# **ARTICLE: The Legal Foundations of Extractive Power**

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**Highlight**

**ABSTRACT**

Over the last decade, the United States has become the world's top producer and leading exporter of ***oil*** and gas a change with dramatic geopolitical and climate implications. At the root of this ascendency is a legal framework around ***oil*** and gas extraction in the United States that empowers extractive industry to dismantle community opposition, undermine local governance, and entrench extraction in communities over time. Exercising this power creates conditions of domination and dependency in communities where ***oil*** and gas extraction occurs. These conditions, in turn, build social and political support for continued extraction.

This Article charts the legal foundations of the process described above to highlight law's role in building the social and political conditions for continued fossil fuel extraction in the era of climate crisis. Drawing on the experiences of Colorado communities, this Article offers two contributions. First, I articulate how legal frameworks align to grant industry power over communities targeted for extraction and chart this power's effects. Legal frameworks that facilitate ***oil*** and gas extraction allow industry to reorder systems of social and political authority in communities where extraction occurs. This process creates conditions of industry domination and community dependence on extraction legitimized by law. These conditions, in turn, build political support for continued extraction a dynamic that links climate policy with the legal structures of extraction in ways that legal scholarship and policy advocacy have largely overlooked. Second, I apply this understanding to explain why prominent ***oil*** and gas law reforms adopted in Colorado have failed. I use this example to reorient ongoing debates in ***oil*** and gas law toward reforms that target the legal supports of extractive industry's social and political power.

**Text**

**[\*68] INTRODUCTION**

Over the last twenty years, the rise of fracking as a primary method of ***oil*** and gas production has fundamentally changed the global energy landscape.[[1]](#footnote-2)1 Specifically, the combination of hydraulic fracturing (fracking's namesake) with advances in directional drilling and other technologies opened huge amounts of previously inaccessible ***oil*** and gas in the United States to extraction.[[2]](#footnote-3)2 Conventional ***oil*** and gas development generally involves drilling vertical wells into a reservoir that flows together naturally by seeping through permeable rock formations.[[3]](#footnote-4)3 Unconventional development, by contrast, involves extracting ***oil*** and gas that does not flow together naturally, such as when they are trapped within an impermeable rock formation like shale.[[4]](#footnote-5)4 The combination of fracking, directional drilling, and other technologies allowed developers to more effectively extract ***oil*** and gas from shale formations by drilling horizontally along the formation and shattering the rock apart to access ***oil*** and gas trapped inside.[[5]](#footnote-6)5 This process opened large shale formations across the United States to development, sparking a boom in American ***oil*** and gas production.[[6]](#footnote-7)6

While versions of these various drilling technologies have existed for decades, their combination in the later 2000s and the resulting "shale boom" in the United States were revolutionary.[[7]](#footnote-8)7 Fears that global ***oil*** production had peaked and American production was in irreversible decline inverted as fracking opened access **[\*69]** to more ***oil*** and gas than can be extracted while confidently maintaining a livable planet.[[8]](#footnote-9)8 Gas became so cheap that it undercut coal as a fuel for electricity generation, contributing to a "collapse" in American coal consumption.[[9]](#footnote-10)9 The United States became the world's top producer of gas in 2009 and ***oil*** in 2013.[[10]](#footnote-11)10 Between 2015 and 2019, the United States increased its ***oil*** exports six times over.[[11]](#footnote-12)11 In 2022, the United States became the world's top exporter of gas.[[12]](#footnote-13)12 For the first time in generations, the United States once again wielded fossil-fuel power on the geopolitical stage.[[13]](#footnote-14)13 Likewise, American ***oil*** and gas production became a prominent domestic policy tool for influencing elections and the economy.[[14]](#footnote-15)14 Over two decades, fracking forged a bipartisan consensus around growing domestic ***oil*** and gas production as a central pillar of American policy at home and abroad.[[15]](#footnote-16)15

**[\*70]** This ascension was fueled by drilling and fracking thousands of wells in communities across the United States and suppressing those communities' opposition. Extraction is a major industrial endeavor, and fracking's rise amplified its impact on communities.[[16]](#footnote-17)16 Most notably, fracking pushed extraction into residential communities and concentrated the industrial impacts of extraction by allowing industry to drill dozens of wells from a single, large worksite.[[17]](#footnote-18)17 These impacts have prompted conflicts across the country between communities and the ***oil*** and gas industry, highlighting the scope and stakes of the industry's legal and socio-political power to dismantle community opposition and local governance structures that stood in their way.[[18]](#footnote-19)18

Fracking in the United States thus offers a new frontier for social-scientific study of the relationship between extraction, power, and governance. Researchers have documented through interviews and other qualitative research the power the industry has wielded over communities across the United States during the drilling booms spurred by fracking.[[19]](#footnote-20)19 This research brought to light the industry's **[\*71]** overwhelming power within individual negotiations and interactions with community members, as well as the industry's broader power to control the social and political conditions of extraction in a community.[[20]](#footnote-21)20 These insights extended concepts around extraction's corrosive effects on governance to modern American ***oil*** and gas production concepts historically associated with the socially destructive legacy of coal mining in Appalachia now applied to Colorado suburbs facing ***oil*** and gas rigs.[[21]](#footnote-22)21

Legal scholarship has largely ignored these dynamics between extractive industry's power and governance. Community opposition to fracking resulted in a wide range of legal conflicts that, in turn, prompted extensive commentary from legal scholars.[[22]](#footnote-23)22 But the vast majority of this work has framed the conflicts around fracking as relatively run-of-the-mill regulatory problems that could be addressed by, for example, properly aligning costs and benefits or better tailoring regulations.[[23]](#footnote-24)23 Notable exceptions, such as Professor Ann Eisenberg's work on how fracking developers exploit inequality and Benjamin Apple's work about the structural constraints on local governments facing fracking, has raised issues of power and **[\*72]** inequality but their analysis does not extend to larger governance implications.[[24]](#footnote-25)24 As a result, there is a gap in the legal literature on the law's role in creating and perpetuating the political and social conditions for continued extraction.

This gap in the legal literature reflects a similar gap in policy advocacy. Such oversight is particularly important as the climate crisis forces us to identify and reevaluate legal supports for continued fossil fuel extraction. Burning fossil fuels is the primary cause of climate change.[[25]](#footnote-26)25 The majority of global fossil fuel reserves, including most ***oil*** and gas, must remain in the ground to avoid catastrophic climate change.[[26]](#footnote-27)26 Scholars and climate advocates have therefore focused on identifying the legal supports for continued extraction and use of fossil fuels, such as federal subsidies for fossil fuel developers and fossil fuel companies' use of traditional state powers to seize property for fossil fuel development.[[27]](#footnote-28)27 This work often turns to protest and social movements to advance change in light of fossil fuels' political power in the United States.[[28]](#footnote-29)28 While local movements opposed to fracking have played an important role in the broader climate movement, policy advocacy has reflected the gap in legal scholarship on the role that the legal structures around extraction, often at the state and local level, play in building **[\*73]** political and social support for continued extraction.[[29]](#footnote-30)29 In doing so, this advocacy overlooks a central support for continued fossil fuel extraction in the United States.

This Article seeks to fill that critical gap in scholarly research and policy advocacy by articulating how legal structures grant industry power over communities where extraction occurs, what I call *extractive power*, and how the exercise of that power creates social and political conditions for continued extraction that I refer to as *extractive domination*. The ***oil*** and gas industry's extractive power is legally structured in that law controls how the industry exercises power over communities to facilitate extraction, including by delegating power and granting privileges to the industry. The industry exercises extractive power in both formal ways, such as through state regulatory processes, and informal ways, such as exerting power over community members in individual negotiations. A central goal of this Article is to articulate how legal structures across various doctrinal areas such as contract, property, constitutional law, and bankruptcy align to grant industry this extractive power.

The industry's exercise of extractive power results in social and political conditions of extractive domination. Legal structures grant the industry power to functionally create spaces where systems of social authority are reoriented to facilitate extraction put simply, the industry carries its own rules into communities it targets for extraction. This process and the resulting extractive activity create conditions of industry social and political control, as well as conditions of dependence on continued resource extraction. These conditions, in turn, build social and political support for continued extraction in affected communities, creating barriers to effective climate and other policy interventions.

In sum: legal structures grant industry extractive power. The exercise of extractive power creates conditions of extractive domination in communities where extraction occurs. Extractive domination erects social and political barriers to effective reforms. This Article's central goal is to identify these legal foundations of extractive power so they can be targeted for reforms to effectively empower communities against industry control and better enable the transition away from fossil fuel extraction.

The Article focuses on Colorado as a case study, examining the suburban sprawl north of Denver that overlays one of the most productive ***oil*** and gas regions **[\*74]** in the United States. I ground this Article in Colorado for two reasons. First, conflicts between communities and the industry and resulting legislation reforming ***oil*** and gas extraction in the state have drawn national attention.[[30]](#footnote-31)30 For example, energy law scholars identify Colorado's reforms as leading "a legal revolution" in ***oil*** and gas law, and the results of Colorado's reforms have national importance.[[31]](#footnote-32)31 As I explain, this legislation has failed to meaningfully change extraction in Colorado. Focusing on Colorado presents an opportunity to apply the frameworks developed in this Article to a developing policy debate and advance scholarship on ***oil*** and gas reform.

Second, this Article draws on my work with the University of Denver Environmental Law Clinic, representing, along with my students, Colorado communities resisting fracking developments.[[32]](#footnote-33)32 This experience emphasizes my stake in debates around ***oil*** and gas reform and my dual role as legal scholar and participant on these issues.[[33]](#footnote-34)33 My work alongside these communities exposed me to law's role in creating conditions of domination in communities where extraction occurs. My role as a law professor puts me in a position to contribute these experiences to legal debates and make those debates more "responsive to the lived realities of those" affected by them.[[34]](#footnote-35)34 This "embedded" perspective offers an opportunity to develop "critiques of the socio-legal world that are rooted in the experiences of people caught up in the legal system."[[35]](#footnote-36)35 In this sense, developing these frameworks around extractive power and applying them to critique Colorado's recent reforms is my attempt to make larger debates around energy **[\*75]** law more responsive to the experiences of communities facing both the immediate and long-term effects of that debate.

It is helpful, therefore, to introduce you to these communities' experiences as I was introduced to them. For many years our clinic has worked with Colorado communities opposing dangerous ***oil*** and gas developments and their impacts in various capacities. Prior to my employment at the clinic, we represented a community opposing a large fracking project proposed immediately behind their middle school in Weld County, Colorado. Shortly after I started, a community member named Patricia Garcia-Nelson asked that our team attend a meeting hosted by the school administration to address parent concerns about the project. The new academic year had just started, and Patricia knew she was getting both a new team of student attorneys and me, a new clinical teacher. She therefore recommended that, instead of taking the interstate on our drive north of Denver to the school, that we drive what locals call the "Frack Freeway."[[36]](#footnote-37)36

The Frack Freeway is a state highway that takes you off the main interstate and through the bleeding edge of residential and ***oil*** and gas development in Weld County. Denver's sprawl is more expansive than most major cities. Its suburbs and nearby cities blend together along the foothills of the Rocky Mountains (Rockies), creating a "mini-version of a megalopolis" known regionally as the Front Range.[[37]](#footnote-38)37 Weld County spans roughly from the northern-most reaches of Denver to Wyoming's border, yet not far enough west to include the northern cities of the Front Range. It sits atop the Denver-Julesburg Basin and specifically the Wattenberg field, the most prolific ***oil*** and gas producing region in Colorado.[[38]](#footnote-39)38 The Frack Freeway drives you through the overlap of booming residential development from the sprawling Front Range and booming drilling from the fracking revolution.

While the occasional pumpjack is still visible along the drive, most modern wells look like little more than a pipe with some valves coming out of the ground. **[\*76]** As a result, they are most recognizable because they are grouped onto a large concrete pad dozens of wells and associated machinery are immediately recognizable from the road as an industrial operation in contrast with their agricultural or residential surroundings. Still, there is nothing quite like seeing one of these sites being drilled and fracked. These steps require costly skill and machinery, so developers will often drill or frack wells at a site continuously until they are all done, including through the night. To help mitigate the nonstop noise and industrial lighting impacting nearby homes, operators will surround the project site with twenty- to thirty-foot high "earthen-color fabric on steel" walls.[[39]](#footnote-40)39 The drilling and fracking rigs reach higher still, protruding skyward from the top of the drab structure. Large tractor-trailer trucks enter the project site through spaces where the walls stagger but overlap, preventing anyone outside from seeing in. These brown blocks with latticed drill rigs sticking out the top are unmistakable across the landscape, with trucks laboriously snaking in and out of them to nearby roads. As we drove along in the fall of 2018, amidst the United States's ascension to the world's top producer of ***oil*** and gas, these monoliths were seemingly dropped at random among the farms and neighborhoods of Weld County like an inscrutable alien invasion.

When we arrived at the school's parking lot, the property behind the school had been cleared and leveled in preparation for drilling. It was the middle school campus of the Bella Romero Academy, a public school focused on incorporating technology into student experiences.[[40]](#footnote-41)40 The developer was a company called Extraction ***Oil*** & Gas (Extraction) from Denver, who planned to drill and frack twenty-four wells next to the school.[[41]](#footnote-42)41 The project was one of the most controversial ***oil*** and gas developments in the state because it had originally been planned for placement next to a school in Greeley serving primarily white students, and after community opposition, had been relocated next to Bella Romero's middle school, which served a primarily Spanish-speaking, working-class community of color.[[42]](#footnote-43)42 The site had been the subject of protests; not long **[\*77]** before the school meeting, a student from Colorado State University in nearby Fort Collins faced criminal charges after locking himself to a bulldozer being used to clear the lot behind the school.[[43]](#footnote-44)43 Given the rigs' location immediately next to the school's playgrounds and markers of environmental racism, the project took on statewide and national importance as a compelling example of the ***oil*** and gas industry's encroachment on residential communities across the United States.[[44]](#footnote-45)44

The meeting with school officials revealed how much Extraction's arrival had unsettled the community. School officials called a meeting to try to explain to parents what was going on, and two fire department officials joined it to reassure parents. But most of the parents in attendance spoke Spanish, while most of the school and fire officials spoke only English. Patricia, a parent and active opponent of the project, served as an interpreter for other parents' questions. They worried about the risks of locating the project so close to the school. The school officials tried to talk through the issue but insisted that Extraction had not given them much information. The unavoidable conclusion was that no one in the room was in control Extraction was. As a school official later explained, this was "just the reality of living in an ***oil*** and gas rich area" like Weld County.[[45]](#footnote-46)45

More than a year after that first school meeting, I returned to the Bella Romero parking lot with one of my students in preparation for a court hearing. The brown box loomed over the school, providing the background for a picture of three children playing basketball at the school's playground that ran in the *New York Times*.[[46]](#footnote-47)46 By then, my students and I had worked with several communities resisting similar projects across the state. In each circumstance, the law did more than fail these communities. The law was consistently wielded as a tool to split their communities, close them out of the regulatory process, and protect the industry's interests. The law did more than facilitate extraction it actively suppressed opposition.

**[\*78]** These communities' experiences offer important insight into the effects of modern American ***oil*** and gas extraction and policy responses. Along with the drilling rigs, the ***oil*** and gas industry comes bearing its own rules an overlay of legal protections and powers that restructure the social and political dynamics in communities. With these rules, the industry is effectively licensed to impose extraction and dismantle opposition within communities. Colorado communities' experiences with these effects ultimately resulted in state reform legislation that ***oil*** and gas law scholars identify as leading the field. But this legislation has largely failed to change extraction in Colorado because it failed to account for the social and political power wielded by the industry. These communities' experiences offer an important correction to the literature, clarifying both what is at stake in reforming ***oil*** and gas law and how to structure more effective reforms. Central to this correction is a concrete understanding of how law structures the industry's power over communities. This Article contributes these communities' stories and their implications to these debates.

This Article does so in four parts. Part I provides background on the geography, geology, and history of the principal ***oil*** and gas producing region in Colorado where impacted communities live. Part II articulates how legal structures across doctrinal areas align to empower the industry over communities where extraction occurs. Part III charts how the industry's exercise of this power creates conditions of domination, dependence, and ultimately political support for continued extraction. Part III also briefly highlights the policy implications of these dynamics. Part IV then applies these ideas to assess why Colorado's recent legislation has failed to meaningfully change ***oil*** and gas extraction in Colorado and draws lessons for future reform.

**I. GEOGRAPHIES OF EXTRACTION**

This Part takes a long view of the history of Colorado's primary ***oil*** and gas producing regions to provide background and answer several questions relevant to the communities' experience with the industry: why ***oil*** and gas is there, why the companies extract it the way they do, and how these most recent conflicts resonate with a longer story of displacement and disempowerment in the name of resource exploitation in Colorado.

**[\*79] A. The Denver-Julesburg Basin**

Colorado owes its rank among the top five ***oil*** and gas producing states to the Denver-Julesberg Basin.[[47]](#footnote-48)47 The Basin is an extensive geologic feature, running along the entire Front Range, including under Denver and into Wyoming and Nebraska.[[48]](#footnote-49)48 It includes the Wattenberg field, the "fourth-largest U.S. ***oil*** field based on proved crude ***oil*** reserves and ninth-largest gas field based on proved natural gas reserves."[[49]](#footnote-50)49 The Wattenberg field, extending roughly from just north of Denver to the town of Greeley, is almost entirely in Weld County, Colorado.[[50]](#footnote-51)50 For this reason, Weld County accounts for over 90 percent of all ***oil*** produced in Colorado.[[51]](#footnote-52)51

The unique conditions of the Denver-Julesberg Basin stem from the large interior sea that covered the American West during the Cretaceous period.[[52]](#footnote-53)52 This sea was populated by a vibrant marine ecosystem ranging from eighteen-foot swimming reptilian predators to early birds to plankton, all of which contributed to organic material that would eventually be exhumed as hydrocarbons.[[53]](#footnote-54)53 In the late Cretaceous period, a series of pulsing geologic uplifts known as the Laramide orogeny began building the modern Rocky Mountains.[[54]](#footnote-55)54 Over this period of uplift, the interior sea retreated into swamps and lakes that would, over the course of deep time, produce shale rock formations run through with the organic material of ancient marine ecosystems.[[55]](#footnote-56)55

The uplift of the Rocky Mountains through layers of sedimentary rock would warp those formations into an asymmetric basin shaped like a "J" laid on its long side.[[56]](#footnote-57)56 Closest to the Rockies, the formation declines sharply, creating a "hogback" ridge of jagged rock formations that visually characterize the foothills of the Rocky **[\*80]** Mountains, such as the dramatic angles of Red Rocks Amphitheatre.[[57]](#footnote-58)57 Moving east, the deepest part of the curve is roughly located under Denver and the Front Range.[[58]](#footnote-59)58 The formation then gradually inclines towards the plains.[[59]](#footnote-60)59 These geological forces created the conditions needed to both transform biological material into hydrocarbons and trap those hydrocarbons within impermeable rock formations at the deepest part of the "J."[[60]](#footnote-61)60

The foothills and plains overlaying the Denver-Julesburg Basin are the ancestral lands of the Ute, Arapaho, and Cheyenne.[[61]](#footnote-62)61 While the U.S. government had originally recognized Indigenous peoples' claims to the area in the Treaty of Fort Laramie, the Pike's Peak Gold Rush prompted a rush of white settlement and desire for resources that would ultimately result in the violent removal of these communities from the area.[[62]](#footnote-63)62 In 1861, the U.S. Congress formally organized the Territory of Colorado in part to secure the region's mineral wealth for the Union in the lead up to the Civil War.[[63]](#footnote-64)63 Paranoia around the war led John Evans, then governor of the Colorado Territory and eventual founder of the University of Denver, to issue a proclamation in 1864 authorizing all citizens of Colorado to pursue and kill any Indigenous people who did not present themselves at American forts for protection.[[64]](#footnote-65)64 This led to the Sand Creek Massacre, where Colorado soldiers murdered hundreds of Cheyenne and Arapaho people, mostly women and **[\*81]** children, who had camped near the cavalry's base as part of a peace agreement.[[65]](#footnote-66)65 The Sand Creek Massacre is often seen as the start of an extensive series of conflicts and a campaign by the United States military to violently remove remaining Indigenous communities from what is now Colorado east of the Rockies, opening the land for further settlement after the Civil War.[[66]](#footnote-67)66

**B. Weld County**

The early history of Weld County reflects the colonial vision of settlers transforming the West into "productive" land through irrigation, farming, and ranching. What would become Greeley, Colorado was originally founded as a Christian utopian commune in 1869 by Nathan Meeker, a newspaperman from New York.[[67]](#footnote-68)67 Meeker would rename the commune Greeley to honor his former editor and infamous Western expansionist Horace Greeley.[[68]](#footnote-69)68 Greeley went on to become the county seat and claim several firsts that established Weld County's character as an exemplar of this "productive" West, including claiming to have established the defining doctrine of Colorado water law in a dispute with settlers upriver and popularizing, if not inventing, large-scale confined cattle feeding.[[69]](#footnote-70)69 In 1923, the Greeley Chamber of Commerce first asked geologists to explore the potential for extracting ***oil*** and gas in Weld County.[[70]](#footnote-71)70 This request prompted a history of fossil fuel development in Weld County stretching back to the late 1920s, but the geology of the area limited major development until a half-century later; **[\*82]** the features of the "J" that trapped ***oil*** and gas within impermeable rock formations meant that single-well, vertical drilling of that time was often not profitable.

Decades later, fracking would transform Weld County into one of the most prolific fossil fuel producing areas in the United States. While drilling booms had happened in Weld County before, these latest booms spurred by fracking came while Weld County's population grew at a higher rate than any other county in Colorado.[[71]](#footnote-72)71 While part of this growth is likely attributable to the ***oil*** and gas industry, these trends also reflected general residential growth across the Front Range, with sprawling residential developments moving into Weld County from Denver to the south and other Front Range cities to the west.[[72]](#footnote-73)72 These two patterns of growth in Weld County residential on the one hand and fossil fuel on the other came to exemplify the growing tension between Colorado's past as a resource producer and its future.

These tensions manifested into the latest chapter of Colorado's "***oil*** and gas wars," the local phrase for the conflicts between fossil fuel extraction and Colorado's communities which run through decades of the state's modern history.[[73]](#footnote-74)73 Weld County's government sees itself as an open partisan in this conflict, personifying Colorado's history with resource extraction and standing in opposition to the cultural urbanization of Denver and the Front Range.[[74]](#footnote-75)74 There is perhaps no better example of this oppositional character than residents of Weld County's persistent **[\*83]** attempts to avoid regulation of its industries by seceding from Colorado, often trying to join Wyoming.[[75]](#footnote-76)75

**C. The Petrosuburbs**

While major fossil fuel developers sought to avoid community conflicts, some smaller developers sought to specialize in what they called "neighborhood drilling."[[76]](#footnote-77)76 One of these companies was Extraction, and two of its projects pushed the outer boundaries of fossil fuel control over communities in Colorado.[[77]](#footnote-78)77 The first project is called Triple Creek, where in 2014 Extraction proposed to develop a massive, twenty-two well pad in a field surrounded on three sides by homes.[[78]](#footnote-79)78 On the outskirts of Greeley's city limits, the project site was separated from a municipal road by a single row of older homes.[[79]](#footnote-80)79 Extraction proposed to **[\*84]** build an access road through these homes, where large trucks would carry in fluids necessary to frack the wells and, once the project was complete, carry out ***oil*** and gas from the wells for years to come.[[80]](#footnote-81)80 The mostly white homeowners, ranging from residents who had lived there for decades to relative newcomers, began organizing by forming a group called Neighbors Affected by Triple Creek and hired a lawyer to represent them in the early stages of the regulatory process.[[81]](#footnote-82)81

The second project is formally called Vetting, although it became better known as the Bella Romero project because of its location behind the Bella Romero middle school.[[82]](#footnote-83)82 Part of the Greeley school district, the middle school campus was built in unincorporated Weld County to serve a primarily Spanish-speaking community of color.[[83]](#footnote-84)83 Extraction had originally proposed drilling next to Frontier Academy, a middle school serving a primarily white community in Greeley. But in response to community opposition in Greeley, the company relocated its proposal from the primarily white school to Bella Romero in the unincorporated part of the county. As one parent told the *New York Times*, "It's like they said, 'Put it where the Mexicans live, over there it's O.K.'"[[84]](#footnote-85)84 The proposal laid bare the environmental racism in ***oil*** and gas extraction, drawing wide-spread opposition from environmental and racial-justice groups that would then support the community during the regulatory process.[[85]](#footnote-86)85

These projects exemplify how the industry's arrival transforms communities into petrosuburbs a residential community reshaped by in the influx of, and opposition to, ***oil*** and gas extraction.[[86]](#footnote-87)86 The term has been credited to scholars **[\*85]** working on the close relationship between ***oil*** extraction and development of Los Angeles's residential suburbs.[[87]](#footnote-88)87 Studies focused on conflicts between communities and ***oil*** extraction both across the American West and specifically in Colorado have adopted the term to describe areas of residential drilling characterized by the fracking booms in the 2000s and 2010s.[[88]](#footnote-89)88 Using conflicts in the Denver-Julesberg Basin as a framework, one study set out characteristics of drilling in petrosuburbs, which differs from large-scale extraction undertaken by massive multi-national corporations.[[89]](#footnote-90)89

Within petrosuburbs, "extraction is predominantly conducted on private lands by smaller operators that have made (sub)urban drilling their business niche."[[90]](#footnote-91)90 In these contexts, horizontal drilling "has enabled operators to condense their surface footprints by co-locating" as many as "40-56 wells per site," which has intensified the impacts of drilling on those who live around the well pad.[[91]](#footnote-92)91 These sites have exceptionally high impacts on surrounding communities for example, "a 24-well site requires a total of 20 months of round-the-clock drilling plus hydraulic fracturing, including 55-108 daily round trips by heavy trucks."[[92]](#footnote-93)92 As a result, the proposal of these developments in residential communities becomes a focal point for resistance, with affected communities organizing to challenge development in ways that implicate the social and political dynamics of their community.[[93]](#footnote-94)93

This Article contributes to ongoing work documenting the dynamics of community resistance to fossil fuel development. Bella Romero and Triple Creek are characteristic of conflicts in Colorado's petrosuburbs: community resistance to massive fracking projects proposed by small operators. While the projects differ in many respects, their stories demonstrate similarities that highlight core operations of industry power in communities and the law's role in structuring that power.

**[\*86] II. THE LEGAL STRUCTURES OF EXTRACTIVE POWER**

This Part describes how formal legal structures designed to promote extraction of ***oil*** and gas also empower the industry to dismantle opposition and entrench extraction in communities over time power I refer to as *extractive power*. This process starts with the industry using legal powers and privileges to disempower individual community members in the process of negotiating the rights needed for extraction and to defuse community organizing. The subsequent regulatory scheme built on those private rights then disempowers local governments and functionally excludes affected community members from the state regulatory process. Finally, legal doctrines like bankruptcy allow the industry to perpetuate their control within communities over time and through economic downturns. Altogether, these dynamics exacerbate racial and economic inequality. The legal structures that enable these effects run across doctrinal fields contract, property, bankruptcy, and ***oil*** and gas law, for example and collectively work to isolate and disempower communities in places targeted by the industry for extraction. This Part follows the experience of the Triple Creek and Bella Romero communities to show how these disparate legal structures align to create extractive power.

**A. Divide and Contract**

The ***oil*** and gas industry's interaction with a community typically starts with landmen. A landman's job is to negotiate with land owners and other people to secure legal rights to extract ***oil*** and gas.[[94]](#footnote-95)94 These negotiations typically result in a lease to access ***oil*** or gas under a person's land, or an agreement to use the surface of a person's land for drilling, extracting, or other industry needs.[[95]](#footnote-96)95 These negotiations occur, however, within a legal framework that prioritizes extraction of the resource.[[96]](#footnote-97)96 By tipping the scale in favor of extraction, landmen enter these negotiations with structural advantages such as informational and **[\*87]** power asymmetries.[[97]](#footnote-98)97 In turn, the industry leverages these advantages to pit neighbors against one another or otherwise divide communities to benefit the industry.[[98]](#footnote-99)98 This practice of dividing communities and securing rights for extraction serves as the foundation of the ***oil*** and gas regulatory structure a space of "private" negotiations around which the regulatory structure sets boundaries.

There are three legal concepts that enable this divide-and-contract dynamic. The first is a couplet of familiar property law doctrines that prioritize extraction of natural resources over other property interests: the split estate and the dominant mineral interest. Together, these well-established doctrines bend the baseline rules of property toward the extraction of mineral resources such as ***oil*** and gas.[[99]](#footnote-100)99 The split estate refers to a property law doctrine that allows owners to "split" or "sever" property interests in the surface of a parcel from property interests in the minerals below, such that different people can hold interests in the surface estate and the mineral estate on the same land.[[100]](#footnote-101)100 Generally, a split mineral estate is legally treated as the "dominant" estate, meaning that the person who controls the mineral estate can use the surface to access their minerals even if they do not own the surface interest.[[101]](#footnote-102)101 Together, these doctrines mean that an ***oil*** and gas developer need only secure a separate interest in the minerals beneath your land to gain some legal control over your land and the land of others around the minerals.

The second concept is forced pooling. While the doctrines described in the last paragraph give substantial power to developers trying to extract ***oil*** and gas, the scheme is still susceptible to holdouts. Forced pooling facilitates development of large areas of ***oil*** and gas by allowing a developer to effectively seize a nonconsenting mineral owner's property interest and add it into a broader "pool" of resources for **[\*88]** development.[[102]](#footnote-103)102 This is typically accomplished through a state regulatory process where a developer is able to "force pool" remaining mineral owners once the developer secures a minority stake of the overall resource.[[103]](#footnote-104)103 "Pooled" interests are entitled to compensation, although it may be less than what the nonconsenting owners would have received under a separate agreement with the developer.[[104]](#footnote-105)104 Forced pooling is controversial and regularly critiqued as an unconstitutional taking of private property.[[105]](#footnote-106)105 Nevertheless, it is standard practice in major ***oil*** and gas producing states, including Colorado.[[106]](#footnote-107)106 This allows developers to gain near complete control over a mineral resource, and corresponding rights over the surface, once they have obtained a minority stake.

The third concept is the use of time-limited agreements to secure rights associated with extraction namely, the use of mineral leases and surface use agreements. Rather than purchasing the relevant property interest in the mineral or surface estate, fossil fuel developers can instead enter into time-limited contracts with property owners.[[107]](#footnote-108)107 A mineral lease is generally an agreement between a fossil fuel developer and mineral interest owner that grants the developer an exclusive right to develop the mineral resource for a period of years.[[108]](#footnote-109)108 Similarly, a surface use agreement grants a fossil fuel developer certain rights to use the surface over a **[\*89]** period of time.[[109]](#footnote-110)109 These agreements often include immediate benefits to a property owner such as lump-sum cash payments regardless of whether the resource is developed, as well as percentages of profits (a royalty) or other guarantees if it eventually is.[[110]](#footnote-111)110 For the industry, these agreements reduce the initial investment required to secure the rights needed for extraction.[[111]](#footnote-112)111 Put another way, these agreements are the relatively low-cost strategy the industry has developed to access legal powers such as the dominance of the mineral interest and ability to force pool. For example, a developer can gain substantial power over other property owners by signing a mineral lease with one owner it may gain certain rights for use of various surface estates, or it might gain the ability to force pool other mineral interest owners and further expand its claims over the community.

The context created by these legal concepts yields informational and power asymmetries that landmen exploit in negotiations with property owners. Because of its resources and expertise, the ***oil*** and gas industry often enters these negotiations with a substantially better understanding of, for example, how much a mineral resource is worth, how difficult or damaging it will be to extract, and where extraction can occur.[[112]](#footnote-113)112 These informational asymmetries allow landmen to be strategic both in who they approach and how they approach them.[[113]](#footnote-114)113 Once in negotiations, landmen can leverage legal powers to pressure or even threaten property owners to sign an agreement or risk, for example, their neighbor signing a better deal or getting force pooled.[[114]](#footnote-115)114 These power asymmetries allow landmen to secure the rights for extraction even in the face of community concern or opposition.[[115]](#footnote-116)115

These tactics have been extensively documented in communities facing rapid development stemming from the fracking boom. A study of landowner experiences during leasing negotiations across Colorado and Pennsylvania revealed "that participants across contexts overwhelmingly experienced problematic and disempowering experiences" in negotiations with landmen.[[116]](#footnote-117)116 Across both states, property owners "overwhelmingly reported that landmen played central roles in shaping lease negotiations," and specifically "drew on strategies that compelled **[\*90]** them to sign leases" such as "a tendency to create urgency," a "consistent lack of transparent information," and even "concealment of information."[[117]](#footnote-118)117 For example, a landman threatened one Pennsylvania farmer with what turned out to be a lie intended to create urgency: if the farmer did not sign the lease, he was told "we're going to go right beside your property when we frack" and "get[] your gas for nothing . . . because all of your neighbors have signed."[[118]](#footnote-119)118 In another example, Colorado participants who signed agreements because the company was "surrounding us and we thought we should get some money" were told to "not share the conditions of our contract with other people" so "other people couldn't use that to negotiate theirs."[[119]](#footnote-120)119 The study concluded that "these private negotiations reinforce power imbalances and result in disempowerment, individualization, and confusion rather than authentic attempts to facilitate equal participation among stakeholders when siting" ***oil*** and gas development.[[120]](#footnote-121)120 Studies document similar asymmetries and tactics in negotiations between landmen and communities in Ohio, Pennsylvania, West Virginia, and New York during the Marcellus shale fracking booms.[[121]](#footnote-122)121

Importantly, landmen leverage these asymmetries to disrupt community organizing against extraction by pitting neighbors against one another.[[122]](#footnote-123)122 Landmen leverage industry power to make individual property owners feel "like 'sitting ducks,' . . . 'unprotected,' and that attempting to keep activity off the land was 'a futile task.'"[[123]](#footnote-124)123 As one Pennsylvania farmer who signed a lease in the face of force-pooling threats put it, "whether you signed or not, they're still gonna drill. They [the industry] make you feel like you have that option, but you don't. Again, I think if that was the case, I think all of us would have gotten together and said, 'You know what? None of us are signing.'"[[124]](#footnote-125)124 Once community members signed a lease, they felt further disempowered.[[125]](#footnote-126)125 One participant explained that residents experiencing problems with the industry once development started still refused to organize together, worried that "[t]hey'll cancel our leases" or "we'll be blacklisted."[[126]](#footnote-127)126 "Rather than enhancing their capacity to function as communities," the researchers **[\*91]** concluded, "the leasing process often turned neighbors against one another."[[127]](#footnote-128)127 "Split estate and forced pooling systems," the study noted, "act as key components" to the industry's exercise of this power over communities.[[128]](#footnote-129)128

The communities at Bella Romero and Triple Creek did not receive even the minimal engagement afforded by the leasing process for two reasons. First, the developer in both projects purchased the surface where drilling and extraction would occur. For this reason, there was no need to engage with residents in these communities to determine where to drill. Similarly, the developer of these projects planned to access minerals several miles away from the well pad through horizontal drilling. Many of the community members affected by the developments therefore had no mineral interests implicated by the project, so the developer did not need to engage with them from that perspective either.[[129]](#footnote-130)129

But even in these conditions, the industry's strategies are still visible. For example, Dawn Stein joined the community group organizing around the Triple Creek project when she learned at an informational meeting that Extraction would be building a sixty-foot-wide access road about thirty feet from her bedroom window. Dawn was shocked that no one had even approached her, but Extraction explained that the road was not on her land. Rather, the company had negotiated the easement with Dawn's neighbor. Her neighbor, Dawn learned, had been able to ensure the road would be farther from her own home by agreeing to an easement at the edge of her property right next to Dawn's house. What is worse is that Dawn could have been a willing negotiator; the announcement of the road had actually derailed ongoing negotiations to sell Dawn's house. Instead, Dawn now faced hundreds of tractor-trailer trips immediately next to her bedroom impacts that would eventually prevent Dawn from sleeping, knock windows out of her walls, and shift her house such that the doors would no longer close. Extraction met with Dawn several times, but the road remained, and the trucks still came. From Extraction's perspective, they had the legal rights they needed. It is for this reason that Dawn and her community, like other communities across Colorado, stopped looking to the industry and instead looked to their local governments and state regulators for help. They would receive none because that is not what the regulatory system was built to do.

**[\*92] B. Regulating to Deregulate**

The extraction of ***oil*** and gas is a regulated activity. In Colorado, for example, developers must typically receive drilling and planning permits from a state agency, and sometimes permits or approvals from the relevant land-use regulator such as a local government.[[130]](#footnote-131)130 However, the traditional purpose of these regulatory systems, in Colorado and elsewhere, has been to maximize extraction of ***oil*** and gas.[[131]](#footnote-132)131 These regulatory frameworks were overlaid onto the property-rights framework to more effectively promote private extraction and not to, for example, minimize its impacts or impose public control.[[132]](#footnote-133)132 This purpose manifested in two related legal features: aggressive use of preemption doctrine to sweep away local regulation of extraction seen as more burdensome than state regulation, and exclusion of those without specific property interests in extraction from the state regulatory structure. Together, these features work to disempower communities by first disabling their most accessible form of regulatory authority and then excluding most community members from access to concentrated state power. This two-step strategy legitimizes the industry's asymmetric power over communities when securing private rights for extraction by setting regulatory boundaries around those interactions it regulates to protect that space of asymmetric industry power.

Colorado's modern use of preemption doctrine to protect ***oil*** and gas extraction brings us again to Greeley, Colorado. In 1985, the citizens of Greeley passed a ballot measure that banned ***oil*** and gas extraction in the city limits.[[133]](#footnote-134)133 The ban was prompted by an explosion in the nearby town of La Salle, where a gas leak likely related to ***oil*** and gas development had collected in an abandoned water well and blew up a local lumber store late one night.[[134]](#footnote-135)134 The explosion prompted an "obsessive search" across Greeley and Weld County that revealed further leaks, **[\*93]** including one that prompted the evacuation of a school.[[135]](#footnote-136)135 Believing the city government was not doing enough, a local landscaper started collecting signatures to ban extraction by ballot measure.[[136]](#footnote-137)136 The measure passed by overwhelming margins; the landscaper was even elected to the city council as part of the campaign.[[137]](#footnote-138)137

In the resulting litigation, the Colorado Supreme Court held that state law preempted Greeley's complete ban on extraction of ***oil*** and gas.[[138]](#footnote-139)138 The Supreme Court reasoned that state legislation promoting extraction signaled a sufficient state interest in the activity to preempt a complete ban by a local government.[[139]](#footnote-140)139 The Court acknowledged some role for local government regulation of ***oil*** and gas; it simply did not explain what was legal, short of a complete ban.[[140]](#footnote-141)140

The dramatic expansion of ***oil*** and gas development in Colorado during the fracking boom tested these boundaries. Increases in residential drilling across the Front Range led to community opposition that prompted several local governments to act. Recognizing that a total ban would likely be preempted, several local governments, including the City of Fort Collins, imposed moratoria on drilling until they could enact appropriate regulations.[[141]](#footnote-142)141 In other municipalities, citizens felt that their local governments were not moving quickly enough and turned to ballot measures, as the citizens of Greeley had decades before. In the City of Longmont, for example, citizens enacted a moratorium into the city charter by ballot measure. In companion cases, the Colorado Supreme Court invalidated both Fort Collins's and Longmont's moratoria.[[142]](#footnote-143)142 Extending the holding of the Greeley case, the Court held that even local pauses on drilling conflicted with the state's legislative priority of promoting ***oil*** and gas extraction such that they were preempted.[[143]](#footnote-144)143 In both cases, the Court again recognized some role for local government regulation of the industry but did not offer further details.[[144]](#footnote-145)144 To municipalities, the signal was clear and chilling at every turn, the courts had impact of fracking and waste disposal on public health"). **[\*94]** invalidated local regulation of the industry.[[145]](#footnote-146)145 And through the *Longmont*[[146]](#footnote-147)146 and *Fort Collins*[[147]](#footnote-148)147 cases, the industry signaled that it would sue any jurisdiction who tried.

It was in this context that far greater attention focused on Colorado's state ***oil*** and gas regulator: the Colorado ***Oil*** & Gas Conservation Commission (Commission). The word "conservation" in both its title and enabling act reflects the origins of state ***oil*** and gas regulation in maximizing extraction.[[148]](#footnote-149)148 In the wake of the Great Depression and swinging prices from unregulated ***oil*** production, ***oil*** was a natural subject of federal interest. Consequently, the Roosevelt Administration sought to regulate by setting production quotas and price controls.[[149]](#footnote-150)149 In one of the central decisions resisting the New Deal, the U.S. Supreme Court declared these controls unconstitutional.[[150]](#footnote-151)150 Wary of future federal regulation, the industry began promoting state regulation as an alternative.[[151]](#footnote-152)151 One result of this shift was the adoption of legislation promoting the "conservation" of ***oil*** and gas across many states, meaning the regular and efficient production of the resource to support a stable and profitable private market.[[152]](#footnote-153)152 Colorado passed its ***Oil*** & Gas Conservation Act in 1951, which created the Commission.[[153]](#footnote-154)153

Up until 2019, the Commission's statutory mission was to promote the extraction of ***oil*** and gas.[[154]](#footnote-155)154 Composed primarily of commissioners with ***oil*** and **[\*95]** gas industry backgrounds, its expertise was technical and secondary to the industry.[[155]](#footnote-156)155 For example, the Commission did not tell developers where to drill their wells, but would ensure that developers appropriately spaced them to extract the maximum amounts of the resource.[[156]](#footnote-157)156 As an administrative agency, it also had authority to promulgate rules and adjudicate disputes between the agency and the industry or between rights-holders in the extractive process.[[157]](#footnote-158)157 For much of its existence, it had little need to interact with communities facing extraction impacts of ***oil*** and gas development beyond how it comes out of the ground and who gets paid were not its concern.[[158]](#footnote-159)158 Over time, however, attempts to resolve growing conflicts between communities and the industry in Colorado expanded the agency's responsibilities. In 1994, the legislature expanded the agency's statutory mission to promoting ***oil*** and gas "to the extent necessary to protect public health, safety, and welfare . . . ."[[159]](#footnote-160)159 In 2007, the legislature added protection of the environment and wildlife to the agency's mission.[[160]](#footnote-161)160 The agency sought to square these responsibilities but did little to change its fundamental structure and position towards the industry. Through these years, it still largely saw itself as a technical, secondary regulator assisting the industry in extracting as much of the resource as possible. For example, agency staff during this time were open about their practice to not deny permits to drill in Colorado.[[161]](#footnote-162)161

**[\*96]** This combination left communities affected by ***oil*** and gas development with nowhere to go. Local governments felt chilled; even those who held some regulatory control were reluctant to exercise it. For example, Extraction had to receive a permit from the City of Greeley for its Triple Creek project.[[162]](#footnote-163)162 Citizens organized and pressured their city council to deny the permit; the city planning office even recommended to not approve the project because of its impacts.[[163]](#footnote-164)163 Nevertheless, the city council approved the permit over concerns that "state law prevents local governments from denying mineral owners access" to their mineral rights.[[164]](#footnote-165)164 The Weld County commission, for its part, unanimously approved the Bella Romero project over community opposition, "thank[ing] the industry for lifting its residents out of poverty and providing a brighter economic future for its workers."[[165]](#footnote-166)165 In response, one resident told the county commissioners, "[W]e don't have a democracy" and then walked out of the meeting.[[166]](#footnote-167)166

The Bella Romero and Triple Creek communities therefore looked to the Commission, but again found themselves turned away. Because the community members were not financial stakeholders in the extractive process, their only procedural access to the Commission's permitting process was through public comment.[[167]](#footnote-168)167 Each of the communities submitted extensive public comments and studies detailing the health and environmental impacts of each project, as well as ways that each project violated the Commission's regulations.[[168]](#footnote-169)168 But the Commission asserted that it had no obligation to respond to public comments and approved the projects with no changes from Extraction's proposals.[[169]](#footnote-170)169

**[\*97]** Finally, the communities turned to the courts. As administrative actions, the Commission's permits were subject to judicial review under the state's administrative procedure act. The Commission maintained that the communities did not have a legal right to challenge the permits because they had no right to participate in the Commission's permitting process in the first place, which was restricted to parties with a financial stake in the resource itself. While the Commission ultimately lost that argument, courts variously affirmed the permits for each project based on principles of administrative deference. The projects at Bella Romero and Triple Creek were drilled and fracked while litigation over their permits was ongoing, with various courts rejecting motions for preliminary injunctions.

As the final hearings in each case went forward, the communities lived through the impacts that they had warned the Commission about. At Bella Romero, for example, the state public health agency detected elevated levels of benzene, a toxic air pollutant associated with fracking, while the wells behind the school were being drilled and fracked.[[170]](#footnote-171)170 Nevertheless, many in the state wanted to move on even as the communities continued their fight. The state removed its air monitor at Bella Romero.[[171]](#footnote-172)171 Then, in the midst of the coronavirus pandemic and plunging ***oil*** and gas prices, Extraction declared bankruptcy.[[172]](#footnote-173)172

**C. Booms Without Busts**

Extraction's bankruptcy caused mixed feelings among community members. While Extraction's wells had already been drilled at Triple Creek and Bella Romero, the bankruptcy ushered in a new set of uncertainties. What would happen to the wells behind their homes and school if Extraction ran out of money? Would they be operated safely? Would they be cleaned up? Colorado's communities have long experienced the "boom and bust" cycles of the ***oil*** and gas industry, and are therefore familiar with the industry growth that comes from high prices and the resulting bankruptcies, layoffs, and abandoned wells that come **[\*98]** with low prices. From one perspective, this is the operation of market forces on a "deregulated" industry low prices contract the industry and limit drilling. But legal support protects extractive interests from economic downturns, perpetuating extractive power over communities until the next boom cycle. The ***oil*** and gas industry's manipulation of the bankruptcy process illustrates this effect.

Because extraction requires substantial upfront capital to secure rights and pay for the equipment and labor to extract the minerals, developers frequently carry large debt loads to try to maximize extraction while ***oil*** and gas prices are high.[[173]](#footnote-174)173 These debts make developers, especially smaller developers that tend to operate near residential communities, particularly vulnerable when ***oil*** prices inevitably dip.[[174]](#footnote-175)174 Bankruptcies, therefore, are common during busts. However, property interests, such as rights in minerals, wells, and land, can be transferred or preserved as part of the bankruptcy process.[[175]](#footnote-176)175

A common practice in the industry is to therefore use the bankruptcy process to shed old wells and other environmental liabilities while keeping profitable assets, such as rights over minerals and land in communities. For example, one Colorado developer used the bankruptcy process in 2019 to transfer its valuable assets to its debtors while abandoning roughly sixty-seven wells it no longer wanted, "effectively leaving the cleanup costs" of about $ 12 million "to the taxpayers of Colorado."[[176]](#footnote-177)176 While states maintain a pool of money dedicated to cleaning up these abandoned wells paid for by bonds from the industry, this pool is notoriously underfunded and cleaning up abandoned wells presents a systemic financial risk to ***oil*** and gas producing states.[[177]](#footnote-178)177 In this way, companies leverage the bankruptcy process to shed liabilities during bust cycles while retaining mineral interests and other assets in communities to restart extraction when the boom returns. The overall effect of **[\*99]** policies like these is to perpetuate extractive interests through downturns in the industry.

The Triple Creek and Bella Romero communities both saw the projects in their area emerge through the other end of the bankruptcy process unchanged. Extraction carried immense debts and opted to restructure, wiping most of its debts away in exchange for issuing stock to its debtors.[[178]](#footnote-179)178 It emerged from bankruptcy with its rights in the Bella Romero and Triple Creek projects intact. All told, these communities saw the collapse of the ***oil*** and gas industry in 2019 come and go; the company, the wells, the impacts it all stayed the same.

**D. Extracting Power**

Extractive power and inequality have a reciprocal relationship.[[179]](#footnote-180)179 Racial and wealth inequality amplify extractive industry's power over communities, while extractive power deepens racial and wealth inequality by transforming communities into disempowered spaces characterized by pollution and political isolation. In this way, disempowerment of communities where development occurs is both a tool and outcome of extractive power. This disempowerment broadens the concept of what development "extracts" from communities in addition to extracting resources, development extracts power and control from those that may oppose extraction.

These ideas have deep roots in areas both related and unrelated to resource extraction. Environmental justice scholars, for example, have long emphasized the political harms caused by disproportionate siting of hazardous land uses in communities of color and low-income communities. Pollution, noise, and other impacts of hazardous land uses create segregated spaces where communities are "isolated not only geographically and economically, but also socially and culturally."[[180]](#footnote-181)180 This isolation, in turn, leads to political marginalization as communities are sapped of resources, capacity, and trust in institutions.[[181]](#footnote-182)181 Often this marginalized status is used to justify siting still more hazardous land uses, **[\*100]** deepening the cycle.[[182]](#footnote-183)182 Political and social effects from environmental harm then weave together with various other legacies of racism and classism in the United States, such as lack of access to adequate health care, to further deepen racial and wealth inequality. This cycle exemplifies environmental racism.[[183]](#footnote-184)183

Within the broader context of resource extraction, the concept of energy sacrifice zones reflects similar themes. A sacrifice zone is a geographic area or otherwise distinct subgroup of people who bear a disproportionate risk of environmental harm to facilitate development; the community is "sacrificed" in exchange for development.[[184]](#footnote-185)184 Originally used to describe communities disproportionately exposed to petrochemical pollution, scholars and advocates have also used the term to describe communities affected by the environmental and social harms of resource extraction. For example, Appalachia has been described as an "energy sacrifice zone" or "natural resource sacrifice zone" where both "the land and the people have been exploited" through extraordinarily destructive coal mining to "fuel the U.S. Industrial Revolution, both World Wars, and the rapid, fossil-fuel-driven economic growth that occurred throughout the 20th century and beyond."[[185]](#footnote-186)185

In this context, the concept of a sacrifice zone serves as a framework for other ideas focused on the material and political disempowerment of communities who face resource extraction. These ideas include the "resource curse," the idea that people who live where valuable natural resources occur often do not see material benefits from their extraction, and the related idea that communities living in sacrifice zones are "othered" to justify continued subordination and extraction.[[186]](#footnote-187)186**[\*101]** These themes intertwine with work on environmental racism and climate justice to articulate the important role that racialized sacrifice zones and racialized capitalism play in understanding globalized commodities and energy markets. People and places are othered to justify this dynamic of disempowerment and harm in service of facilitating resource extraction to fuel global development.[[187]](#footnote-188)187 Central to this concept is recognizing how localized environmental harm weaves together with social and political disempowerment to facilitate continued extraction.

Within the specific context of American ***oil*** and gas extraction, racism, pollution, and disempowerment share deep roots. As Daniel Cumming documented in his study on the development of Los Angeles's petrosuburbs, officials and city leaders used a combination of restrictive covenants and redlining to confine Los Angeles's nonwhite and immigrant communities into areas of ***oil*** extraction south of the city.[[188]](#footnote-189)188 Cumming recounts how federal appraisers treated the presence of non-white people and ***oil*** and gas development as "common, even interchangeable, levels of threat" when developing Los Angeles's redlining maps.[[189]](#footnote-190)189 In 1937, the Federal Housing Authority (FHA) even created a map detailing the ***oil*** deposits in south Los Angeles.[[190]](#footnote-191)190 Given the FHA's focus on home mortgage financing, "[t]he map's very existence is surprising," Cumming explained until you overlay FHA's ***oil*** map onto the residential security map: "The ***oil*** deposits and redlined properties align."[[191]](#footnote-192)191

The effect was to "reserve[] the benefits of ***oil*** production for a white middle class, while depositing its burdens on communities of color."[[192]](#footnote-193)192 White residents could escape the impacts of extraction as "petroleum fueled Los Angeles's massive sprawl," while "toxins such as benzene, toluene, xylene, and formaldehyde, among others, seeped into land, water, and air, silently poisoning [B]lack and Latin[e] residents."[[193]](#footnote-194)193 In this way, the legal structures that surrounded and enabled resource extraction within communities worked as a "method of political exclusion" to ensure "that resource-rich lands remained securely within the accumulative logics of white supremacy."[[194]](#footnote-195)194 The central tools of this scheme are familiar tools of **[\*102]** contract and property law used to define the boundaries and character of spaces, such as restrictive covenants and predatory contract practices "paper technologies," as Cumming calls them.[[195]](#footnote-196)195 They worked alongside drilling technology and advances in geological exploration to create racialized and disempowered spaces of extraction: "interlocking technologies," paper and industrial, that "produced ***oil*** as a natural resource and inequality as a persistent feature" of Los Angeles.[[196]](#footnote-197)196 This was the origin of the petrosuburb.[[197]](#footnote-198)197

Recent research suggests that the rise of fracking is again exacerbating the disproportionate siting of ***oil*** and gas extraction. The technological advances that enabled the fracking boom also gave fossil fuel developers greater choice in where to locate the surface impacts of extraction. As discussed, horizontal drilling practices allow developers to locate dozens of wells at a single location on the surface and drill outwards, spiderlike, to reach ***oil*** and gas miles away. This practice is a stark departure from historical vertical drilling and spacing practices in that it both concentrates the industrial impacts of dozens of wells in one location and gives the industry the ability to locate this industrial facility within the technical limits of horizontal drilling. While not unlimited, this discretion can yield disproportionate impacts.

For example, recent studies have demonstrated that certain aspects of the modern ***oil*** and gas extraction process, such as wastewater disposal facilities, are disproportionately located in low-income communities.[[198]](#footnote-199)198 Similar effects are visible in the Bella Romero project. As noted, Extraction moved its project from next to a middle school in Greeley serving a primarily white, middle-class community to the Bella Romero Academy middle school, which served a working class, primarily Latine and Spanish-speaking community, where it was approved by state and local regulators and ultimately constructed.[[199]](#footnote-200)199 The projects and its impacts flowed to low-income communities of color with the express approval of the regulatory system. This effect redirected the harms of extractive power toward a community of color, further emphasizing the links between extractive power and inequality.

**[\*103] III. EXTRACTIVE DOMINATION**

Drawing on several concepts from political and social science, this Part tracks the effects of extractive power. Specifically, I align three concepts enclosure, domination, and dependence to articulate how the exercise of extractive power translates into social and political control in communities where extraction occurs. Understanding extractive power through these frameworks carries important policy implications, two of which I highlight here. First, reforming these state and local legal structures around extraction should be a central priority for climate policy because those structures build social and political support for fossil fuel extraction. Second, reforms focused on addressing extractive industry's social and political power over communities must target the legal structures of that power; otherwise, the industry's power will undermine any reforms. This is why the primary reforms enacted in response to community conflicts in Colorado have failed, which I take up in Part IV.

**A. Dynamics of Extractive Power**

Extractive domination, as I use the term, describes the condition of social and political control that industry develops over communities where extraction occurs. This condition is a result of how the industry exercises extractive power its legally-structured power intended to facilitate resource extraction. This Part uses three concepts from social and political science to describe this relationship.

The first is *enclosure* the industry uses legal frameworks to reorient systems of authority within places targeted for resource extraction. The result is to create distinct spaces where different rules apply to prioritize and facilitate extraction. The second is *domination* within these spaces, legal authority normalizes industry control over the central social and political decisions around extraction. The third is *dependency* industry's ability to prioritize continued resource extraction over alternative social and economic conditions creates both real and perceived dependence on extraction within communities that, in turn, builds political support for continued extraction.

**1. Enclosure**

One common feature of Colorado communities' experience with ***oil*** and gas development was a sense that the industry's arrival realigned local power structures. At the school meeting at Bella Romero, for example, it became clear that the industry was now in control. This effect is what political scientist David Szablowski calls *legal enclosure*: "the remaking of legal, social, political, and **[\*104]** ecological spaces through a spatialized reordering of authority in order to facilitate and prioritize resource extraction over other activities."[[200]](#footnote-201)200

Writing from a comparative perspective, Szablowski offers legal enclosure as a framework for understanding a central feature of many legal schemes supporting resource development the replacement of local power structures in places where extraction occurs with new ones that favor industry control.[[201]](#footnote-202)201 As Szablowski describes it, this process is motivated by an alignment between the industry and governments in overcoming local opposition to extraction.[[202]](#footnote-203)202 State or national governments deem resource extraction a priority through policy, but tend to delegate extraction itself to industry through systems of licenses and other legal privileges.[[203]](#footnote-204)203 With either direct or indirect state endorsement, the industry then leverages these legal privileges to reorient local power structures with the goal of either dismantling opposition outright or channeling opposition into spaces more favorable to the industry, such as regulatory schemes structured to prioritize extraction.[[204]](#footnote-205)204

Legal enclosure is a helpful framework for conceptualizing several dynamics that are central to Colorado communities' experiences with extractive industry. While these ideas are not unique to legal enclosure, the framework arranges and articulates them in a way that is particularly helpful here.

First, legal enclosure highlights how extractive power often works through *governance change*.[[205]](#footnote-206)205 From a legal perspective, there is something counterintuitive about the industry's power over communities; communities experience it as a kind of "invasion" and dynamic change in their community's life, yet the relevant legal structures, the resource itself, and even norms of industry power preexisted any alleged change. What, if anything, actually changes when the industry arrives? Szablowski's account clarifies this by focusing on changes in community **[\*105]** governance caused by industry's application of preexisting legal structures to places targeted for extraction. Developers "bring a set of overriding rights and authorizations provided by state authorities" into communities "to assert influence over local territorial spaces."[[206]](#footnote-207)206 This metaphorical language of "bringing" legal structures into communities reflects community experience that would be invisible if we only asked: what laws changed? Rather, the industry's entry into communities results in governance changes through the application of preexisting legal structures, such as when state law regulating ***oil*** and gas extraction overrides or displaces local government permitting or zoning decisions.

Second, the framework emphasizes that the relevant governance change is a shift from public to private forms of governance.[[207]](#footnote-208)207 As seen in Colorado, the industry enjoys substantial support from state law but primarily secures control over the resources and community through property rights and contract negotiations. This emphasis on private rights has the effect of "walling off" governance decisions from other legal or normative frameworks.[[208]](#footnote-209)208 One example of this effect is when local government decisions are formally preempted or informally discouraged through the rhetoric of private property, such as when a Greeley city council member voted to approve the Triple Creek project based on the mistaken and confused view that state law prohibited local governments from denying mineral owners access to their property either way, central decisions are removed from public control.[[209]](#footnote-210)209 Likewise, community concerns are "channeled" into routes better controlled by the industry, such as corporate community relations programs or state regulatory schemes limited to those with property interests in extraction.[[210]](#footnote-211)210 From a legal theory perspective, this is a familiar move: carving out a nominally private space of legal ordering to insulate asymmetric power relations from public oversight or control. The insight here is that this privatization is not distinct from regulation, but a central feature of a regulatory scheme intended to prioritize extraction through industry control to use a phrase from above, regulating to deregulate.

**[\*106]** Third, legal enclosure articulates how this effect can create geographic boundaries at the subjurisdictional level a process called *internal territorialization*.[[211]](#footnote-212)211 The displacement of community governance structures does not necessarily follow jurisdictional lines because it is a result of the industry's application of rules to specific places targeted for extraction. For example, many neighborhoods in Weld County may be potential areas of extraction, but only the neighborhoods actually targeted by industry for extraction would experience these effects. Local governance may change as applied to that neighborhood, but the effects are not necessarily uniform across the county. This creates important mismatches in governance around ***oil*** and gas. For example, all of Weld County may receive tax benefits from extraction while only particular neighborhoods experience the harms and disempowerment that come with extraction. In this sense, extractive power can create inequality within communities dependent on extraction, complicating the concept of "community" in extractive areas.[[212]](#footnote-213)212

Finally, the framework supports an expansive understanding of what the industry "extracts" from communities through this process of enclosure and development.[[213]](#footnote-214)213 Specifically, the reordering of governance around extraction "also represents a dispossession of an intangible collective asset: a governance space, an institution through which community members participate in the regulation of their social, economic, and cultural lives."[[214]](#footnote-215)214 As we have seen, extractive power reorders both formal and informal systems of power within communities; local governments may lose regulatory authority as a matter of law, but neighbors are also pitted against one another through asymmetric negotiations intended to defuse community organizing. Formal or informal, "[t]hose normative systems represent **[\*107]** areas of collective governance and authority."[[215]](#footnote-216)215 They are "systems of meaning making, through which individuals and groups articulate visions of justice."[[216]](#footnote-217)216 By reordering systems of community power, the industry extracts more than resources from a community it extracts power and control.

**2. Domination**

In this sense, the industry's exercise of extractive power over communities is a form of *domination*. Domination is a central concept in republican political theory.[[217]](#footnote-218)217 In this tradition, one way of understanding the concept of freedom is as "non-domination" a person is not free in a politically desirable sense if they are in a relationship characterized by domination.[[218]](#footnote-219)218 Domination, broadly understood, is where someone is in a position of power over you to arbitrarily interfere with your choices.[[219]](#footnote-220)219 A classic illustration is that an enslaved person who is entirely free to make their own choices is still experiencing domination if the enslaver holds the power, legally or otherwise, to control their choices but chooses not to.[[220]](#footnote-221)220 At bottom, freedom as non-domination is a theory about power relationships in society.

Domination can be *structural* in the sense that social and political structures determine how people exercise power.[[221]](#footnote-222)221 For example, law can authorize domination such that it occurs where it otherwise would not have, or such that it continues even where it is socially understood as unethical.[[222]](#footnote-223)222 In this way, **[\*108]** interpersonal exercises of power and their social and political contexts are inseparable; one cannot be fully understood without the other. Law is a particularly important structure in this analysis because it allocates power and legitimizes its exercise. Legally-authorized domination is no less domination, and is arguably more pernicious given law's role in legitimating social relationships.[[223]](#footnote-224)223

Political theorist Michael J. Thompson built on this structural understanding to explain how domination can be both *extractive* and *constitutive*.[[224]](#footnote-225)224 Domination can be extractive where its principal purpose is to extract value from dominated people.[[225]](#footnote-226)225 This concept builds on structural approaches to domination by further distancing any one interpersonal relationship from the purpose and exercise of dominating power.[[226]](#footnote-227)226 For example, an ***oil*** and gas developer's exercise of dominating power over a landowner often has little to do with that specific landowner. As we have seen, a developer may even be explicitly ambivalent about who faces its power so long as it achieves its extractive goals either we get the ***oil*** from your land or your neighbor's land, you choose.[[227]](#footnote-228)227 In this way, industry's power remains dominating even when impersonal; its purpose is to extract value, and who is dominated in this process is ancillary.

Domination can be constitutive in the sense that the exercise of dominating power can naturalize itself by remaking the social and political context around its exercise.[[228]](#footnote-229)228 As Thompson explains, once "forms of extractive relations become routinised, they also become legitimate in the sense that they are absorbed into the legal framework of the state" and "the cultural and social norms of the community."[[229]](#footnote-230)229 Domination therefore manifests both as the power to extract value and as "a power to shape the conventions by which individuals manage and navigate their lives."[[230]](#footnote-231)230 Put another way, this dynamic describes how legally-authorized **[\*109]** forms of domination take advantage of the law's ability to socially legitimize power. Law structures the industry's extractive power, but its authorized exercise in turn reconstitutes surrounding social norms around extraction. This is how industry's dominating power becomes "just the reality" of Weld County; routinized and absorbed into the cultural norms of the community.[[231]](#footnote-232)231

Understanding extractive power as dominating in these ways is helpful for two related purposes.

First, it highlights how the industry's extractive power over communities normalizes its own exercise. Social and political scientists have observed that extractive industries exercise broader power to not simply win battles with individual landowners but "set the rules of the game" by "structuring and culturing those contexts" where they exercise power.[[232]](#footnote-233)232 This power, sometimes called the industry's *structural power* or *meta-power*, reflects the constitutive character of domination that Thompson articulates.[[233]](#footnote-234)233 This feature has important policy implications, including the tendency of any policy reforms that do not account for this constitutive nature of industry power to, over time, bend back toward industry control as the social and political norms of extractive domination remake the law in its image.[[234]](#footnote-235)234

Second, and relatedly, this understanding elevates the legal supports of domination as targets for reform.[[235]](#footnote-236)235 As Rafeeq Hasan puts it: "When domination is understood structurally, the institution of slavery dominates the slave, patriarchy dominates the wife, and labor law dominates the worker."[[236]](#footnote-237)236 So, too, do the legal structures of extraction dominate communities domination stems not only from the industry's power over individual community members, but from the legal structures that empower the industry and legitimize the exercise of that power. This feature sharpens targets for policy reforms: if the goal is to address community disempowerment and domination around ***oil*** and gas extraction, meaningful **[\*110]** reforms must target the structural supports of domination rather than only seeking to empower communities within those structures. Failure to target the legal supports of extractive power will likewise fail to address central aspects of domination and undercut the reforms' effectiveness.

**3. Dependency**

If communities are dominated by extractive industry, why then do communities often accept and even champion extraction? Why, for example, does Weld County support ***oil*** and gas extraction when its communities are most heavily affected? The common story is that local communities grow economically dependent on extractive industry and this dependence builds political support for continued extraction.[[237]](#footnote-238)237 One important addition to this story is that the perception of dependence, rather than the actual economic impact of extraction, most prominently predicts political support.[[238]](#footnote-239)238 This matters because the exercise of industry power itself generates political support for continued extraction by building the perception of dependence, economic or otherwise.

Resource extraction can reshape local economies through a combination of tax revenues, employment, and extraction's tendency to displace other economic activity. Resource extraction often promises communities economic benefits, such as high-paying jobs and increased tax revenues.[[239]](#footnote-240)239 Tax revenues in particular can play an important role as local governments can receive revenue through taxes on extraction itself and through increases in property taxes stemming from increased value of the resource within the jurisdiction.[[240]](#footnote-241)240 This effect is often exacerbated by extraction's tendency to underdevelop local economies through, for example, boom-bust cycles that undermine long-term and stable economic development.[[241]](#footnote-242)241 Extractive booms can also have negative effects, such as environmental harms and decreases in property values even as the resource's value increases.[[242]](#footnote-243)242 When combined with extractive industry's power to unilaterally enter communities, these negative effects can displace other economic activity in communities experiencing extraction. This combination of increased revenues **[\*111]** matched with long-term underdevelopment and displacement of other economic activity quickly reshapes local economies around extraction.

"Resource dependence whether real or perceived predicts support for extractive industries."[[243]](#footnote-244)243 Importantly, political support for extraction is often disconnected from the actual economic impacts of extraction in the community. For example, community members that support extraction politically tend to overestimate the industry's economic impact, or support extraction for sociocultural and partisan reasons.[[244]](#footnote-245)244 So while economic language often surrounds political support for extraction, beliefs about the industry's economic impact can be influenced by the industry's visibility and power within a community even to the point of "encouraging mis-perceptions" about the industry's economic benefit.[[245]](#footnote-246)245

A 2019 study by Adam Mayer and Stephanie Malin on political support for fracking regulations in Colorado's communities is a good example of this effect.[[246]](#footnote-247)246 Among other findings, the study determined that "[n]either individual-level economic circumstances nor local economic conditions" predicted support for regulating fracking.[[247]](#footnote-248)247 Rather, the respondents' positions seemed tied to their "more ambiguous" evaluation of the industry's "importance" to communities.[[248]](#footnote-249)248 As Mayer and Malin summarize in their findings, "individual economic dependence has little explanatory power in predicting support for regulations and community economic dependence has a minor effect as well but the perception of community economic benefit is substantively important."[[249]](#footnote-250)249 They note that these results resonate with studies on political attitudes in coal towns and uranium mining communities, where "people may support" extractive industry, "even one with a troubled history, if they perceive that it will create economic development in contexts of natural resource dependence."[[250]](#footnote-251)250

These effects emphasize the important role that extractive power's legitimating and normalizing effect plays on building political support for extraction. As **[\*112]** discussed, the entry of extractive industry into communities and the development of resources is not a choice that a community makes. Rather, legal structures empower the industry to enter communities, displace local governance and economic systems, and entrench extraction. These legal structures help normalize and legitimate industry power, remaking communities into places defined primarily by extraction and industry control. This control, in turn, builds political support for continued extraction through a perception of community dependence. This creates a kind of vicious cycle extractive power builds political support, which in turn further entrenches and legitimates extractive power.[[251]](#footnote-252)251

**B. Policy Implications**

As suggested above, recognizing the influence of industry's dominating power in communities where extraction occurs and the law's role in structuring that power carries two important policy implications for our purposes here.

First, reforming state and local laws around ***oil*** and gas production should be understood as a central priority for effective climate policy. To avoid the most catastrophic impacts of climate change, most of the remaining available ***oil*** and gas in the world must remain in the ground including about a quarter of ***oil*** and gas reserves in the United States.[[252]](#footnote-253)252 Burning fossil fuels has been and remains the primary source of greenhouse gas emissions.[[253]](#footnote-254)253 And extraction itself causes huge greenhouse gas emissions even before ***oil*** and gas makes it to a consumer.[[254]](#footnote-255)254 For **[\*113]** these and other reasons, scholars and advocates argue for a rapid and managed decline in U.S. extraction over the next twenty or so years.[[255]](#footnote-256)255

The urgency of this task has led advocates to catalogue the legal supports for extraction and target them for reform. This advocacy covers a wide range of proposals, from eliminating federal subsidies for fossil fuels to challenging the industry's ability to use state power to seize land and build infrastructure.[[256]](#footnote-257)256 While local movements opposing ***oil*** and gas infrastructure occupy a prominent role in climate advocacy, reform of state and local law around extraction has not been a major focus for the broader climate movement.[[257]](#footnote-258)257

Recognizing the dynamics of extractive domination should clarify the stakes of this oversight and push climate advocates to engage with the details of ***oil*** and gas law reforms at the state and local level. These reforms have related legal and political implications for effective climate policy. Legally, some of the principal barriers to managing the decline of extraction stem from private property rights in ***oil*** and gas and state-level policies prioritizing extraction.[[258]](#footnote-259)258 Politically, these structures generate political support at the state and local level while dismantling opposition from those most affected by extraction.[[259]](#footnote-260)259 Frontline advocates in California have had success advancing state-level regulations on fossil fuel extraction by linking together the need to phase-out extraction that has harmed California's communities of color and low-income communities for generations with California's ambitious climate policies.[[260]](#footnote-261)260 The dynamics of extractive power **[\*114]** should elevate the importance of this strategy for climate policy generally, and encourage climate advocacy to focus on state and local level ***oil*** and gas reforms.

The second policy implication involves how to engage in those state and local level reforms. While legally-structured, extractive power exerts itself in social and political contexts. In this way, the extractive industry's power within the social and cultural contexts of regulation can undermine reform efforts or bend reforms back toward structures of industry control and domination. This effect is not necessarily visible from the design or ambitions of reforms themselves in part because it surrounds and influences the reform's design and implementation. In this way, studying the extractive industry's structural power by looking only at the content or goals of reforms "is a bit like astronomers revealing the existence of a hidden celestial body by detecting the gravitic force it exerts on other objects."[[261]](#footnote-262)261 This dark-matter effect is the constitutive nature of extractive domination the way in which the industry's control over communities has the effect of remaking the law to reflect its power. Failure to account for those dynamics when designing and implementing reforms can undermine their effectiveness.

New regulations adopted in Colorado in 2015 to mitigate the impact of fracking developments on suburban communities offer an example of this effect. In an attempt to defuse conflicts around ***oil*** and gas extraction ahead of a statewide election, then-Governor Hickenlooper (a former petroleum engineer) created a task force of various stakeholders to create regulations for industry operations in residential communities, including proposing a greater role for local government regulation of the industry.[[262]](#footnote-263)262 Despite these ambitions, later studies revealed that the task force never achieved those goals because it was dominated by industry control.[[263]](#footnote-264)263 Reflecting on the experience, one member of the task force described it as "a rigged process from the beginning."[[264]](#footnote-265)264 Participants said the industry's influence was so powerful that the task force was never intended to generate meaningful reform one participant described the process as a "set up . . . enforced to make sure nothing would happen. A complete waste of time in the **[\*115]** end."[[265]](#footnote-266)265 Researchers concluded that political dynamics around the task force "enabled the ***oil*** and gas industry to retain control over the process and subsequent outcomes."[[266]](#footnote-267)266 But the industry's influence did not stop there. The resulting compromise regulations adopted by the state agency were touted by some and, counterintuitively, criticized by the industry as vague and lacking support.[[267]](#footnote-268)267 Facing this criticism, the agency then interpreted the regulations narrowly, prompting litigation where the agency and the industry cooperatively and successfully defended the narrow interpretations against communities who were the intended beneficiaries of the initial task force's work.[[268]](#footnote-269)268 The overall process had generated reforms intended to benefit communities, but industry power had bent those reforms in design and implementation such that they had little to no meaningful effect.

In this way, understanding extractive domination and the dynamics of extractive power provides both essential context for understanding prior failures and necessary guidance for future reform. As the next Part explains, recent legislation in Colorado placed the state at the cutting edge of questions around how ***oil*** and gas would be regulated after the conflicts prompted by fracking, with many holding up Colorado as an example for other states to follow. Yet much like the 2015 regulations, the legislation and its subsequent regulations have likewise failed to achieve meaningful changes because they have been bent by industry power. Understanding this explanation helps chart new paths forward.

**IV. BEYOND LOCAL CONTROL**

In 2019, Colorado General Assembly passed an ***oil*** and gas reform law known as Senate Bill (S.B.) 19-181 after a bitter partisan battle.[[269]](#footnote-270)269 Governor Jared Polis **[\*116]** supported the law and called it "the most consequential reform to ***oil*** and gas drilling in the state in decades," infamously suggesting that the legislation would end Colorado's ***oil*** and gas wars.[[270]](#footnote-271)270

It did not, but S.B. 19-181's passage did reverberate well beyond Colorado. Prominent energy law scholars characterized the legislation as leading a "revolution" in the field.[[271]](#footnote-272)271 From these scholars' perspective, the law exemplified "a sea change in all areas of ***oil*** and gas governance" in two senses.[[272]](#footnote-273)272 First, S.B. 19-181 adopted "environmental ***oil*** and gas regulation" by incorporating environmental and health protections into the regulatory scheme a change that "upends the traditional frameworks of top-down state regulation designed to maximize production of petroleum resources."[[273]](#footnote-274)273 Second, the law endorsed "strong local control" by granting local governments authority to regulate certain aspects of ***oil*** and gas operations another change that was "largely unprecedented because the dominant trend of states has been to preempt, not empower, local action."[[274]](#footnote-275)274 In theory, these changes would work together: stronger state law requirements create a regulatory floor that local governments could go beyond.[[275]](#footnote-276)275

By implementing these reforms, Colorado was actively "reshaping the energy regulatory landscape and developing a new model of ***oil*** and gas conservation."[[276]](#footnote-277)276**[\*117]** The centerpiece of Colorado's new approach was its "shift toward local empowerment," which did "more than fundamentally change the landscape" of ***oil*** and gas regulation it stood in direct "stark contrast to the overwhelming trend" in energy law to disempower communities where extraction occurs.[[277]](#footnote-278)277 In the following years, there was a nervous optimism around S.B. 19-181's implementation. Other fossil fuel producing states considered adopting Colorado's approach.[[278]](#footnote-279)278 The industry watched Colorado with close attention.[[279]](#footnote-280)279 Scholars awaited the results of Colorado's revolution.[[280]](#footnote-281)280

This Part advances this discussion in two ways. First, I document how S.B. 19-181's reforms have failed to meaningfully change ***oil*** and gas extraction in Colorado or empower communities targeted for extraction. Local governments such as Weld County aligned with the industry to undermine S.B. 19-181's goals by leveraging the law's central commitment to local control to undermine its statewide regulatory reforms. This outcome was predictable and arguably expected based on some contemporary accounts of S.B. 19-181's development. In this way, S.B. 19-181's centerpiece reform undermined its larger structure and goals. Second, I explain this failure through the framework of extractive power and draw some brief lessons for future reform. S.B. 19-181 failed to target the legal pillars of the industry's social and political power and, as a result, its reforms were vulnerable to resistance from the industry and aligned local governments both within the regulatory scheme and through external social and political pressure. Recognizing the role of extractive power in constraining potential reform both highlights the special risk of reformism in ***oil*** and gas regulation and suggests that effective reforms will likely have to reach the private rights that stand at the root of the industry's social and political power.

**[\*118] A. Local Control's Failure**

Both pillars of S.B. 19-181's reforms improved statewide regulation and greater local control have thus far failed to meaningfully change ***oil*** and gas extraction in Colorado.

To start, S.B. 19-181's regulatory reforms have not meaningfully changed how the Colorado ***Oil*** & Gas Conservation Commission regulates the industry. One of the two major innovations of S.B. 19-181 was to introduce environmental and health protections into the agency's regulatory mission. This shift included, for example, prominent statutory changes that amended the agency's legislative mandate from "foster[ing]" the industry to "regulat[ing]" the industry.[[281]](#footnote-282)281 The Commission implemented these statutory changes through extensive rewriting of its regulations over the course of several years.[[282]](#footnote-283)282 This "mission change" was a source of substantial controversy over exactly what these changes could accomplish.[[283]](#footnote-284)283 At least up to this point, the answer is very little and nothing meaningful.

In 2021, one of S.B. 19-181's principal drafters issued a report assessing S.B. 19-181's influence on the Commission's work now that the major rulemakings had been completed.[[284]](#footnote-285)284 After noting widespread perception that the law would work a "sea change" and "major shift" in the agency's work, the report explained that "none of that has actually happened to date."[[285]](#footnote-286)285 The industry "continues to operate in Colorado much as it did before."[[286]](#footnote-287)286 While there were some new steps in the process, the industry's "ability to get and keep permits to operate remains largely unchanged."[[287]](#footnote-288)287 The report paid special attention to how agency leaders still **[\*119]** articulated the Commission's basic purpose as assisting the industry with extraction "getting to yes" with operators, as the report put it.[[288]](#footnote-289)288

The agency's persistent commitment to facilitating extraction signaled the fundamental problem with S.B. 19-181's regulatory reforms: its central environmental and community protections were subject to enough agency discretion to open them to the industry's longstanding influence over the agency's work. One prominent example of this effect has been the agency's treatment of projects proposed within a regulatory setback requiring the projects be more than 2000 feet from homes and other residential buildings.[[289]](#footnote-290)289 Setbacks have been particularly controversial in Colorado, and the Commission's decision to adopt a 2000-foot setback in regulations was seen as an initial vindication of S.B. 19-181's regulatory changes.[[290]](#footnote-291)290 One reporter characterized public perception of the setback: "There are exceptions, but in general, an application to drill closer than 2000 feet will be denied."[[291]](#footnote-292)291 But experience showed that exceptions have "swallow[ed] the rule" in practice.[[292]](#footnote-293)292 The report documented examples showing the Commission's "apparently standardless" application of regulatory exceptions to approve projects within the setback, generally relying on the industry's representations about projects' impacts.[[293]](#footnote-294)293 The result has "encouraged some operators to locate in residential areas just as they did prior to the passage of" S.B. 19-181 an outcome that, if it continues, suggests that the Commission "will have completely reverted back to its" past practices.[[294]](#footnote-295)294

**[\*120]** Moreover, the local control reforms have failed to meaningfully empower communities targeted for extraction. For example, in 2022 a group of four municipal governments along the Front Range presented results of regional air monitoring.[[295]](#footnote-296)295 One of the key findings of the report was that "[d]espite newer regulations, ***oil*** and gas emissions have not decreased" in their jurisdictions.[[296]](#footnote-297)296 The governments cautioned that "[i]ndividual source emissions may have decreased," but overall "production has continued to increase."[[297]](#footnote-298)297 The governments also documented increases in methane emissions, a potent greenhouse gas associated with ***oil*** and gas extraction, and confirmed "that residents living within one mile of multi-well, horizontal ***oil*** and gas sites" much farther than even the regulatory setbacks "experience upper respiratory and acute health symptoms (e.g., nosebleeds) more often than residents living at distances further away."[[298]](#footnote-299)298

So why hadn't these local governments adopted their own, stronger regulations of the industry? The other pillar of S.B. 19-181 was that it empowered local governments to "regulat[e] the surface impacts of ***oil*** & gas operations in a reasonable manner" subject to several qualifications, in order to "protect public health, safety, welfare and the environment."[[299]](#footnote-300)299 Boulder County, one of the study participants, had done just that by adopting updated ***oil*** and gas regulations in 2020 almost immediately after S.B. 19-181 passed.[[300]](#footnote-301)300 The answer to why Boulder and surrounding municipalities are still experiencing impacts of extraction helps illustrate two fundamental limitations of S.B. 19-181's reliance on local control.

First, S.B. 19-181 carries implicit limitations on local governments' ability to stop extraction within their respective jurisdictions. These limitations stem from what S.B. 19-181 deliberately failed to change about the existing structure of ***oil*** and gas regulation in Colorado namely, the state's legislated interest in maximizing the extraction of ***oil*** and gas and the central preemption decisions in *Longmont*[[301]](#footnote-302)301 and *Fort Collins*.[[302]](#footnote-303)302 The Democratic Senate majority leader argued **[\*121]** during the legislative process that the bill "doesn't give" local governments authority to prohibit drilling "because the existing case law" holding moratoria and bans preempted "would still stand" if the law passed.[[303]](#footnote-304)303 Local governments "couldn't deny mineral owners access to their property," the lawmaker reasoned.[[304]](#footnote-305)304

The people of Longmont soon put this theory to the test. The community group that had successfully passed the ballot measure imposing a moratorium on fracking in Longmont asked a court to reconsider whether the ordinance, which remained on the books, was still preempted in light of S.B. 19-181's changes to state law that empowered local regulation.[[305]](#footnote-306)305 The court answered that the ordinance was still preempted.[[306]](#footnote-307)306 It reasoned that, while the law had granted some regulatory authority to local governments, the law had not changed the state's interest in promoting extraction.[[307]](#footnote-308)307 Because Longmont's ordinance remained in conflict with those priorities, it remained preempted under the Colorado Supreme Court's decisions in the *Longmont* and *Fort Collins* cases.[[308]](#footnote-309)308 To the people of Longmont and similar communities, S.B. 19-181 had done the exact opposite of giving them greater control over the industry it implicitly mandated that extraction continue in these communities.

Second, S.B. 19-181 did not account for local governments aligned with the fossil fuel industry namely, Weld County. As noted, Weld County accounts for nearly all of Colorado's ***oil*** production and a substantial portion of its gas production.[[309]](#footnote-310)309 As such, many of the people most seriously affected by extraction in Colorado live in Weld County or nearby. For example, one answer as to why Boulder and the other Front Range governments saw increased air and climate pollution from ***oil*** and gas despite new regulations is that they are all located either within or next to Weld County.[[310]](#footnote-311)310

**[\*122]** Weld County openly opposed S.B. 19-181, and once it passed, immediately sought to use the concept of local control to undermine S.B. 19-181's regulatory reforms. "We are going to force local control back down their throats," one Weld County commissioner explained from the steps of the state capitol, "the same way they forced [S.B. 19-181] down our throats."[[311]](#footnote-312)311 "[T]hat would be the Weld County way," she concluded.[[312]](#footnote-313)312 The county pursued a legal strategy to use S.B. 19-181's endorsement of local control to support a local permitting system designed to "expedite ***oil*** and gas permits."[[313]](#footnote-314)313 After vigorously opposing S.B. 19-181, the industry was quick to put its weight behind Weld County and celebrate the General Assembly's wisdom in bringing regulations on extraction "back to local governments that know their communities and their needs."[[314]](#footnote-315)314 Tellingly, the industry also started emphasizing that S.B. 19-181 "says nothing about a floor for regulations."[[315]](#footnote-316)315 The strategy successfully resulted in the state agency agreeing to change aspects of its regulatory process to accommodate Weld County's local process.[[316]](#footnote-317)316

This outcome was entirely predictable, and arguably expected. Local control enables divergent outcomes, including regressive ones. S.B. 19-181's failure to account for an industry-aligned local government like Weld County pitted the central pillars of the law against each other and all but ensured that many of people most heavily impacted by ***oil*** and gas extraction would, at the very least, not benefit from one of the bill's central innovations. Worse still, one Weld County commissioner suggested that this oversight was intentional when recounting a conversation he had with Governor Polis in the lead up to S.B. 19-181: "[He] looked us dead in the eye and said, 'How you do business in Weld County will not change.'"[[317]](#footnote-318)317 Having leveraged the governor's signature legislation against itself, the commissioner twisted the knife: "You're right Gov. Polis."[[318]](#footnote-319)318

**[\*123] B. Reformism and Reaching Private Rights**

Why S.B. 19-181 has failed to either meaningfully change regulation of the industry or empower communities where extraction has occurred is straightforward: industry's power at both state and local levels enabled it to exploit structural flaws in the law. Local control, a central pillar of the law's design, undermined S.B. 19-181's broader goals by empowering industry-aligned local governments where the vast majority of ***oil*** and gas extraction in Colorado occurs to deepen their commitment to extraction and openly frustrate statewide regulation. S.B. 19-181 left untouched the central roots of the industry's power over communities like those in Weld County and therefore left its reforms vulnerable to that power's effect namely, social and political support for continued extraction in Colorado.

Recognizing the role of industry's social and political power in constraining reform helps explain the large gap between S.B. 19-181's potential and its reality. Both in text and ambition, S.B. 19-181's reforms were revolutionary for the field of energy law. Yet it has nevertheless failed to achieve meaningful change because of the social and political context it was placed in one dominated by extractive power. This power manifests at various scales of governance, from Weld County's commitment to undermine state regulation to the state agency's persistent commitment to get to yes with the industry it regulates. The influence of extractive power on S.B. 19-181's reforms was both clear to observers as it was happening and relatively straightforward to understand. As one Colorado lawyer working on these issues put it, the experience with S.B. 19-181 "is a microcosm of a larger trend" where "industry wields extraordinary social, economic, and political power" to "snuff out rules that affect its bottom line."[[319]](#footnote-320)319

One value of articulating the legal foundations of extractive power and its effects is to emphasize that this dynamic is, nevertheless, rooted in legal structures that can be changed. From this perspective, the central lesson from S.B. 19-181's failure should be that Colorado did not go far enough.[[320]](#footnote-321)320 S.B. 19-181's reforms, **[\*124]** though revolutionary in its field, were not meaningful because they did not reach the legal supports of the industry's social and political power. This experience offers two insights for future reform efforts.

First, Colorado's experience helps illustrate the special risks of reformism in ***oil*** and gas law. Broadly, reformism is a phrase for critiquing how marginal changes to a system can help maintain the status quo by drawing momentum, attention, or resources away from effective, structural changes.[[321]](#footnote-322)321 In this sense, "reformism effectively shields the status quo from deep critique."[[322]](#footnote-323)322 The experience with S.B. 19-181 shows the special risk of reformism in attempts to change dynamics around ***oil*** and gas extraction. The process of extraction is run through with legally constructed power asymmetries that suppress opposition and build socio-political support for extraction. S.B. 19-181's experience shows how difficult this feedback loop is to break, and how failing to do so renders incremental reforms ineffective. In this sense, S.B. 19-181 is archetypal reformism despite its revolutionary status in the field by failing to target changes to the legal structures of extractive power, S.B. 19-181 did little to change anything about extraction in Colorado and has drawn both attention and resources, locally and nationally, away from more effective reforms.

The second lesson is that effective reforms will likely need to reach the roots of industry power in the private rights and negotiations around ***oil*** and gas extraction.[[323]](#footnote-324)323 If the question after S.B. 19-181 is how far reforms must go, the answer is that they must be willing to reach private rights in ***oil*** and gas. The industry's ability to secure rights in ***oil*** and gas and insist upon its extraction as a matter of right is the foundation of industry's extractive power. It is the legal basis for industry's ability to unilaterally enter communities and maintain control over the central decision of whether or not to extract fossil fuels; it is the reason the answer is almost always yes, whether now or later. This control, and the legal structures that facilitate it, build dependence and social-political support for continued extraction within communities. In this way, private rights in ***oil*** and gas **[\*125]** sit at the root of the dynamics that start with legal structures intended to promote efficient production and end with Weld County undermining state regulation. They link the dynamics that suppress opposition from communities such as Triple Creek and Bella Romero to state and local opposition to climate policies intended to phase-down ***oil*** and gas extraction.

Disrupting the private rights scheme at the root of industry power could be accomplished in a variety of ways. States could start denying permits to extract.[[324]](#footnote-325)324 States could adjust the contours of private rights in ***oil*** and gas by, for example, reconsidering the dominance of the mineral estate to undercut the industry's asymmetrical power in negotiations with community members.[[325]](#footnote-326)325 States could take seriously the role of environmental rights or public trust obligations in constraining private rights in ***oil*** and gas.[[326]](#footnote-327)326 The substantial diversity of state legal schemes around ***oil*** and gas, as well as differential community experiences, cautions against elevating any one approach above another. Rather, effectively challenging the industry's extractive power may take different or multiple forms in various jurisdictions.

As such, it is most helpful to recognize that meaningful reform, regardless of the form it takes, will likely need to reach into the space of private rights that has so thus far constrained public regulation of ***oil*** and gas extraction. To reach the roots of industry's power, reforms will likely need to challenge the industry's ability to demand extraction as a matter of right. Doing so will almost certainly prompt challenges rooted in property rights, such as taking claims from the industry.[[327]](#footnote-328)327 This Article's analysis of extractive power's legal foundations, as well as S.B. 19-181's failures to reach those foundations, should encourage those seeking effective reforms to see this challenge as a necessary step towards confronting the industry's power and transitioning away from ***oil*** and gas extraction.

**[\*126] CONCLUSION**

In 2021, a reporter asked Lowell and Margie Lewis, a couple who had helped lead the fight against Extraction's Triple Creek project now operating behind their house, whether they planned to move away.[[328]](#footnote-329)328 "Now that it's quieted down, we're kind of here," Margie explained, "but in retrospect, we should've moved."[[329]](#footnote-330)329 "If we'd known how distressing it was going to be and how bad it turned out being, I wish we had," she continued, "There were several people who did, and they were the smart ones."[[330]](#footnote-331)330 Lowell and Margie moved out of Colorado in 2022.

When a state air monitor detected a spike in a toxic air pollutants associated with extraction at the Bella Romero campus in 2019, Weld County released a press report in which two county commissioners characterized the state air monitoring reports as "politically motivated" and "politiciz[ing]" public health "to further an agenda."[[331]](#footnote-332)331 The state later removed the air monitor from Bella Romero and never brought it back.[[332]](#footnote-333)332 The state never determined the source of the benzene spike.[[333]](#footnote-334)333 In 2022, Weld County's school district rejected a parent-led proposal to return air monitoring to Bella Romero for free, reasoning that "nothing warrants parent and community concerns if the state health department previously deemed continued air monitoring unnecessary."[[334]](#footnote-335)334 "Here's the truth," a school official explained, "We live in Weld County. There are wells near many of our schools. In fact, probably most of our schools. . . . Do we need to put air monitoring at every single school because it's close to ***oil*** and gas production?"[[335]](#footnote-336)335

Patricia Garcia-Nelson, the parent who first encouraged me to drive the Frack Freeway, continues to advocate for air monitoring at Bella Romero and, **[\*127]** ultimately, to shut the wells down.[[336]](#footnote-337)336 "This work I do is exhausting," Patricia explained to a reporter, although other parents' appreciation "definitely makes it worth it."[[337]](#footnote-338)337 The reporter asked: why not just move away?[[338]](#footnote-339)338 "I can do that, but my sister can't," she responded.[[339]](#footnote-340)339 "How many other parents out there don't have the ability to move their kids to another school? This is my home."[[340]](#footnote-341)340 "If I quit there's not going to be anybody else."[[341]](#footnote-342)341

The central goal of this Article is to track the legal structures of the ***oil*** and gas industry's social and political power so that they can be targeted for reform. This work should guide future reforms intended to target the industry's extractive power, control extraction, and facilitate the transition away from fossil fuel extraction. But this work also helps to understand the nature of harm that the exercise of extractive power has imposed on communities such as Triple Creek and Bella Romero. By emphasizing the law's role in upending the social and political lives of communities to facilitate extraction, this Article's analysis helps clarify the scope of our obligations to those communities that have suffered extraction's harms. In this sense, understanding extractive power and its legal foundations is central to designing policies for a just transition that both facilitates the transition away from fossil fuels and repairs those communities that have suffered extraction's harms.

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1. 1*See* Ed Crooks, *The U.S. Shale Revolution: How it Changed the World (and Why Nothing Will Ever Be the Same Again)*, FIN. TIMES MAG. (Apr. 24, 2015), https://www.ft.com/content/2ded7416-e930-11e4-a71a-00144feab7de [https://perma.cc/AB88-EUY4] (describing fracking as "perhaps the most important innovation of the 21st century" and discussing global implications). [↑](#footnote-ref-2)
2. 2*See* TREVOR HOUSER, JASON BORDOFF & PETER MARSTERS, COLUMB. CTR. ON GLOB. ENERGY POL'Y, CAN COAL MAKE A COMEBACK? 16 (2017) ("Through a combination of horizontal drilling, hydraulic fracturing, and seismic imaging, US companies have unlocked ***oil*** and gas from previously inaccessible shale and other unconventional resources. This transformed the American energy landscape."). *See also* Crooks, *supra* note 1 (quoting industry participants as describing the amount of gas made available by fracking in North America as "just astonishing" and "absolutely mind-boggling," as well as similar reactions to shale ***oil***). [↑](#footnote-ref-3)
3. 3*See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-12-874, UNCONVENTIONAL ***OIL*** AND GAS DEVELOPMENT: KEY ENVIRONMENTAL AND PUBLIC HEALTH REQUIREMENTS 5-6 (2012) (describing conventional and unconventional ***oil*** and gas development). [↑](#footnote-ref-4)
4. 4*See id.* [↑](#footnote-ref-5)
5. 5*See* Crooks, *supra* note 1 (describing the innovation of "horizontal wells with multi-stage fracks" in promoting ***oil*** and gas extraction from shale). [↑](#footnote-ref-6)
6. 6*See id.* [↑](#footnote-ref-7)
7. 7*Id.* [↑](#footnote-ref-8)
8. 8For a discussion of the peak ***oil*** phenomenon, see *id.* ("[The shale boom] struck a blow against the idea that world ***oil*** production is at or close to its ultimate peak. [United States] ***oil*** output peaked in 1970, and until 2009 appeared to be in inexorable long-term decline. Now it has been reborn."). For a discussion of maintaining a livable planet, see Dan Welsby, James Price, Steve Pye & Paul Ekins, *Unextractable Fossil Fuels in a 1.5 °C World*, 597 NATURE 230, 231, 233 (2021) (finding that 58 percent of the world's ***oil*** reserves and 56 percent of the world's gas reserves, as well as roughly 26 percent of the United States's ***oil*** reserves and 24 percent of its gas reserves, must remain unextracted "to achieve a 50 probability of keeping the global temperature increase to 1.5 °C"). [↑](#footnote-ref-9)
9. 9HOUSER ET AL., *supra* note 2, at 5, 15-16, 19. [↑](#footnote-ref-10)
10. 10Linda Doman & Ari Kahan, *United States Remains the World's Top Producer of Petroleum and Natural Gas Hydrocarbons*, U.S. ENERGY INFO. ADMIN. (May 21, 2018), https://www.eia.gov/todayinenergy/detail.php?id=36292# [https://perma.cc/JBK4-HNUP]. [↑](#footnote-ref-11)
11. 11U.S. GOV'T ACCOUNTABILITY OFF., GAO-21-118, CRUDE ***OIL*** MARKETS: EFFECTS OF THE REPEAL OF THE CRUDE ***OIL*** EXPORT BAN 7, 17 (2020) (summarizing repeal of legislation limiting crude ***oil*** exports and effects of lifting restrictions). [↑](#footnote-ref-12)
12. 12Victoria Zaretskaya, *The United States Became the World's Largest LNG Exporter in the First Half of 2022*, U.S. ENERGY INFO. ADMIN. (July 25, 2022), https://www.eia.gov/todayinenergy/detail.php?id=53159 [https://perma.cc/XW2E-C6PV]. [↑](#footnote-ref-13)
13. 13*See, e.g.*, Anna Shiryaevskaya, *For the First Time, US Is Sending More Gas to Europe Than Russia*, BLOOMBERG (July 1, 2022), https://www.bloomberg.com/news/articles/2022-07-01/uslng-supplies-to-europe-overtake-russian-gas-iea-says#xj4y7vzkg [https://perma.cc/E4HB-6HSW] (noting how domestic U.S. ***oil*** production undercut Russia's influence in Europe through American gas exports); Edward Wong, *The U.S. Re-Evaluates Ties With Saudi Arabia Over an* ***Oil****-Production Cut That Could Benefit Russia*, N.Y. TIMES (Oct. 26, 2022), https://www.nytimes.com/2022/10/26/us/politics/us-saudi-arabia-***oil***.html [https://perma.cc/VN8A-THVL] (discussing the United States openly battling the Organization of the Petroleum Exporting Countries (OPEC) on ***oil*** prices). [↑](#footnote-ref-14)
14. 14*See* Alan Rappeport, *U.S. to Release Millions More Barrels of* ***Oil*** *to Contain Gas Prices*, N.Y. TIMES (Oct. 18, 2022), https://www.nytimes.com/2022/10/18/business/us-***oil***-reserve-gasprices.html [https://perma.cc/GCB9-EZKF] ("Gas prices in the United States eased over the summer as the United States sold ***oil*** from the Strategic Petroleum Reserve and concerns about a global recession deepened."). [↑](#footnote-ref-15)
15. 15For a discussion of support of domestic ***oil*** and gas development in the Biden Administration, see Zach Schonfeld, *Biden Advisor Calls Investor Refusal to Ramp up Shale Drilling 'Un-American*', THE HILL (Dec. 11, 2022, 4:34 PM), https://thehill.com/policy/energy-environment/3771025-biden-adviser-calls-investor-refusal-to-ramp-up-shale-drilling-unamerican [https://perma.cc/88KF-ARRV]. For a discussion of support of ***oil*** and gas development in the Obama Administration, see generally EXEC. OFF. OF THE PRESIDENT, THE ALL-OF-THE-ABOVE ENERGY STRATEGY AS A PATH TO SUSTAINABLE ECONOMIC GROWTH (2014) (celebrating domestic ***oil*** and gas production for "making the United States more energy secure"). For a discussion of support during the Trump Administration, see, e.g., Myron Ebell, '*Drill, Baby, Drill' Is Back in Trump Era*, THE HILL (Jan. 10, 2018, 8:30 AM), https://thehill.com/opinion/energy-environment/368248-drill-baby-drill-is-back-in-trumpera [https://perma.cc/BBT7-E53T] ("It is now abundantly clear that President Trump was not making empty campaign promises when he talked about establishing U.S. energy dominance. This is 'drill, baby, drill,' and then drill some more."). [↑](#footnote-ref-16)
16. 16*See* Grace Heusner, Allison Sloto & Joshua Ulan Galperin, *Defining and Closing the Hydraulic Fracturing Governance Gap*, 95 DENV. L. REV. 191, 238-46 (2017) (collecting impacts and sources). [↑](#footnote-ref-17)
17. 17*See* Wyatt Sassman, *Communities of Extraction*, L. & POL. ECON. PROJECT (Mar. 10, 2022), https://lpeproject.org/blog/communities-of-extraction [https://perma.cc/SY87-YA3M] (describing these effects). [↑](#footnote-ref-18)
18. 18*See* Julie Turkewitz, *In Colorado, a Fracking Boom and a Population Explosion Collide*, N.Y. TIMES (May 31, 2018), https://www.nytimes.com/2018/05/31/us/colorado-frackingdebates. html [https://perma.cc/8EAB-P7DY] (describing "a return of the turmoil that accompanied the last [fracking] boom, pitting neighbor against neighbor and communities against companies in a fight over which projects should be allowed to pierce the land"). [↑](#footnote-ref-19)
19. 19*See, e.g.*, Stephanie A. Malin, Tara Opsal, Tara O'Connor & Peter Mandel Hall, *The Right to Resist or a Case of Injustice? Meta-Power in the* ***Oil*** *and Gas Fields*, 97 SOC. FORCES 1811, 1813 (2019) (analyzing "over 100 interviews with Colorado and Pennsylvania citizens who have negotiated private leases" with ***oil*** and gas developers to demonstrate that leasing "and related outcomes do not result from equitable and authentic participation in the process by both parties") [hereinafter Malin et al., *Right to Resist*]. [↑](#footnote-ref-20)
20. 20*Id.* (concluding that "industry wields enormous power meta-power in decisions related to [unconventional ***oil*** and gas] production, which shrinks space for authentic participation on the part of stakeholders such as community members"). [↑](#footnote-ref-21)
21. 21*See, e.g.*, Adam Mayer & Stephanie Malin, *How Should Unconventional* ***Oil*** *and Gas Be Regulated? The Role of Natural Resource Dependence and Economic Insecurity*, 65 J. RURAL STUD. 79, 80 (2019) (drawing parallels to concepts of resource dependence and coal in West Virginia). *See also* Ann M. Eisenberg, *Beyond Science and Hysteria: Reality and Perceptions of Environmental Justice Concerns Surrounding Marcellus and Utica Shale Gas Development*, 77 U. PITT. L. REV. 183, 194 (2015) (applying the concept of the "resource curse" to fracking in Appalachia). [↑](#footnote-ref-22)
22. 22*See* Heusner, *supra* note 16, at 193 ("How many articles over the past half-decade have begun by describing the dramatic growth and impacts of fracking? A lot over 1200, to be precise."). That search was conducted in 2017 and the same Westlaw search in October 2024 identified almost twice that around 2300 articles. [↑](#footnote-ref-23)
23. 23*See, e.g., id.* at 195 ("Ultimately, fracking is a land use not entirely different from other industrial land uses with which local governments have long histories of governing through zoning and planning tools as well as nonregulatory techniques."); David B. Spence, *The Political Economy of Local Vetoes*, 93 TEX. L. REV. 351, 352 (2014) ("These attempts by local governments to veto local development [of fracking] are essentially fights over the distribution of the costs and benefits of development."); Thomas W. Merrill & David M. Schizer, *The Shale* ***Oil*** *and Gas Revolution, Hydraulic Fracturing, and Water Contamination: A Regulatory Strategy*, 98 MINN. L. REV. 145, 149 (2013) (considering "how to regulate this risk of water contamination" through "a careful balance of competing considerations" because "[t]he shale boom offers enormous benefits"); David B. Spence, *Federalism, Regulatory Lags, and the Political Economy of Energy Production*, 161 U. PA. L. REV. 431, 435 (2013) (asking "[w]hat, if anything, should the federal government do about fracking?" and concluding nothing). [↑](#footnote-ref-24)
24. 24Eisenberg, *supra* note 21, at 209-26 (discussing the role of power asymmetries and inequality in fracking in Appalachia); Benjamin E. Apple, *Mapping Fracking: An Analysis of Law, Power, and Regional Distribution in the United States*, 38 HARV. ENV'T L. REV. 217, 219 (2014) (applying "theories of law and power to posit a general framework for understanding why various public and private actors involved in fracking development behave in particular ways, and how their interactions influence the distribution and impacts of fracking operations across localities and regions"). [↑](#footnote-ref-25)
25. 25Paola A. Arias et al., *Technical Summary, in* CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP I TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 33, 80 (Valérie Masson-Delmotte et al. eds., 2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\_AR6\_WGI\_TS.pdf [https://perma.cc/PA78-WHX5] ("Of the total anthropogenic CO2 emissions, the combustion of fossil fuels was responsible for about 64% +/- 15%, growing to an 86% +/- 14% contribution over the past 10 years. The remainder resulted from land-use change."). *See also id.* at 101 ("Fossil fuel combustion for energy, industry and land transportation are the largest contributing sectors on a 100-year time scale (*high confidence*).") (emphasis in original). [↑](#footnote-ref-26)
26. 26*See* Welsby et al., *supra* note 8, at 231, 233 (finding that 58 percent of the world's ***oil*** reserves and 56 percent of the world's gas reserves, must remain unextracted "to achieve a 50 [percent] probability of keeping the global temperature increase to 1.5 °C"). [↑](#footnote-ref-27)
27. 27*See, e.g.*, TED HAMILTON, BEYOND FOSSIL LAW: CLIMATE, COURTS AND THE FIGHT FOR THE FUTURE 90-121 (2022) (charting legal supports for fossil fuel extraction); HOLLY JEAN BUCK, ENDING FOSSIL FUELS: WHY NET ZERO IS NOT ENOUGH 20, 146, 159-60 (2021) (offering a "framework for how we can think about the problem of phasing out fossil fuels," emphasizing "building political power," and including targeted policy interventions). [↑](#footnote-ref-28)
28. 28*See* HAMILTON, *supra* note 27, at 6-7 (focusing attention on the relationship between law and climate activism as a way to overcome fossil fuel's political and legal power). [↑](#footnote-ref-29)
29. 29*See, e.g., id.* at 119-21 (noting some examples of legal successes around fossil fuel power and recognizing that "[o]bstacles are obstacles, and we should seek to remove them," but focusing primarily on climate protest and policing); BUCK, *supra* note 27, at 146, 159-60 (discussing some sub-national policies, such as statewide bans on exploration and denying permits, but mostly focusing on national and international policies for phasing out fossil fuel extraction). [↑](#footnote-ref-30)
30. 30*See* Tara K. Righetti, Hannah J. Wiseman & James W. Coleman, *The New* ***Oil*** *and Gas Governance*, 130 YALE L.J. F. 51, 62 (2020) (recognizing that Colorado's legislation "buil[t] upon a long-simmering community regulatory movement"). [↑](#footnote-ref-31)
31. 31*Id.* at 51, 55 (noting that "states such as California are considering changes similar to Colorado's"). [↑](#footnote-ref-32)
32. 32In my role with the University of Denver Environmental Law Clinic, I represented community and environmental groups in *Weld Air & Water v. Colo.* ***Oil*** *& Gas Conservation Comm'n*, 457 P.3d 727 (2019), *cert. denied*, No. 19SC505, 2020 WL 529211 (2020), and *Neighbors Affected by Triple Creek v. Colo.* ***Oil*** *& Gas Conservation Comm'n*, No. 18CA0116, 2021 WL 1300567 (Colo. App. Apr. 1, 2021). [↑](#footnote-ref-33)
33. 33*See* Wendy A. Bach & Sameer M. Ashar, *Critical Theory and Clinical Stance*, 26 CLINICAL L. REV. 81, 91 (2019) ("Clinicians, unlike their doctrinal peers, are embedded in their clients' experiences of the legal system. Because of this location in the legal academy, 'they have the potential to transform the study of law into the study of a culture that deploys law for various purposes.'"). [↑](#footnote-ref-34)
34. 34*Id.* at 93. [↑](#footnote-ref-35)
35. 35*Id.* at 91. *See also id.* at 92 ("So we make a claim that scholarship written from the embedded stance of clinicians adds to the critical enterprise because we 'observe' from our standpoint beside clients."). [↑](#footnote-ref-36)
36. 36*See* Turkewitz, *supra* note 18 ("Today, County Road 49 is so crowded with ***oil*** derricks and tanks that some residents call it the Frack Freeway."). [↑](#footnote-ref-37)
37. 37Thomas E. Cronin & Robert D. Loevy, *Insights: Where's the 'Front Range'? In Colorado Politics, It's Where the Votes Are*, COLO. POL. (Jan. 24, 2017), https://www.coloradopolitics.com/news/insights-wheres-the-front-range-in-colorado-politics-its-where-the-votes-are/article\_f51a8d60-60d8-5483-8ea0-af089e5cf741.html [https://perma.cc/95KK-EY3Z] (describing that "[t]he Front Range constitutes Colorado's mini-version of a megalopolis, a string of cities linked together in a corridor"). [↑](#footnote-ref-38)
38. 38*See* R.A. Matuszczak, *Wattenberg Field, Denver Basin, Colorado*, 10 THE MOUNTAIN GEOLOGIST 136, 136 (1974) ("Wattenberg gas field is located in the Colorado portion of the Denver basin. Its present area comprises 978 sq mi (2530 km2) lying between Denver and Greeley, Colorado . . . ."). [↑](#footnote-ref-39)
39. 39Bruce Finley, ***Oil*** *and Gas Industry Building Giant Walls to Try to Ease Impact*, DENVER POST (Apr. 27, 2016, 7:59 AM), https://www.denverpost.com/2014/05/29/***oil***-and-gas-industry-building-giant-walls-to-try-to-ease-impact [https://perma.cc/2UGF-M5QG]. [↑](#footnote-ref-40)
40. 40*See generally Welcome to the Bella Romero Academy*, GREELEY-EVANS SCHOOL DISTRICT 6, https://www.greeleyschools.org/Page/12655 [https://perma.cc/Q68M-M7Q4] ("At The Academy, we believe in applying technology to all areas of the student experience."). [↑](#footnote-ref-41)
41. 41*See* Megan Jula, *Parents Didn't Want Fracking Near Their School. So the* ***Oil*** *Company Chose a Poorer School, Instead*, MOTHER JONES (Apr. 17, 2018), https://www.motherjones.com/environment/2018/04/an-***oil***-company-faced-pushback-about-fracking-near-a-charter-so-it-moved-next-to-a-low-income-public-school [https://perma.cc/NH83-3WJM]. [↑](#footnote-ref-42)
42. 42*Id.* [↑](#footnote-ref-43)
43. 43*See* Nora Olabi, *CSU Student Arrested at Anti-Fracking Protest in Greeley*, WESTWORD (Mar. 9, 2018, 8:45 AM) https://www.westword.com/news/csu-student-cullen-lobe-arrested-at-antifracking-protest-in-greeley-awaits-court-hearing-10069732 [https://perma.cc/32RRCHSG] ("A 23-year-old anti-fracking activist and student at Colorado State University was arrested Thursday on two charges of tampering with ***oil*** and gas equipment and second-degree criminal trespassing after protesting at a drilling site near Bella Romero Academy, a middle school in Greeley."). [↑](#footnote-ref-44)
44. 44*See, e.g.*, Jula, *supra* note 41; Turkewitz, *supra* note 18. [↑](#footnote-ref-45)
45. 45Jadyn Watson-Fisher, *Weld County Energy, Part 3: Homeowners Criticize Residential* ***Oil****, Gas Development*, GREELEY TRIB. (July 3, 2021, 8:07 PM), https://www.greeleytribune.com/2021/07/03/weld-county-residents-say-petroleum-development-too-impactful [https://perma.cc/P9WH-GB5R]. [↑](#footnote-ref-46)
46. 46Turkewitz, *supra* note 18. [↑](#footnote-ref-47)
47. 47*See* WALLACE R. HANSEN & ELEANOR J. CROSBY, U.S. DEP'T. OF THE INTERIOR, ENVIRONMENTAL GEOLOGY OF THE FRONT RANGE URBAN CORRIDOR AND VICINITY, COLORADO 54 (1982). [↑](#footnote-ref-48)
48. 48*See id.* at 29, 52-53; Matuszczak, *supra* note 38, at 136, 138. [↑](#footnote-ref-49)
49. 49*Colorado: State Profile and Energy Estimates*, U.S. ENERGY INFO. ADMIN. (May 18, 2023) https://www.eia.gov/state/analysis.php?sid=CO [https://perma.cc/577T-P3MX]. [↑](#footnote-ref-50)
50. 50*Id.* [↑](#footnote-ref-51)
51. 51*Id.* [↑](#footnote-ref-52)
52. 52*See* Robert G. Raynolds, Kirk R. Johnson, Beth Ellis, Marieke Dechesne & Ian M. Miller, *Earth History Along Colorado's Front Range: Salvaging Geologic Data in the Suburbs and Sharing it With the Citizens*, 17 GSA TODAY 4, 9 (2007). *See also Dinosaur Ridge*, COLO. ENCYC. (Sept. 30, 2022), https://coloradoencyclopedia.org/article/dinosaur-ridge [https://perma.cc/CU94-TUAX]. [↑](#footnote-ref-53)
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54. 54Matuszczak, *supra* note 38, at 136; *see also* COLO. ENCYC., *supra* note 52. [↑](#footnote-ref-55)
55. 55*See* Raynolds, *supra* note 52, at 8-9. [↑](#footnote-ref-56)
56. 56*See* Matuszczak, *supra* note 38, at 136-37. [↑](#footnote-ref-57)
57. 57HANSEN & CROSBY, *supra* note 47, at 21. [↑](#footnote-ref-58)
58. 58*Id.* at 29. [↑](#footnote-ref-59)
59. 59*See* Matuszczak, *supra* note 38, at 136. [↑](#footnote-ref-60)
60. 60*Id.* [↑](#footnote-ref-61)
61. 61*See* SEAN O'MEARA, INDIGENOUS CONNECTIONS: NATIVE AMERICAN ETHNOGRAPHIC STUDY OF GOLDEN, COLORADO AND THE CLEAR CREEK VALLEY 1 (2022) (noting studies linking the histories of at least twenty-eight federally-recognized tribes to the lands of the Front Range). [↑](#footnote-ref-62)
62. 62*See id.* at 12. [↑](#footnote-ref-63)
63. 63*See* Susan Schulten, *The Civil War and the Origins of the Colorado Territory*, 44 W. HIST. Q. 21, 21-22, 45 (2013) (explaining the "territory's political origins" in a Republican vision "for the West that stressed the development of railways, resources, and land," made urgent by secession: "Without secession, Republicans would not and could not have organized these territories"); *see also id.* at 21 (quoting President Abraham Lincoln's belief that "the 'practically inexhaustible' wealth" of the West "would vastly ease the payment of the war debt," and "'prove in a very few years that we are indeed the treasury of the world'"). [↑](#footnote-ref-64)
64. 64John Evans, *The Sand Creek Massacre - Second Proclamation* (Aug. 11, 1864), https://www.kclonewolf.com/History/SandCreek/sc-documents/sc-evans-second-proclamation.html [https://perma.cc/PR8E-KNJD] ("Now, therefore, I, John Evans, governor of Colorado Territory, do issue this my proclamation, authorizing all citizens of Colorado, either individually or in such parties as they may organize, to go in pursuit of all hostile Indians on the plains, scrupulously avoiding those who have responded to my said call to rendezvous at the points indicated also, to kill and destroy, as enemies of the country, wherever they may be found, all such hostile Indians."). [↑](#footnote-ref-65)
65. 65*Sand Creek Massacre: History & Culture*, NAT'L PARK SERV. (Aug. 29, 2022), https://www.nps.gov/sand/learn/historyculture/index.htm [https://perma.cc/GD9X-8KPE]. [↑](#footnote-ref-66)
66. 66*See* Tony Horwitz, *The Horrific Sand Creek Massacre Will Be Forgotten No More*, SMITHSONIAN MAG. (Dec. 2014) https://www.smithsonianmag.com/history/horrific-sand-creek-massacre-will-be-forgotten-no-more-180953403 [https://perma.cc/CS6V-NYET] (describing that the Sand Creek Massacre as "'a bloody and mostly forgotten link' between the Civil War and the Plains Indian Wars that continued for 25 years after Appomattox"). [↑](#footnote-ref-67)
67. 67Sara L. Brooks, *Nathan Meeker*, GREELEY HIST. (Apr. 11, 2013, 3:34 PM), http://www.greeleyhistory.org/pages/meeker\_story.html [https://perma.cc/A4KF-9DLT]. [↑](#footnote-ref-68)
68. 68Adrianne Kroepsch, *Greeley*, COLO. ENCYC. (Nov. 2, 2022), https://coloradoencyclopedia.org/article/greeley [https://perma.cc/M7CD-JPK8] (explaining that Greeley was re-named after *N.Y. Tribune* owner Horace Greeley, who allegedly popularized the phrase "Go West, young man"). [↑](#footnote-ref-69)
69. 69*See id.* ("The city's founders played a major role in the creation of water law in Colorado and across the American West. Local beef barons pioneered business concepts in Greeley that have influenced meat production worldwide . . . ."). [↑](#footnote-ref-70)
70. 70*See* Charles S. Lavington, *Greasewood* ***Oil*** *Field, Weld County, Colorado, in* STRATIGRAPHIC TYPE ***OIL*** FIELDS 19 (A.I. Levorsen et al. eds., 1941) ("The writer was engaged by the Greeley Chamber of Commerce to make a reconnaissance of the ***oil*** possibilities of the county in 1923 . . . ."). [↑](#footnote-ref-71)
71. 71*See* WELD COUNTY, THE WELD COUNTY POPULATION & DEVELOPMENT REPORT: DEMOGRAPHIC STATISTICS AND TRENDS FOR WELD CNTY., COLORADO 5 (2019) ("Between 2010 and 2019, the County population grew by over 27 [percent], the most of any county in the state."). [↑](#footnote-ref-72)
72. 72*See* Jenny McCoy, *What Allowed Greeley to Become One of the Fastest-Growing Metro Areas in the Country?*, 5280 (Sept. 7, 2021), https://www.5280.com/2021/09/what-allowed-greeley-to-become-one-of-the-fastest-growing-metro-areas-in-the-country [https://perma.cc/4DTXY7KJ]; *see also* Kevin J. Lynch, *Regulation of Fracking Is Not a Taking of Private Property*, 84 U. CIN. L. REV. 38, 50-53 (2016) (describing earlier disputes in Colorado over fracking bans and moratoria). [↑](#footnote-ref-73)
73. 73*See, e.g.*, Mark Jaffe, *Colorado Regulators' Plans to Require 2000-Foot Buffer Around Drilling Rekindles* ***Oil*** *and Gas Wars*, COLO. SUN (Sept. 18, 2020, 4:18 PM), https://coloradosun.com/2020/09/18/colorado-2000-foot-***oil***-and-gas-setback [https://perma.cc/X8Y8-494W] ("The Colorado ***oil*** and gas wars are back if they ever left."). [↑](#footnote-ref-74)
74. 74*See A Tale of Two Counties:* ***Oil*** *and Gas Regulation Along the Front Range*, KGNU NEWS (Dec. 31, 2020), https://news.kgnu.org/2020/12/a-tale-of-two-counties [https://perma.cc/G5FX-7GFS] (quoting a Weld County commissioner opposing new state ***oil*** and gas regulations as promising to become "even more welcoming of the ***oil*** and gas industry" as a way to "force" the regulations "back down their throats" and describing that opposition as "the Weld County way"). *See also* McCoy, *supra* note 72 (noting locals' perception that people moving to Weld County "are sick of traffic and the 'fast-paced lifestyle'" of Denver). [↑](#footnote-ref-75)
75. 75*See Weld County Residents Propose Leaving Colorado Again, This Time to Join Wyoming*, COLO. SUN (Jan. 27, 2021, 2:04 PM), https://coloradosun.com/2021/01/27/weld-county-secession-wyoming [https://perma.cc/WX86-G6DP] (quoting a resident that "Colorado 'is at war with three major economic drivers for Weld County: small businesses, agriculture, and ***oil*** and gas'"). [↑](#footnote-ref-76)
76. 76*See, e.g.*, Daniel Glick, Kelsey Ray & Ted Wood, *Greeley Residents Sue State* ***Oil*** *and Gas Commission Over Neighborhood Drilling Rules*, COLO. INDEP. (Nov. 18, 2016), https://www.coloradoindependent.com/2016/11/18/greeley-residents-lawsuit-cogcc/#:~:text=A%20group%20of%20homeowners%20in,well%20site%20in%20their%20neighborhood [https://perma.cc/L8HK-LZNA] (discussing "drilling in residential neighborhoods" and its "uptick"). *See also* Julia H. Haggerty, Adrianne C. Kroepsch, Kathryn Bills Walsh, Kristin K. Smith & David W. Bowen, *Geographies of Impact and the Impacts of Geography: Unconventional* ***Oil*** *and Gas in the American West*, 5 EXTRACTIVE INDUS. & SOC'Y 619, 627 (2018) (noting that "smaller operators . . . have made (sub) urban drilling their business niche"). [↑](#footnote-ref-77)
77. 77Mark Jaffe, *Two Colorado* ***Oil*** *Companies Announce Merger, the Latest in a Consolidating Industry*, COLO. SUN (May 10, 2021, 3:26 PM), https://coloradosun.com/2021/05/10/colorado-***oil***-company-merger [https://perma.cc/K265-RDQM] (noting Extraction ***Oil*** & Gas's (Extraction) history drilling in "more densely populated suburban corridor" along the Denver-Julesburg Basin "a subtle way of saying neighborhood drilling"). To be sure, Extraction was involved in many controversial projects beyond the two focused on here. *See, e.g.*, Jennifer Rios, *Wildgrass Pushes Back on Extraction Spacing Unit Application*, DAILY CAMERA (Oct. 16, 2019, 10:28 AM), https://www.dailycamera.com/2019/10/09/wildgrass-pushes-back-on-extraction-spacing-unit-application [https://perma.cc/5G2A-MTGU] (describing opposition to Extraction's plan for "six industrial hydraulic fracturing pads to the tune of 84 wells" in the residential community of Broomfield, Colorado). [↑](#footnote-ref-78)
78. 78Daniel Glick, Kelsey Ray & Ted Wood, *Fractured: Part V, Trouble in Triple Creek*, COLO.INDEP. (Nov. 2, 2016), https://www.coloradoindependent.com/2016/11/02/fractured-triple-creek-extraction-***oil***-and-gas [https://perma.cc/D8JX-8XAH] ("The Triple Creek site is located in a field about five miles west of downtown Greeley, a bucolic few acres of horse pasture flanked by subdivisions on three sides."). [↑](#footnote-ref-79)
79. 79*See id.* (discussing traffic issues and noting that "well pad access would be from 71st Avenue, a two-lane rural road slated for improvement"). [↑](#footnote-ref-80)
80. 80*Id.* ("Extraction estimates that there will be more than 25,000 round trips to the facility over the period of site preparation, drilling, and hydraulic fracturing of the 22 wells, which will take three years to drill and complete."). *See also* Glick et al., *supra* note 76 ("The Commission approved construction of a new road that runs 50 feet from the bedroom of Dawn Stein, a 60-year-old Triple Creek resident who has lived in her home for more than 30 years."). [↑](#footnote-ref-81)
81. 81Glick et al., *supra* note 78 ("Other Triple Creek neighbors formed Neighbors Affected by Triple Creek and gathered comments from dozens of people concerned about Extraction's plans. They hired Sura, the lawyer who had been on the governor's task force."). [↑](#footnote-ref-82)
82. 82*See, e.g.*, Kirk Jalbert & Kyle Ferrar, *Drilling Bella Romero: Children at Risk in Greeley, Colorado*, FRACTRACKER ALL. (June 21, 2016), https://www.fractracker.org/2016/06/bella-romero-children-risk-greeley-co [https://perma.cc/RQ3M-L727] (using both Vetting and Bella Romero to describe the project). [↑](#footnote-ref-83)
83. 83*See* Jula, *supra* note 41 ("The student population at Bella Romero is more than 87 percent Latino or Hispanic, African American, or other people of color. More than 90 percent of students at Bella Romero qualify for free or reduced-price lunch."). [↑](#footnote-ref-84)
84. 84Turkewitz, *supra* note 18. [↑](#footnote-ref-85)
85. 85*See* Jula, *supra* note 41 (noting coalition of "Sierra Club, the Colorado NAACP, and environmental groups Weld Air and Water and Wall of Women"). [↑](#footnote-ref-86)
86. 86*See* Haggerty et al., *supra* note 76, at 627 (defining petrosuburbs as "residential areas that house active drilling and/or producing well pads in their midst"); *see also* Adrianne Kroepsch, Peter T. Maniloff, John L. Adgate, Lisa M. McKenzie & Katherine L. Dickinson, *Environmental Justice in Unconventional* ***Oil*** *and Natural Gas Drilling and Production: A Critical Review and Research Agenda*, 53 ENV'T SCI. & TECH. 6601, 6607 (2019) ("This intermixing of extractive and residential land uses has been called a 'petro-suburban' impact geography."). [↑](#footnote-ref-87)
87. 87*See* Kroepsch et al., *supra* note 86, at 6604. [↑](#footnote-ref-88)
88. 88*See, e.g.*, Haggerty et al., *supra* note 76, at 627. [↑](#footnote-ref-89)
89. 89*Id.* [↑](#footnote-ref-90)
90. 90*Id.* [↑](#footnote-ref-91)
91. 91*Id.* [↑](#footnote-ref-92)
92. 92Kroepsch et al., *supra* note 86, at 6607. [↑](#footnote-ref-93)
93. 93Haggerty et al., *supra* note 76, at 627. [↑](#footnote-ref-94)
94. 94*See* Malin, *supra* note 19, at 1821-31 (documenting landmen and their strategies for securing extractive rights in Colorado and Pennsylvania); Eisenberg, *supra* note 21, at 212 ("The traditional practice in forming leases for mineral extraction is that company landmen, or land agents, approach landowners in a seller beware transaction where the landowner is typically the less knowledgeable party.") (internal quotation marks omitted). [↑](#footnote-ref-95)
95. 95Malin, *supra* note 19, at 1817. [↑](#footnote-ref-96)
96. 96*Id.* at 1826-27 (noting the role of legal doctrines such as the split estate in "structur[ing] lease negotiations"). [↑](#footnote-ref-97)
97. 97*Id.* at 1827 ("Across both states, split estate was a central mechanism of meta-power that shaped residents' private negotiations with corporate actors," leaving many residents feeling "powerless"). [↑](#footnote-ref-98)
98. 98*Id.* at 1830 (documenting how the "leasing process often turned neighbors against one another, as landmen facilitated an urgent, competitive atmosphere when negotiating leases"); Eisenberg, *supra* note 21, at 217-18 (collecting examples of gas companies "manipulating town politics to turn people against one another," including through "high pressure sales tactics" that "pit neighbor against neighbor" and "a culture of doing cutthroat business"). [↑](#footnote-ref-99)
99. 99*See, e.g.*, Meredith A. Wegener, *Balancing Rights in a New Energy Era: Will the Mineral Estate's Dominance Continue?*, 57 HOUS. L. REV. 1037, 1039 (2020) (describing these doctrines as "an essential body of property law and policy that has fueled ***oil*** and gas as preeminent resources"). [↑](#footnote-ref-100)
100. 100*Id.* at 1043 ("The mineral estate, which may be referred to as the mineral interest or mineral rights, may be created by severing it from the fee interest, away from the entire bundle of sticks."). [↑](#footnote-ref-101)
101. 101*See id.* at 1045-56 (describing the common-law "right to use as much of the surface as is reasonably necessary to extract and produce the minerals"). [↑](#footnote-ref-102)
102. 102Lindsey Trachtenberg, Note, *Reconsidering the Use of Forced Pooling for Shale Gas Development*, 19 BUFF. ENV'T. L.J. 179, 182 (2011) ("Forced pooling, sometimes referred to as compulsory integration, allows states to compel landowners whose land in aggregate is of sufficient size to support one well or a group of wells, to develop their resources in cooperation with one another so long as" someone with rights wants to develop the resource). [↑](#footnote-ref-103)
103. 103*See* COLO. REV. STAT. ANN. § 34-60-116 (West 2019) (establishing Colorado's force-pooling process). States vary in the percentage of interests that must consent to enable pooling, and Colorado requires a minority of the mineral interests (45 percent) to consent in order to force pool the remainder. *Id.* § 116(b)(I). *Compare id., with* Trachtenberg, *supra* note 102, at 198-202 (discussing various state regulatory pooling processes). [↑](#footnote-ref-104)
104. 104*See* COLO. REV. STAT. ANN. § 34-60-116(c)(I) (West 2019); *see also* Trachtenberg, *supra* note 102, at 200-10 (discussing compensation in other state schemes). [↑](#footnote-ref-105)
105. 105*See, e.g.*, Wildgrass ***Oil*** & Gas Comm. v. Colorado, 447 F. Supp. 3d 1051, 1069-70 (D. Colo. 2020) (rejecting a claim that Colorado's force-pooling scheme violates the Takings Clause); ***Kerns*** v. Chesapeake Expl., L.L.C., 762 F. App'x 289, 295 (6th Cir. 2019) (rejecting claim that an Ohio pooling order violated the Takings Clause); *see also* Kevin J. Lynch, *Forced Pooling: The Unconstitutional Taking of Private Property*, 75 U.C. L. S.F. J. (forthcoming 2024). [↑](#footnote-ref-106)
106. 106*See* Marie C. Baca, *State Laws Can Compel Landowners to Accept Gas and* ***Oil*** *Drilling*, PROPUBLICA (May 19, 2011), https://projects.propublica.org/tables/forced-pooling.html [https://perma.cc/6YUR-P2CL] ("Thirty-eight states have some form of forced pooling law," including, for example, Texas, New Mexico, North Dakota, Alaska, and Colorado). [↑](#footnote-ref-107)
107. 107*See* James W. Coleman, *The Third Age of* ***Oil*** *and Gas Law*, 95 IND. L.J. 389, 398-99 (2020) (discussing mineral leases); Tara Righetti, *Contracting for Sustainable Surface Management*, 71 ARK. L. REV. 367, 383 (2018) (discussing surface use agreements). [↑](#footnote-ref-108)
108. 108*See* Coleman, *supra* note 107, at 403-04. [↑](#footnote-ref-109)
109. 109*See* Righetti, *supra* note 107, at 383-88. [↑](#footnote-ref-110)
110. 110*See id.* at 386. [↑](#footnote-ref-111)
111. 111*See* Coleman, *supra* note 107, at 401. [↑](#footnote-ref-112)
112. 112*See* Malin, *supra* note 19, at 1823-24; Eisenberg, *supra* note 21, at 211-12. [↑](#footnote-ref-113)
113. 113*See* Malin, *supra* note 19, at 1830. [↑](#footnote-ref-114)
114. 114*See id.* at 1822, 1829 (giving examples of landmen threats, such as "[y]ou know, we're going to go right beside your property when we frack," and "[w]e're gonna force-pool you"). [↑](#footnote-ref-115)
115. 115*See id.* at 1831-33. [↑](#footnote-ref-116)
116. 116*Id.* at 1820. [↑](#footnote-ref-117)
117. 117*Id.* at 1821. [↑](#footnote-ref-118)
118. 118*Id.* at 1822. [↑](#footnote-ref-119)
119. 119*Id.* [↑](#footnote-ref-120)
120. 120*Id.* at 1817. [↑](#footnote-ref-121)
121. 121*See* Eisenberg, *supra* note 21, at 211-19. [↑](#footnote-ref-122)
122. 122*See* Malin, *supra* note 19, at 1820 (noting that "industry often controlled the narrative and prevented neighbors from collaborating with one another"). [↑](#footnote-ref-123)
123. 123*Id.* at 1828. [↑](#footnote-ref-124)
124. 124*Id.* at 1829. [↑](#footnote-ref-125)
125. 125*Id.* ("Once you sign a contract . . . you have no power to negotiate."). [↑](#footnote-ref-126)
126. 126*Id.* at 1823. [↑](#footnote-ref-127)
127. 127*Id.* at 1830. [↑](#footnote-ref-128)
128. 128*Id.* [↑](#footnote-ref-129)
129. 129*See* Kroepsch et al., *supra* note 86, at 6603. [↑](#footnote-ref-130)
130. 130*See, e.g.*, 2 COLO. CODE REGS. § 404-1-301 (LexisNexis 2022) (describing the state permitting process for ***oil*** and gas operations in Colorado); WELD COUNTY, COLO., CHARTER AND CNTY. CODE § 21-5-30 (2021), (describing county specific permits for ***oil*** and gas development). [↑](#footnote-ref-131)
131. 131*See* Tara K. Righetti, *The Incidental Environmental Agency*, 2020 UTAH L. REV. 685, 707 (2020) ("The ultimate aim . . . of conservation law more broadly, has been to promote development of ***oil*** and gas."). [↑](#footnote-ref-132)
132. 132*Id.* at 690-700. [↑](#footnote-ref-133)
133. 133Sam Brasch, *Meet the Guy Who Helped Outlaw Fracking Bans in Colorado (by Banning Fracking)*, CPR NEWS (Apr. 8, 2019, 7:08 PM), https://www.cpr.org/2019/04/08/meet-the-guy-who-helped-outlaw-fracking-bans-in-colorado-by-banning-fracking [https://perma.cc/9KJZ-EQZH]. [↑](#footnote-ref-134)
134. 134*Id.* [↑](#footnote-ref-135)
135. 135*Id.* [↑](#footnote-ref-136)
136. 136*Id.* [↑](#footnote-ref-137)
137. 137*Id.* [↑](#footnote-ref-138)
138. 138Voss v. Lundvall Bros., 830 P.2d 1061, 1068 (Colo. 1992). [↑](#footnote-ref-139)
139. 139*Id.* [↑](#footnote-ref-140)
140. 140*Id.* at 1068-69. [↑](#footnote-ref-141)
141. 141*See* City of Fort Collins v. Colo. ***Oil*** & Gas Ass'n, 369 P.3d 586, 593 (Colo. 2016) (characterizing Fort Collins's moratorium as "a temporary 'time-out' that allows Fort Collins to study the [↑](#footnote-ref-142)
142. 142*Id.* at 578, 589. [↑](#footnote-ref-143)
143. 143City of Longmont v. Colo. ***Oil*** & Gas Ass'n, 369 P.3d 573, 585 (Colo. 2016). [↑](#footnote-ref-144)
144. 144*Id.* at 579-80; *Fort Collins*, 369 P.3d at 592. [↑](#footnote-ref-145)
145. 145*See* John Herrick, *Some Colorado Residents Want Their Local Governments to Ban Fracking. Here's Why That Probably Won't Happen*, COLO. INDEP. (Jan. 6, 2020), https://www.coloradoindependent.com/2020/01/06/senate-bill-181-local-government-ban-fracking [https://perma.cc/PW6X-B54C]. *See also* Stephanie A. Malin, Stacia S. Ryder & Peter M. Hall, *Contested Colorado: Shifting Regulations and Public Responses to Unconventional* ***Oil*** *Production in the Niobara Shale Region, in* FRACTURED COMMUNITIES: RISK, IMPACTS AND PROTEST AGAINST HYDRAULIC FRACKING IN U.S. SHALE REGIONS 198, 211 (Anthony E. Ladd ed., 2018) ("But when the Colorado Supreme Court stripped municipalities of their rights to zone and regulate local [unconventional ***oil*** and gas] activity, all spaces for procedural justice collapsed and the democratic processes playing out in some communities stalled."). [↑](#footnote-ref-146)
146. 146369 P.3d 573 (Colo. 2016). [↑](#footnote-ref-147)
147. 147369 P.3d 586 (Colo. 2016). [↑](#footnote-ref-148)
148. 148*See* Righetti, *supra* note 131, at 690-700. [↑](#footnote-ref-149)
149. 149*See* Panama Refin. Co. v. Ryan, 293 U.S. 388, 406-10 (1935) (describing policies). [↑](#footnote-ref-150)
150. 150*Id.* at 433. [↑](#footnote-ref-151)
151. 151*See* Thomas A. Mitchell, *The Future of* ***Oil*** *and Gas Conservation Jurisprudence: Past as Prologue*, 49 WASHBURN L.J. 379, 396 (2010) (discussing the history of state coordination around ***oil*** and gas production and explaining that, "at the end of 1934, opposition to federal control gave way to compromise and acceptance of state action" around an interstate compact that led to individual state conservation laws). [↑](#footnote-ref-152)
152. 152*See* Righetti, *supra* note 131, at 697 (noting that adoption of the interstate compact "coincided with the passage of conservation laws in several ratifying states"). [↑](#footnote-ref-153)
153. 1531951 Colo. Sess. Laws 651. [↑](#footnote-ref-154)
154. 154*See* S.B. 19-181, 72d Gen. Assemb., Reg. Sess. (Colo. 2019). [↑](#footnote-ref-155)
155. 155*See* Mike Soraghan, *Will Colorado's Strict* ***Oil*** *& Gas Rules Spread to Other States?*, E&E NEWS (Nov. 4, 2022, 6:47 AM), https://www.eenews.net/articles/will-colorados-strict-***oil***-and-gas-rules-spread-to-other-states [https://perma.cc/GGJ5-KSFR] ("Until 2007, five of seven seats on the agency's governing panel were reserved for people with ***oil*** and gas industry backgrounds. Directors of the agency commonly came from the ***oil*** field and revolved back into industry positions when they left."). [↑](#footnote-ref-156)
156. 156*See* Righetti, *supra* note 131, at 698 (explaining spacing regulations). [↑](#footnote-ref-157)
157. 157*See generally* COLO. REV. STAT. ANN. § 34-60-108 (West 2019) (describing the Colorado ***Oil*** & Gas Conservation Commission's (Commission) authority to create rules and hold hearings by "interested person[s]"). [↑](#footnote-ref-158)
158. 158*See* Righetti, *supra* note 131, at 708 (noting that "conservation statutes were not amended to provide conservation agencies with authority to enact rules for health, safety, and the environment until decades after adoption of the original conservation laws"). [↑](#footnote-ref-159)
159. 1591994 Colo. Sess. Laws 1980. [↑](#footnote-ref-160)
160. 1602007 Colo. Sess. Laws 1357. [↑](#footnote-ref-161)
161. 161Kelsey Ray, *For State Regulators Considering Drilling Permits, 'No' is Off the Table* COLO. INDEP. (June 2, 2017), https://www.coloradoindependent.com/2017/06/02/colorado-cogcc-drilling-permits-martinez [https://perma.cc/2A3G-NCAU] (quoting agency spokesperson: "COGCC doesn't typically deny a permit"). At least one contemporaneous account of a senior agency official's comments at a hearing suggests that agency staff could be far more aggressive in person: "I don't care what your local land use regulations are. If I want to drill at a certain location, I am going to approve the drilling. It doesn't matter what you want." Malin, Ryder & Hall, *supra* note 145, at 216. [↑](#footnote-ref-162)
162. 162*See* Sharon Dunn, *Greeley City Council Overturns Planning Commission Denial of Triple Creek Project*, GREELEY TRIB. (May 13, 2020, 7:14 AM), https://www.greeleytribune.com/2016/03/12/greeley-city-council-overturns-planning-commission-denial-of-triple-creek-project [https://perma.cc/9B6M-AYNT]. [↑](#footnote-ref-163)
163. 163*Id.* [↑](#footnote-ref-164)
164. 164*Id.* The Greeley mayor's comments similarly reflected similar themes: "We have to protect the private property rights of many citizens of Greeley who have mineral rights and have the right to access them." Malin, Ryder, & Hall, *supra* note 145, at 212. [↑](#footnote-ref-165)
165. 165Catherine Sweeney, *County Commissioners Approve Extraction* ***Oil*** *and Gas Project Near Bella Romero Academy*, GREELEY TRIB. (May 13, 2020, 6:56 AM), https://www.greeleytribune.com/2016/06/30/county-commissioners-approve-extraction-***oil***-and-gas-project-near-bella-romero-academy [https://perma.cc/2GEN-PXZE]. [↑](#footnote-ref-166)
166. 166*Id.* [↑](#footnote-ref-167)
167. 167*See* Weld Air & Water v. Colo. ***Oil*** & Gas Conservation Comm'n, 457 P.3d 727, 734 (2019) (describing the public comment process); Neighbors Affected by Triple Creek v. Colo. ***Oil*** & Gas Conservation Comm'n, 2017 Colo. Dist. LEXIS 2257, at \*11 (Colo. Dist. Ct. August 23, 2017) (describing the public comment process). [↑](#footnote-ref-168)
168. 168*See Weld Air & Water*, 457 P.3d at 730 (describing comments on the Bella Romero project); *Triple Creek*, 2017 Colo. Dist. LEXIS 2257 (describing comments on the Triple Creek project). [↑](#footnote-ref-169)
169. 169*See Weld Air & Water*, 457 P.3d at 730; *Triple Creek*, 2017 Colo. Dist. LEXIS 2257. [↑](#footnote-ref-170)
170. 170Michael Elizabeth Sakas, *Greeley District Officials Reject an Offer to Continue Air Monitoring at a School Where a Spike in Toxic Chemicals Was Detected*, CPR NEWS (Feb. 24, 2022, 2:07 PM), https://www.cpr.org/2022/02/24/greeley-bella-romero-academy-rejects-air-monitoring [https://perma.cc/X8LW-A7Z8]. [↑](#footnote-ref-171)
171. 171*Id.* [↑](#footnote-ref-172)
172. 172Judith Kohler, *Denver-Based Extraction* ***Oil*** *and Gas Latest Producer to File for Bankruptcy, Pays Millions to Executives*, DENVER POST (June 15, 2020, 8:46 PM), https://www.denverpost.com/2020/06/15/extraction-***oil***-gas-bankruptcy-colorado [https://perma.cc/6EUL-MK4V]. [↑](#footnote-ref-173)
173. 173*See* Justin Mikulka, *The Secrete of the Great American Fracking Bubble*, DESMOG (Apr. 18, 2018, 10:28 AM), https://www.desmog.com/2018/04/18/finances-great-american-fracking-bubble [https://perma.cc/SS5P-XQYN] (describing the industry's heavy borrowing, low returns, and bankruptcies). [↑](#footnote-ref-174)
174. 174*Id.* [↑](#footnote-ref-175)
175. 175*See* Justin Mikulka, *With Bankruptcies Mounting, Faltering* ***Oil*** *and Gas Firms Are Leaving a Multi-billion Dollar Cleanup Bill to the Public*, DESMOG (Oct. 15, 2020, 3:00 PM), https://www.desmog.com/2020/10/15/bankruptcies-***oil***-gas-multi-billion-cleanup-bill-public [https://perma.cc/3D83-DW2H]. [↑](#footnote-ref-176)
176. 176*Id.* [↑](#footnote-ref-177)
177. 177Nick Bowlin, *Energy Companies Have Left Colorado With Billions of Dollars in* ***Oil*** *and Gas Cleanup*, HIGH CNTY. NEWS (Mar. 11, 2021), https://www.hcn.org/issues/53.4/south-energy-companies-have-left-colorado-with-billions-of-dollars-in-***oil***-and-gas-cleanup [https://perma.cc/3AFV-E67B]. [↑](#footnote-ref-178)
178. 178Stephen Cedric Jumchai, *Extraction* ***Oil*** *& Gas Emerges from Chapter 11*, S&P GLOB. MKT. INTEL., (Jan. 20, 2021), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/extraction-***oil***-gas-emerges-from-chapter-11-62204666 [https://perma.cc/JKW2-5CYD]. [↑](#footnote-ref-179)
179. 179*See* Ann M. Eisenberg, *Transitions in Energy Communities*, 12 GEO. WASH. J. ENERGY & ENV'T L. 103, 112 (2021) ("Energy production has often both exploited and exacerbated various forms of societal inequality."). [↑](#footnote-ref-180)
180. 180LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF ENVIRONMENTAL JUSTICE MOVEMENT 69-70 (2001). [↑](#footnote-ref-181)
181. 181*Id.* [↑](#footnote-ref-182)
182. 182*Id.* at 71-72. [↑](#footnote-ref-183)
183. 183*See id.* at 54 ("To understand fully the phenomenon of environmental racism, one must understand the structural processes that underlie the well-documented distributive outcomes."). [↑](#footnote-ref-184)
184. 184*See* Shalanda H. Baker, *Anti-Resilience: A Roadmap for Transformational Justice Within the Energy System*, 54 HARV. C.R.-C.L. L. REV. 1, 6 n.22 (2019) ("The term 'sacrifice zones' refers to communities or regions that bear disproportionate health and environmental risks to facilitate development activities."). [↑](#footnote-ref-185)
185. 185Nicholas F. Stump & Anne Marie Lofaso, *De-Essentializing Appalachia: Transformative Socio? Legal Change Requires Unmasking Regional Myths*, 120 W. VA. L. REV. 823, 841 (2018); *see also* Jacqueline Yahn, *Power and Powerlessness in the Shale Valley Schools: Fracking for Funding*, 120 W. VA. L. REV. 943, 953 (2018) ("The superintendents and treasurers I spoke with across the Shale Valley took issue with popular romantic notions that their home place was 'the other America.' It is a *part of*, not *apart from*, a larger global economy that for nearly two centuries has promoted the widespread use of natural resource and labor exploitation as an efficient means for fueling economic growth.") (emphasis in original). [↑](#footnote-ref-186)
186. 186NICHOLAS F. STUMP, REMAKING APPALACHIA: ECOSOCIALISM, ECOFEMINISM, AND LAW 18-19, 40 (2021) (discussing "othering" and the natural resource curse); *see also* Stump & Lofaso, *supra* note 185, at 829 (discussing the natural resource curse). [↑](#footnote-ref-187)
187. 187Carmen Gonzalez & Athena Mutua, *Mapping Racial Capitalism: Implications for Law*, 2 J.L. & Pol. Econ. 127, 171-74 (2022). [↑](#footnote-ref-188)
188. 188Daniel G. Cumming, *Black Gold, White Power: Mapping* ***Oil****, Real Estate, and Racial Segregation in the Los Angeles Basin, 1900-1939*, 4 ENGAGING SCI.,TECH., & SOC'Y 85, 87 (2018). [↑](#footnote-ref-189)
189. 189*Id.* at 100. [↑](#footnote-ref-190)
190. 190*Id.* at 101. [↑](#footnote-ref-191)
191. 191*Id.* [↑](#footnote-ref-192)
192. 192*Id.* at 104. [↑](#footnote-ref-193)
193. 193*Id.* [↑](#footnote-ref-194)
194. 194*Id.* at 88. [↑](#footnote-ref-195)
195. 195*Id.* at 101. [↑](#footnote-ref-196)
196. 196*Id.* at 104. [↑](#footnote-ref-197)
197. 197*See* Kroepsch et al., *supra* note 86, at 6604 (noting the term's origins in studying ***oil*** and gas extraction around Los Angeles). [↑](#footnote-ref-198)
198. 198*Id.* (collecting studies noting emerging evidence of disproportionate impacts from modern ***oil*** and gas development, including wastewater facilities in Texas). [↑](#footnote-ref-199)
199. 199See discussion in *supra* Introduction. [↑](#footnote-ref-200)
200. 200David Szablowski, *"Legal Enclosure" and Resource Extraction: Territorial Transformation Through the Enclosure of Local and Indigenous Law*, 6 EXTRACTIVE INDUS. & SOC'Y 722, 724 (2019). [↑](#footnote-ref-201)
201. 201Szablowski uses the term enclosure deliberately to invoke the history of enclosing the commons. Enclosure is at the root of capitalism in several accounts, including Gonzalez and Mutua's account of racial capitalism, further linking the concepts. *See* Gonzalez & Mutua, *supra* note 187, at 132 ("Direct entrepreneurial control over the production of goods in England resulted in part from the enclosure movement, which brutally dispossessed peasants of shared land central to subsistence living (the commons)."). [↑](#footnote-ref-202)
202. 202*See* Szablowski, *supra* note 200, at 724 (discussing state and industry interest in "marginalizing the influence of local institutions and actors over territorial governance" where resource extraction is involved). [↑](#footnote-ref-203)
203. 203*Id.* [↑](#footnote-ref-204)
204. 204*Id.* [↑](#footnote-ref-205)
205. 205*Id.* at 725. [↑](#footnote-ref-206)
206. 206*Id.* [↑](#footnote-ref-207)
207. 207*See id.* at 728 ("Extractive firms work to ensure that these new legal spaces are private in character, that they are designed and dominated by extractive firms, and that they are 'walled off' in the sense that they tend to exclude independent extra-local actors, institutions and their normative systems."). [↑](#footnote-ref-208)
208. 208*Id.* at 726, 728. [↑](#footnote-ref-209)
209. 209*See* Herrick, *supra* note 145 (noting the chilling effect of the Colorado Supreme Court's preemption decisions on local government regulation of ***oil*** and gas). [↑](#footnote-ref-210)
210. 210Szablowksi, *supra* note 200, at 725 (discussing "channeling"). [↑](#footnote-ref-211)
211. 211*Id.* at 724. [↑](#footnote-ref-212)
212. 212*See* Sassman, *supra* note 17 (discussing inequality within communities dependent on extraction). [↑](#footnote-ref-213)
213. 213Szablowski, *supra* note 200, at 725. This reflects broader scholarship on extraction and its impacts. *See, e.g.*, Chagnon et al., *From Extractivism to Global Extractivism: The Evolution of an Organizing Concept*, 49 J. PEASANT STUD. 760, 761 (2022) ("While natural resource extraction remains an important focus, the processes, and conditions of extractivist practices have been abstracted and applied to entirely new areas, from the digital and intellectual realm to finance and the global economy."). [↑](#footnote-ref-214)
214. 214Szablowski, *supra* note 200, at 725. This concept aligns with broader definitions of "value" when describing the central purposes of capitalism ("profit-making") to include the extraction of political power alongside the extraction economic profits. *See* Gonzalez & Mutua, *supra* note 187, at 128 ("By profit-making, we mean capturing, as well as securing and expanding, surplus value, economic profits or wealth, and political power through processes of exploitation, expropriation, and expulsion."). *See also* Chagnon et al., *supra* note 213, at 761 ("Extractivism has long been conceptually linked to capitalist processes and has recently been characterized as a fundamental expression of global capitalism, particularly in its manifestations across the rural realities of the Global South . . . ."). [↑](#footnote-ref-215)
215. 215Szablowski, *supra* note 200, at 725. [↑](#footnote-ref-216)
216. 216*Id.* [↑](#footnote-ref-217)
217. 217*See* Michael J. Thompson, *The Two Faces of Domination in Republican Political Theory*, 17 EUR. J. POL. THEORY 44, 44 (2018) ("Domination is rightly seen as one of the central concepts in republican political theory."). [↑](#footnote-ref-218)
218. 218*Id.* at 45-46. [↑](#footnote-ref-219)
219. 219*Id.* at 45 ("[D]omination occurs whenever any agent has the capacity to interfere in 'certain choices that the other is in a position to make.'") (quoting PHILIPP PETTIT, REPUBLICANISM: A THEORY OF FREEDOM AND GOVERNMENT 52 (1997)). [↑](#footnote-ref-220)
220. 220*Id.* at 45-46. [↑](#footnote-ref-221)
221. 221This statement smooths over some conceptual debate around the role of abstract structures (e.g., economy, racism) and agents (individual people) in domination. Some, for example, argue that all forms of domination are structural to some extent. *See* Rafeeq Hasan, *Republicanism and Structural Domination*, 102 PAC. PHIL. Q. 292, 295 (2021) (arguing that "even forms of domination that might initially appear dyadic will be mischaracterized if one does not view the structural elements as conceptually primary"). For an overview of this debate within republican theory, *see* Steven Lukes, *Power and Domination*, 14 J. POL. POWER 97, 99-102 (2021). [↑](#footnote-ref-222)
222. 222*See* Hasan, *supra* note 221, at 300-01 (describing how legal authority can sanction unethical domination). [↑](#footnote-ref-223)
223. 223*Id.* For example, law plays a central role in legitimizing social relationships that racialize and "other" communities to justify extraction. *See, e.g.*, Gonzalez & Mutua, *supra* note 187, at 171-74 ("International law has been deeply complicit in the creation of sacrifice zones in the global South by extractive and polluting industry."). [↑](#footnote-ref-224)
224. 224Thompson, *supra* note 217, at 47-56. [↑](#footnote-ref-225)
225. 225*Id.* at 47 ("Extractive domination is in play whenever agent *A* is in a relation with *B* and this relation is a structural type where the relation exists for the purpose of obtaining some benefit or value for *A* from *B*."). [↑](#footnote-ref-226)
226. 226*See id.* at 48 (discussing that, in the "modern, non-personal sense," people "are dominated by the structural relation they possess towards" others, "not by the personal *arbitrium*" of the dominator). [↑](#footnote-ref-227)
227. 227*See* Malin et al., *supra* note 19, at 1822 (documenting a landman's tactic of pressuring a landowner to sign agreements by threatening to drill on their neighbor's land). [↑](#footnote-ref-228)
228. 228Thompson, *supra* note 217, at 50. [↑](#footnote-ref-229)
229. 229*Id.* at 49. [↑](#footnote-ref-230)
230. 230*Id.* at 51. [↑](#footnote-ref-231)
231. 231Watson-Fisher, *supra* note 45 (for "just the reality"). [↑](#footnote-ref-232)
232. 232Malin et al., *supra* note 19, at 1816 ("Meta-power is the establishing of conditions for future contexts by structuring and culturing those contexts"); David Szablowski & Bonnie Campbell, *Struggles Over Extractive Governance: Power, Discourse, Violence, and Legality*, 6 EXTRACTIVE INDUS. & SOC'Y 635, 637 (2019) (defining structural power as "the ability of actors to shape the rules of the game"). [↑](#footnote-ref-233)
233. 233*See* Malin et al., *supra* note 19, at 1816 (discussing meta-power); Szablowski & Campbell, *supra* note 232, at 637 (discussing structural power). [↑](#footnote-ref-234)
234. 234Szablowski & Campbell, *supra* note 232, at 637 (discussing "how governance reforms can come to align with the sector's interests in spite of countervailing efforts" as an example of structural power). [↑](#footnote-ref-235)
235. 235*See* Hasan, *supra* note 221, at 299 (arguing that structural domination "brings to the forefront of political analysis the social agency at work in producing and maintaining the structures that constrain" people's lives and choices). [↑](#footnote-ref-236)
236. 236*Id.* at 293. [↑](#footnote-ref-237)
237. 237*See* Mayer & Malin, *supra* note 21, at 80 (surveying "strands of research [that] have examined how dependence upon extractive industries shapes broader socio-economic conditions," including the "resource curse"). [↑](#footnote-ref-238)
238. 238*See id.* at 86. [↑](#footnote-ref-239)
239. 239*See id.* at 80. [↑](#footnote-ref-240)
240. 240*See id.* [↑](#footnote-ref-241)
241. 241*See id.* [↑](#footnote-ref-242)
242. 242*See id.* [↑](#footnote-ref-243)
243. 243*Id.* [↑](#footnote-ref-244)
244. 244*See id.* at 86-87. [↑](#footnote-ref-245)
245. 245*Id.* at 80-81. [↑](#footnote-ref-246)
246. 246*See id.* [↑](#footnote-ref-247)
247. 247*Id.* at 87. For example, "individuals who own mineral rights or have active drilling on their land" were "not more or less supportive of a hydraulic fracturing ban" than those who did not benefit directly from extraction potentially, Mayer and Malin speculate, because those people had experienced the disempowering effects of directly interacting with the industry. *See id.* at 86. [↑](#footnote-ref-248)
248. 248*Id.* at 86. [↑](#footnote-ref-249)
249. 249*Id.* [↑](#footnote-ref-250)
250. 250*Id.* [↑](#footnote-ref-251)
251. 251Szablowski & Campbell, *supra* note 232, at 636 (recognizing that "resource extraction seems to unlock powerful dynamics that create institutional and political commitments in favour of extraction"). [↑](#footnote-ref-252)
252. 252Welsby et al., *supra* note 8, at 231-33 (finding that about 58 percent for ***oil*** reserves and 56 percent for fossil methane gas reserves must not be extracted to maintain "a 50% probability of keeping the global temperature increase to 1.5 °C"). [↑](#footnote-ref-253)
253. 253Arias et al., *supra* note 25, at 80 ("Of the total anthropogenic CO2 emissions, the combustion of fossil fuels was responsible for about 64% ± 15%, growing to an 86% ± 14% contribution over the past 10 years. The remainder resulted from land-use change"). *See also id.* at 101 ("Fossil fuel combustion for energy, industry and land transportation are the largest contributing sectors on a 100-year time scale (high confidence).") (emphasis in original). [↑](#footnote-ref-254)
254. 254For example, leaks from gas infrastructure in Texas erased nearly all emissions benefits of transitions from coal to gas for electricity generation. *See* Benjamin Storrow, *Methane Leaks Erase Some of the Climate Benefits of Natural Gas*, E&E NEWS (May 5, 2020), https://www.scientificamerican.com/article/methane-leaks-erase-some-of-the-climate-benefits-of-natural-gas [https://perma.cc/J7QG-8YEL] (discussing the EDF study). Similarly, one gas well in Pennsylvania leaked for thirteen days and "effectively erased emissions gains from about half of the [electric vehicles] sold in the US" in 2021. *See* Aaron Clark, *Giant Methane Leak Tops List of Worst US Climate Disasters in 2022*, BLOOMBERG (Dec. 13, 2022, 6:00 AM), https://www.bloomberg.com/news/articles/2022-12-13/us-gas-leak-at-equitrans-well-in-pennsylvania-adds-climate-pressure [https://perma.cc/37Z4-7ZA9]. [↑](#footnote-ref-255)
255. 255*See* Welsby et al., *supra* note 8, at 231 (identifying U.S. ***oil*** and gas production as peaking in 2025 and declining in 2050). [↑](#footnote-ref-256)
256. 256*See, e.g.*, BUCK, *supra* note 27, at 143-79 (collecting reforms). [↑](#footnote-ref-257)
257. 257*See generally, e.g.*, HAMILTON, *supra* note 27 (discussing the legal foundations of fossil fuel extraction but focusing primarily on climate activism and criminal prosecution). [↑](#footnote-ref-258)
258. 258*See, e.g.*, Alyssa Battistoni, *On the Politics of* ***Oil*** *Abolition*, ABOLITION DEMOCRACY (March 5, 2021), https://blogs.law.columbia.edu/abolition1313/alyssa-battistoni-on-the-politics-of-oilabolition [https://perma.cc/C653-V2T5] ("That is to say, in order to abolish ***oil***, the state must effectively destroy private property rights. This is a high bar to clear, to say the least."). [↑](#footnote-ref-259)
259. 259*See, e.g.*, Mayer & Malin, *supra* note 21, at 86 (noting how extractive industry generates political support despite "troubled history" with communities). [↑](#footnote-ref-260)
260. 260*See* Liza Gross, ***Oil*** *Industry Moves to Overturn Historic California Drilling Protection Law*, INSIDE CLIMATE NEWS (Oct. 10, 2022), https://insideclimatenews.org/news/10102022/***oil***-industry-california-drilling-protection-law [https://perma.cc/UY7J-TVFX] (noting how California passed a "historic climate package" that "bans new ***oil*** and gas wells within 3200 feet of homes, schools and any other place people could be harmed by drilling operations," and how this law was "the result of a 'monumental effort' by the people who are most affected by polluting ***oil*** and gas wells in their backyard"). [↑](#footnote-ref-261)
261. 261Szablowksi & Campbell, *supra* note 232, at 637. [↑](#footnote-ref-262)
262. 262Joshua Zaffos, *Jared Polis Abandons Anti-Fracking Initiatives*, HIGH COUNTRY NEWS (Aug. 12, 2014), https://www.hcn.org/issues/46.14/jared-polis-abandons-anti-fracking-initiatives [https://perma.cc/9WU5-FQGW] (explaining how "Hickenlooper announced a new commission to recommend fracking rules to the Legislature" in an effort to take ***oil*** and gas conflicts "off the table prior to the election"). [↑](#footnote-ref-263)
263. 263Stacia S. Ryder & Stephanie A. Malin, *Mechanisms of Metapower & Procedural Injustices in the Colorado* ***Oil*** *and Gas Task Force Decision-Making Process*, 15 CRITICAL POL'Y STUD. 462, 476 (2021) (quoting participants describing the task force "so flawed in how it was designed" and "biased toward the industry"). [↑](#footnote-ref-264)
264. 264*Id.* at 471. [↑](#footnote-ref-265)
265. 265*Id.* at 476 (emphasis omitted). [↑](#footnote-ref-266)
266. 266*Id.* [↑](#footnote-ref-267)
267. 267Rich Nemec, *Colorado Sets New Local Control Rules; Industry is "Disappointed*," NATURAL GAS INTEL. (Jan. 26, 2016), https://www.naturalgasintel.com/colorado-sets-new-local-control-rules-industry-is-disappointed [https://perma.cc/D5JE-5GRX] ("Various task force and local government representatives praised the commission's work," but industry representatives criticized the rules as "problematic, unsupported by reasonable or technical basis, and unclear as to the intent and purpose" ). [↑](#footnote-ref-268)
268. 268*See* Neighbors Affected by Triple Creek v. Colo. ***Oil*** & Gas Conservation Comm'n, 2017 Colo. Dist. LEXIS 2257. [↑](#footnote-ref-269)
269. 269*See* Bente Birkeland, *Court Rules That Democrats' Use of Computers to Accelerate the Reading of a Bill Is Unconstitutional*, CPR NEWS (Mar. 20, 2019, 12:18 AM), https://www.cpr.org/2019/03/20/court-rules-that-democrats-use-of-computers-to-accelerate-the-reading-of-a-bill-is-unconstitutional [https://perma.cc/4MKY-L5WC] (describing a lawsuit stemming from Colorado Republicans' attempts to stall S.B. 19-181 by invoking a rule requiring the 2000 page bill to be read aloud and Colorado Democrats using "five computers to read" the bill "at top speed at 650 words per minute"). [↑](#footnote-ref-270)
270. 270*See* Jared Polis, *Give Pivotal New* ***Oil*** *& Gas Law a Chance to Work*, COLO. POL. (Sept. 17, 2020), https://www.coloradopolitics.com/opinion/give-pivotal-new-***oil***-gas-law-a-chance-to-work/article\_8eb26b64-cd67-11ea-9565-d790872378e8.html [https://perma.cc/YB8D-LS7K]. *See also* Jennifer Kovaleski, *Colorado's Governor Strikes a Deal to Keep* ***Oil*** *and Gas Measures Off the November Ballot*, DENVER7 (Aug. 19, 2020, 6:58 AM), https://www.denver7.com/news/360/colorados-governor-strikes-a-deal-to-keep-***oil***-and-gas-measures-off-the-november-ballot [https://perma.cc/HMZ3-H7BC] ("Colorado's ***oil*** and gas ballot box wars are over. Or at least that's what Gov. Jared Polis said when he wrote a recent opinion piece for Colorado Politics, but not everyone is buying the deal the governor is selling."). [↑](#footnote-ref-271)
271. 271Righetti et al., *supra* note 30, at 51 (observing that "a spectrum of changes to state statutes and common law has rendered an expansive reshaping of ***oil*** and gas law that amounts to a legal revolution"). [↑](#footnote-ref-272)
272. 272*Id.* at 75. [↑](#footnote-ref-273)
273. 273*Id.* at 62, 76. [↑](#footnote-ref-274)
274. 274*Id.* at 54, 63. By local control, I generally mean as used in this ***oil*** and gas reform literature. *Compare id., with* Shelley Welton, *Grasping for Energy Democracy*, 116 MICH. L. REV. 581, 638-42 (2018) (discussing an alternative understanding of local control in energy law). [↑](#footnote-ref-275)
275. 275Michael Booth & Mark Jaffe, *Colorado Gave Local Governments More Power to Regulate* ***Oil*** *& Gas. And Some Are Using It*, COLO. SUN (March 31, 2021, 3:49 AM), https://coloradosun.com/2021/03/31/colorado-***oil***-and-gas-rules-drilling-fracking [https://perma.cc/4FZN-KBZD] (quoting former legislator that the "new state regulations . . . should be seen by communities as 'a floor not a ceiling' to regulating ***oil*** and gas activity"). [↑](#footnote-ref-276)
276. 276Righetti et al., *supra* note 30, at 62. [↑](#footnote-ref-277)
277. 277*Id.* at 62, 64. [↑](#footnote-ref-278)
278. 278*Id.* at 65 ("And at least one state, California, has considered following in Colorado's footsteps."). [↑](#footnote-ref-279)
279. 279Soraghan, *supra* note 155 ("'We certainly worry about things like that making their way outside of Colorado,' said Lynn Granger, executive director of the American Petroleum Institute Colorado. Particularly vexed by the 2000-foot buffer zone, she worries about opponents arguing that 'they're doing it there, and they were able to make it work.'"). [↑](#footnote-ref-280)
280. 280*See* Righetti et al., *supra* note 30, at 76 (noting it is "too early to declare" whether Colorado's approach will take hold). [↑](#footnote-ref-281)
281. 281S.B. 19-181 § 6, 72d Gen. Assemb., Reg. Sess. (Colo 2019). [↑](#footnote-ref-282)
282. 282*See* COLO. ***OIL*** & GAS CONSERVATION COMM'N, COLORADO ***OIL*** & GAS CONSERVATION COMMISSION IMPLEMENTING COLORADO'S ***OIL*** & GAS LAW SB 19-181, https://cogcc.state.co.us/documents/media/Mission\_Change\_200\_600\_800\_900\_1200\_Series\_Fact\_Sheet\_20201123. pdf [https://perma.cc/R2DV-7P8C] (describing agency rulemakings intended "to fulfill the mandates" of S.B. 19-181). [↑](#footnote-ref-283)
283. 283*See* Mark Jaffe, *Colorado* ***Oil*** *and Gas Companies Said a 2019 State Law Would Destroy Them. That Didn't Happen. But Here's What Did.*, COLO. SUN (July 6, 2022, 3:52 AM), https://coloradosun.com/2022/07/06/colorado-***oil***-gas-laws-new-drilling-permits [https://perma.cc/3PUC-62E5] ("It was the hope of community and environmental groups that the new law and rules would bend the curve in ***oil*** and gas development in Colorado, limiting the drilling and hydrofracking . . . ."). [↑](#footnote-ref-284)
284. 284Mike Foote & Casey Morris, *COGCC: One Year After Mission Change*, COLO. SIERRA CLUB (Jan. 17, 2022), https://www.sierraclub.org/sites/www.sierraclub.org/files/press-room/COGCC%20One%20Year%20After%20Mission%20Change.pdf [https://perma.cc/H5MG-ZJLP]. [↑](#footnote-ref-285)
285. 285*Id.* at 4. [↑](#footnote-ref-286)
286. 286*Id.* [↑](#footnote-ref-287)
287. 287*Id.* [↑](#footnote-ref-288)
288. 288*Id.* at 12. [↑](#footnote-ref-289)
289. 2892 COLO. CODE REGS. § 404-1-604(b) (LexisNexis 2021). [↑](#footnote-ref-290)
290. 290*See* Lucy Haggard, *Colorado* ***Oil*** *and Gas Regulators Finalize New Rules for the Drilling Industry and Themselves*, COLO. SUN, (Nov. 23, 2020, 6:23 PM), https://coloradosun.com/2020/11/23/colorado-***oil***-gas-conservation-commission-mission-change [https://perma.cc/76LP-EXEW] ("The changes include a requirement that most new drilling be set back at least 2000 feet from homes and schools, which the ***oil*** and gas industry fiercely opposed."). [↑](#footnote-ref-291)
291. 291*Id.* [↑](#footnote-ref-292)
292. 292Foote & Morris, *supra* note 284, at 1. [↑](#footnote-ref-293)
293. 293*Id.* at 10, 23-25. [↑](#footnote-ref-294)
294. 294*Id.* at 25. Notably, this 2022 report is consistent with prior evaluations of whether regulatory reforms have meaningfully changed the Commission's practice. For example, a 2015 report evaluating the Commission's compliance with regulatory changes requiring 1000-foot setbacks and that facilities be located "as far as possible" from homes and other buildings concluded that nearly 200 approved well sites did not include "information necessary to determine if the locations were meeting the requirement that well operations be located as far as possible from homes." UNIV. OF DENVER ENV'T L. CLINIC, REVIEW OF ***OIL*** & GAS INDUSTRY AND THE COGCC'S COMPLIANCE WITH COLORADO'S SETBACK RULES 2 (2015), https://www.law.du.edu/documents/student-law-office-clinical-programs/ELC-Form-2a-Executive-Summary.pdf [https://perma.cc/PJ7Y-UBDY]. [↑](#footnote-ref-295)
295. 295*See* BOULDER CNTY., CITY OF LONGMONT, TOWN OF ERIE, & CITY & CNTY. OF BROOMFIELD, FRONT RANGE LOCAL GOVERNMENT AIR QUALITY STUDIES (2022), https://www.documentcloud.org/documents/22108199-front-range-air-pollution-report [https://perma.cc/62U6-EQ9R]. [↑](#footnote-ref-296)
296. 296*Id.* at 43. [↑](#footnote-ref-297)
297. 297*Id.* [↑](#footnote-ref-298)
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