

The Emergence of Community Rights: Contesting Corporatism

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Abstract

As concern for the environment grows in select communities, it is increasingly important to understand the role of government in structuring patterns of consumption and production. This is especially true under the administration of Donald Trump. Since the founding of the United States of America, corporations and capital-rich agents experienced greater freedoms and are afforded greater rights by the system of law. The Community Rights Movement that has emerged across the United States placed themselves in direct opposition to this legal system and the system of governance that legitimates it. This study will thus explore the rhetoric and objectives of community rights declarations throughout the United States to analyze the possibilities for legal transformation. This quantitative study of the status quo legal structure and environmental governance seeks to analyze systems of power and the resistance strategy for the community rights movement.

The election of President Donald Trump and the resulting executive cabinet has fundamentally altered the landscape of environmental policy-making and the tools available to individual communities to contest the perpetual expansion of corporate influence on resource extraction. Previous movements have been able to demonstrate the antagonism at the heart of capitalist consumption/production and environmental preservation, but there is still much work to be done. Especially as the 45th President of the United States begins to wage war

on the Environmental Protection Agency (EPA) and increase the extraction of fossil fuels there is an urgency for new legal frameworks to present themselves in opposition to the environmental agenda of the current administration. As such, a series of community rights declarations and networks are emerging as a means of delegitimizing state-corporate collusion over resource extraction by taking the law into their own hands. These groups believe their rights have been fundamentally undermined by corporations and that violence is innate to the current system of governance. Faith in the government to pursue meaningful policies that prioritize people's well-being and their communities' health has greatly dwindled, but that only demonstrates the need for a new discourse and praxis that is capable of disrupting the preservation of corporate sovereignty and corporate control over the policy making process.

The qualitative study of community rights declarations and networks that have emerged within the last decade throughout the United States provided here demonstrates the need for new rights frameworks that undermine the subjugating and predatory interests and desires of corporations in collusion with the federal government. Specifically, I analyze the rhetoric and objectives of community rights declarations in Philadelphia, Pennsylvania, Spokane, Washington, and New Mexico State, by utilizing a green criminological method meant to expose the violence of corporatism and create new value/rights frameworks to prioritize the communities exploited by corporations. These declarations are efforts to reclaim the rights of individuals and their communities that have been victimized by corporations under the current structure of the Constitution while also creating a networked movement across state and community contexts. In this regard, environmental justice is a critical concept for this study. Environmental justice is largely defined as the fair and equal treatment and involvement of all peoples in regard to environmental laws and their enforcement (Adams 2016, 114; CELDF 2015, 5; Foster 2017; Lynch et al. 2015, 848-849; Bonds 2016, 10). In so far as

environmental justice is concerned, community rights are the sovereignty and autonomy of sub-state level organizations and stakeholders to make decisions regarding the use of their land, resources, and labor, decisions which implicate their health and livelihoods (CELDF 2015, 6-7; Hall 2017, 26-27; Short 2016, 188-189).

Green criminology, the vital methodology to this study, is academically defined as an analysis of the legal discourse of harm and victimization that implicates social and ecological values. Although this specific strain of sociology has only been around for a little over twenty years, its application to a number of ecological crises and accounts of violence proves its theoretical and transformative merit (Lynch and Stretesky 2014, 8; Hall 2017, 25-26; Short 2016, 4-5). Green criminology as a meta-framing of rights seeks to assert the environment as the primary victim, or point of reference, of environmental degradation and the harm done to human health and wellbeing as emergent from that. Green criminologists necessarily treat the power-laden discourse of the law as a tool for resistance, especially in the context of community rights, to hold corporations accountable for their “ecocidal” practices, ecocide being the structural violence that is intrinsic to the corporate model of production and profit (CELDF 2015, 27; Hall 2017, 28; Lynch et al. 2015, 845-846; Adams 2016, 120-121; Bonds 2016, 13-14; Rhodes, 2016). The case studies demonstrate how communities assert the law from the bottom-up to create a new system of legalism that is capable of undermining corporate sovereignty. Further, ecocide is applied in this context as the material alteration of ecosystems and the accompanied human and natural costs that come at the price of economic expansion and increased productivity.

The next four years will have massive ramifications on the environment if the current administration is able to pursue its agenda unhindered. A green criminological methodology, applied specifically to the context of community rights and ecocidal practices, is vital to uncover the gaps in environmental law and past legal precedence that

has enabled the overexpansion of corporate sovereignty into the process of governance. Many of the traits of corporatism, defined as a form of governance where the state or federal government is controlled/manipulated by large interest groups, are intrinsic to the logic and values of the constitution itself (CELDF 2015, 4-6). The primary goal here is to portray the urgency for a radical break in contemporary environmental thought. More specifically, to expose the legal rhetoric and socio-political justifications that structure ecocidal systems such as corporatism.

Contemporary Contexts: Trump and Environmental Governance

Trump placed three men into cabinet positions that will drastically implicate the direction of environmental governance over the coming four years, illustrating his war on the EPA. First, Scott Pruitt, who is the current head of EPA, is notorious for having sued the agency thirteen times on the behalf of fossil fuel corporations while serving as the Attorney General of Oklahoma (Mosbergen 2017). Then there is Secretary of State Rex Tillerson who will lead the Department of State (DOS) and received a \$180 million severance package for leaving his position as CEO of Exxonmobil but still holds millions of dollars of stock in Russian and Chinese fossil fuel companies while also claiming that “any alternative-energy movements was doomed to fail” (Thielman 2017; Foster 2017). Third, former Texas Governor Rick Perry will head the Department of Energy (DOE), an agency he vowed to eliminate during the 2012 election, while also being a self-proclaimed “stalwart ally of the fossil-fuel industry” (Foster 2017). Further, the Bureau of Land Management has plans to sell hundreds thousands of acres of public land to fossil fuel companies spread throughout the United States (Center for Biological Diversity 2016; Center for Biological Diversity 2017). Such proposals and negotiations have come as a result of the Presidential Executive Order on Promoting Energy Independence and Economic Growth which specifically calls for increased development of fossil fuel resources

while undermining previous executive orders and pieces of legislation that were crafted to limit fossil fuel production and extraction within the United States (White House 2017). It is unclear what the effects of such policies will necessarily be, yet the proposals are still demonstrative of the current administration's direction for environmental governance.

Fundamentally, the Trump administration's ties to the fossil fuel industry deeply implicates the process of environmental governance. Although it is impossible to predict how critical agencies will actually change under the leadership of Pruitt, Tillerson, and Perry, it should not be considered a stretch to argue that the relations these men have to fossil fuel companies will effect policymaking and its enforcement (Faber et al. 2017, 12-13). In fact, it has already been well documented that fossil fuel companies have "spent more than US\$141 million on lobbying to influence Congress and federal agencies in 2014" including "US\$74 million to bankroll the campaigns of political candidates" while also helping to "secure billions of dollars in subsidies every year" (Bonds 2016, p. 13-14; The Center for Responsive Politics 2016). It is absolutely necessary to keep these connections between the United States government and fossil fuel companies in mind when analyzing the processes and structures of neoliberal capitalism and environmental governance because the self-interested nature of corporations and the Trump administration profit from ecocide.

We see this in the case of the executive order on Obama-era environmental policies such as the Paris climate deal, the National Environmental Policy Act, and the Clean Power Plan. Together, these three policies sought to limit carbon emissions and the release of pollutants by energy intensive industries while increasing governmental oversight of potentially destructive projects such as oil pipelines and natural gas fields. Such policies tried to integrate the concerns surrounding climate change and environmental destruction into the cost-benefit analysis of agencies such as the DOE and EPA by setting a "social cost of carbon" at \$36 per ton and requiring federal

agencies to conduct formal reviews on fossil fuel leasing and construction projects (Foster 2017; Faber et al. 2017, 11). The ramifications of the repeal of any one, let alone all three, of these federal policies, will be massive. As they fall under increased review and risk being rolled-back, the administration's rhetoric has shifted to emphasize the economic benefits of their agenda regardless of the environmental ramifications.

Part of this rhetorical flourish happens through budgetary debates that demonstrate the priorities of the administration and "the common good". Critical agencies, such as the EPA, are labeled as excessive and a hindrance to social progress when compared to the military and economic industries while climate denialism fuels unsustainable growth and development (Foster 2017). The ramifications of dismantling federal policies that deal with energy and environmental policy are further implicated by a lack of funding as enforcement and litigation resources are drained from such agencies. Any policies that are left in place will functionally lose their teeth as a result of budget cuts, especially for the EPA, which will lose 31% of its funding, leaving the agency \$5.7 billion in 2018 (Office of Management and Budget 2017, p. 41). This directly enables corporate pollution and environmental destruction since it is the EPA's Office of Enforcement and Compliance Assurance that provides pro bono legal resources to the victims of ecocide, but now plans to cut one-quarter of their legal staff (Upton 2017). Ann Carlson, a professor of environmental law at the University of California, Los Angeles, cited by John Upton, explains that "it's hard to imagine we won't see real effects in air and water quality" as "individual polluters are going to be able to get away with violating the law much more easily" (Upton 2017). As a result, many states are taking on increased responsibility for the environmental health and wellbeing of their communities and locales. But it is primarily the EPA that possesses the resources and expertise needed to work on large scale cases (Foster 2017). In fact, "many states are already strapped for enforcement resources" which

only fractures the status quo model of environmental governance while enabling corporations to exploit the gaps that have been a result of such budgetary and policy changes (Upton 2017). Such a fragmented system is the inevitable result of competition between various levels of governance in constructing and implementing policy (Lynch 2016, 89-90). For example, if the federal government plans on auctioning off land to fossil fuel extraction companies, but state governments attempt to resist such proposals, then there is much at stake in terms of the values and ethics of environmental governance. Green criminology seeks to bring such concerns to the forefront of consideration, especially in prioritizing a bottom-up system of legalism that contests the corporate minority that would primarily benefit from such proposals.

The ultimate consequence of the Trump administration's environmental policies is "ecological disorganization" where the government's attempts to regulate pollution and environmentally destructive practices tend to be ineffective because of inconsistencies in control processes across states or nations (Bernat and Whyte 2017, 83-84). If critical decisions regarding environmental governance are left up to the states, including the enforcement of laws or policies that attempt to limit pollution, then conflict between the local, state, and federal governments are inevitable as differing values are articulated at different levels of implementation. Corporations, then, are able to simply shift their projects and capital investments to places where there is no or little resistance, or at least where the federal government is capable of sanctioning their actions (Lynch 2016, 91). Although this trend is most well documented internationally where "transfer reduces pollution in core nations but leads to a rise in pollution on the global periphery," the Trump environmental agenda will create new fissures domestically that perpetuate socio-economic inequalities and the collateral damage of the free market (Lynch 2016, 92; Bernat and Whyte 2017, 82). It is assumed that growth and efficiency gains in the economy are capable of offsetting environmental degradation as

production becomes more environmentally friendly, but such assumptions rely on micro-level data without empirical or historical context (Lynch 2016, 83). Rather, as it pertains to the discussion of governance and the implementation of environmental policy, ecocide is the result of “macro-level processes related to the organization of capitalism” itself (Lynch 2016, 83; Adams 2016, 119-120). The perpetual problem of ecological disorganization is that the language of a common good, usually connoting economic growth and development situated in the health and proper function of the market, is used to erase the structural and insidious violence that accompanies such policies.

The role of the green criminologist and environmental legal scholar will be increasingly important as Trump and his administration of “petro-bromances” continue to pursue an agenda entirely against the reforms and policies that Obama put in place to limit fossil fuel consumption and tackle the issue of climate change. The men now in charge of critical agencies such as the DOE, DOS, and EPA “have spent their professional careers seeking to dismantle or circumvent environmental rules on the behalf of the polluter-industrial-complex” (Faber et al. 2017, 10; Foster 2017). As more fissures develop between the various levels of governance, it is important to understand that this is functionally the goal of corporations. Pollution and environmental destruction is profitable. More loopholes and increasingly lax regulations are actually desirable because it further limits the standard of accountability that corporations must be held to while facilitating profit-making enterprises (Bonds 2016, 17; Adams 2016, 131). In this sense, environmental laws have been crafted in a way that enables corporatism as model of governance to infect the highest levels of policy and decision making. Since “the polluter-industrial complex [has] come together to create a coordinated and sophisticated infrastructure of interlocking think tanks, policy institutes, research centers, foundations, public relations firms, and... front groups” it will be critical for those resisting such measures to do the same (Faber et

al. 2017, 9). There is a need to not simply expose the legal technologies and mechanisms that facilitate ecocide and environmental destruction, but to also hold the colluders within the government and corporations accountable for the violence innate to their businesses. Those that find themselves in opposition to such a predatory system of governance and legalism must be able to navigate the nuances and complexities that have historically developed to advance such a system.

The Descent of Corporatism

A series of Supreme Court decisions since the founding of the United States of America has gradually increased the role and power of corporations in influencing governance at the local, state, and federal level. Even the Annapolis Convention in 1786, which preceded the Philadelphia Constitutional Convention, spoke to a Republic headed by a group of economic elites that owned slaves, controlled vast swathes of land, and were primarily concerned with commerce and economic productivity. In fact, the corporate constitutional rights framework can be traced back to debates between Robert Yates, the Chief Justice of the State of New York during the time of the conventions, and state delegates, where “the federal courts bestowed the rights of persons onto corporations, enabling corporations to use those protections to overturn local and state laws” if they interfered with corporate commerce or property (CELDF 2015, 17, footnotes 17-18). The Interstate Commerce Clause of the United States Constitution, found in Article I, section 8, clause 3, specifically prioritizes production and the economy over labor and nature, giving Congress the unique authority to govern matters across states and regions (CELDF 2015, 12-13). In so far as these logics make up the backbone of the United States’ legal structure in regards to the economy, it is important to trace how they have morphed into the present day.

More contemporarily, cases such as *Buckley v. Valeo* (1976) and *Citizens United v. Federal Election Commission* (2010) have gutted

constraints on corporate expenditures in elections and lobbying efforts which has proliferated corporate involvement in the entire political system. Further, *Dodge v. Ford Motor Company* (1919) and *Chevron v. National Resource Defense Council* (1984) justified that corporations and politicians are only accountable to the shareholders whom invest capital in their operations, not the individuals who are materially implicated by their projects. Governance must thus be contextualized by questions of value and how such values are actualized through the administration of law and policy. As corporations have been granted heightened levels of political subjectivity, meaning the ability to exert power and influence over the decision making and governance process, the environment and poor working-class communities have borne the brunt of ecocide. The system is fundamentally pay-to-play, which means unless communities have sufficient legal and financial resources available, they will fall prey to the predatory system of capital.

Corporatism fundamentally privileges the use and exchange value of goods and services over the needs of communities and ecosystems. The convergent systems of consumption and production have to be “hierarchical and uneven” given global and national discrepancies in wealth and resource accumulation (White 2017, 15). This “treadmill of production” is the result of the prevalence of “market mechanisms for pollution control” in addition to “policy tinkering” that does not contest the underlying profit-motives that generate pollution and environmental destruction in the first place (Lynch et al. 2015, 853). Social disposability is innate via this process where whole communities and troves of resources are reduced to their economic input value. Increased consumptive demand further perpetuates the treadmill while limiting resource availability and forcing select communities to deal with the heightened socio-economic costs. The guise of conservation and regulation has specifically created “processes [that] shape patterns of state-corporate harm” to legitimate resource extraction while doing little to nothing to limit the resulting pollution (Bernat and Whyte 2017, 76). Thus, there

is a need for a green criminological methodology that prioritizes “pollution as crime... the extent of victimization associated with pollution... and the fact that market-based environmental social control produces environmental injustice” (Lynch et al. 2015, 855). If resistance to the corporate-state regime is to be successful, the legal frames of crime and the basis of corporate rights must be revealed and consequentially delegitimized.

Status quo models of regulation are a legal technology meant to protract economic growth and lock productivity well into the future. Especially under the Trump administration, environmental and energy policy is being fundamentally altered to prioritize the economy over the environment. Regulation, or the process of business-as-usual, assumes a rhetoric of individual choice and governmental permission that “are not necessarily *deviations* from a normal social path or social state,” but rather, are engrained in the very possibility of business and capital accumulation (Bernat and Whyte 2017, emphasis theirs, 76-77). It would be wrong to pathologize specific events or moments of disruption, such as oil spills or water contamination, as examples of corporate crime because the system itself is “criminogenic.” The taking of resources and exploitation of labor are the crimes, not spectacularized events, which means that corporatism and its vision for capital accumulation is the prior condition that generates the possibility for green crime and ecocide in the first place. In so far as the government establishes the legal and policy framework under which corporations operate, “capitalist states produce the entirety of the social conditions that enable criminal and harmful practices to occur” (Bernat and Whyte 2017, 77). The urgency for new frameworks such as community rights emerges as the necessary point of departure from current legal, social, and political values that engrain ecocide while propping the market up as the only feasible solution to social and environmental harms.

A major seduction of the capitalist and corporatist system within this model of legalism and regulation is the commodification of

the crises and consequences that result from ecocide and resource extraction. This is exemplified by the trend towards the privatization and further commodification of “basic necessities – food, water, air, and energy” including essential public services like education through the use of “profit-making enterprises” (White 2017, 16). It is increasingly important to understand governmental action as a legitimating force for capital, especially as the corporate structure continues to constrain all aspects of life. Since the rhetoric of individual choice and governmental permission frames the discourse of public policy, the trend towards privatization and increased commodification has very distinct social and environmental consequences. This trend, however, is not unique by any means. The market will always construct itself as the only ethical, and in fact feasible, means of finding a balance between economic growth and environmental preservation.

Specifically, the rhetoric of national security and economic growth that shrouds carbon intensive fossil fuel industries under the façade of inevitability has meant that, necessarily, social costs such as human wellbeing are always bracketed out of decision making calculations despite specific attempts by the Obama-era EPA to incorporate things like the “social cost of carbon,” as mentioned previously. Corporations and their state colluders always prioritize profit because the treadmill demands it; economic value is the only concern for the corporatist regime. This logic of externality, which does not account for social and environmental costs as a function of economic output, privileges those that primarily benefit from a carbon-intensive economy very much at the expense of the poor and historically dispossessed while simultaneously influencing public policy (Adams 2016, 119-120; Bonds 2016, 15-16). In fact, the two-factor Cobb-Douglas production function that is widely used by fossil fuel corporations to assess economic output only considers two input variables: labor and capital. There is “no explicit reference to environmental resources” (Bernier 2014, 47). Macro-economics refuses to address its dependence on natural systems and ecological

limits which places certain populations in what are functionally zones of sacrifice. Their wellbeing and health never to be considered anything other than an afterthought in the pursuit of growth and profit. This drastically implicates how governance is conceptualized, especially under a capitalist economic system.

The sanctity of, and faith in, the market is a critical aspect of corporatist governance and neoliberal capitalism. As each crisis or instance of ecocide is commodified, and the regime of regulation perpetuates the façade of choice, capitalism has attempted to rebrand itself. The possibility of a “green” economy has been linked to the same market interventions and policy tinkering that structures the treadmill of production (Lynch et al. 2015, 853). This is because there is a fundamental antagonism between the economy and the environment that makes conservation and regulation endeavors ineffective. Either the natural world is disregarded entirely, as per the Cobb-Douglas function, or it is swept up as a subset of the economy. Nature is seen as without agency, and thus without rights; property to be afforded only the rights that have been granted to the owner whom is able to exploit the economic value or potential of nature (CELDF 2015, 14). For the economy to flourish, more of the environment must be consumed. In fact, consumption and destruction of the environment is necessitated by the capitalist model of growth and development which demands “a crisis-preventing 3% annual compound rate” of Gross Domestic Product, or GDP (Bradshaw and Zwick 2016, 269).

However, this creates significant problems for the sustainability of the economy as such a growth rate would mean that all “capital flowing through markets will have doubled in around 20 years,” dependent upon steady increases in production, consumption, and environmental exploitation (Bradshaw and Zwick 2016, 269). For these reasons, green criminologists disagree with the idea that new markets, such as a cap-and-trade or carbon tax system, are capable of changing the underlying social values that manifest themselves through

policy and legal implementation. Such endeavors fundamentally mistake the forest for the trees and obscure the larger problem of sustainability under a capitalist economic system.

The carbon tax and cap-and-trade systems are the two most popular forms of market intervention within the discourse of environmental governance. In the context of the United States this makes sense because corporations prioritize the accumulation of wealth and profit over a sustainable economy. The main difference between the two markets, however, is that a carbon tax establishes a floor for emissions while cap-and-trade sets a ceiling (Rosenberg 2017). Trump and conservative lawmakers have been toying with the idea of a carbon tax because “it reduces regulation and relies on the market” which would take advantage of the proposed rollbacks already being debated (Rosenberg 2017). This mechanism will be the most likely to get endorsed by Trump since the cap-and-trade system sets a maximum amount of acceptable emissions while forcing over-polluters to purchase credits from under-polluters (Rosenberg 2017; Faber et al. 2017, 13).

Questions of effectiveness of such taxes in reducing emissions aside, the two systems have been criticized as merely pricing nature where “fetishized carbon means the projection onto carbon of symbolic or economic values that are effectively autonomous from its objective value within the climate system and environment” (Moolna 2012, 2). Carbon, via any pricing or market scheme, merely gets incorporated into the economy, separating it from its relevance to the natural world and entrenching the antagonism between the economy and nature while letting corporations proclaim themselves as “carbon neutral” (Moolna 2012, 4). It is important to recognize that such markets only focus on carbon as well, which could potentially obscure the role of other pollutants and environmentally degrading practices in contributing to the structural violence of ecocide. The “overemphasis on carbon prices,” following the same logic of commodification and antagonism, only delays the inevitable social and ecological revolution

that will be a result of unsustainable practices within capitalism (Foster 2017). This demonstrates that the whole of the system is fundamentally unsustainable and that massive socio-political revolutions may be necessary.

There is much at stake. Under the current system of law, “our communities remain corporate property by virtue of the relationship between corporate ‘rights’ and our nonexistent ones” where zones of sacrifice are structured by socio-economic values and the bracketing out of certain concerns which have been subjugated under economic or public concerns (CELDF 2015, 3). The main problem with previous movements and demands on the government is that they have focused on “working the system” or making reforms rather than fundamentally changing the structure of the system itself. As such, “working the system has meant embracing a system of law that supports an unholy alliance of decision-makers, corporate and governmental, as they make decisions based on a model of unlimited growth” (CELDF 2015, 4). Resistance to corporatism as a model of governance and law, then, requires an absolute and complete departure from the constitution in a bottom-up revolution of values as demonstrated by the nodes of the community rights movement. Specific attention must be paid to the legal discourse and rhetoric that undergirds the construction of rights and their administration through systems of governance and production. In the following section, specific community rights declarations will be discursively analyzed to demonstrate a common rhetoric of resistance to the exploitative system of corporate environmental governance that is beginning to emerge.

Social disposability is engrained in the business practices of corporations which results in a lack of corporate accountability sanctified by the law. Primarily, “the corporation... exists outside the normal parameters of social life” because “efforts to punish corporations for violations of law are largely futile” (Adams 2016, 121). Any violation, should one occur, is not framed as criminal. Rather, fines such as legal costs or government imposed fees are accepted by

corporations as part of the normal means of doing business and subsequently internalized by their production costs. It is unrealistic to think that fines or fees that are large enough to offset profit gains will be pursued by the current administration given its emphasis on economic activity. Therefore, the question turns to one of ethics and the underlying values that undergird the law and consequentially social and environmental life. This is illustrated in more detail by the logic of the treadmill of production, which “is dependent on a counterfactual ideological trick which invokes anti-ecological, limitless growth” as “essential for social progress” (Short 2016, 188).

Corporations, by their very nature, in tandem with the federal government, benefit and profit from these ideological ploys while “disadvantaged minorities, indigenous peoples and the working class often benefit the least but bear the most significant burdens of environmental degradation and pollution” (Short 2016, 188; Bonds 2016, 17). Ideologically, this has made capitalism premised on “death regimes” where “the community... the environment...” and “the Earth itself, by law, does not matter, and must be sacrificed to the bottom line” of production and growth (Adams 2016, 121). As long as the profits of shareholders and owners of the means of production are uncontested then crime as a social construct will continue to be leveraged by the privileged and powerful to maintain the legitimacy of neoliberal capitalism and corporate subjectivity.

The following case studies, then, reveal the ways that a community rights framework reclaims the law as a tool of resistance in the fight against exploitative and sinister economic systems and corporate organizations. The goal is not to “explain ecological destruction and its associated human and non-human impacts” but to reorient how ecocide is understood in loftier value frameworks that implicate the process of governance (Short 2016, 189). Many of these considerations are fundamentally not questioned by traditional criminology which makes the analysis of governance and corporate subjectivity ever more important. Although the communities that have

created declarations against the corporatist regime are not necessarily green criminologist nor engage with such scholars, they embody green criminological ideology by identifying “the harms committed by the corporate state as ‘criminal’” to prevent the normalization of ecocide in their communities (Kramer 2016, 521). The full role of the green criminologist will be explained later, but as it pertains to the case studies in this section, green criminology should be understood as a discursive and rhetorical methodology that delegitimizes hegemonic values and systems while speaking truth to power. In the cases of Chambersburg, Spokane, and Mora County, federal and state governments have colluded with corporations to conduct ecocidal projects at the expense of the communities that live in the areas where extraction projects occur.

Community Rights Declarations Nation-Wide¹

The Community Rights Declarations and the resulting networks of legal activism demonstrate the possibility for building solidarity movements that share common criticisms of the status quo with similar goals in mind. The Community Environmental Legal Defense Fund, specifically, has served as a vital resource in drafting ordinances and disseminating information throughout the regions that such laws have been enacted. Their groundbreaking organization has helped over two-hundred communities since its founding in 1995 with various issues from shale drilling and fracking to water privatization and factory farming (CELDF 2015, 57). The common language employed by the community rights declarations is important for creating a vocabulary of resistance that enables the community rights framework to be easily emulated while also establishing coalitions for resistance (Kramer 2016, 529). Each declaration shares foundational motives: distrust of government and corporations, the necessity for local laws, and a state and nation-wide call to action. Together these motives

¹ Full text of the Community Rights Declarations can be found in the Appendix

create the possibility for legal transformation via the citizen's reclamation of power and environmental governance.

First, each of the three declarations generates a similar understanding of the status quo where communities and community decision makers are subjugated by the interests of corporations. The declarations argue that this is innate to the system of law itself as Chambersburg claims that there are "an elite few" who control the decision-making process while Mora County suggests that the "structure of law... has bestowed greater rights to corporations than the communities in which they operate" (CELDF 2015, 32, 35). The subjugation of communities and nature to the logic and interests of corporations is a direct result of the prioritization of the economy over the natural world and human realities as a result of ecocidal practices. Mora County's and Spokane's use of "siege" is especially important as it evokes an image of pillaging, looting and assault occurring on their land due to "a corporate minority" that has the legal precedence to "override our community majorities" (CELDF 2015, 37).

To speak truth to power in this way is vital to a green criminological method as it "call[s] out the social injustices that states and corporations produce or tolerate" for their own economic ends (Kramer 2016, 521). Each of the declarations suggests there is a structural problem with the status quo that cannot be resolved by the government or law because it is such institutions that have subjugated community authority and legitimated corporate sovereignty (Rhodes 2016, 1508-1509). Naming corporations and the government as colluders responsible for ecocide fundamentally "seeks to displace a centralized decision-making system focused on protecting property and commerce" (CELDF 2015, 26). As federal policy continues to expand fossil fuel and resource extraction, the corporate system will undermine democracy and further the social disposability of select communities. All levels of governance and decision making are deeply implicated by exceptional legal doctrines, discussed previously, that

privilege the government and corporations as the benefactors of environmental governance.

Second, as a result of the subjugation of community rights in the status quo, each of the declarations professes a lack of faith in the government or system of law to reform itself in any meaningful way. For the effected communities, that have resorted to community rights frameworks, democracy is illusive because corporations have completely bracketed out their voices and concerns within public spaces of activism and decision making. Chambersburg asserts that exploitation is framed as “the common good” which makes “new community-based democratic decision-making systems” a necessity while Mora County and Spokane suggest that “democracy does not exist in our communities” (CELDF 2015, 32, 36-37). This frames the difference between democracy and corporatism as systems of governance. Corporatism is dependent on top-down decision making, which necessitates the subjugation of democratic rights for the communities victimized by ecocide.

Further, since this model of democracy is broken and only perpetuates corporate exploitation where reformism is seen as an attempt to merely integrate resistance into the political economy of corporatism (CELDF 2015, 28). Although only the Chambersburg declaration clearly states, “that most reformers and activists have not focused on replacing the current system of elite decision-making,” Mora County and Spokane state “we have given up hope” that the government will protect communities from corporate exploitation (CELDF 2015, 32, 36-37). Capitalism is an insidious system that must denigrate the conditions of democracy in order to flourish which is embedded in the logic that profit outweighs concern for people and the environment (Lynch 2016, 95; Rhodes 2016, 1510). Shared distrust in the corporate structure of governance and its implications on governmental policy at both the state and federal level thus frames the necessity for a break from contemporary legal thought. There is an urgency implicit to each of the declarations that suggests communities

must take matters into their own hands and assert their rights via direct confrontation with the system that subjugates them.

Third, given the problems of environmental governance and democracy, each declaration proclaims that clash with current state/federal laws and the assertion of local laws is critical to resist exploitation and ecocide. Although the ultimate objective is to alter the constitutional structure that legitimates corporate sovereignty, this is only possible if “local constitutions... provide a template for new state and federal constitutional structures” (CELDF 2015, 29). Thus, Chambersburg suggests that “new frameworks of law” are necessary to “dismantle the existing undemocratic systems” by what Mora County and Spokane call “direct challenges to the legal doctrines that currently mandate that corporations have greater rights than residents of our communities” (CELDF 2015, 33, 36, 38). Direct challenges to specific legal principles like preemption and the commerce clause attempt to nullify the technologies that governments and corporations use as their source of authority over individual communities. Such frameworks specifically benefit the communities that pass them, but there is still great potential for those frameworks to either serve as models for other communities or for broader coalitions to flourish as a result.

Finally, each declaration ends with a call to action predicated on changing constitutional structures through state and federal constitutional conventions. In this sense, the local must be driven into state and federal decision making and legal system. The declarations are all tailored to the communities and states in which they find themselves, usually “sparked by a single corporation threatening their community with a specific project” (CELDF 2015, 28). This demonstrates the necessity for bottom-up praxis as it provides the possibility of contextualizing the problem of ecocide to a specific event or project while generating momentum for the larger movement (CELDF 2015, 29). As a multitude of communities confront corporate exploitation, information and goal sharing has subsequently increased

as well. Community rights networks (CRNs) have proliferated as a result of state-wide movement building endeavors under the guidance of the CELDF. As of Fall 2015, “close to two hundred communities in Pennsylvania, Virginia, New Hampshire, Maryland, New York, Massachusetts, Ohio, New Mexico, Maine, Washington, Oregon, and California” have generated community rights declarations aimed at dismantling the corporatist system (CELDf 2015, 26). Although CRNs are not explicitly green criminological organizations, their legal praxis and discursive resistance rooted in legalism demonstrates the potential to create new systems that assume an ecological point of reference to assess the violence done to communities and natural ecologies.

A National Community Rights Network was even formed in 2013 “to serve as a national voice for the state-based community rights networks” in an effort to expand the coalition and bring advocacies for state and federal constitutional reform into conversation with each other (CELDf 2015, 45-46). Thus, even though these movements have a tendency to start in isolated and unique instances, multiple organizations have formed to establish linkages across struggles to transform and expand the community rights movement. Even if material gains are few and far between, starting the conversation and building momentum is essential to driving the local into state and federal levels of governance.

There should not be a metric or standard through which the success or failure of the community rights movement is assessed. It is rare, if not impossible, for a movement to achieve the entirety of its stated objectives. Therefore, failure and a process-oriented approach to activism is an inevitable and necessary part of the movement (Hall 2017, 31). Especially if the goal is to transform the underlying social, economic, and environmental values of the system of law then it is important to understand the process as slow at times and incremental throughout (CELDf 2015, 48). There may never be a total victory against the corporatist system, but the path of resistance will be

sprinkled with many, some major and some minor. Ultimately, the community rights movement and the resulting CRNs demonstrate the potential to actualize green criminological theory through the material implications of the law. In the next section, such discursive forms of resistance will be more thoroughly theorized in terms of its current necessity and transformative potential in challenging, if not changing, the social and environmental values implicated by law.

Green Criminology and the Discourse of Resistance

Green criminology, as a discursive and rhetorical method, analyzes the various frames of reference and value systems that emerge from the social construction of crime. It is a method that is fundamentally intersectional, treating “gender inequalities, racism, speciesism, and classism” as key categories used to contextualize the “causes of harm, crimes and conflicts, and related connections and consequences” which are overlooked as part of traditional criminology (Short 2016, 190). Although power is usually abstracted through theoretical conversations of discourse and representation, this thesis situates power within a specific material context of governance and neoliberal capitalism. Green criminology provides a new vocabulary to discuss the structure of ecocide and the ways in which environmental governance inherently privileges the interests of corporations over the communities materially implicated by their projects (Bernat and Whyte 2017, 74-75; Rhodes 2016, 1513). This vocabulary is one of resistance. It names a hegemonic system of values and then seeks to disrupt the logics and discursive strategies used to legitimate said system.

Green criminology begins with an explicit change in the frames of reference for criminology. All forms of study “exhibit a strong tendency to take up a human frame of reference” where researchers and advocates “are typically concerned with their subject matter in relation to humans” (Lynch and Stretesky 2014, 35). This demonstrates the foundational hierarchy which implicates systems studies. Humans are constructed as independent from the environment, which thus

treats human systems such as the economy or politics as separate from the natural environment. The green criminological frame of reference, then, understands that “removed from the ecological context... human beings, as such, do not exist” and are merely treated as an abstraction “that fails to appreciate the connection between humans and the environment” (Lynch and Stretesky 2014, 44). To move beyond the human-centered frames of reference such as the economy, politics, and law requires a larger, greener, imagination that sees all systems and frames as dependent on, and in fact emergent from, the environment. Even if it is human labor that enables the construction of these systems they would not be possible without the material resources that are provided by nature (Hall 2017, 36). This larger concern for ethics rests within ideological structures that result in the prioritization of the economy over communities and the environment (Rhodes 2016, 1507). Altering the frame of reference via a green criminological method, then, is a necessary theoretical intervention that prioritizes the immanence of nature and serves to challenge the processes of commodification engrained in capitalism that perpetuate ecocide.

Once a green criminological frame of reference has been established, it is possible to change how victimization and harm are conceptualized within the violence of ecocide. The main problem with the prioritization of the human frame of reference is that it fails “to treat victims of powerful offenders as if they deserve the attention of criminologists” which abdicates the accountability of corporations in facilitating ecocidal practices (Lynch and Stretesky 2014, 83). As such, economic values become prioritized over the human and environmental costs of corporatism because of the discourse of regulatory permission and common good discussed previously (Bernat and Whyte 2017, 76-77). The assumption that social progress cannot happen without economic growth and environmental destruction entrenches the antagonism between nature and the economy as the death of one means the life of the other (Bernat and Whyte 2017, 74;

Short 2016, 187-188; CELDF 2015, 2-3). Treating the environment as the meta-frame through which all other frames and systems emerge, however, reveals how “the vast array of harms [are] perpetuated against and through the victimization of the environment” (Lynch and Stretesky 2014, 6). All of the human related consequences of ecocide, then, are only possible because of a prior crime committed against the environment, foundational to business ethics writ-large (Rhodes 2016, 1508). As long as the environment is constructed as passive and separate from systems like the economy and law, then ecocide and its associated human consequences will be inevitable.

Primarily, CRNs and their declarations demonstrate the ways that a green criminological approach to ecocide can be materially inculcated in public activism. To treat the environment as an intrinsic good exploited by corporations alters the legal frame of reference to no longer treat natural resources as “free gifts” (Hall 2017, 38). Asserting the rights of the environment and individual communities is a process of naming that challenges “socially defined” crimes that “become suitable targets for prevention and control efforts” such as regulation (Kramer 2016, 525).

The status quo and the hegemonic system of corporate rights, legitimized by the state, is thus a form of “interpretative denial” that normalizes state-corporate crime and the narratives of state exceptionalism represented by legal concepts such as the preemption doctrine, commerce clause, and other technologies discussed previously (Kramer 2016, 525; Rhodes 2016, 1508). As CRNs reveal the violence that accompanies such normalization it is important that the language and rhetoric deployed within community rights declarations are “used for the purpose of a bottom-up analysis of the issues and an assessment of the law ‘in action’” (Hall 2017, 26). This means a broader assessment of how the political, social, and economic values of society are the source of ecocide and its human effects. The law as such is not a neutral or objective system, but is intimately implicated by questions of value and power (CELDf 2015, 3-4). The

result of this system of law alters the treadmill of production to become the treadmill of crime which “grounds environmental crimes, environmental harms, and ecological destruction... within the contemporary capitalistic imperative to increase production” (Hall 2017, 28). The disruption of the treadmill of crime, then, requires efforts such as CRNs to expose and contest how the normalization of certain legal technologies maintains ecocide as a profitable enterprise.

The lessons to be learned from this model of victimization and criminology by public activists is thus generative for social movements and broader forms of resistance that have the potential to develop organically at the local to implicate state and federal levels of governance. The role of the public criminological activist is “to speak prophetically with regard to state and corporate crime” and name violence as such (Kramer 2016, 521). Organizations such as CRNs and the CELDF are able to “orient debate and/or produce progressive political action” by “focusing attention on... unrecognized blameworthy harms” that have previously not been treated as such (Kramer 2016, 521).

The contestation of power and how it is structured within state-corporate collusion can alter governance and political or legal institutions by drawing the attention of social audiences to the problem (Kramer 2016, 522; Hall 2017, 36-37). This may include the names of specific individuals within the government and corporations who are responsible for destructive practices, but is not limited to such. Research and advocacy are intimately connected through this process of resistance as the application of theory to material instances of violence and injustice require activists to also take on a role as public intellectuals who frame their concerns in terms of broader ethical questions (Kramer 2016, 529-530; Rhodes 2016, 1508-1509). Speaking prophetically “does not mean predicting the future” but drawing attention to the systems of power and their discursive basis to reframe questions of responsibility within neoliberal capitalism (Kramer 2016, 521). Green crime, if it is to be realized as such, requires power to be

confronted, named, and undermined (Rhodes 2016, 1510). Only then can the law be coopted by those victim to ecocide, including the environment, to present a strategy for resistance capable of contesting state-corporate collusion.

This methodological framing of violence is evermore applicable under the administration of the 45th President of the United States. The ties between critical cabinet members, the President himself, and fossil fuel moguls is already well documented and reported on, but it demonstrates the necessity for public intellectuals to emerge in legal settings like the community rights movement to undermine the priorities and values that dominate environmental governance (Foster 2017; Mosbergen, 2017; Thielman, 2017). Since the interests of the government and corporations are not at odds with each other, part and parcel of the normalization of corporatism, there is little evidence that such trends will reverse within the next four years (Bernat and Whyte 2017, 75). Public intellectuals, such as the legal scholars engaged in the CELDF and CRNs, thus play a critical role in structuring resistance. New constitutional and legal systems that work for, rather than against, the people are capable of creating conversations at the very least (CELDf 2015, 3-4). Although education and consciousness raising are vital components of any movement, it is especially important for public intellectuals engaged in the community rights movement to inform themselves and their communities of the laws and their material implications.

In conclusion, the chokehold that corporations have on the constitutional structure demands that individuals and their communities reclaim and reorient the system of law to prioritize their rights. CRNs will continue to grow as more instances of ecocide become apparent, but the actual process for transforming the social and environmental values innate to corporate governance requires constant resistance. Even though green criminology is primarily a theoretical method concerned with how violence is rhetorically framed and materially limited to select populations, it demonstrates that such

transformations in value systems are possible. Thus, taken together, the community rights movement and green criminologists can learn from and build off of one another. Synthesizing material and theoretical forms of resistance is absolutely necessary to delegitimize and undermine the structure of corporate rights, especially as they collude with the Trump administration to perpetuate their violence interests. The profound ethical concerns presented by status quo environmental governance and the structural violence of ecocide frames the community rights movement as a noble enterprise capable of questioning, if not transforming, the large value frameworks that inculcate corporate sovereignty. Since there are massive flaws in the Constitutional structure, which have enabled the over-expansion of corporate influence on decision making, there is a necessity for the people to reclaim the institutions that have rendered them and their communities disposable in the name of a larger, “common,” good. As such, the community rights movement and resulting CRNs provide the possibility to revitalize democracy.

Appendix: Full Text of Case Studies

I. Chambersburg, Pennsylvania

We declare:

- That the political, legal, and economic systems of the United States allow, in each generation, an elite few to impose policy and governing decisions that threaten the very survival of human and natural communities;
- That the goal of those decisions is to concentrate wealth and greater governing power through the exploitation of human and natural communities, while promoting the belief that such exploitation is necessary for the common good;

- That the survival of our communities depends on replacing this system of governance by the privileged with new community-based democratic decision-making systems;
- That environmental and economic sustainability can be achieved only when the people affected by governing decisions are the ones who make them;
- That, for the past two centuries, people have been unable to secure economic and environmental sustainability primarily through the existing minority-rule system, laboring under the myth that we live in a democracy;
- That most reformers and activists have not focused on replacing the current system of elite decision-making with a democratic one, but have concentrated merely on lobbying the factions in power to make better decisions; and
- That reformers and activists have not halted the destruction of our human or natural communities because they have viewed economic and environmental ills as isolated problems, rather than as symptoms produced by the absence of democracy.

Therefore, let it be resolved:

- That a people's movement must be created with a goal of revoking the authority of the corporate minority to impose political, legal, and economic systems that endanger our human and natural communities;
- That such a movement shall begin in the municipal communities of Pennsylvania;
- That we, the people, must transform our individual community struggles into new frameworks of law that dismantle the existing undemocratic systems while codifying new, sustainable systems;

- That such a movement must grow and accelerate through the work of people in all municipalities to raise the profile of this work at state and national levels;
- That when corporate and governmental decision-makers challenge the people's right to assert local, community self-governance through the passage of municipal law, the people, through their municipal governments, must openly and frontally defy those legal and political doctrines that subordinate the rights of the people to the privileges of the few;
- That those doctrines include preemption, subordination of municipal governments, bestowal of constitutional rights upon corporations, and relegating ecosystems to the status of property;
- That those communities in defiance of rights-denying law must join with other communities in our state and across the nation to envision and build new state and federal constitutional structures that codify new, rights-asserting systems of governance;
- That Pennsylvania communities have worked for more than a decade to advance those new systems and, therefore, have the responsibility to become the first communities to call for a new state constitutional structure; and
- That now, this 20th day of February, 2010, the undersigned pledge to begin that work, which will drive the right to local, community self-government into the Pennsylvania Constitution, thus liberating Pennsylvania communities from the legal and political doctrines that prevent them from building economically and environmentally sustainable communities.

That a Call Issues from this Gathering:

- To create a network of people committed to securing this right to local, community self-government, the reversal of political, legal, and cultural doctrines that interfere with that right, and the creation of a new system and doctrines that support that right;
- To call upon the people and elected officials across the Commonwealth of Pennsylvania to convene a larger gathering of delegates representing their municipal communities, who will propose constitutional changes to secure the right of local, community self-government; and
- To create the people's movement that will result in these changes to the Pennsylvania Constitution. (Community Environmental Legal Defense Fund, 32-34)

II. Mora County, New Mexico

We, the undersigned residents of New Mexico and the communities in which we live, hereby declare the following:

... We now call on communities across the State of New Mexico to do the following:

- Adopt local laws that recognize community rights for residents of New Mexico municipalities and the natural environment;
- Include in those local laws direct challenges to the legal doctrines that currently mandate that corporations have greater rights than residents of our communities;
- Join together with other communities across the State to create a statewide movement focused on rewriting the State Constitution to recognize a right to local self-government which eliminates these legal doctrines at the State level, to protect the local laws adopted within our municipalities; and
- Join together with other statewide movements to rewrite the federal Constitution to elevate the rights of people and

communities above the claimed rights of corporations.
(Community Environmental Legal Defense Fund, 35-36)

III. Spokane, Washington

We, the residents of Washington State and of our communities, gathering in Spokane, Washington, this 28th day of July, 2012, declare: ...that if democracy means “consent of the governed,” a democracy does not exist in our communities or in Washington State, and that we must now create democracy in our municipalities and within the State; and

We now call on communities across the State of Washington to:

- Adopt local laws that recognize community rights for residents of Washington municipalities and the natural environment;
- Include in those local laws direct challenges to the legal doctrines that currently mandate that corporations have greater rights than residents of our communities or the natural environment;
- Build a statewide coalition of communities to challenge the State Constitution to recognize our right to local self-government eliminate these legal doctrines at the State level, to protect the local laws adopted without our municipalities; and
- Join together with other statewide movements to change the federal Constitution, to elevate the rights of people, communities, and nature above the claimed rights of corporations. (Community Environmental Legal Defense Fund, 37-38)

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