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COMMENTARIES

## A Response to Sassen – Expulsion, Extraction and the Silent Enabler

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Professor Sassen's 2019 Montesquieu Lecture, delivered at Tilburg Law School to a packed theatre of faculty and students, drew heavily on her previously published article, 'Predatory Formations Dressed in Wall Street Suits and Algorithmic Math'.<sup>1</sup> This comment refers both to this printed text and to her delivered lecture, which is available to view on Youtube.<sup>2</sup>

### Expulsion, extraction

Sassen is one of our most influential analysts of globalisation. Her efforts to locate actors, such as nations or cities, within and against the various dynamics of globalisation have had a deep impact on how we conceptualise contemporary globalising forces. Her notion of assemblages of Territory, Authority and Rights (TAR) have given us a vocabulary for discussing how globalisation is constructed, undone and reformed; and her broad historical approach has given us greater insight into contemporary changes by allowing us to understand them as part of a longer trajectory, detailing how key concepts and notions have flowed and mutated from the Middle Ages onwards. In the context of her present lecture, two themes stand out in Sassen's work. The first is an interest in electronic, capital markets as an elemental marker of twenty-first century globalisation. This is evidenced, for example, in her most well-known work (at least among lawyers), *Territory, Authority, Rights*,<sup>3</sup> and has become the focus of her later work on high finance. The second theme is her interest in the dark side of globalisation, in its 'discontents'<sup>4</sup> and in those subject to 'expulsions'<sup>5</sup> – an interest that is represented here as the victims of the brutality of globalisation's extractive logics.

As with the idea of TAR assemblages, the characterisation of globalisation as extractive provides us with a powerful vocabulary for identifying and expressing the huge negative costs of economic globalisation to humans and the environment. It gives us a vivid way of understanding the harms done, not as a side-effect to be mitigated, but as the core logic of global capital. The language of extraction represents a shift from Sassen's earlier vocabulary of expulsion and is a welcome one. 'Expulsion' as a term spoke to the brutalities of the global economy, and Sassen used it to refer to both the physical and social expulsion of individuals and communities from place and liveable space. Yet the term was less evocative than that of extraction: while it is easy to grasp how the global market in land leads to the expulsion of local people from the space that was once theirs, it is less easy to visualise how global capital leads to social inequalities and exclusion through the language of expulsion. It is certainly the case, as Sassen argues in this lecture, that city-dwellers are being pushed out as global capital seeks safe havens for their investments. Yet, on the whole, poorer citizens are not expelled from society; they are instead slowly but inexorably pushed out to the margins of social life and then out of sight. Expulsion is a dramatic often highly visible action and, as such, arguably fails to capture the processes of marginalisation that are precisely non-dramatic in their method, yet dramatic

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<sup>1</sup> *Science, Technology & Society* 22:1 (2017): 1–15.

<sup>2</sup> <https://www.youtube.com/watch?v=W5gdRTU3HAE> (last accessed 3<sup>rd</sup> August 2019).

<sup>3</sup> Saskia Sassen, *Territory, Authority, Rights: From Medieval to Global Assemblages* (Princeton University Press, 2006).

<sup>4</sup> Saskia Sassen, *Globalization and Its Discontents: Essays on the New Mobility of People and Money* (The New Press, 1999).

<sup>5</sup> Saskia Sassen, *Expulsions. Brutality and Complexity in the Global Economy* (Belknap Press, 2014).

in their consequences. By reframing her analysis as extractive logic, Sassen overcomes this by drawing our attention away from consequences to the process itself, to the essence of how global capital functions. As Sassen notes in passing in the final chapter of *Expulsions*, “[t]he mechanisms for ... extractions are often far more complex than the outcomes, which are often quite elementary.”<sup>6</sup>

While Sassen largely restricts her analysis in her lecture to high finance and property, it is easy to see how the notion of extractive logics can help us understand other sectors and other global crises, such as, for example, the opioid crisis.<sup>7</sup> Where the creation and production of medicine to treat illness has been one of the greatest triumphs of modernity, the pharmaceutical industry instead sees individuals not as patients in need of care but as sources of profit. Being able to identify such sectors as extractive or predatory, and call them out as such, is an important contribution to globalisation studies. Sassen is a master at offering the right vocabulary at the right moment.

Moreover, the concept of extraction – drawing as it does on the terminology of the extractive industries of mining – is also better able than the notion of expulsions to capture the environmental costs of global capital. Whereas ‘expulsion’ might capture the impact of environment degradation on human communities, it does less well at explaining the impact on nature itself or the global repercussions of localised environmental harm. As such, the notion of extraction fits very well with another new vocabulary, that of the Anthropocene or Human Epoch. Much of the early work within the social sciences on the Anthropocene has focused on detailing evidence of a new geological era<sup>8</sup> and on reflecting about the likely impact – both for how we see the world and how we live in it – of an environment irrevocably altered by human behaviour. The language of extraction makes clear how humankind is remaking her environment and gives us a place to start in rethinking our relationship to nature.

Yet, while extraction as a logic or the related notion of predatory formations provides us with a powerful means to understand the logic of global capital, I wonder whether it is fully adequate as a vocabulary to capture the system of economic globalisation. Extraction helps us identify the losers of globalisation – the prey – and it identifies the suits and algorithm whiz kids of high finance as the winners or predators, which is hugely helpful – and yet, there is surely another category within economic globalisation who are neither predators nor prey. They are the partial winners of globalisation: the professional middle classes who, yes, suffer from high house prices and from the gutting out of old communities, but who are able to save, to educate their children, to go on nice holidays and to build new communities based on function rather than location (tennis clubs rather than streets, professional networks rather than fellow citizens). How should we understand the role of this, sizable, group in perpetuating the system? Are they simply bystanders, ebbing and flowing with the capital tide? If so, their role does not really require elaboration. But perhaps it is worth identifying and exploring their role in the system, as it may be more critical than it at first seems. In any case, I look forward to seeing Sassen elaborate further on extraction as a logic in forthcoming work.

### The Silent Enabler

Sassen’s work has done much to place law at the heart of how we think about globalisation – one of the main reasons that her work is so beloved by lawyers. Her reflections on authority, as opposed, say, to power, and on the relationship between authority and territory, have made an important contribution to how the legal discipline has engaged with the many questions raised by globalisation.<sup>9</sup> This makes it all the more surprising that her later work has paid so little attention to law. It is true that in one of the central chapters of her work on expulsions – that on the global market for land – Sassen notes that this global land market requires a “vast specialized servicing infrastructure to enable sales and acquisitions, secure property and leasing rights, develop appropriate legal instruments, and even push for the making of new laws to accommodate such purchases in a sovereign country.”<sup>10</sup> However, this is as much as she says about the vital infrastructure that enables the creation of such a global market, in land or in the transformation of any other ‘good’ into a commodity or asset. Of course, one can argue that it is the work of legal academics to explore exactly how these legal instruments do their work and to unpick the

<sup>6</sup> Sassen, *Expulsions*, 219.

<sup>7</sup> While much of the media’s focus has been on the U.S., parts of Africa are also experiencing an opioid crisis, fuelled by cheap and unregulated access to drugs such as codeine and tramadol. See, *The Economist*, West Africa’s Opioid Crisis, 23<sup>rd</sup> August 2018.

<sup>8</sup> The Anthropocene has not yet been officially endorsed by either the International Commission on Stratigraphy (ICS) nor the International Union of Geological Sciences (IUGS), although proposals to do so have been presented and are being studied.

<sup>9</sup> See *Territory, Authority, Rights*, chapters 2 and 5 in particular.

<sup>10</sup> Sassen, *Expulsions*, 81.

networks of knowledge and individuals that create and sustain them.<sup>11</sup> Sassen has identified the way and others should pick up the thread. Fair enough.

However, in her work on high finance, she appears to deny the role of law entirely. Not only does law not feature in her reflections, but when asked directly during her Montesquieu lecture about the role she saw for law in enabling the extractive logics of capital, Sassen stated that law was irrelevant – indeed, Sassen claimed that the world of dark pools and financial algorithms is precisely characterised by its absence of regulation. This, I think, is dangerous stuff. It is undoubtedly the case that the deregulation of national financial markets, beginning in the early 1980s, was a crucial aspect in the creation of the global financial market that we have today and, of course, in the 2008 financial crash itself. But deregulation in certain areas does not equate to a lack of law. The financial sector is saturated with law; put differently, legal instruments – as Sassen noted in relation to global land transactions – underpin and make possible all financial transactions, even those that are the result of complex algorithms. At the most basic level, law plays a decisive role in converting assets into commodities, in enabling these commodities to be bought and sold, and in providing security of assets. Law provides anonymity, and hence security, via shell corporations and off-book tax-keeping. Dismissing the role of law in the functioning of global capital does two things that make this approach dangerous: firstly, it provides only a partial understanding of how high finance functions in practice. This matters if we wish to challenge it.

This connects to one of the downsides of focusing on logics, and that is that it anonymises. Capitalism creates predators and prey but by seeing this as a logic of capitalism itself – which is, as I have hoped to stress, extremely helpful in capturing the systemic nature of global finance – the identity of both victims and winners is effaced. This effacement or anonymity is secured in practice for the predators by legal tools: shell corporations, tax havens, privacy rules, non-disclosure agreements – all instruments that have been created by lawyers and that are guaranteed by the law. Seeing this is an important step in fighting back. Through understanding that a form of globalised contract enables transnational investors to profit, for example, from sugar production land-grabbing in Cambodia, other legal tools can be used to challenge it and to hit investors where it hurts most: profit and reputation.<sup>12</sup> This is the essence of the lawfare movement.<sup>13</sup>

The second reason that to dismiss the role of law in high finance is dangerous is that it works to exculpate it. Lawyers and the legal industry that they populate are very good at justifying their role in extraction logics by claiming that they simply serve the needs of their clients. The ethics that we teach in law school and that form part of bar qualifications concern the ethical responsibility of lawyers towards their clients and towards the law itself. Little consideration is given to the ethical responsibility of lawyers towards those that are not their clients, towards societies more broadly and to vulnerable groups and communities in particular. Legal instruments, like financial instruments, easily become divorced from those that create them, as does, of course, the accountability for their consequences. It is crucial that we broaden our approach to ethics in legal education and an important step in this is in acknowledging the vital role that law plays in enabling global capital to do its extractive work.

Of course, one can argue that the role of law in enabling global capital is not the most interesting subject or, more pertinently, that it was not the subject of Sassen’s lecture – rather she chose to focus on the core logic of high finance, not its facilitating infrastructure. But if the first step in making sense of economic globalisation is to identify a language that captures its essence (job done), the next step is to untangle how that essence functions. And while maths is part of the answer, and is definitely a sexier topic, the bigger part of the answer – the silent enabler – is law.

### Competing Interests

The author has no competing interests to declare.

<sup>11</sup> Much as Dezelay and Garth did for commercial arbitration well over a decade ago: Yves Dezelay and Bryant G. Garth, *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order* (University of Chicago Press, 1996).

<sup>12</sup> See, as one instance of fighting back, the still-pending tort claim in London brought in response to land transactions in Cambodia: *Song Mao and Others v. Tate & Lyle Industries Limited and T&L Sugars Limited*, Particulars of Claim, Queen’s Bench Division of the High Court, 28 March 2013; <https://business-humanrights.org/sites/default/files/media/documents/tate-lyle-particular-of-claim-28-mar-2013.pdf> (last accessed 4th August 2019).

<sup>13</sup> For more information on lawfaring, Tomaso Ferrando, *Land and Territory in Global Production: A Critical Legal Chain Analysis*, doctoral thesis defended at Ecole Doctorale de Sciences Po, 30 October 2015.

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