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Law's rurality: Land use law and the shaping of people-place relations in rural Ontario

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ABSTRACT

This paper considers law's role in constructing rurality in the context of land use disputes in Ontario, Canada. In particular, highly contested aggregate mineral developments are examined to demonstrate how legal and policy conceptions of the rural shape people-place relations to construct rurality as residual. In this context, rurality is considered as a dimension of a broadened and relational politics of environmental justice that extends to the more-than-human world. At the same time, this paper explores how environmental justice perspectives are critical to deepening and strengthening the transformative potential of rural land use and environmental activism. Land use conflicts are considered as one strategic opening for an ecologically just rural politics of place that can shift the way law structures relationships of rurality in particular places.

1. Introduction

Land use law in Ontario constructs the rural as residual – a boundary space between the urban and the natural, between the industrial extractive and protected ecological zones. The working landscapes of rural places serve as a buffer to legally protected environmental landscapes, but are also offered up as a potential sacrifice zone where resource demands can be satisfied. As the space between industrial and environmental zones, rural places serve as the spaces in which the 'balance' between environmental values and economic growth can be established through the promotion of appropriate development and good planning. This residuality reinforces the value of rural places as either preserved amenity spaces or sites of industrial and extractive development rather than the inhabited sites of ongoing negotiated relations between human communities and with ecological systems. Further, it forecloses opportunities for the articulation and performance of transformative ecological relations that might otherwise emerge as parties negotiate the people-place relations of living with the 'more-than-human' world in rural places.

Decisions about land use are sites of political and legal contestation about social and environmental justice in both rural and urban contexts. This paper specifically considers the rural context by examining aggregate mineral mining in the Niagara Escarpment area of Ontario, Canada, a rural and peri-urban region that borders the Greater Toronto Area.[2] Aggregate extraction provides a strategic context in which to explore rurality as a dimension of environmental justice because of both the transformative material impacts of extraction and the spatially fixed nature of mineral resources. In this sense, mining can be distinguished from many of the other types of siting and locally unwanted land use issues traditionally considered by environmental justice scholars. Mining necessarily occurs in particular locations where resources are found (Keeling and Sandlos, 2009). As well, extraction is transformative – a particular place is lost and another is created. While large-scale industrial aggregate mining in Ontario takes place largely on private land at the initiative of private land owners, the impact of

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[2] Section 1 of the *Aggregate Resources Act* (RSO 1990, c. A.8), defines "aggregate" as, "gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock or other prescribed material". Depending on the specific material, a mine is classified as either a "pit" or a "quarry" in Ontario. Mines are further classified according to private or Crown lands, tonnage of extracted material, and extraction above or below the water table.

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extraction extends to a much wider range of human and more-than-human communities with relationships to the particular places at stake. In this paper, I specifically examine interests asserted by parties without ownership interests in the land involved. These 'more-than-ownership' interests complicate legal and cultural constructions of property ownership as the defining relationship between people and places. Disputes about aggregate mining provide one example of the how land use planning law attempts to balance such interests with the protection of private property ownership in Anglo-Canadian law.

In the context of Ontario, the fixed location of aggregate mineral resources overlaps with networks of conflicting relationships with land: environmental preservation and ecological integrity; agricultural and recreational land uses; local and regional infrastructure and economic development; and, Indigenous rights and legal orders with respect to land and resources. Such relationships are produced through complex and interdependent people-place relations that are always being contested and negotiated through political, social, and material interactions within and between human and more-than-human communities. The specific hydrogeological features of valuable mineral deposits create the conditions for high quality agricultural land, historically inhabited and used by Indigenous communities displaced from their land through the establishment of settler farming communities and now characterized by a growing population of amenity-seeking exurbanites and second home owners. Elsewhere the rare species habitat of an alvar landscape, protected by an Indigenous legal order for its cultural and spiritual significance and subject to ongoing land claims, may be popular as a recreational destination, valuable as pastureland leased to local ranchers, and simultaneously privately owned by aggregate developers with plans to extract the uniquely accessible mineral resources. This paper examines the role of legal constructions of rurality in determining the ordering of these relations. In particular, the legal privileging of an extractive model of property over people-place relations that fall outside the boundaries of private property ownership is critically examined in the context of rural Ontario. The work that law does in structuring relationships with land shapes and constrains the range of 'more-than-ownership' relations that are articulated and recognized in planning processes. In doing so, it plays an important role in shaping opportunities for just and equitable environmental relations in particular places.

2. Methods

This paper presents a case study on the unique environmentally-focused Niagara Escarpment planning regime that is part of a larger research project examining the law and policy governing disputes about aggregate extraction in Ontario between 2001 and 2014.[3] An initial review of the Provincial Environmental Registry identified 242 decisions on large-scale industrial aggregate mines, including approvals, withdrawals, and denials.[4] A database of the decisions was constructed, including chronologies, location, depth of extraction, volume of extraction, objections filed, key issues identified, and, decision makers.

Detailed documentary analysis of legal texts was undertaken, including formal laws and regulations, policy and regulatory guidance documents, public submissions, and legislative review documents. Specific cases for detailed documentary analysis and in-depth interviews were selected through a review of key documents to identify the level of participation by members of the public and governmental and non-governmental organizations in the regulatory process and the types of issues and concerns about the impact of extraction raised by such parties. Cases with high levels of participation or those that presented particularly significant concerns, such as unprecedented size, experimental or untested extraction methods, or high levels of social and environmental impact were considered for interview-based qualitative case studies. In selecting specific cases, I focused on applications resulting in, or likely to result in, a hearing before the provincial land use tribunal.

Based on the documentary analysis, 18 unstructured in-person interviews were conducted with 25 participants involved in aggregate extraction disputes. All the disputes were in places deemed 'rural' by local or regional plans with the exception of one case study in Northern Ontario. For the purposes of this paper, rurality is defined in relation to the legal classification of the place involved rather than personal identification as rural or as belonging to a rural community. Participants were largely activists in local or regionally-based organizations formed to respond to a specific application or pre-existing organizations who chose to become involved with a particular quarry application based on a particular set of environmental or social concerns. Participants included farmers, residents of communities close to proposed mine sites, non-resident home owners in communities close to proposed mine sites, and members of local environmental and conservation groups.[5] In addition, two lawyers, one scientific consultant, one policy analyst, one professional naturalist, and two planners were interviewed. All but one of the participants were white, 15 were men and 10 were women.

Interviews took place in both one-on-one and small group settings. Where possible, interviews took place in the area that was the subject of the conflict. Subsequent site visits were made by the author in order to achieve a place-based understanding of the participants' perspectives. In two cases, participants provided an extensive guided tour of the proposed site following the interview. In other interviews participants provided or referred to maps and pictures of the location. In two cases the author is personally familiar with the area.

The legal texts and interview data were analyzed through an eco-relational analysis developed by the author to bring together the relational analysis of law proposed by Canadian legal scholar Jennifer Nedelsky with the relational-place approach proposed by Pierce et al. Based on this hybrid framework, the data was analyzed to identify "the place-frames central to the conflict" (Pierce et al.,

[3] In May 2012, an all-party review of the *Aggregate Resources Act* was initiated at the Standing Committee on General Government (Legislative Assembly of Ontario, Orders and Notice Paper, 1st session, 40th Parliament, March 22, 2012). The review included the consultation process, siting, operations, and rehabilitation, best practices and industry developments, fees and royalties, and, aggregate resource development and protection, including conservation and recycling.

[4] The Environmental Registry is a public online database governed by the *Environmental Bill of Rights* (1993, SO 199s, c 28), where *Aggregate Resources Act* applications are publicly posted.

[5] At the time of writing, the larger project includes the development of a conceptual framework and an ongoing process of relationship building aimed at working with an Indigenous community facing quarry development proposals in Ontario, including in the Niagara Escarpment Development Plan Area where enduring Indigenous relationships to the land and place-based legal systems are critically components of realizing just sustainability. The goal of this work is to engage with Indigenous experiences, perspectives, and legal principles for land use governance, which requires distinct legal and methodological considerations for the author as a white, settler, legal academic. This aspect of the project was not complete at the time of publication and is therefore not included in this paper. The discussion below does consider questions and implications related to Indigenous land and legal orders as a critical part of a broader discussion about rurality and environmental justice in Ontario and Canada and an essential element of ongoing and future research. However, it is not reflected in the empirical data discussed below.