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Protecting People, Protecting Places: What Environmental Litigation Obscures and Reveals about Rurality

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I. Introduction

The theme of this collection, “rural dimensions of environmental injustice,” could be read to suggest that rurality has been overlooked in the environmental justice movement and literature, but that is not necessarily the case. Many pivotal U.S. environmental injustice episodes have occurred in places that are, by some definition, “rural.” Rarely, however, has the movement foregrounded rurality in its activism or litigation. What is typically foregrounded in the United States—the movement’s public face, if you will—is race, hence the movement’s alternate name: environmental racism. Other manifestations of “rural” are frequently present—but again not foregrounded—in conservation efforts and therefore in environmental litigation. A great deal of environmental legislation seeks to protect and preserve wilderness, which is typically conceptualized as the absence of humans—except, of course, those who recreate in and consume it, those for whom it is conserved. Yet the preservation of wilderness also has consequences for those who live in areas contiguous to the wilderness, and those places are often rural by some measure.

This article draws rurality out of the shadows of both the environmental justice and conservation movements in order to show how the two movements can be reconciled and, in

fact, find synergies by explicitly engaging the rural. We explore the ways in which both typical environmental injustice narratives and conventional conservation narratives fail to capture adequately the threatened environmental, social, and economic degradation of poor, rural communities. This may be a particular problem for poor, rural white communities, for reasons we explore below.

We evaluate the stances and rhetoric of both conservationist and environmental justice movements to consider the most effective litigation and advocacy strategies when a locally undesirable land use (LULU) threatens not only wilderness, but also the humans who live near it. In doing so, we draw on the literature regarding use of narratives in litigation and other advocacy, and we consider how a focus on the rural dimensions of such situations can provide a powerful, unifying frame. The more comprehensive picture of the situation that emerges is more likely to surface the voices of rural residents—and not only those of relative outsiders, those who consume nearby “wilderness.” That picture also helps explain some rural-specific obstacles to such advocacy, including rural lack of anonymity and close networks of personal relationships, attitudes toward farming and private property, lack of local social capital, and antipathy to the state.

We use the recent siting of an industrial hog farm in a highly impoverished rural community in the American South to illustrate how conservation instincts and ambitions that sometimes dominate environmental litigation in the United States can be bolstered by a more robust conception of environmental justice. This broader conception takes seriously the wellbeing of rural communities, including those suffering the deleterious impacts of industrial

farming. In short, we show how environmental litigation can preserve wilderness while also enhancing and protecting rural people and their livelihoods.

In Part II, we set forth the case study, and in Part III we describe our methodology. We illustrate in Part IV how rurality has been a latent element of two strands of environmental law: environmental justice and conservation. In Part V, we explain the importance of narrative framing in advocacy and discuss more fully the types of narratives typically invoked in U.S. environmental litigation. We also show how those shaping the Newton County CAFO litigation have deployed or neglected each frame. In Part VI, we examine the Newton County conflict through an explicitly ruralist lens, essentially offering a meta-narrative of the rural. We demonstrate how foregrounding the multi-dimensional concept of rurality provides a useful frame for environmental conflicts in rural settings. Such an approach yields an understanding more complete and more nuanced than that derived from any single frame.

II. The Case Study

In 2012, the State of Arkansas granted C&H Hog Farms permission to construct a 6,500-hog factory farm in a sparsely populated, highly impoverished county in the Ozark highlands. The U.S. government provided loan guarantees for construction of the CAFO, which covers 630 acres (255 hectares) along Big Creek, less than six miles (10 km) from where it flows into the Buffalo National River. The factory farm releases millions of gallons of swine waste into the regional ecosystem (Complaint, 2013). This could have devastating consequences for the area's economy, which is highly dependent on ecotourism jobs and revenue (Bethune & Snyder, 2014), although the CAFO also promises to bring a handful of badly needed jobs to the county (Dezort,

2013c).

C&H Hog Farms is sited in one of the poorest places in Arkansas or, indeed, in the entire United States. The massive CAFO is in Newton County, Arkansas, population 8,000 (U.S. Census Bureau [USCB], 2015b). Newton County is a “persistent poverty” county meaning that the county has had a “high poverty” rate—in excess of 20%—for each of the last four decennial censuses (U.S. Dep. of Agriculture [USDA], 2015a). Indeed, the 2009-2013 poverty estimate for Newton County was 23.5%, more than 60% higher than the national average, with a child poverty rate of 30.5%, more than 50% higher than the national average (USCB, 2013). Just 12.7% of the county’s residents have at least a bachelor’s degree, compared to 28.8% nationally (USCB, 2015b). The median household income in Newton County is just over \$30,000, a bit more than half of the national figure (USCB, 2015b). In sum, poverty is an entrenched and intergenerational phenomenon in Newton County.

The economic landscape is even more bleak when the particular locale of the CAFO within Newton County is considered. The CAFO is in White township, which has a poverty rate twice the county’s average (48.1%) (USCB, 2013). Further, the facility is less than a mile from a public school where more than half of the student population lives below the poverty line (Complaint, 2013).

Newton County’s government is also fiscally distressed, in part because more than half of its territory is federally controlled as Ozark National Forest or Buffalo National River. That this property is not taxable seriously undermines local public coffers. The presence of the federal land also narrows the types of jobs available, e.g., farming, timber harvesting, and eco-tourism. Indeed, Newton County’s economy is so undiversified that the federal government designates it

one of just 244 “government-dependent” counties in the nation, meaning that the labor market is highly dependent on government entities as employers, a phenomenon associated with lower levels of economic well-being (USDA, 2015b).

In 2014, Earthjustice, a national, non-profit law firm that styles itself as existing “because the Earth needs a good lawyer,” filed suit to enjoin the U.S. government’s loan guarantees for the CAFO. Plaintiffs were several regional, state, and national conservationist organizations, and the essence of their case was the federal agencies’ failure to comply with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) when they did not provide notice of the proposed hog farm to the nearby communities, or even to the National Park Service, the agency overseeing the Buffalo National River. The state agency had published information on the proposed CAFO only in the statewide *Arkansas Democrat-Gazette*, a newspaper with just 29 daily subscribers in Newton County (Browning, 2015). The statute of limitations barred a suit against the State of Arkansas, leaving plaintiffs to use only federal law to oppose the hog farm. The lawsuit also challenged the accuracy of the federal agencies’ requisite environmental assessment of the CAFO.

III. Methodology

Our methodology represents a hybrid of traditional legal scholarship (analysis of laws and litigation documents) and qualitative methods associated with sociology and anthropology. Regarding the latter, we engaged in the open-ended and open-minded participant observation associated with ethnographic fieldwork (Braverman, 2014). Legal geographies scholarship increasingly employs such qualitative methods to “explore the intricacies of various

administrative structures and their material manifestations in the world” (Braverman, 2014: 126). These methods are especially well-suited to environmental justice scholarship, which implicates space, place, and scale (Jessup, 2013) and is inherently multi-disciplinary (Sze & London, 2008).

One of us (Pruitt) conducted half a dozen interviews in Newton County over the course of several days in February, 2015, using the snowball method, or chain referral sampling, to identify subjects. This allowed us to gather data “within a broader social and cultural context” (Engel, 558). We were not entirely detached researchers because Pruitt’s family has lived in Newton County five generations, though she no longer does. These personal connections to the place fostered trust, thus facilitating the interviews, although those interviewed were not limited to persons previously acquainted with Pruitt and her family.

Because the views of the principals of C&H Hog Farms and others supporting the CAFO had been frequently featured in local news coverage of the enterprise and protests against it, our interviews aimed to garner the perspectives of those who opposed the hog farm, which had been relatively neglected in media coverage. The interviews generally tracked the same format, beginning with a discussion of C&H Hog Farms, when the interviewee first learned about the enterprise, and its perceived impact on both the individual and the wider community. The result is a snapshot of how various Newton County residents understand not only the industrial hog farm, but also the economic, political and social forces buffeting their corner of rural America.

A word about terms and concepts is in order here. We recognize “wilderness” and “nature” as contested terms for socially constructed concepts (Sze, 2011; Cronon, 1996; Delaney, 2001), and we use them as so constructed in the U.S. context. For other purposes, we use these terms more precisely as legally constructed, as defined in federal laws, which

essentially track the “common concept of wilderness as landscapes without much human presence or impact” (Leshy, 2014: 550-551). “Rural” is also contested, referring varyingly to “wilderness” and “bucolic idyll” (Woods, 2011: 1), among other concepts and associations. We use “rural” generally to refer to “small-scale communities with a social control based on personal relationships in a restricted space” (Mormont, 1990: 28), though we also recognize how competing rural imaginaries influence the events we analyze.

IV. Rurality as a Dimension of Environmental Litigation

Rurality has long been at least an implicit feature of both the environmental justice and conservationist movements. The environmental injustice movement in the United States emerged against backdrops that were frequently rural by some measure, places like Kettleman City, California and Emelle, Alabama (Cole & Foster, 2001: 1). Indeed, the notorious 1984 Cerrell Report, produced by management consultants for the California Waste Management Board, suggested that places targeted for siting garbage incinerators should be—among other things—“rural” (Powell, 1984). The rationale for this recommendation was that communities where residents have low education levels and those whose residents are “employed in resource-extractive jobs like mining, timber and agriculture”—like poor communities more generally—would offer the “least resistance” to such projects (Cole & Foster, 2001: 3). Of course, communities sharing multiple such characteristics came to be viewed openly as polluting industries’ most favorable prospects for siting LULUs.

Yet, in spite of the roles rurality has played in environmental injustices, the environmental justice movement has rarely foregrounded rurality in any explicit way. What has been typically foregrounded in the United States—the movement’s public face, if you will—is

race. Indeed the global phenomenon (Schlosberg, 2013; Sze & London, 2008) that has become known varyingly as environmental justice, pollution injustice (Agyeman, 2014), or environmental inequality in other countries (Pellow, 2007; Sze & London, 2008; Bulkeley & Walker, 2006), remains perhaps better known in the United States as environmental racism. This is reflected in the title of Cole and Foster's germinal text, *From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement* (2001), which acknowledges environmental racism as the "better known term" (Cole & Foster, 2001: 15). Schlosberg has observed that "racism has been at the heart of environmental justice discourse in the United States" (Schlosberg, 2013: 39). Targeted communities tend also to be poor, but it is the race or ethnicity of residents that typically gets foregrounded to establish why they need law's solicitude. Indeed, this same tension between race and class is typical of other U.S. legal contexts, too, with race dominating as the most apparent, most discussed axis of disadvantage implicated by any of a number of social ills (Pruitt, 2015b; Ansley, 1989).

The prominence of the racial face of the U.S. environmental justice movement is illustrated by two milestone events, the 1987 "Toxic Wastes and Race" report of the United Church of Christ and the 1990 SouthWest Organizing Project letter. The former suggested that race—independent of class—was the most significant variable predicting the siting of hazardous waste facilities (Chavis & Lee, 1987). The latter, a letter sent on behalf of local stakeholders in the American Southwest to the "Group of Ten" national environmental organizations (e.g., National Wildlife Federation, Sierra Club), accused those organizations of disrupting poor and minority communities. The letter repeatedly called on the Group of Ten to attend to the needs of "people of color," "communities of color," and "minority workers." It asserted that "[r]acism is

a root cause of [recipients'] inaction around addressing environmental problems in our communities” (SouthWest Organizing Project Letter, 1990: 3).

In the intervening years, environmental justice has become an international brand (Agyeman, 2014; Sze & London, 2008) that has evolved to encompass a range of global concerns (e.g., climate change). In spite of this globalization, the proposition that those in closest proximity to a polluting externality will bear the brunt of its burden remains an important frame of analysis (Verchick, 1999). Tradeoffs must necessarily be made between competing priorities, and these trade-offs will have disparate impacts on particular communities, keeping the scale of the local relevant (Bulkeley & Walker, 2005; Jessup, 2013). Environmental justice has further evolved to focus not only on race and poverty, but also on other vulnerable subpopulations (Agyeman & Carmin, 2011; Bulkeley & Walker, 2006; Schlosberg, 2013). We assert that rurality may also be a basis for vulnerability and therefore that socio-spatiality itself is sometimes a critical axis of disadvantage. Indeed, while *siting* dumps and other *locally* undesirable land uses remains an inherently spatial phenomenon, few environmental justice scholars or activists have considered the socio-spatial implications of making rurality a dumping ground. This is a gap we seek to begin to fill and one that is especially timely given the proliferation of industrial agriculture in the United States (Wing, et al., 2013; Lobao & Stofferahn, 2007). We use the Newton County CAFO to illustrate.

V. Environmental Litigation as Narrative

Stories can be told many ways . . . the presence of . . . different, competing versions of a story is itself an important feature of the dispute at hand that courts are being called upon to resolve . . . If a dispute occurs across a perceptual fault

line where people with different backgrounds, understandings and expectations have a disagreement, then the presence of different versions is a clue that there is more at stake here than the violation of a particular legal rule. (Scheppelle, 1989: 2097)

Stories, narratives, and critical frames—terms we use interchangeably—highlight different viewpoints on a situation. Like other advocates, environmental lawyers tell different versions of stories to suit their purposes. Three types of narratives are typical in U.S. environmental law and advocacy: the conservationist story, the economic story, and the social story (McComas & Shanahan, 1999). The “conservationist frame” focuses on the protection of wilderness and wildlife (Cronon, 1996), depicting a world to be saved from humankind (Leshy, 2014). Such narratives neglect people except to the extent they are consumers of that wilderness, as recreational visitors. The “economic frame” emphasizes the importance of jobs, giving economic development primacy over competing considerations. The “social frame” includes what has become known as environmental justice or environmental racism, including the idea that some communities are targeted for the siting of LULUs because they are low-value communities and because they are relatively powerless to stop the proposed siting (Cole & Foster, 2001). The environmental justice narrative typically focuses on the human element, arguing that such siting should not be permitted because of fundamental fairness and concerns varyingly couched in terms of civil rights (Cole & Foster, 2001) or human rights (Agyeman, 2014).

Scholars and advocates often focus on one of these frames or story lines at the expense of others. Earthjustice’s telling of the Newton County CAFO story illustrates how a conservationist narrative can obscure other possible stories, even when those additional story lines could advance the conservationist cause. As detailed in the following sections, the litigation mentions

only in passing consequences for local residents' health and wellbeing (environmental justice narrative), with no note of the diminution of their land values and the need for jobs (aspects of the economic narrative).

A. The Conservationist Story

"I love Nature, . . . partly because she is not man, but a retreat from him." (Thoreau, 1853: 103)

One of the most powerful environmental law narratives is about a pristine, human-free world in which wilderness thrives, a world that must be saved from humans, by humans (Cronan, 1996). This narrative conceptualizes nature "as a pristine green-space, absent of people . . . equated with spectacular wilderness, constructed as an explicitly anti-urban escape" (Sze, 2011: 9). Early conservationists aimed to protect wilderness for its aesthetic value, and environmental laws were crafted to achieve this end (Cronon, 1996; Leshy, 2014).

Earthjustice's complaint in the Newton County CAFO case tells a conservationist story, highlighting the impact of the CAFO's enormous volume of waste on the "air, waters, ecosystem, and wildlife in the Buffalo National River and its watershed" (Complaint, 2013: 6). One of the conservation group plaintiffs explains that its members "want to preserve these lands and the plants and wildlife in them, including threatened and endangered species, for the enjoyment of present and future generations" (Complaint, 2013: 5). Another focuses on the need to protect the area "to float, fish, and swim the Buffalo River and hike, view wildlife, and camp on its shores" (Complaint, 2013: 6).

The conservationist campaign extends beyond the courtroom, too, seeking to raise

awareness both within the county and throughout the region, among state legislators, and with the national restaurant chain that will purchase much of the premium, antibiotic-free pork raised by C&H Hog Farm. The rhetoric of this public relations campaign also reflects conservationist concerns. The slogan most associated with the effort is “Save the Buffalo ... Again,” a reference to the early 1970s campaign to have the river designated a National Park. A billboard erected near the river in 2014 said, “Come Enjoy the Buffalo. It’s Not Polluted ... Yet.”

The complaint mentions only in passing those living near the CAFO, asserting generally that the environmental assessment was inadequate regarding the pollution impact on “nearby residents and users of the project area and surrounding area” (Complaint, 2013: 39). It makes only cursory note of the public school, even though it sits just across Big Creek from where swine waste is sprayed (Complaint, 2013). The complaint is the appropriate place to notify the court of relevant facts, but the plaintiffs apparently did not see the residents’ health and wellbeing as salient. Instead, it articulated primarily the concerns of relative outsiders—recreational visitors.

The federal district court’s initial ruling in the case echoed the plaintiffs’ conservationist frame, finding that the federal agencies violated the National Environmental Policy Act and the Endangered Species Act (Order, 2014). The court ordered that the federal loan guarantees be enjoined and that the federal government re-do the environmental assessment to be more thorough in examining environmental impacts. The judge observed that the government’s environmental assessment “didn’t mention the Buffalo River. It didn’t mention Big Creek. It didn’t mention the nearby Mt. Judea school. It didn’t mention the Gray Bat,” an endangered

species present in the Buffalo watershed (Order, 2014: 11). The court concluded, “Brevity is commendable, but conclusions can’t take the place of reasons” (Order, 2014: 11).

The judge responded to the complaint and other pleadings on their own terms, hence its adoption of the conservationist frame. A court’s agenda is a passive one, and no one would expect the judicial order to go beyond the facts and laws that the parties present. Further, Earthjustice’s litigation strategy is not without reason, based as it is on federal legislation that provides legal remedies to protect natural resources, habitats, or unique landscapes from human presence (Cole & Foster, 2001; Cronon, 1996). Yet conservationist advocacy elsewhere has found synergy with environmental justice concerns. For example, one conservationist group’s lawsuit seeking mitigation of power plant emissions in the San Francisco Metropolitan Area used the Endangered Species Act and the Clean Air Act explicitly to protect not only fragile habitat for an endangered butterfly, but also a local community whose wellbeing was undermined by the pollution (Center for Biological Diversity, 2013). Like many other such suits, however, the setting was an urban one, the residents racial/ethnic minorities.

B. The Economic Story

The economic frame emphasizes the importance of jobs, typically giving economic development primacy over competing considerations. Developers and others seeking to site undesirable industries typically confront residents, with a “trade-off between jobs and health” (Cole & Foster, 2001: 77), the latter being closely linked to environmental wellbeing (Bullers, 2005; Beraza, 2013). However, the economic promise that developers and industry hold out to communities is rarely realized. Indeed, the economic consequences of industrialized farming are

not fully manifest in the short term. Lobao and Stofferahn found that “[c]ounties with greater industrialized farming in 1970 had significantly lower income, higher poverty, and greater income inequality the next decade, net of other local conditions” (2007: 5).

The need for local jobs and the related matter of the county’s poor tax base have been significant aspects of local discussions about the Newton County CAFO. A long-standing member of county’s governing body, the Quorum Court, offered this perspective at a public meeting shortly after news broke about the granting of C&H’s permit:

We don’t have the tax base to do this, to do that. Now, this hog barn is going to raise approximately \$50,000 in taxes, and you people with the tourists say, well, the tourists bring in all these dollars. Eighty-five percent of Newton County never sees one of those tourist dollars, and the county, itself, doesn’t see a lot of the tourist dollars. We’re sitting here starving to death, boys. ... I’m not going to stand here and not let a man make a living and pay taxes that will come into the county! (Dezort, 2013a)

Subsequent analysis indicates that C&H Hog Farm has generated only about \$7,000/year in property tax revenue (USDA & SBA, 2015c). Meanwhile, the C&H Hog Farm owners have bolstered the jobs-oriented economic narrative. In a media interview, one of the owners defended the operation by highlighting the economic importance of even a “handful of jobs” in the context of the county’s small population. “Eight jobs . . . might not mean too much to other counties, but it means quite a bit to us, and to be able to farm at home . . . where we live” (Froelich-Kuaf, 2013).

Earthjustice’s complaint regarding the Newton County CAFO features an economic element, too, but only in a single sentence: tourism attracts over one million visitors and generates \$38 million annually for the “local” economy (Complaint, 2013: 2). The plaintiffs’

narrative neglects other aspects of the economic story, including the long-term economic consequences of the CAFO on the health of residents (Wing, et al., 2013; Lobao & Stofferahn, 2007). Further, the jobs-versus-conservation discussion in the complaint is not very robust, failing to discuss the jobs associated with ecotourism. A greater focus on the value of jobs and sales tax revenue generated by Buffalo National River tourism would permit the conservationist and economic narratives to reinforce each other.

C. The Environmental Injustice Story

The third frame—a social frame—accommodates environmental justice concerns. In the United States, lawsuits seeking to protect vulnerable groups from environmental hazards can rest on several different legal bases, the most common being state tort law and federal civil rights law (Cole & Foster, 2001), though the latter protect only racial or ethnic minorities (Title VI, 1964). As already noted, environmental justice concerns are also sometimes raised to bolster or complement conservationist-oriented litigation (Center for Biological Diversity, 2013).

This convergence of conservationist and environmental justice concerns is facilitated by federal regulations which, since 1994, have required federal agencies to conduct an environmental justice assessment that identifies and addresses the impact of government actions on communities with minority *and* low-income populations, which are referred to by the term of art “environmental justice communities” (USDA, 2012b; Executive Order, 1994). Federal law requires federal agencies to make “environmental justice” part of their mission for “programs, policies, and activities” (Executive Order, 1994), and the USDA explicitly identifies rural communities as at risk for environmental and human health harms. Rural “environmental justice

communities” benefit from USDA Rural Development programs to support basic infrastructure, e.g., clean drinking water, solid waste disposal. Further, the USDA in 2014 initiated special programs to examine environmental justice concerns in rural America (USDA, 2014). One program, StrikeForce, is said to be “currently identifying and addressing disproportionate environmental impacts and adverse human health or environmental effects occurring in persistent poverty counties,” expressly including Newton County (USDA, 2012b).

Because the Newton County CAFO received federally guaranteed loans, the environmental assessment of the project was required to include an “Environmental Justice” section. Yet contrary to the government solicitude suggested by the array of USDA initiatives for rural “environmental justice communities” like Newton County, the federal government’s initial environmental assessment stated that the project “is not likely to cause any adverse effects to low-income or minorities in the immediate area in the foreseeable future” (USDA, 2012a: 24). Specifically, the assessment concludes:

Based on 2002 Census, the immediate area is . . . approximately 99% Caucasian. . . . Most families are low to middle income. The population is primarily middle aged. Since swine farms are not common in this area and there is primarily only one race, this project should not have any adverse impact on race. (USDA, 2012a: 26)

The racial homogeneity of the community—and the fact that the single race is “Caucasian”—appears to have made it easier for the agency to conceal environmental justice concerns. That is, by noting the lack of racial diversity in the area, the report distracted attention from the alternate basis for an environmental justice claim: low income. Further, while the agency’s characterization of “most families” as “low to middle income” may be technically correct by some metrics, its vagueness obscures the fact that the place’s poverty rate is well

above national and even state averages. By avoiding the term “poverty” and failing to include hard economic data, the report made Mt. Judea seem typical rather than vulnerable, thereby deflecting attention from the acute environmental justice implications of the CAFO’s siting. Bureaucrats effectively circumvented federal regulations that should have protected Newton County and Mt. Judea as “environmental justice communities,” and ensuing litigation also failed to identify and leverage the environmental justice cause.

Earthjustice and the plaintiffs it represents may have overlooked the environmental justice story because Newton County is all white. Earthjustice was generally aware that Newton County was low-income. That knowledge did not, however, trigger an environmental justice analysis in the complaint—in spite of the fact that federal regulations accommodated and, indeed, invited it.

Alternatively, or additionally, the environmental justice argument may have been obscured by the plaintiffs’ focus on wilderness, which must be protected from humans—or at least from too many humans, or the “wrong” types of human uses (Cronon, 1996; White, 1996: 174). Because “nature is constructed as a place where people are not present, or as ‘nature out there’” (Sze, 2011: 9), human habitation is anathema to places constructed as wilderness, including the Buffalo River watershed. This conservationist concept of wilderness obscures the fact that some people do *live* closer than others to wilderness.

Distinct from those who merely visit wilderness—those who consume it (Urry, 1995)—are those residing in the open space, rural settlements, and small towns abutting what in the United States is popularly thought of as wilderness. By way of illustration, consider that the Grand Canyon is hours from Phoenix, and Yellowstone is also far from any metropolitan areas.

The national parks, national monuments and state parks in southern Utah are nowhere near the region's population centers, Salt Lake City and Las Vegas. Even east of the Mississippi River, which is more densely populated overall, national parks and other significant wilderness amenities are typically removed from metropolitan areas. Arcadia National Park is in nonmetropolitan Hancock County, Maine, and Smoky Mountains National Park straddles the Tennessee-North Carolina border, at least an hour from even a mid-sized city. By the same token, the Buffalo National River is at least 80 miles from the center of either of Arkansas's metropolitan areas. Yet in all of these places, rural residents live at the park boundaries, at the cusp of what is officially designated wilderness.

On the rural-urban continuum then, a construct, which suggests some degree of human habitation, the "wilderness" about which conservation battles are fought is likely to be at the rural end. Wilderness and rurality are not necessarily synonymous (Cf. Woods, 2011), but they may well be contiguous. A violation of wilderness, then, may well also be a wrong to rural people, as is well illustrated by the Newton County CAFO. Yet rural residents may not be worthy of conservationists' solicitude if the residents are seen as transgressing wilderness by the very presence of their homes.

Alternatively, Earthjustice and the plaintiffs may not have taken up the CAFO as an environmental injustice because widely held rural associations with the pastoral, the bucolic, the serene (Pruitt, 2006; Romero, 2010; Cloke, 2006a) may have blinded them to Newton County's poverty. Like wilderness, the "small town and the farm" are "valued landscapes" (Bell, 1997: 95). "Hard times" can be "naturalized in to [such] landscapes" (Cloke, 1997: 264), causing rurality to "signify itself as a poverty-free zone" (Cloke, 2006a: 381). The idyll-ised rural

thereby “both exacerbate[s] and hide[s] poverty in rural geographic space” (Cloke, 2006a: 381).

This effective disguise and denial of rural poverty—and therefore of rural vulnerability—may yield out-of-sight, out-of-mind benefits in and to our increasingly metrocentric world by permitting LULUs to be placed in rural places with little or no psychic cost or guilt. The polluting externality and its consequences are effectively obscured, right along with rural poverty itself. This is a particular concern when no racial minority is present to provide an optical trigger for environmental justice advocacy.

* * *

Different stories about the same events offer us clues about the concerns and perspectives of a range of stakeholders. In the Newton County CAFO litigation, facts were available to support the conservationist, economic, and environmental justice stories, yet the plaintiffs focused on conservation to the neglect of competing narratives they could have advanced regarding the economic and environmental justice stories. The plaintiffs did so even as the three stories clearly intersect and overlap—indeed, as all three narratives could have been used to oppose the industrial farm. In doing so, the plaintiffs failed to see how their efforts to protect a place—the Buffalo National River—could also protect people living in its watershed.

In the next section we offer a different narrative frame, the frame of “rurality.” This alternate frame accommodates each of these three standard narratives, but also yields insights into numerous additional aspects of what is happening to the impoverished rural residents living, working, and going to school near the Newton County CAFO. We show how this robust and multi-dimensional concept can synthesize and even strengthen the individual frames. This rural-oriented analysis reveals voices not yet heard in Earthjustice’s conservation-oriented litigation

narrative, while also helping to explain the lack of local engagement with law and legal remedies.

VI. Reframing the Newton County CAFO as a Rural Story

If local people are to become more engaged in their governance, [American] attitudes of individualism and local sovereignty must give way to a view that values the local geography and its inhabitants. (Verchick, 1999: 786)

Rurality is a multi-dimensional concept (Halfacree, 2006; Woods, 2011). U.S. government definitions focus principally on metrics such as the size of population clusters and population sparseness (USCB, 2015a), while some more nuanced classification schemes also consider proximity to and lack of economic embeddedness with metropolitan places (USCB, 2015a). Beyond these ecological definitions, social scientists have described and theorized various characteristics associated with rural places: the high density of acquaintanceship (Freudenberg, 1996); stasis, tradition and homogeneity (Willits et al., 1982; Mormont, 1990); localism, informal order and antipathy toward the state (Ellickson, 1991; Engel, 1984; Weisheit & Donnermeyer, 2000); relative lack of human capital (Glasgow & Brown, 2008); attachment to place and the land (Tickamyer and Henderson, 2003; Ashwood, 2016); and tension between long-time residents/“old-timers” and newcomers/outsideers (Salamon 2007; Engel, 1984). Not all associations with rurality are consistent with each other. For example, the image of the bucolic rural idyll (Woods, 2011; Pruitt, 2006) does not square with the reality of rural poverty (Duncan, 1999), as Cloke has observed (1997).

Many of these characteristics are relevant to environmental injustices such as that wrought by the siting of the CAFO in Newton County. We have already discussed some of them

in relation to one or more of the three typical environmental narratives. Others help us understand additional aspects of the CAFO episode, including apparent lack of local involvement in opposition to it. Indeed, the very localism of residents is one reason the CAFO initially got sited where it did: people in Newton County did not get public notice of the proposed siting because they do not read the statewide newspaper.

While it is discouraging that the federal litigation about the CAFO sidelined the impact the factory farm would have on local residents, it is important to acknowledge that long-time Newton County families have been very reluctant to engage law in the dispute or even to speak openly against the CAFO. As such, old-timers have foregone the opportunity to assert their own concerns, as in a lawsuit for nuisance, or by seeking to have their interests heard as part of the federal suit. This reluctance is largely a function of the lack of anonymity that marks rural communities (Pruitt, 2008; Pruitt, 2006; Rich, 2016). Community norms are highly restricting in places like Newton County—even more so remote Mt. Judea and the Big Creek Valley. The constraints arise from the deeply embedded multi-generational relationships among residents, many of whom are fourth, fifth, even sixth generation residents of the county, living on land their ancestors home-steaded. Indeed, one C&H owner has even claimed eighth-generation roots in the area (Froelich-Kuaf, 2013).

The influence of these long-standing relationships is illustrated by the fact that one resident of Big Creek Valley agreed to an interview only if we met outside Mt. Judea so she could ride around the valley in my rental car and not to be recognized. The local community has ostracized some who have voiced their opposition to the hog farm—or even acknowledged concerns about it—to the media. Opponents of the CAFO have reported harassment of their

children at school, the conflict among factions of locals already passed to the next generation. This sort of retaliation has made it more “challenging to find Mt. Judea residents willing to take a chance, to stick their necks out,” as one expressed it. Another Newton County resident—a relative newcomer to the area who was heavily involved in grassroots efforts opposing the CAFO—described the reluctance of multi-generation residents to get involved in the ongoing dispute: “‘I will help you,’ the old-timers say, ‘but I won’t speak out. But if you want to run a dye test using my spring or my land, I’ll let you.’”

By the spring of 2015, several physical altercations had occurred between those associated with the CAFO, including those paid to collect and spray the swine waste, and those who oppose the facility. The situation has been especially volatile when opponents of the CAFO had gone to Mt. Judea accompanied by journalists documenting the situation. Some residents have even articulated fear that the principals of C&H Hog Farms, brothers who were closely associated with the Mt. Judea Volunteer Fire Department, might exact revenge upon those who openly opposed the CAFO. One resident said, “Locals think the [principals] are the Mt. Judea Volunteer Fire Department, and if something happens it would be a long time before someone would come to help them.”

One life-long resident of Big Creek Valley acknowledged that “some local people have talked about filing a lawsuit, actually for damages you know.” But, the resident explained, “If you are going to find people [willing] to sue, it would have to be people who have moved in here, not locals.” That resident described a husband and wife who own land on Big Creek, downstream from the CAFO, and who were aware that the value of their land had fallen since it began operating. The female landowner, a multi-generational resident of the county, had said:

“My husband would sign [onto a lawsuit] in a minute, but I wouldn’t. I know these people.”

That woman’s husband is not a Newton County native, but rather moved to the county after marrying her. This, the woman said, explained his different attitude toward participating in the litigation. One of the conservationist plaintiffs in the federal lawsuit brought an attorney to Newton County from another region of Arkansas to discuss with landowners the opportunity to file a nuisance suit against C&H. To date, however, no residents have been willing to do so.

Another reason for local reluctance to engage law may be that this region has a documented shortage of lawyers. Newton County has just three lawyers in private practice (Pruitt et al., 2015a). This shortage of local attorneys presumably has an impact on the ability of residents to connect with a counselor or advisor whom they know and trust, thus further deterring the suit. While Frisvoll (2012) found that “money was a paramount concern” when rural residents contemplated litigation “to fight for their desired rurality,” (p. 455) none of our informants mentioned financial considerations as influencing the decision not to sue. These residents may not have seriously explored the economic implications of a lawsuit because other considerations have made them so averse to litigation.

Some constraints on “old-timer” involvement in litigation stem from cultural and social norms, including deeply and long-held attitudes towards government, law, and litigation. The reluctance to sue C&H in nuisance is consistent with what scholars have found regarding rural residents’ preference to negotiate conflicts apart from formal legal processes (Ellickson, 1991) and their general reluctance to engage in civil litigation (Engel, 1984). This attitude toward law is consistent with rural antipathy toward government generally and with a culture of self-reliance widely associated with long-time rural residents (Engel, 1984).

In Newton County, the robustness of these attitudes is often—somewhat ironically—traced back to the very establishment of the Buffalo National River in 1973, when the federal government forced local landowners to sell land adjacent to the river, land that became the Buffalo National River. One multi-generation resident of the Mt. Judea area explained:

Local people are held back [from opposing the CAFO] because they still hate the government for taking [what became the Buffalo National] river. They took people's property back then, back in the 1970s. . . . So many people still hate the National Park Service over taking the Buffalo.

The links between many long-time residents' tolerance of the CAFO nuisance and their antipathy toward the federal government generally and the making of Buffalo National River in particular are reflected in an impassioned June 2013 letter to the editor of the *Newton County Times*. The writer, a long-time resident and dairy farmer in a part of the county far from the CAFO, mocked the National Park Service for calling the Buffalo National River “Arkansas’s gift to the nation.” She said the

gift was ripped from the hands and hearts of 350 families up and down the river. Though it has been 40 years, those of us left have not forgotten. We have not forgotten the 12 of our elders who died because of the stress of forcefully losing their homes. (Teter, 2013)

The writer also expressed antipathy to conservation groups protesting against the CAFO because they “were probably instrumental in the movement that took our heritage. Why did you want it? Because it was a beautiful clean river that was kept that way by generations of farm families along its banks” (Teter, 2013).

These sentiments reflect what Loka Ashwood has theorized as the “moral economy of land” (2016). Landowners like those in Newton County experience a “virtue-infused conception of private property rights that stems from the landownership ethic, an approach to landownership

as a sacrosanct right achieved through self-toil or family labor to ensure independence and sustenance in the face of scarcity” (Ashwood, 2016). Verchick has made a similar point in referring to Americans’ view of land as a “means to individual autonomy, a way of staking a claim in commerce and in politics” (1999: 785). The government’s authority becomes suspect when it takes the land, albeit with compensation. Ashwood explains moral economy of land as “a baseline of economic and political justice that establishes access to land as a right necessary for the ruling authority to sustain validity” (2016). In taking the private property along the river to form the Buffalo National River, the federal government violated locals’ moral economy of land, and the wound has not healed.

One consequence of this perceived violation is that Newton County’s local government seems in chronic tension with the federal government, in particular with the National Park Service (NPS). Recent disputes have arisen between the two entities regarding roads and cemetery boundaries, both at places where private or county land abuts NPS land. In July 2013—during the same time frame when protests of the CAFO were reaching fever pitch—the Newton County Judge (the county’s chief executive officer, who is elected) told the local newspaper that he had “to be constantly vigilant that the park service not close or gate county roads” (Dezort, 2013e). He further stated that if NPS gates are blocking county roads, he “will not hesitate to have them knocked down” (Dezort, 2013e). The judge boasted that, during the prior week, the county sheriff had “escorted off the [county] road” leading to NPS land a “park service enforcement officer” who had blocked it following county road maintenance to make the road easier for county residents to use (Dezort, 2013e).

Another dispute between the National Park Service (NPS) and the board of a local cemetery contiguous to NPS land has lingered for several years. The cemetery's caretakers repaired a fence to keep out federally protected elk after the elk damaged the cemetery. After NPS officials said the fence did not respect park boundaries, allegations ensued of desecration of an American Indian grave, followed by counter allegations that a military veteran's grave was desecrated. The conflict escalated over many months, culminating in a negotiation between NPS and representatives of the Arkansas governor and the area's U.S. congressional delegation, the latter invited by locals seeking their support in the conflict with the federal agency (Dezort, 2013f). The incident is another illustration of the intensity of old-timer emotions when the NPS is involved.

In light of these ongoing skirmishes with the federal government, it is perhaps not surprising that old-timers voiced fear that if government regulation succeeded in shutting down C&H Hog Farm, that closure might portend a greater degree of future regulation of their small, mostly subsistence farms. One long-time resident explained:

People [around here] think if they shut the hog farm down, we won't be able to have cows on the creek. They think we will all likely be watched more closely by the government.

A letter to the editor of the local weekly newspaper similarly cautioned: "The government is large enough to give you everything you want. It is also large enough to take everything you have" (Manor, 2013). In a similar vein, a member of the Quorum Court representing a district adjoining that of the CAFO and who identified himself as a beef farmer and lifelong resident of Newton County, opined: "If restrictions are placed on hog farm operators in the region it would only be a matter of time when cattle farmers would face restrictions, too" (Dezort, 2013a). That

official invoked nostalgia, “recall[ing] a time when every farm raised pigs free range” (Dezort, 2013a).

Not surprisingly, a great deal of local pro-CAFO rhetoric is grounded in identity as a farmer, a long-standing staple of rural livelihoods. One of the owners of C&H, for example, told the local newspaper: “To me this is the American dream. . . . Farming is our heritage. . . . This is what we would want to do for the rest of our lives” (Dezort, 2013c). In another interview, he highlighted his 12 prior years of farming experience, with a 300-hog operation adjacent to his home (Froelich-Kuaf, 2013). One young woman who self-identified as having been named the county’s Junior Farmer of the Year in 2010 wrote a guest column for the *Newton County Times* in which she defended C&H. She quoted extensively from the creed of Future Farmers of America, a national student organization, and from broadcaster Paul Harvey’s well-known, highly sentimental tribute to farming, “On the Eighth Day, God Created a Farmer” (Slape, 2013). This rhetoric invokes powerful images of the yeoman farmer to defend a very different system of agricultural production: factory farming on a massive scale.

Others, however, distinguished the scale of their own family farms from that of the 6,500-hog CAFO. One farmer who had previously kept a small number of pigs and who opposed the CAFO commented: “No, if they want 100 sows near their house, and do it the old-fashioned way, that is fine. . . . This is no place for a big hog operation like that” of C&H Hog Farms. Even some long-time Mt. Judea residents are skeptical that the CAFO will bring more jobs or that the few jobs it will bring are worth the cost. One stated, “People are living with the smell. . . . People said it would bring jobs, but now they’ve got the stench of the swine waste.”

Many residents have expressed frustration at outsider interest in the CAFO, including that from the conservationists who brought the federal lawsuit. Local autonomy has been a recurring theme. One wrote in a letter to the editor of the *Newton County Times*:

[W]e should be more concerned about “outside agitators” coming to our county and trying to tell us how “they” want us to live in Newton County. . . . If you are reading this and do not live here, and still want to control what we legally do, I suggest you move to the communist state of California and help them control their citizens! We still live in a free country! (Meyer, 2013)

Another multi-generational resident organized a coalition of Newton County farmers to “stand vigilant against laws and policies that would adversely affect agriculture in the county” (Dezort, 2013d). He asserted, “We’ve got rights. We live here. If we want to build a hog farm, poultry farm, if we go through the right process, we ought to have the opportunity whether we drain into the Buffalo or wherever” (Dezort, 2013b). That resident was among several encouraging the Quorum Court to respond to a resolution by the City of Fayetteville (80 miles away and home to the state’s land grant university and a significant liberal population), which in 2013 announced its official opposition to the permitting and operation of the CAFO because of its proximity to the Buffalo National River. The head of the farmer coalition invoked *us* versus *them* language in his comments at the May 2013 Quorum Court meeting:

We’re going to have to fight back against these people. If these boys lose that hog farm you can kiss your county good-bye. It’s in you boys’ [the Quorum Court’s] hands. We have to fight back. Those people [in Fayetteville] need to know people live here. (Dezort, 2013d)

The last sentence poignantly reflects one of our key observations: outsiders advocating for the Buffalo National River seem not to have noticed that “people live here.”

In his germinal study of poor, rural whites in Appalachia, Gaventa (1980) observed residents' fatalism, their perceived inability to resist the agenda of elites, both local and absent, whatever the deleterious consequences for them. While some hints of fatalism are evident among old-timers who oppose the CAFO but refuse to get involved in the litigation, the dominant response among long-time residents has been not only to align themselves with local elites—most obviously the principals of C&H Hog Farms—but also to cheer them. These local elites' status is enhanced by what they have accomplished in building the hog barns—not only because they have found a way to generate income in an economically inhospitable locale, but because they have gotten the best of the federal government in doing so. The status of the C&H principals is not diminished—and perhaps is even further enhanced—by their association with distant capitalist elites, the multi-national corporation that owns the hogs C&H is raising.

This allegiance to local elites is consistent with old-timers' dominant narrative of self-sufficiency and self-determination. That narrative is evident in their denunciation of the actions of outside political entities such as the City of Fayetteville and the conservation interests seeking to close the CAFO. In doing so, the old-timers ask to be let alone, ostensibly to exercise self-determination in how they live and make a living, to be masters of their own fate. Yet whatever narrative Newton County residents embrace, their situation seems similar to what Gaventa observed among rural Appalachians in that economic vulnerability, social isolation and even the specter violence are effective tools of both local and distant elites for keeping the most vulnerable in their place.

* * *

Whatever the reasons for the lack of old-timer or more truly local involvement in the federal litigation, that lack of engagement has had consequences. First, the lack of local knowledge about the area where the CAFO has been sited has surely had implications for how the case has been litigated. The Earthjustice lawyers litigating the case are based in New York City, and the plaintiff with the closest connection is regional; its governance includes newcomers to Newton County but no old-timers. Thus, those shaping the litigation may not realize the depth of the county's poverty as an objective, statistical fact. But long-time Newton County residents know Mt. Judea's reputation as the poorest place in the county, and their involvement might have prompted an inquiry into relevant Census Bureau data, thus equipping the plaintiffs to expose federal agency half-truths regarding environmental justice considerations. On the other hand, if locals had been involved in the litigation, they might well have protested use of the poverty data because of the collective shame it would represent to the community to acknowledge—let alone emphasize—this reality.

If Newton County's population were not white, the plaintiffs and their lawyers would more likely have seen the siting of the CAFO as an environmental injustice—or, more specifically, as environmental racism (Cole & Foster, 2001). Had the plaintiffs seen the injustice, they presumably would have done what conservation interests have done elsewhere: use federal law to achieve *both* conservationist and environmental justice goals. As it is, Newton County proved vulnerable to the siting of the CAFO in spite of its whiteness. That vulnerability stems from many of the very reasons that the Cerrell Report suggested three decades ago make certain communities desirable as industry targets for LULUs: low property values, low-

education levels and associated human capital deficits, sparse population, and extractive-industry economies (Cole & Foster, 2001). These characteristics are, in turn, associated with rurality. A look at the very phenomenon of persistent poverty further supports the point: the vast majority of persistent poverty counties in the nation are rural, and a significant number of them are home to concentrated pockets of white poverty. In short, entrenched, intergenerational, spatially concentrated poverty—especially when experienced by whites—is a rural phenomenon.

Not only did Newton County’s collective white privilege (McIntosh, 1997) not protect it from the siting of the CAFO, the place’s whiteness appears in some ways to have aggravated its vulnerability. That is, Newton County’s whiteness feeds into the bucolic, idyllic imaginary widely associated with (white) rurality in the U.S., thus masking rural poverty. That particular rural imaginary is presumably one reason Earthjustice and the plaintiffs failed to see the environmental injustice inherent in the CAFO’s siting. Alternatively, outsiders such as those shaping the litigation may have seen the poor white residents as transgressing wilderness—as having trashed the rural by their very presence, another manifestation of “white trash” (Wray, 2006). Such a perception presumably renders them unworthy of the engagement of conservation interests, or perhaps even of law’s solicitude more broadly.

VII. Conclusion

Sad to say, it looks like the Buffalo River people are going to have to save us from this [CAFO] because the local people can't do it. (Multi-generational resident of Mt. Judea, Arkansas)

As it turns out, that Mt. Judea resident was partly correct. The outside advocacy attracted by the Buffalo National River's status as a wilderness gem has been partly successful. The federal lawsuit initiated by conservation interests succeeded in getting the loan guarantees enjoined, but the CAFO is still operating with further federal litigation pending. The next logical step is a nuisance suit—but only if landowners step forward as plaintiffs. Thus, among those who oppose the CAFO, the fates of Newton County's old-timers are intertwined with those of newcomers and outsiders. Yet the instincts of the latter run toward conservation, and they have either failed to grasp the depth of residents' vulnerability, or chosen to look past it. Meanwhile, old-timers' hands are effectively tied by multi-generational relationships with the CAFO's owners.

This is but one conclusion we draw from this analysis of the Newton County CAFO litigation. Our analysis has also revealed how conservationist rhetoric—while appropriate and important—emphasizes the interests of those who consume wilderness but may well overlook the interests of those who live nearest that wilderness. This uni-dimensional posture represents an important missed opportunity in environmental advocacy because in many cases protection of wilderness will also protect those who live in rural places contiguous to and intermingled with that wilderness. Meanwhile, when rural residents are poor but white, the clear optical trigger for environmental justice advocacy is missing. Their rurality and their poverty intersect to render them a highly vulnerable population, but this vulnerability is not readily cognizable in an increasingly metrocentric nation that is highly attuned to racial disadvantage but ambivalent about poor whites. Indeed, when poor whites live in the shadow of a natural recreational amenity, their vulnerability is obscured by dueling associations with rurality—wilderness versus bucolic idyll.

With globalization, the concept of environmental (in)justice has expanded to include new places, contexts, and axes of vulnerability (Agyeman & Carmin, 2011; Bulkeley & Walker, 2006). The broadening concept also accommodates “a diversity of stories of injustice, the multiple forms it takes, and the variety of solutions it calls for,” (Schlosberg, 2007, 535), beyond the commonly recited conservationist, economic, and environmental justice narratives. Turning a rural frame on the Newton County CAFO episode helps cultivate that diversity of stories, voices, and—perhaps ultimately—solutions. The rural lens cultivates a holistic, multi-dimensional perspective, a way of drawing out and accommodating the perspectives of a wide variety of stakeholders, including some not currently being heard.

But foregrounding rurality does more than that. It gives us a way of seeing, making sense of, and theorizing the difference that rural socio-spatiality, culture, and economics make in relation to the direction and success of the ongoing efforts to close this industrial hog farm. It helps us understand the positions taken by some of the county’s residents and how they link to a long-standing tension between locals and the federal government, a tension fueled by the designation of the Buffalo National River—its setting aside as wilderness—four decades ago.

The environmental justice movement’s early coalescing around the siting of locally undesirable land uses brought that movement into rural America. A few decades on, agricultural industries are among the most toxic, and a great many of them are polluting rural communities and endangering the health and wellbeing of rural residents, including poor white ones. It is time for environmental justice advocates to re-discover and re-engage rural livelihoods and rural people in all their complexity, a task that will become more pressing in this age of industrial agriculture’s proliferation.

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