Offset Frontiers, Fossil Capitalism and the Law

The notion that you can subject contemporary capitalism to a green makeover has always centered on one thing above all else: offsets.

The idea is that regulators shouldn't force you to reduce your emissions if you can convince them that you've found a cheaper substitute for doing so. Or that you shouldn't have to stop depleting biodiversity or water sources on one site as long as you can also do something else somewhere else that "balances out" the damage and costs less.

What will make aviation green, on this reasoning? Among other things, finding land and forests to suck down the CO_2 from airplanes. Green cars? In part, similar offsets. Ditto for green cement and green IT. Chevron has even even claimed to make a cargo of liquid natural gas "carbon-neutral" by, among other things, financing the annexation of the carbon-cycling capacity of soils and trees in Indonesia and Cambodia.

At first, this claim that irreparable damage done here can be "zeroed out" by something else over there sounds a bit desperate. But it fits perfectly within the overall logic of colonial capitalism and its legal regimes. As Binghamton University historian Jason W. Moore has long argued, "capitalism not only *has* frontiers; it exists only *through* frontiers." Built on grabbing the cheapest possible labor, raw materials, food and energy from various frontiers at any cost to the global commons, it has only one solution for the resulting mess: open yet another frontier of appropriation to clean it up.

What could be more natural, then, when it looks like the free atmospheric waste dump you've been using to stow your carbon dioxide emissions in for 150 years is getting maxed out, to open further frontiers on the world's land masses to take care of some of the spillover and rescue economic growth? To press soils, trees, farmers and forest peoples, even oceans and geological formations into doing cheap maintenance work in the form of carbon dioxide absorption?

The creation of these new "sacrifice zones," to adapt Maristella Svampa's term, is a "joint operation of wars and words" (to borrow Ranajit Guha's nice phrase describing colonialism). Seizing the carbon-cycling capacity of somebody else's environment in order to be able to keep your fossil fuels coming out of the ground means stacking up millions of pages of abstruse technical and legal documentation to persuade regulators and consumers that what you're doing makes sense – a process that has been patiently chronicled over decades by researcher Chris Lang together with colleagues in the World Rainforest Movement and the Indigenous Environmental Network.

So far so good. But what happens when the new frontier of offsets itself gets maxed out? For example, when it turns out that there will never be enough trees to absorb all that fossil-origin carbon dioxide? Or that the attempt to enlist new land and forests to safeguard industry profits wreaks havoc on the human and more-than-human communities that were previously taking care of them?

Well, maybe another frontier can be found by and by to take care of *that* crisis too. The spirit of capital requires nothing less than to believe that there will always be new frontiers to get us past the crack-up of old ones. "Something will turn up" is the time-honored slogan of capitalist idealism.

And capital's famed technical ingenuity is always on hand to make sure something does. Maybe new homes and green jobs can be promised to people driven off their land in the name of carbon. Or

maybe cutting-edge digital technology can improve the efficiency with which corporations gain access to offset frontiers, adding its own energy footprint to the landscape in the process.

Legal ingenuity is part and parcel of this fabled capitalist flexibility. Take the role of neoliberal regulation in opening up the most important offset frontier of all: the frontier of the future. For a whole generation of innovative lawmakers, the seemingly simple concept of "avoided emissions" has offered the juiciest potential of all for crafting legislation that allows the current frontier of fossil fuel extraction to continue expanding outward indefinitely.

The idea is that preventing future emissions is just as good as stopping them now. Instead of limiting your emissions or your extraction, regulators can give you the right to pollute today if you can show them that you are averting pollution that would otherwise happen tomorrow.

Accounting-wise, the setup is simple. First you find emissions that haven't yet occurred. Carbon dioxide from forests that are doomed to burn. Methane from future cows whose birth is inevitable. Future smoke from oil whose burning, you assert, will never be precluded by construction of a wind or solar farm.

To back up your claim to know all this stuff about the future, you have a rich choice of technologies: statistical prediction, economic projection, even series of satellite images. If a dissident lawmaker tells you that you're wrong, that a certain emission that you are anticipating is not going to happen because it's against the law, all you need to do is demonstrate that the law will not be enforced.

Or, better yet, just show the lawmaker that it's in their interest to get the law repealed or halt any future attempts to compel compliance.

Second, you introduce a loophole. For sure, all the future emissions you've tabulated will happen. It's destiny. You've documented that in accordance with now-accepted legal standards. But wait! Actually, there does happen to be one person who can alter this otherwise fatal fate. You. In all the world, you are the solitary agent who can bend history away from this otherwise unalterable statistical doom.

It's you, not some ragtag forest community, who will protect this or that stand of trees from being cut down. It's you, not some financially-challenged local government, that will build the hydroelectric dam that displaces such-and-such a tonnage of coal combustion that is otherwise inevitable. You are the actor who will arrive on the scene to "avoid the emissions" that you've just mapped out. As a result, it's you, not just anybody, who will legally earn the pollution rights that "zero out" all those fossil fuels you keep burning.

And the more that climate regulatory regimes expand under public pressure, the bigger the market for those rights will be. So not only does what looked like a collapsing frontier of fossil fuel exploitation get a new lease on life. Brand new frontiers start coming into their own as profit centers in their own right too.

In terms of colonialist reasoning, John Locke himself couldn't have done better. The future, like Locke's imagined "America," becomes – in legislation like that governing the EU Emissions Trading Scheme or California's carbon trading scheme – a blank space awaiting the arrival of entrepreneurial property-owners like you before anything good can happen and history can begin.

Armed with this logic, you can come up with no end of cheap possibilities for keeping fossil fuels coming out of the ground. The only qualification you need is the capacity to fill out the forms that neoliberal environmental regulation has thoughtfully provided. Almost anything can become a license to keep burning coal, oil and gas – even opening a new fossil-fuelled project, provided it burns less than an alternative installation that – according to you – could also have been built. It's one more token of the genius of law under capitalism for multiplying unexpected equivalences in the face of wisdom that insists they be kept nonequivalent.

Predictably, offsets that have been manufactured on the basis of these principles haven't worked out too well environmentally. After 25 years of experience, it's harder and harder to find serious scientists who deny that carbon offsets are doing anything but making climate change worse. Even many experts who allowed themselves to be swept along with the first US-stoked fever for offsetting around the time of the Kyoto Protocol – including former chair of the Intergovernmental Panel on Climate Change Robert Watson as well as a member of the old climate team at the World Wide Fund for Nature – have now recanted. Even for capital itself, as lawsuits against offset claims pile up, the offsets frontier isn't quite cutting it any more, even as a delaying tactic.

What's often less noticed is the extent to which offsetting has warped the whole original idea of environmental law. It was one thing to normalize the watering down of regulation to allow a swarm of dubious "avoided emissions" to take the place of actual emissions reductions. What may be equally insidious is that offsets introduce an incentive against legislating and enforcing stringent limits to environmental destruction in the first place.

Thus in Nigeria, the Italian oil company Eni and a subsidiary earned carbon pollution licenses by calling a halt to its gas flaring at extraction sites. Yet flaring had already been judged illegal by the Nigerian High Court. So not only did Eni's extraction regime in Nigeria gain a new source of support and Eni's operations elsewhere the right to emit millions of tons more CO_2; the company was also rewarded for being in breach of the law. What's more, the whole operation, like many others, was given the stamp of approval by none other than the United Nations, an organization that on paper declares itself opposed to colonialism and in favor of the rule of law.

Jason W. Moore again puts a name to what's going on. The history of capital's moving waste frontiers, Moore writes, is also a "history of *laying* waste." It's not only places but also peoples and institutions that get "wasted," and in more ways than one. Environmental law, despite its first promise of becoming a space for just accommodations, compromises and mutual concessions among different interests in the human and more-than-human world, often becomes one of the casualties.