaign. The GAB feeds thousands of households and farms. The Gurrea story is consistent with international standards such as the precautionary principle (UN Environment, 1992), which directs that we refrain from high-risk activities where the realisation of the risk would be catastrophic. Thus CSG mining breaches both the first law of the land and contemporary international law.

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But there are no consequences for perpetrators of such breaches. There is considerable disquiet within executive government at lax mining approval processes (interview with former Environment officer, 2015; Hannam, 2015). The NSW Independent Commission Against Corruption (ICAC) has made formal findings of corruption 'in respect of certain coal mining allocation areas' (ICAC 2013); and two former government ministers have been jailed for related criminal offences (Whitborn & McClymont, 2016).

This, then, is what the movement is aligned against. The Pilliga groups are made up of locals and visitors. The locals are also active on social media; while out-of-area visitors may stay a day or a week or longer and campaign online before, during and after a visit. Not everyone is digitally networked, and not everyone has visited the Pilliga. The sub-groups intersect: a knitting nana is also a farmer; a local businessman is also a shire counsellor; an Observatory worker is a rural fire service volunteer. Like any volunteer project, the volunteers must maintain many other aspects of life.

Linear thinking obscures this, and can err in foregrounding a singular champion or hero. This erases other participants, obscures the communal nature of communities of interest, and is inconsistent with Aboriginal social organisation. As with the police response, media coverage shows a demonstrable bias towards whiteness and local identity. Farmers and knitting nanas are the 'acceptable' face of protest; Aboriginal people and other activists are outsiders, layabouts and troublemakers. This *Northern Daily Leader* (1 February 2016) report is a typical example:

Chamber president Russell Stewart said the 'vast majority' of Narrabri Shire was pro-Santos. 'We are sick and tired of people travelling in, annoying us, getting on the television and telling the world what we think. We don't have a problem with coal seam gas, we have a problem with out-of-towners coming here and revving things up' (Murphy, 2016).

The reality is more complex. Many 'out-of-towners' are from neighbouring chapters of their action alliance. For example, in November 2015, the NSW government offered to buy back three licences from mining giant Metgasco for \$25 million. Shareholders unsurprisingly accepted this offer. The figure represents risk-free profit, funded by the public via the state.

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The planned mining development, on Bundjalung Country in northern New South Wales, had been subject to sustained protest under the banner *Bentley Blockade*. This outcome freed up resources which were sent by shipping container to the Pilliga camp; and freed up time for Knitting Nanas and Nurses and Midwives to come and stage action days at Leewood.

Many locals aligned with the National Party – the ‘traditional’ party of rural voters – feel a strong sense of betrayal. The Nationals are the junior partner in neoliberal Coalition governments. The local member had always been accessible; local interests had previously aligned. But having once championed farmers and other rural interests, the Nationals have failed to disaggregate from mining interests.

Mines are huge consumers and pose enormous risks to water supply, which in turn threaten livelihoods. Access rights for miners, underwritten by the state, drive farmers to despair and even suicide. This community of interest has coalesced around the Lock the Gate Alliance, which emerged as the threat became clearer. ‘The farmers didn’t want the protest camp. *Oh it’s in the forest won’t harm my property*, farmers said. *And what about Gomeroi property which is ALL of it?* says us Murri’ (interview with Gomeroi women, 3 December 2015).

As the report quoted above shows, Narrabri Chamber of Commerce whole-heartedly embraced the resident mining company, Santos (previously Eastern Star Gas). The town hosts a gas processing plant despite the fact that a legal challenge to Santos was pending appeal at the time of writing (EDO, 2016). In contrast, Coonabarabran has resisted the lure of mining riches. A critical factor is the Siding Springs and surrounding Observatories, the pre-eminent astronomy research site in the country, which generates civic pride and tourism income. The impact of mining includes increased dust in the equipment and methane flares which breach dark sky standards and distort data collection.

Santos burns off methane, an obvious bush fire risk, from gas leaks and exploration wells (approved for prospecting but not production). Following a massive scrub fire in December 2015, many (including a fire fighter, an ecologist, and a farmer we interviewed), were convinced that authorities deliberately obscured its cause. Santos has not implemented other

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ways to dissipate gas since the fire, which presumably reflects a cavalier approach to the surrounding country. Its share price is around AUD3.50, down from a high of \$22.00 in June 2008, and well below its opening float. This does not indicate long-term prosperity for Santos, although it should be noted that ten years of climate policy insecurity in Australia has drained investor confidence in energy markets.

The CEOs of Coonabarabran Local Aboriginal Land council (LALC) also noted the carelessness of the mining company. There was no rancour towards Aboriginal people who accepted positions with Santos, on the basis of deep poverty in Aboriginal communities: 'there are not enough jobs for our people'. But 'Santos brought two [Aboriginal] people down from Queensland' and did not allow the necessary time to check for artefacts. It was 'a rush job' – hasty tours to few sites. Santos ignored the fact that Gamilaraay Gomeri clan groups speak for different parts of the 3,000 square kilometre areas.

The LALC was open to better process and job opportunities, to working alongside mining interests, instead of confronting it head-on. Similarly, one Auntie described an off-set arrangement, which she saw as the allocation of land for the purpose taking children and grandchildren on country, to teach culture to the next generation. Others saw this trade-off as a breach of custodial responsibility. These positions represent the post-colonial struggle: should people accept the 'pragmatic' or utilitarian offer, the best of too-poor options, under threat of losing everything? Or is standing up to banish mining interests, given it is impossible to mine without damaging country, an ontological imperative?

White interviewees who oppose CSG mining also expressed understanding for those who profit from mining. A local arborist said he understood that a shire councillor who opposed CSG at local government level also does business with mining truck operators. It is a fairly typical small town Australian outlook to not judge people on principle, to maintain friendly relations at the sports field, the school gate, the town meeting. This is not apathy but empathy and social norm. White business operators are not marginalised by dispossession and consequent deep poverty. They enjoy the benefit of meritocracy mythology, where it is acceptable and admirable

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to turn a dollar, irrespective of how tainted the source; where pursuing self-interest is 'rational'; and accruing wealth at the cost of trashing country is 'entrepreneurial' and 'successful'.

3. Epistemologies of Mining, Law and Commodification

3.1 Mining

Possibly the earliest human industry is mining. From Africa to Australia and across Eurasia are ochre mines dated from 20,000 to 120,000 years old. Ancient sites are interpreted by western scholars through Cartesian dualisms: was ochre medicinal or decorative? Used for the body (tourniquets, insect repellent), or the mind (rock art, decoration)? What does it mean that the Iron Age was immediately preceded by human use of iron minerals? That 40,000 year old stone chisels and boar tusks for digging are found alongside hollowed antler containers for storing paint (Rudgley, 1998, p. 179)?

Archaeology is literally grounded in linear time: dating artefacts is its central practice. Its disciplinary descendants such as ethnography and cultural studies may have a more contemporaneous frame; but as with all scholarship, historical context – building on, refining, or erasing prior human knowledge – is essential. These discourses operate within white, patriarchal paradigms (French, 1985). Values such as aggressive competitiveness, self-interest, and exclusive possession are elevated and universalised. By artificially constructing the male experience as the universal human condition, the western canon – from Aristotle to Kant to Foucault – omits otherwise obvious hypotheses about humanity and society.

The uses of ochre by Swiss ancestors at Lion Cavern 42,000 years are reconstructed using these methods. In Australia, another methodology is available: ask their descendants, the custodians of the oldest continuing cultures on earth. Were tourniquets or body decoration the more pivotal social determinant? The simple answer is both.

According to Rudgley (1998, p 182), a 'large scale ochre-mining operation' at Wilgie Mia 'continued to be exploited by the Aboriginal people until relatively recently'. The descriptor

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'exploited' profoundly misrepresents Aboriginal relationship to land (Pascoe, 2014; Gammage, 2011). There is no evidence that Aboriginal values suddenly veered into exploitation when it came to ochre mining. If the Wajarri Yamatji can no longer visit Wilgie Mia, it is due to dispossession and commodification of country: land grants, mining licences, fences. Forced physical removal of traditional owners does not block the passing down of law; and Aboriginal people as a group would not voluntarily relinquish millennia-old practices. Ochre remains central to ceremony in the 21st century.

3.2 Law

Perhaps the closest understanding to Aboriginal law in the western tradition is natural law. Aristotle wrote of political justice – part legal, part natural – where the *demos* defined the city state. Justinian records a similar division – the universal and the civil law. Cicero twinned universal law with the eternal, while Aquinas added human law to the natural and eternal. There are general laws, universal and eternal, binding on all and sourced from beyond the human; and there is particular or local law, distinct to whichever peoples construed its traditions and practices. The explanatory force of these conceptions shifted as scholars worked through the permutations of walled city state to empire. On the great southern land, there is general law of the continent and particular law of its 200 distinct peoples, although not forged through the signature violence of the global north-west.

It is a general human trait to tell creation stories of place. This connects us to our ancestry; and may carry rules, obligations or rights. The Judeo-Christian and later, secular legal systems have devised various rules of succession around material property and social position. These include heirlooms classified as 'real property', which is an elevation from mere goods to part of the land and thus a revered object; the role of the church in marriage and inheritance, showing kinship with a spiritual dimension; and 'birthright' practices such as primogeniture, showing the patriarchal value of vesting unearned superiority in maleness.

Aboriginal societies – in very general terms – elevate and universalise mutuality and integrity, which is defined by meeting obligations to kin and country: 'nobody left behind' (Perkins, 1966, quoted by McCarthy, 2016). Countrymen and women pass on the law via authority to

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'speak for country' (Napaltjarri Davis, 2016) to members of the next generation, who are identified by birth, kinship and learning.

The country-and-kin system establishes authority without hierarchy, and status without exclusivity. The most common English word used to communicate these organising principles is 'respect'. The law-making power of the parliament, the corrupt issuing of mining licences, and the deployment of a publicly-funded police force to safeguard private-sector mining interests all show a cavalier use of legal authority; a lack of respect for ancient law, and ongoing severing of First Peoples' connection to country. The state rarely, and only very recently, negotiates co-existence and mutuality. It retains the authority to over-ride previous recognition of First Peoples rights

3.3 Commodification

The failure of Australian governments to act on the fact that coal and CSG mining are stranded assets is a product of the alliance between government and the mining industry, which donates heavily to both major parties. Granting mining licences serves only the interests of corporate sponsors, shareholders, and a dwindling workforce. The dishonest narratives around 'energy security' are shored up by the authority of parliament and executive government: to criminalise democratic resistance, to licence destruction of country. This harms already oppressed First Peoples and profits already wealthy shareholders. It breaches of principles of precaution and intergenerational equity (Thompson, 2003), and inflicts severe health consequences on whole communities.

Aboriginal interviewees emphasised that the damage caused by mining to country – to animals and plants and ecosystems, to water sources and air quality – *therefore* causes ill-health in people. In this schema – which is far more credibly universalised than the western normative tradition – healthy country, connection to country, and human well-being can not be disaggregated. In addition, forcibly removed from country, and blocked from caring for country, brings a spiritual sickness. This trauma is intergenerational and directly linked to mental illness and suicide (Sweet et al., 2016; Fast & Collin-Vézina, 2010).

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There is vast positional power in the wealth that derives from mining for some, just as there is deep identification with the devastation mining wrecks on country by others. Rent-seeking, or commodification of country by private sector interests via state power, is easy pickings for wealth accrual. Securing a mining licence does not require hard work or innovation; merely access to political and financial capital. Every new mining approval represents a transfer of resources, from health to wealth, from the commons to private interests. This transfer of resources is facilitated by the State.

3.4 Mining, Law and Commodification

In 2016, the NSW government passed the *Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Act*. The Act amends three others, as mentioned in its title. Each amendment increases state power over protestors and state protection of mining company interests. It erodes democratic freedoms: of speech, of assembly. It increases fines for trespass tenfold, from \$550 to \$5,500. At the same time, the government decreased penalties for mining companies by the same exponential factor, as reported here (Nicholls & Hannam, 2016):

Mining without authority - currently a \$1.1 million fine plus \$110,000 per day for a company if successfully prosecuted in court - can now be punished with a \$5000 penalty notice. Prospecting without authority - currently a \$550,000 fine and \$55,000 per day under a prosecution - may now be dealt with via a \$5000 penalty notice.

That this will produce huge increases in mining pollution and associated health effects is indisputable. From a corporate perspective, it would be a poor business decision to *not* take greater risks with spillage and other pollution when the risk has just dropped to one tenth of its former cost.

In addition, the 'search and seizure powers without warrant' provision is directed at specific and effective form of protest, the lock-on. People 'lock on' to stop mining companies from risking water supply, Aboriginal sovereign rights, biodiversity, and economic interests such as farmers' livelihoods and tourism. Locking-on is not the only form of protest, but it is the one

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most hated by mining and government interests. It causes the longest disruption to work; it poses technical difficulties for safe removal; and it is undertaken by people who have opted in to being arrested for the cause.

Then there is the provision which *creates property rights for mines*:

(b) to amend the *Crimes Act 1900* to extend the meaning of 'mine' in connection with the existing indictable offence (that carries a maximum penalty of imprisonment for 7 years) of intentionally or recklessly interfering with a mine (including hindering the working of **equipment belonging to a mine**) so that it extends to equipment and other things associated with a mine... (emphasis added)

The equipment here does not belong to the mining company but to the mine. Unlike a corporation, a mine is not a 'legal person'. Yet the state has created a law which creates an enforceable property right vested in a mine. In a sense, this takes commodification to a new level. The law usually regulates relations between humans, or between humans and property (owned by humans) or between humans and institutions (run by humans). Here is a law that regulates the relationship between humans and a thing owned by an entity.

3.5 Democracy and Private Property Rights: Re-aggregating Political Economy

The Venn diagram of political and mining interests is virtually a circle (Davies, 2015). A typical example: the current NSW Minerals Council CEO is a former chief of staff to the NSW Premier who ushered in the pro-mining, anti-protestor laws. Property rights are a preoccupation of 'the white man law' since time immemorial; miners' guilds could be more important than the parish priest in England and Wales. In Australia, a rare domestic uprising, the Eureka Stockade, was staged by white goldminers on Watha Wurrung country (Ballarat) in protest against Chinese miners. It is almost a founding value that Australian governments bend to the demands of miners. The current federal government has tabled amendments to the *Native Title Act* for the benefit of a foreign-owned coal mine which neighbours the World Heritage-listed Great Barrier Reef.

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Of all the groups in society, nobody is more likely to have access to credit extended to him, to have inherited a share portfolio, to have the ways and means to take advantage of investment-based tax loopholes, than a white male heir to the centuries of privilege that accrued through primogeniture. It is virtually impossible to persuade a white man with structural power that his position is unearned, that his culture is destructive, and that both people and planet would be better off with a different paradigm. The white male heir is deeply invested in seeing First Peoples as primitive and inferior.

In Australia, from the 'sheep's back' to the gold rush to the resources boom, inherited material wealth derives from the land, and thus from the dispossession. This is not reward for hard work but brute dominance and control. Meanwhile, the federal government defunded the Clean Energy Finance Corporation, and every year since 2001 is in the top fifteen hottest years on record. Both the NSW and federal governments at the time of writing are neoliberal administrations. The key features of neo/liberalism can predict or illuminate fractures in resistance movements; and the imperative of First Peoples leadership.

4. Neo/liberalism: The Democratic Template

In the common law countries, England superimposed its *adversarial system* – government and opposition, prosecution and defence – onto societies which centre respect, inclusiveness, mutuality and reciprocity. In adversarial systems, the goal is to win and the method is to aggressively compete. Neoliberalism has seen a decline in Westminster accountability: a minister caught doing wrong was expected to resign *on principle*. This is not to say that politicians' abuse of incumbency as a power base is something new. It is to observe that refusal by neoliberal governments to being held accountable is increasingly obvious.

This is symptomatic of patriarchal backlash (Faludi, 1992). Social struggles such as civil rights, gay pride, and third wave feminism, have achieved the opening up of institutions to those from outside the dominant norm. Incumbent power then shifts its goalposts to maintain dominance. The arc of the moral universe may be long (after Martin Luther King), but where white patriarchy can bend it towards the interests its own, abuse of incumbent power is the way it does so.

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The disaggregation of political economy blinds the comfortable classes to the fact that Lady Justice is herself far from blind. Popular misconceptions such as impartiality of law, parliamentary accountability to the people, and meritocracy mythology persist in the democratic imagination. These false norms are perpetuated by the materially comfortable classes who are not subject to oppressive state surveillance and control. In contrast, Aboriginal people are the most impoverished group in Australia, and inevitably have direct experience or first-hand accounts of violence and injustice perpetuated by agents of the state.

The history of British Imperial governance is a mish-mash of myth and mendacity, masquerading as civilisation, and a claimed legitimacy of an authority bestowed upon itself. The signal legacy of seventeenth century English revolutionaries is the encoding of *the commons* into modern democratic theory. That commoners (non-nobility) can vote is what makes parliamentary democracy democratic. The Rule of Law proclaims that we are all equal before the law and nobody is above it (see Dicey, 1885); and the common law says that it is common sense (see Blackstone, 1765). Together with the social contract, another made-up justification, all this explains why the people are bound to obey the legitimate law-making power of a democratically elected parliament and the judicial decision-making authority of the courts – even when those laws encroach on democratic rights in a democracy.

From the House of *Commons* in England to the *Commonwealth* of Australia, this language signals the legitimising theory of liberal democracy. It simultaneously obscures the fact that democracy was devised by propertied, free (not-slave) men, for propertied free men. In English democratic theory the common people – the mainstream populace, in contemporary terms – are the third estate. Today, we perpetuate liberal mythology by framing systemic failures as isolated incidents. By expressing surprise that we are not all equal before the law, or anger that the wealth of a billionaire miner is a function of rent-seeking, we accept these instances as exceptions, and thus uncritically reproduce the lies of liberalism.

The institutions – structures and agents (Giddens, 1984) – of the first, second and fourth estates lead the populace in this task. These were the estates of the realm under the imperial model. The first estate is clergy. Men such as the Archbishop of Canterbury took a seat in the House

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of Lords. The second estate is the nobility. Primogeniture sent first-born sons to the House of Lords (flaky second sons were sent to the colonies). The fourth estate, the media, has a duty to report on government and opposition in the public interest. The point is for the people to have an informed choice (despite the mono-cultural profile of the major parties) at the ballot box. In Giddens terms, the lies of liberalism are thus maintained by society as a constituent whole.

The estates structure has fragmented but not displaced the colonial foundations that shape Australian institutional arrangements. For instance, Native Title is recognition by the common law and the parliament of pre-colonial rights and interests in land. Rather than displace ongoing commodification of the commons, it brought more commons – reassigned from the crown to native title holders – into the orbit of potential commodification. The paramountcy – assumed supremacy – of white law is articulated by Justice Brennan (as he then was) in the lead judgement of *Mabo*:

In discharging its duty to declare the common law of Australia, this Court is not free to adopt rules that accord with contemporary notions of justice and human rights if their adoption would fracture the skeleton of principle which gives the body of our law its shape and internal consistency. Australian law is not only the historical successor of, but is an organic development from, the law of England. Although our law is the prisoner of its history, it is not now bound by decisions of courts in the hierarchy of an Empire then concerned with the development of its colonies.

The High Court overturned the 'Law of Nations' (de Vattel, 1760: §81) doctrine of *terra nullius* but left untouched the sovereign status of the Commonwealth. Yet that status is necessarily delegitimised when its founding legitimacy – method of acquisition – is removed (see Mansell, 2016). This was High Court pragmatism, in law called a 'policy' decision. Australia clings to the myth of peaceful settlement, but *terra nullius* is a condition precedent to that method of acquisition. The remaining 'lawful' methods of seizing the territory were by force – conquest – and by cession (Blackstone, 1765 VI, p. 104-5). Conquest necessarily invokes the laws of war, including post-war terms of settlement by treaty. Not one of the 200 distinct First Peoples in Australia ceded sovereignty to the British crown, so their sovereignty is current on its own terms as well as in international law (Watson, 2015, p. 147, UNDRIP, 2007).

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5. Conclusion: The Dominant Norm and the Resistance

This chapter has described shifting and continuous sets of alliances: the incumbent power of the state and corporate interests; communities of interest which operate across the physical and the virtual; First Peoples' and settler protectors dedicated to stopping the damage which inevitably follows commodification of country. Researchers can only observe a snapshot in time, and then locate our observations in a wider context: of history, of epistemologies. The English law sees land as a source of wealth; private property rights are its origin and reason for being. The first law of the land says the land is the source of the law (Black, 2011).

First Peoples are largely excluded from the estates. This is not to overlook the many Aboriginal people who have succeeded in the professions, sports, the arts and sciences, the academy. Gamilaraay leadership, the extant knowledge of their ancestors, was integral to the lay-out of the Pilliga camp. The campaign actions are peaceful, made up of perfectly reasonable people with deep community ties who do not pose a threat to society: knitting nanas, nurses and midwives, farmers, small business, scientists.

But power holders of the estates perceive an existential threat. This prompts law-makers to pass the harsh new measures described (see 3.4) which in turn empowers law-enforcers – police – to treat protectors more harshly. While we do not see the militarised violence of the police and National Guard at Standing Rock, the use of force by police in the Pilliga varies with the social standing of the protectors (see 2.1.2). These laws and policing practices appear out of all proportion. The actions are peaceful, the media show nanas knitting along a fence line, farmers perched on hay bales playing dice ('Santos is gambling with our future').

The shape of imperial structures past can be discerned in the struggle between the CSG industry, which is backed by the state, and communities of resistance. The shadow of neoliberal ascendancy hovers over the protest site, flashing with resentment that black people should assert sovereign rights and leadership at this lucrative mining site. By respecting First Peoples authority and leadership, the protectors are disrupting the colonial project, the *commodification of country*, at a fundamental level. The heavy-handed response is directed at this deeper threat,

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and it is incumbent on the resistance to respond with the integrity of integrating with the first law of the land.

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