

# THE ABSENT PRESENCE

of the State in Large-Scale Resource  
Extraction Projects



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Extraction Projects

EDITED BY NICHOLAS BAINTON  
AND EMILIA E. SKRZYPEK



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P R E S S

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Cover design and layout by ANU Press. Cover photograph: Mining trucks lined up at a copper mine. Source: Centre for Social Responsibility in Mining, the University of Queensland.

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# Contributors

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**Julia Keenan** joined the Centre for Social Responsibility in Mining at the University of Queensland in 2007, working on a range of social sustainability issues related to the extractive industries in Australia and internationally. She specialises in researching the relationship between mining and local communities, with particular focus on agreement making with Indigenous peoples, gender and community development, and methodologies for analysing and improving resource companies' social performance. She has co-authored industry guidance documents on Indigenous peoples and mining, and integrating gender into community relations work. She has also contributed to research projects examining company–community conflict, extractive industry policy, social and cumulative impact assessment, and internal management systems.

**Claire Levacher** is an anthropologist. She completed a PhD on indigeneity and mining governance in New Caledonia (2016) and two postdoctoral research contracts on small-scale mining in New Caledonia (New Caledonian Institute for Agronomic Research) and comparative perspective on mining encounters in New Caledonia and Canada (Laval University, Québec, QC, Canada). Apart from her work on governance, sovereignty and land issues in mining territories, she is especially interested in representations of nature, landscapes, pollution management and post-mining exploitation.

**Gareth Lewis** is a consultant anthropologist with more than 20 years of applied experience across Australia's Northern Territory covering Aboriginal land rights, sacred site protection and native title matters. Gareth has worked extensively at the interface between Aboriginal peoples, governments, parks agencies, the mining industry and other developers, and has held various roles including as Senior Anthropologist at both the Northern Land Council and the Aboriginal Areas Protection Authority. He has worked on Aboriginal land claims, native title claims, co-management of parks, and numerous major mining and other development projects. He has also undertaken numerous sacred site field surveys, sacred site registrations and has been involved in investigations and prosecutions for offences under the *Northern Territory Aboriginal Sacred Sites Act 1989*.

**Martha Macintyre** is an Honorary Principal Research Fellow at the University of Melbourne, honorary Professor at the Centre for Social Responsibility in Mining at the University of Queensland and a Fellow of the Australian Academy of Social Sciences. She has undertaken research

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**Michael Main** has a PhD in anthropology from The Australian National University. His PhD research focused on Huli people in the Papua New Guinea highlands and the impact on their lives from ExxonMobil's Papua New Guinea Liquefied Natural Gas project. Michael has a professional background in geology and environmental science, which underpins his interest and work in the anthropology of development and resource extraction.

**John R. Owen** is Professor and Deputy Director of the Centre for Social Responsibility in Mining at the University of Queensland. His current research interests focus on the problems of future metal supply and the implications for the communities who live and work at their source. He is the academic lead on a university–industry research consortium on mining and resettlement, and has conducted several major studies on the industry's approach to managing the complex social issues that develop around their activities. His most recent book, co-authored with Deanna Kemp, is *Extractive Relations: Countervailing Power and the Global Mining Industry*, published by Routledge (2017).

**Emilia E. Skrzypek** is a Senior Research Fellow in social anthropology at the University of St Andrews, and an Honorary Research Fellow at the Centre for Social Responsibility in Mining at the University of Queensland. Her work to date has largely focused on Papua New Guinea, where she investigates issues related to broadly conceived resource relations and interdependencies. She is particularly interested in stakeholder engagement and social impacts at undeveloped complex orebodies. She is the author of *Revealing the Invisible Mine: Social Complexities of an Undeveloped Mining Project* (Berghahn, 2020).

**David Trigger** is Emeritus Professor of Anthropology at the University of Queensland and an Adjunct Professor at the University of Western Australia. He is the principal partner in David S Trigger & Associates consulting anthropologists. His research interests encompass the different meanings attributed to land and nature across diverse sectors of society. His research on Australian society includes projects focused on a comparison of pro-development, environmentalist and Aboriginal perspectives on land and nature. His most recent works address senses of historical place that both overlap and diverge for people of diverse ancestries in northern Australia. Professor Trigger is the author of *Whitefella Comin': Aboriginal Responses to Colonialism in Northern Australia* (Cambridge University Press, 1992) and a wide range of scholarly articles and applied research reports.

# Afterword: States of Uncertainty

Nicholas Bainton, John R. Owen  
and Emilia E. Skrzypek

Estragon: Godot?

Pozzo: You took me for Godot.

Estragon: Oh no, sir, not for an instant, sir.

Pozzo: Who is he?

Vladimir: Oh, he's a ... he's a kind of acquaintance.

Estragon: Nothing of the kind, we hardly know him.

Vladimir: True ... we don't know him very well ... but all the same ...

*Waiting for Godot* (Samuel Beckett 1956)

## Introduction

This volume opened with a set of questions about the relationship between absence and presence and what this might tell us about the nature of contemporary states from the perspective of resource arenas: how the state may be experienced as more or less present for different actors in different times and circumstances, and how its presence can be experienced through its absence—an absent presence. As the dialogue between Beckett's troubled characters attests, persons, things and processes that exhibit an absent presence are often experienced as ambiguous and indeterminate phenomena. Standing on the broken ground of resource extraction settings, the state is sometimes like a chimera: its appearance and intentions are misleading, and for some actors, it is unknowable and incomprehensible. It may be easily mistaken for someone or something else, like a mining company, for example. As a partial and incomplete project, the state is experienced in

Papua New Guinea (PNG) and Australia as both a form of uncertainty and a progenitor of uncertainty. If this condition of uncertainty is slightly tempered in places like New Caledonia where the state assumes a somewhat different form, as Burton and Levacher claim in their final comparative chapter for this volume, this reinforces the point that the absence or the presence of the state is never absolute.

Two significant events have recently occurred in the period since we compiled the bulk of this volume. These events directly challenge our thinking on absence and presence and happen to have occurred in Australia and PNG: the destruction of the Juukan Gorge rock shelters in Western Australia by Rio Tinto, and the announcement by the PNG prime minister James Marape that his government would not renew Barrick Nuigini Limited's mining lease at the Porgera Gold Mine. In closing out this volume, these events give pause to reflect further on the meaning and the effects of the absence and the presence of the state. These events evidence the uncertainties that constitute the modern state and serve as a kind of postscript to the cases we have considered in this volume—but they do so in unexpected ways and open up new perspectives on the presence and absence of the state, and the relationship between the 'state-idea' and the 'state-system' (Abrams 1988). We briefly describe these events here, necessarily glossing their immense historical complexity, followed by some concluding comments. Each of these events will likely reshape future resource relations and encounters in these nations, and beyond. As the ramifications of these actions reverberate past the publication of this volume, it will be important to keep in mind ideas about absence, presence and absent presence as we try make sense of ongoing state and corporate effects at resource extraction projects.

## The Destruction of the Juukan Gorge Rock Shelters

In the lead up to the July 2020 NAIDOC<sup>1</sup> week, which celebrates the history, culture and achievements of Aboriginal and Torres Strait Islander peoples in Australia, the Puutu Kunti Kurrama People and

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1 NAIDOC originally stood for 'National Aborigines and Islanders Day Observance Committee'. This committee was once responsible for organising national activities during NAIDOC week. The acronym has since become the name of the week itself. See: [www.naidoc.org.au/](http://www.naidoc.org.au/)

Pinikura People (PKKP) requested permission from Rio Tinto to visit their ancestral lands encompassed by the lease for the Brockman 4 iron ore mine in Western Australia's Pilbara region. The mine, one of 16 in the region owned by Rio Tinto, was opened in 2010 at an initial cost of more than AUD1.5 billion, with an estimated mine life of 20 years, constituting a major boost to the already mining-dependent state economy. The PKKP wanted to visit the rock shelters at Juukan Gorge, which had been confirmed as a site of Aboriginal occupation dating back some 46,000 years before the present, and was now threatened by expanding mining operations.

Rio Tinto had commenced negotiations with the PKKP over access to their lands in 2003, and in 2011 this relationship was formalised through an Indigenous Land Use Agreement, or what Rio Tinto prefer to call a 'Participation Agreement'.<sup>2</sup> The Juukan Gorge area lay within the proposed mine expansion footprint, and as such, it has been the subject of considerable archaeological and ethnographic investigation to assess its heritage value. In 2013, Rio Tinto obtained state permission to destroy the rock shelters—known as Juukan 1 and Juukan 2—for mining purposes. Under the terms of Western Australia's *Aboriginal Heritage Act 1972*, ministerial consent was granted for the destruction of the Juukan Gorge rock shelters. This authorisation occurred under Section 18 of the Act, commonly referred to as a 'Section 18 approval' or 's18' for short. This set in train a major program of salvage archaeology, sponsored by Rio Tinto, which confirmed that the site was of the highest archaeological importance in Australia, and of global significance. Archaeological surveys conducted in 2014 provided evidence of human life during the Pleistocene and continued human presence in that place going back tens of thousands of years.

Undeterred by these findings, and satisfied that the site was 'fully salvaged' and that they were legally compliant, Rio Tinto continued with a mine plan that progressively encroached upon the site. By 2020 the company had been blasting for two years within the vicinity of the rock shelters, and in May 2020 a sequence of explosives was loaded into 382 blast holes to access an estimated AUD135 million worth of ore located around Juukan 1 and Juukan 2. When the PKKP approached Rio Tinto for access to their country to 'celebrate Juukan' as part of NAIDOC week, they were

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2 In 2003, Rio Tinto was present in the negotiations through its wholly owned subsidiary, Hamersley Iron Pty Ltd.

informed of the impending blast and reminded via email correspondence that ‘the sites are within the current mine pit design, and RT was granted s18 approval for that activity in 2013’ (Rio Tinto 2020: 32). Last-minute appeals from the PKKP and their representatives were not enough to stop the destruction of the rock shelters and on 24 May Rio Tinto proceeded with the blast on the basis that it was no longer feasible to remove the explosives.

The timing of this event has been critical to the broader response. In addition to the upcoming NAIDOC week, Australia, like much of the global North, was gripped by the rapid escalation of the Black Lives Matter movement. Local, national and international condemnation ensued. In June 2020 the Australian Senate referred the matter to the Joint Standing Committee on Northern Australia, and a parliamentary inquiry was launched.<sup>3</sup> By September, outraged investors had forced the board of Rio Tinto to sack its chief executive along with two senior executives partially responsible for the destruction of the rock shelters (Hopkins and Kemp 2020). While many observers have applauded this move, Marcia Langton (2020) was quick to remind the public that the decision evidenced the power of shareholder interests, not Aboriginal interests.

In a statement submitted to the inquiry, Rio Tinto expressed their belief that, under the terms of the 2011 Participation Agreement, it had secured ‘Free Prior and Informed Consent’ to conduct mining operations on PKKP land including the destruction of the rock shelters. Reflecting on the archaeological evidence amassed over the past decade, Rio Tinto described these reports as ‘missed opportunities’ to re-evaluate the mine plan (2020: 3). In a submission to the same inquiry, the Government of Western Australia stated that the destruction of the rock shelters was ‘devastating for all parties involved and was clearly avoidable’ (2020: 1). As Langton later lamented:

Rio Tinto had four opportunities to stop the destruction of the Juukan Gorge caves. There were alternatives that would have allowed mining but lessened the impact on the site. The company deliberately and consciously failed to share these possibilities with the traditional owners and instead chose the most profitable and expedient option. (Langton 2020)

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<sup>3</sup> At the time of writing, the inquiry had received 161 submissions, and remained open.

The PKKP have rejected Rio Tinto's claim that they provided their free, prior and informed consent for the destruction of Juukan 1 and Juukan 2. In their damning submission to the inquiry, the PKKP stated that while Rio Tinto agreed to their request to delay the blast (to assess options for removing the explosives) the company kept loading charges at the site without informing them. In the words of the PKKP, 'The Juukan Gorge disaster tells us that Rio Tinto's operational mindset has been driven by compliance to minimum standards of the law and maximisation of profit' (PKKP 2020: 8). They described destruction of the rock shelters as a 'yet another example of the low importance accorded to Aboriginal people and Aboriginal culture' (ibid.: 60) and argued that 'Rio Tinto's submission ignores the grossly unequal negotiating position of the parties, a matter Rio Tinto was acutely aware of' (ibid.: 30). Ultimately, 'the destruction of Juukan 1 and Juukan 2 has caused immeasurable cultural and spiritual loss and profound grief to the PKKP People' (ibid.: 7).

Many questions have been asked from many different quarters, including 'where is the state in all of this that such an outcome can occur?' These types of questions lie at the heart of the parliamentary inquiry—which essentially involves the state looking at the state as much as, if not more so, than the state looking at the mining company.

## Reclaiming the Porgera Mining Lease

In late August 2020, the Government of PNG announced that it had granted the Special Mining Lease (SML) for the Porgera mine to Kumul Minerals Holdings Limited (KMHL), a state-owned mining company.

This follows a three-year period of uncertainty over Barrick Niugini Limited's tenure in Porgera, after their lease expired in 2019 and their application for a further 20-year extension was denied by the incoming Marape government as part of his strategy to 'take back PNG'. Barrick has challenged the decision domestically in the National Court to no immediate avail. One commentator, who goes by the name Vailala on The Australian National University's DevPolicy blog, reported Deputy Chief Justice Kandakasi as stating the following on 10 July 2020 as he denied Barrick's right to appeal:



Counsel for the defendants led by the learned Solicitor General's arguments are that the State is under no obligation to give reasons and one of his colleagues in this case, joined in to say it is like a lease situation. When a landlord decides to terminate a lease, the landlord is not required to give reasons. Whether that is a correct analogy or not, I am not getting into that space except to say in this case that a decision has been made and that, there is no expressed statutory provision for disclosure of reasons. (Vailala 2020)

For observers tracking the project, the lead up to the lease renewal (or refusal) has been at least a decade in the making. Much of the observable commentary has been dominated by the project and its discontents. For example, former prime minister Sir Michael Somare went on the parliamentary record in 2005 over 29 alleged killings involving the mine's security forces, announcing his intention to establish a committee to investigate the matter: 'we want to know why they are killing those people, and whether the law allows them to do that' (Anon. 2005). A report presented at the time by the Akali Tange Association, a local Porgera organisation, alleged that the company was directly involved in extrajudicial killings going back as far as 1993 (ATA 2005).

Similarly, allegations of sexual assault by company personnel have circulated around Porgera for well over a decade. In response to claims that Barrick personnel were responsible for the gang rape of local women, Barrick's chief executive Greg Wilkins issued a letter to Porgeran leaders stating that the allegations were 'most distasteful, to say the least as you know these allegations to be untrue.' Three years later in 2011, after several investigative reports from international organisations, including MiningWatch Canada, Human Rights Watch and Amnesty International, Barrick finally admittedly publicly that there was a problem (Anon. n.d.a).

The proposed solution invoked further issues, and more international scrutiny. Barrick's approach to resolving what were effectively criminal activities was to construct a series of direct financial settlements as a means to expunge its future liability to the victims. During the first half of 2013, MiningWatch Canada issued at least two letters to the United Nation's High Commissioner for Human Rights, alleging that the company's remediation framework ran contrary to the United Nations Guiding Principles on Business and Human Rights (UNOHCHR 2013). In April 2015, the General Counsel for EarthRights International said that 'Porgera presents one of the worst cases we've seen of human rights

abuse associated with extractive industry' (Anon. n.d.b). EarthRights International had been central in supporting the Porgera Landowners Association (PLOA) in its complaint to the Canadian government and had been actively exploring a case against Barrick in the United States.

By this stage, it looked as if Barrick was trying to get itself out of the Porgera Joint Venture (PJV). In early June of 2015, the PLOA wrote what became an open letter (courtesy of PNG Mine Watch) to Barrick raising concerns about the recent 50 per cent acquisition of the project by Chinese developer Zijin, noting in particular, a concern that the company under Zijin's management would not honour its commitments to the landowners (PLOA 2015).

In the same year, the company finally proposed to resettle households from the villages surrounded by the Anawe dump after the PNG Mineral Resources Authority (the state regulator of the industry) indicated that a new national policy guideline would require developers to resettle all people living on an SML. This commenced a four-year pilot project in which Barrick actively sought to demonstrate progress against a very long and very overdue set of commitments to resettle villages impacted by the operation (Kemp and Owen 2015). Among a raft of sticking points, the lack of a clear position by either the national government or PJV on who would take responsibility for law and order post-relocation, off-lease in the Porgera Valley, was a major hurdle that none of the parties could see beyond.

In April 2020, the decision by several of the leaders of the PLOA to issue a joint press release with Barrick, defending the company's right to continue its operations would indeed seem curious—especially in light of the project's colourful past (PLOA and PJV 2020). Some commentators have suggested that this move by factional leaders was not supported by the broader community, or indeed by Zijin. This may well be the case; however, following the formal announcement that the national government had granted the SML to Kumul Consolidated Minerals Limited (KCML), the leadership of the PLOA issued yet another media release in which Mr Maso Mangape, the Chairman of the PLOA Negotiating Team, was quoted as saying:

Our interest in reaching an agreement with BNL was fuelled by the desire to have certainty about issues such as resettlement and closure, as well as increased benefits for our community. Will KCML and the National Government now meet these obligations? (Anon. 2020)

## Roles and Interests, Absences and Presences

On the surface, both of these events reflect common patterns of absence and presence. They also raise critical questions about the nature of the state. In the case of Juukan Gorge, an absent state allowed Rio Tinto and other extractive companies to operate almost unilaterally. At the Porgera mine, an otherwise absent state has suddenly presented itself, initially proposing to displace Barrick Niugini Limited. The latest development, as this volume goes to press, suggests that Marape has cut an eleventh-hour deal with Barrick's chief executive Mark Bristow, which will give the state a majority interest while retaining Barrick Niugini Limited as the mine operator (PJV 2020).

To a large extent, public commentary on these events, and the analysis of other cases in this volume, has drawn upon and reinforced traditional assumptions about the roles of different actors: states are supposed to act in the best interests of their citizens, and it is generally accepted that corporations are simply out to make a profit on behalf of their shareholders. From these 'role assumptions' we easily find corresponding absences and presences as states fail to act in expected ways and regulate the excesses of the industry. At the same time, corporations appear to colonise these absent spaces. But if we direct our assumptions at the 'interests' of specific actors, then the absence or the presence of the state begins to look very different—and from a longer-term perspective it seems that neither Barrick nor Rio Tinto have really acted in their own interest.

As noted in the introductory chapter, and reiterated throughout the volume, the interests of the Australian state have long been captured by the extractive industries at all jurisdictional levels. In the case of Western Australia, there is a structural tension between the state's heavy reliance upon extraction, and its executive role in issuing extractive licences and safeguarding Aboriginal heritage. These apparently contradictory functions draw attention to the interests of the state, or what motivates the state to act. From the vantage point of interests, one could argue that the state's presence is clearly felt—in ways that privilege extractive capital. While there may be a certain truth to this observation, perhaps the question is not 'whether the state has acted to protect or promote', but whether the permissive approach to the extractive industries is an active and total representation of the state's interests.

The uncertainty created by this proposition reinforces the value of an ethnographic approach to the state. As Alex Golub reminds us in his chapter, an accurate understanding of history cannot take collective actors like ‘the state’ or ‘the company’ for granted. If we are going to grasp the interests of the state then we must engage the networks of people who emerge in different times and situations as personating these kinds of entities, promoting particular interests. From this perspective, states may well appear both concrete and uncertain. For example, it cannot be assumed that the current Minister for Aboriginal Affairs in Western Australia necessarily shares the same interests as the Minister for Mines and Petroleum or the Minister for Environment, or that these office holders have any interests in common with previous incumbents or the minister who originally provided the Section 18 approval to destroy the Juukan Gorge caves. At this level, the ‘interests of the state’ appear far less certain.

On another level, regardless of the interests pushed by politicians enacting the state at any single point in time, the state has long exerted a hegemonic presence in structural and ideological ways through the Aboriginal Heritage Act, specifically the Section 18 terms.<sup>4</sup> Once ministerial consent has been granted to destroy heritage sites there are very few legal pathways to oppose the decision, and the destruction of Aboriginal heritage and the erasure of Aboriginal interests appears to become *unavoidable*. More importantly, other options, like not proceeding with existing mine plans, appear to be *unthinkable*. The logic of the Section 18 terms reflects a historical coalition of state and corporate interests that licences a dominant social order that governs ‘common sense’ by shaping ideas about what is ‘acceptable’, feasible and necessary, and what is unthinkable, unreasonable and unworkable. The captains of the industry and various state actors have used these forms of ideological, structural and instrumental power to set the ‘rules of the game’ and suppress the political power or effectiveness of their opponents (Lukes 1974).

It could be argued that this particular form of state presence is manifest in a certain level of resignation about the inevitability of heritage destruction and the power of extractive interests. Recognising or acknowledging

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4 The 1972 Aboriginal Heritage Act was already under review by the Western Australian government prior to the destruction of the Juukan Gorge caves. This event has highlighted both the need for urgent legislative reform, and the historical influence of the extractive industries over state processes.

resignation does not imply that people actually consent to the destruction of their heritage, or that they necessarily agree with the terms of any contractual arrangements that have been struck. Rather, attention to resignation can highlight the structural limitations that impede the ability to bring about change. Or in this case, the structural presence and the power of the state that suppresses more active forms of opposition—particularly through its legislation and the so-called ‘gag clauses’ embedded in land use agreements which limit traditional owners’ ability to publicly object to specific mining activities.

The appearance of interests over roles and responsibilities is likewise front and centre in the unfolding narrative over the fate of the Porgera Gold Mine. In the quote provided to the media explaining their preference for Barrick, the PLOA make it amply clear that the known presence of the developer (for all its faults) was more desirable than an absent state (for all its faults). Over months of negotiations the PLOA representatives demonstrated an acute awareness of this critical difference between state roles and state interests. The begging question from the above quote is this: what responsibilities can landowners expect the state to step into under these new arrangements? Will this newly acquired role as majority shareholder translate into a presence of another kind?

There is, in addition, the looming question of whether the state’s ‘role absence’ from Porgera across the decades, and especially in relation to the more egregious issues that have unfolded around the project, has not in fact worked to the advantage of the state as it now exerts its interests. This is almost an exercise in hypothetical history, but the question remains: if the state had positively intervened in the many serious environmental, social, legal and governance matters in the last 30 years, would the project have reached the stage where onlookers see appropriation by the state as the only responsible course of action?

Marape’s expressed enthusiasm for taking back PNG on behalf of the country’s eight million ‘shareholders’ represents a curious turn in language, a quasi-corporate utilitarianism that offers self-contained justifications for otherwise quite challenging decisions. One supposes that corporations habitually act in their self-interest. Marape is suggesting that nation states ought to do the same, and with a similar resolute sentiment in the communication of the outcomes. Acquiring majority ownership of the Porgera Gold Mine, according to Marape, could see a substantial windfall for the state’s coffers, and a marked expansion in

the country's share of resource development projects. This assumes that together, Barrick Niugini Limited, Kumul Minerals and the state will be able to restart the operation after these developments and avoid the 'time bomb' scenario, hinted at by Filer, Burton and Banks, which is created by the conflict within the mine-affected communities over the distribution of the burdens and benefits of mining (Filer et al. 2008: 165).

Of course, there is a fine line between this type of corporate utilitarianism and good old-fashioned opportunism. The time at which the SML expired certainly worked in Marape's favour. Striking a balance between his nationwide shareholders and the many legitimate demands of the project's most immediate stakeholders will be key for the state in this new venture, and any slippage between its commercial interests and its local responsibilities in the Porgera Valley will be imminently visible and could have devastating effects.

In both the Australian and the Porgeran case, it has taken a series of disastrous events to remind the state of its obligations to its citizens. While the Australian state, after notable absence, has suddenly appeared for the PKKP in the form of a parliamentary inquiry into the destruction of their heritage, assuming a more critical (even hostile) stance towards Rio Tinto, the PNG state now claims to be acting in the interests of the Porgera landowners. But this sudden appearance of the PNG state seems to have only created more uncertainty, and not everyone is convinced that the prime minister, or the directors of Kumul Minerals, have acted with the interests of the landowners foremost in mind.

While we might conclude that the presence of the state of Australia and PNG appears uncertain or indeterminate from the vantage point of resource extraction settings, the existential presence of the state cannot be passed over. As the material in this volume reveals, and the Juukan Gorge and Porgera cases confirm, the consequences that follow in the wake of state interests are, in fact, highly visible if not patently palpable.

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