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**The Gavel and the Camera: Environmental Law and
Photojournalism's Relationship to Appalachian Identity**

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Departmental Honors Thesis

The University of Tennessee at Chattanooga

Environmental Science: Policy and Planning

Examination Date: 28 March 2024

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“The life of the law has not been logic; it has been experience... The law embodies the story of a nation’s development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.”

-Oliver Wendell Holmes Jr.

Dedicated to James Patton

A great Appalachian storyteller

TABLE OF CONTENTS

I.	INTRODUCTION	3
	A. Scope of the Research	9
II.	ARRIVAL	
	A. What is Appalachia?	11
	B. Entering <i>As it Was Give(n) to Me</i> , The Exhibit	
	16	
	C. The Legacy of Coal	19
	D. Narrative Mechanisms of Environmental Law	23
III.	EXPLORATION	
	A. Law and Photography Within the Environment	28
	B. The Ideals of Cooperative Federalism	30
	C. Ethically Approaching the Subject	34
IV.	EXTRACTION	
	A. The Impact of Surface Mining	36
	B. Intervention from the Outsider	38
	C. Dissemination of Images and Narratives	39
V.	SALVATION	
	41	
VI.	BIBLIOGRAPHY	44

INTRODUCTION

In July of 2022, historic rainfall descended upon rural Eastern Kentucky. In less than twelve hours, the North Fork Kentucky River rose eighteen feet, homes were lost to flash flooding, and families were airlifted by the Kentucky National Guard. Within the following weeks, federal disaster declarations ensued alongside reports of housing shortages, contaminated water, and permanent migration out of state. With an average accumulation of fifteen inches in four days, it was nothing short of debilitating and devastating. The area is no stranger to running creeks and muddy yards, but the National Weather Service reports a weather event of this intensity to be a 1-in-1,000 chance,¹ giving it the moniker “the thousand-year flood.”²

What we now refer to as “flash flooding,” the sudden, almost biblical effects of a weather system unfolding *just so*, are traceable in the timeline of human history. Like the “Great Drowning of Men,” wrecking northern Europe and swallowing islands in the Middle Ages, or the earthquake causing a gargantuan swell of the Indus River Valley in 1841,³ it seems human civilization has always been subject to the unrelenting might of nature’s systems. Where we once revered such tragedies with symbolic power, premonition, and omen—we now have the comfort of meteorological explanation, disaster relief funds, and policy criticism to remind us we must invest in better infrastructure. Yet some traditions (or maybe better referred to as human

¹ NOAA US Department of Commerce, Historic July 26th-July 30th, 2022 Eastern Kentucky Flooding, www.weather.gov (2022), <https://www.weather.gov/jkl/July2022Flooding#:~:text=These%20thunderstorms%20caused%20an%20intense.>

² Matt Klesta, Resilience and Recovery: Insights from the July 2022 Eastern Kentucky Flood, Community Development Reports (2023), <https://www.clevelandfed.org/publications/cd-reports/2023/20230927-resilience-and-recovery> (last visited Nov 5, 2023).

³ Evan Andrews, The World’s Most Catastrophic Floods, in Photos, HISTORY (2017), <https://www.history.com/news/worlds-most-catastrophic-floods-in-photos>.

impulses) inherited from our poor ancestors, echo in the persistence to rebuild, the need to document suffering, and the urge to tell the tale.

But what is the story of this fateful Kentucky July, exactly? The rarity of such an occurrence is certainly tragic, but avoid reducing its complexity to a singularity or a stroke of unfortunate luck. There are cracks in the assumption that this is a story of chance or accident. While combing through the news articles, remediation efforts, and endless reports, a consequence of modernity begs another glance, another retelling, and an understanding beyond sympathy and storm preparation. This consequence is the rapid, massive output of carbon dioxide into our atmosphere. Due to such an increase in a greenhouse gas, more infrared photons are absorbed in the atmosphere, trapping heat and warming the planet at an alarming rate. The scientific evidence is relentless, and planetary mechanisms to balance and disperse heat have altered and threatened the accustomed livelihoods of ecosystems.⁴ With a sudden heavy downpour that causes the Kentucky flood, consider how heightened evaporation correlates to temperature increase. Precipitation and moisture patterns are changing, and scientists warn of more dramatic instances swinging between heavy rainfall and drought. In 2022, Kentucky experienced an unusually dry June. In July, there's an unusual downpour.

Reports of extreme, unexpected weather are happening across the globe, and modern climate science is fast on the scene to synthesize and scale the extent of human activity responsible for disasters or altered systems. While science is steadfast on carbon emissions causing global warming, research continues to tease out regional impact and subsequent

⁴ Andrew Emory Dessler, Introduction to modern climate change (2018).

adaptation.⁵ After all, climate science is rooted in prediction, not a promise. What the science does tell us is that we are ill-prepared: economy, agriculture, travel, public health, and national security- tenants of human society- must be more responsive to the changing planet. Science reports, examines possibilities, and informs- but science cannot alone organize and inspire what must be done. What we must accomplish to maintain the luxury of modern human advancement certainly cannot be prescribed or instructed. To collaborate and imagine a world which sustains humanity may seem daunting, but humans have always been a creative and persistent species. While the ability to *live* on a warmer planet is an essential concern, this investigation is contemplating *how* we live on a warming planet. The discussion of the Kentucky floods beyond a freak weather occurrence discomforts, reminding us that we're brushing dangerously close to an unfamiliar world, one that will force reconsiderations of the institutions that comfort and define us. With a deeper knowledge of cause, science finds itself at an incredible crossroads. The privilege of modern technology to understand and measure our progression, but also the burden of progress being defined by the energy and destruction it took to arrive at this moment and time. How to communicate this knowledge, encourage adaptability, and catalyze collective decisiveness is the question of the century. Efficient acquisition of information followed by decision-making for a country to reduce carbon emissions, for a state to maintain healthy drinking water, and for a community to rebuild after a flood, will always beg the questions: Who are we? Who do we want to be?

⁵ Jean Chemnick, Scientists Just Warned We Need to Cut Emissions by 60 Percent, but the U.S. Is Years Away, *Scientific American* (2023), <https://www.scientificamerican.com/article/scientists-just-warned-we-need-to-cut-emissions-by-60-percent-but-the-u-s-is-years-away/>.

The determination of identity is an inherently narrative project, and stories serve to both explicate how we got here, and how we should move forward. In the floods of the past, such natural phenomena had to be rationalized by spirituality where humans relented to something beyond themselves.⁶ Today, the story points towards something and someone tangible- the relentless churn of human industry. It's an obvious but currently incomprehensible villain in the narrative of environmental destruction, and to level each human and each nation to bearing responsibility wouldn't be accurate. As the country with the highest Gross Domestic Product (GDP), the United States is a major producer and consumer of energy. How America conceptualizes natural resource value is indicative of the national narrative of progression. With such economic, ideological, and environmental dominance- the rest of the world is watching.

Many scholars spanning disciplines and expertise have told the story of America through our relationship to oil, to coal, to natural gas, and innovation. The building of skyscrapers, the fuel for global warfare, and twentieth-century accumulation of capital, the modern feat of what we label an industrial *revolution* is traceable to energy production in Appalachia.⁷ Factories and development span the nation, but the scene of extensive focus is often Appalachia, with both its tumultuous history with coal and its notoriously "backward" way of life. To environmentally concerned scholars, Appalachia is particularly rich in symbolism. From coal mining to the destruction of ancient mountains, it's difficult to fathom the irony of such extensive extraction fueling the nation's development whilst leaving the very communities providing labor and land impoverished. This project is not interested in retelling the story of mining and suffering, just

⁶ White, Lynn. "The Historical Roots of Our Ecologic Crisis." *Science*, vol. 155, no. 3767, 1967, pp. 1203–07. JSTOR, <http://www.jstor.org/stable/1720120>. Accessed 21 Mar. 2024.

⁷ Patrick C McGinley, *From Pick and Shovel to Mountaintop Removal: Environmental Injustice in the Appalachian Coalfields*, 34 *Envtl. L.* 21 (2004)

like how it avoids regurgitating established climate science warnings. What this essay seeks to demonstrate is *how* the story of energy extraction in Appalachia is told.

To avoid more devastating floods, and to improve climate change responsiveness, wealth, health, and political empowerment is essential- and will require a narrative intrinsically tied to regional identity. In evaluating the construction of place and people, this research is curious about how the institution of environmental law transforms the region's relationship with the natural world. As an indicator of climate responsiveness on a national level, federal environmental law also provides an objective definition of 1) what industry is permitted to perform, 2) when intervention is necessary, and 3) what parties are responsible for ecological damage. Permittance, intervention, and responsibility are principles of law that extend beyond resource extraction site management and the discipline itself. The perceived power of authority such as the federal government, or affluent energy corporations, to both destroy and rehabilitate is a dynamic that climate change conflict makes immediate to public scrutiny but also shapes how each community directly affected by certain statutes can self-determine.

Following the July flood event, an advocacy group called Kentuckians For the Commonwealth called for a federal investigation of the correlation between flood severity and surface mining. Compiling data from obituaries, news reports, and other local information sharing, members of the grassroots organization developed a map that models the proximity of flood deaths to large-scale surface mines.⁸ Due to the intensive clearing required, surface mining strips the land, leaving mountaintops bare for water to flow at a more rapid speed. Extensive

⁸ Matt Klesta, *Resilience and Recovery: Insights from the July 2022 Eastern Kentucky Flood*, Community Development Reports (2023), <https://www.clevelandfed.org/publications/cd-reports/2023/20230927-resilience-and-recovery>.

research within environmental science demonstrates this erosion, and the topographic relief of valleys and streams makes not only residential areas vulnerable to flowing water, but runoff deprives the soil of nutrients, threatens habitats, and within the water are contaminants of the mining practice itself.⁹ But you don't have to be a scientist to recognize this cycle. Locals find the association between stripped mountaintops and flooding to be clear and experienced in their everyday lives.

Members of the Commonwealth questioned if the Surface Mining Control and Reclamation Act, the foremost federal law regulating mining's environmental impact, was "faithfully implemented to carry out its purpose of protecting human life."¹⁰ This is a weighty charge leveled at regulators. While there's often critique for a congressional policy response on a constituent's behalf, in this case we see a direct address to the law's language and enforcement. It's not the first time Appalachian residents of rural counties near mining sites have deeply questioned who and what these large pieces of law are meant to protect. We can measure the soil and water to build determinations of safety and livability, but amending and enforcing the law is no science. Despite how much environmental science urges it to be, an interpretation of central authority is lived in real time. The courtroom, public opinion, and administration of regulation are very much an arena of culture and response. A theater not of objective right and wrong- but built by an "active and discerning awareness of overt and covert social narratives."¹¹

⁹ Richard Schiffman, "A Troubling Look at the Human Toll of Mountaintop Removal Mining." Yale E360, Yale School of the Environment, 21 Nov. 2017, e360.yale.edu/features/a-troubling-look-at-the-human-toll-of-mountaintop-removal-mining.

¹⁰ Liam Niemeyer, KFTC seeks investigation of surface mining's role in deadly Kentucky floods, Kentucky Lantern (2023), <https://kentuckylantern.com/2023/02/13/kftc-seeks-investigation-of-surface-minings-role-in-deadly-kentucky-flood>.

¹¹ Chris Hilson, The Role of Narrative in Environmental Law: The Nature of Tales and Tales of Nature, 34 Journal of Environmental Law 1 (2021).

To accept the role of faithfully protecting human life, the regulatory regimes of environmental law must be receptive to the lives of humans. Understanding how the legal authority of energy extraction has shaped the identity of Appalachia means also understanding how it is not the only institution that has attempted to both examine and protect the region. The laws which permit and regulate the fields of coal and surface mining have always been challenged by photojournalism, yet current scholarship succeeds little in comparing both structures beyond criticism. Holding the notion of photojournalism challenging the efficacy of law, we can also consider where each respective discipline intertwines and informs one another. Hopefully, in examining their influence in Appalachia we will not only uncover sinews of law, art, policy, and place but work to blaze a path forward, progressing not towards the endless accumulation of energy but perhaps more sustainable stewardship. As Steve Peake, a pastor from Letcher County situated within the Kentucky flood zone, asserts, “We love the mountains. That’s why we’re still living here. We’d like to see things rectified so that we can continue living.”

Scope of the Research

With an effort to fashion an approach to environmental law that is more responsive and representative, it is worth investigating federal mining law and photojournalism in tandem. Where these structures generate conversation and strife on their own has been well discussed but never side by side, and not with the interdisciplinary intention of mutual learning. How these institutions operate similarly and differently speaks to how a region’s relationship with the environment is documented- detailing what is preserved, remembered, and what is lost. To execute this analysis, it is necessary to find a foothold in decades of national coverage, mining testimonies, and legal interest. The archival exhibit *As It Was Give(n) To Me* by Stacey Kranitz,

gives this research shape and contemporary relevance, as her work both diverges and responds to efforts of photojournalism before her. Unlike other artforms featuring Appalachian poverty, mining, or more recent attempts to rehabilitate the national image, Kranitz's collection has no central theme beyond challenging the idea of there being a reliable, clear narrative of Appalachia. This challenge gives interpretive mobility, allowing discussions on place, energy, and health to arise naturally. The exhibit also begs us to wonder, with access to Appalachian history being chronicled by outsiders through the modern age, what can truly be experienced, felt, and known?

Kranitz's work takes a glance into the past but trudges forward for the immediate lives of Appalachians here and now. In the same vein, this research will take a similar approach. It's impossible to understand a modern application of environmental law in the region without knowing how we arrived at this moment in time. As Chris Hilson notes in his work on environmental law as narrative, "Academic environmental law stories are often like that: the fabled lone scholar is, in reality, typically building on stories that others have told before us, while hoping to add something new."¹² To structure both the discussion of photojournalism and environmental law in Appalachia side by side, this essay will apply Kranitz's labels which mark sections of her exhibit- *Arrival, Exploration, Extraction, and Salvation*. These are the only labels, or brackets, that Kranitz offers the audience that contain the semblance of a story, or even a rise and fall in interest and investment. Whether they are felt internally to the region, or supplied for a viewer, it is not overt. However, many scholars working on environmental law in Appalachia tend to have a similar arrangement in their work. First, one *arrives* at a scene

¹² Chris Hilson, The Role of Narrative in Environmental Law: The Nature of Tales and Tales of Nature, 34 Journal of Environmental Law 1 (2021).

whether it be a courtroom or a flood event and contextualizes the study area, then *explores* different perspectives, statutes, policies, and news reports. The study then almost always details the vast *extraction* performed by energy corporations and suggests that more comprehensive regulation and increased federal oversight can *save* the region, economically and environmentally. As more and more legal scholars repeatedly criticize the federal regulatory regime, photography also has to adapt to a changing world, balancing expectation and accuracy of capturing and transmitting people and places. This study wonders, are both of these disciplines shouting into a vacuum? Or can a synthesis of the two tease out common threads that demonstrate man's relationship to nature, energy, and home? If so, maybe then we can work to develop efficient legal frameworks for Appalachia, ones that are more constructive to the lived reality of residents.

After all, “many disciplines and perspectives illuminate different dimensions of environmental problems. All disciplines and all perspectives have their blind spots and/or limits. There is no single and comprehensive “view from nowhere.”¹³ This study will examine the commonalities between the institutions of environmental law and photojournalism in Appalachia, but also where one can inform and even improve the other. As both these structures contribute to the identity formation of the region, and how it is displayed and lived, a conversation between legal scholarship on surface mining practices alongside theories of photography relevant to Stacey Kranitz's multimedia archival exhibit *As It Was Give(n) To Me* will attempt to illuminate dimensions of environmental problems in Appalachia.

¹³ Liz Fisher, Environmental Law, Scholarship, and Epistemic Responsibility, 33 *Journal of Environmental Law* 521 (2021).

ARRIVAL

What is Appalachia?

As defined by the Appalachian Regional Commission, Appalachia forms a shape indicative of the Appalachian mountains. Spanning 13 states, 206,000 square miles, and 26.3 million residents, it is without a doubt a large, complex, and diverse space to define within the nation.¹⁴ Most environmental research refers to rural, economically “distressed” areas predominantly in eastern Kentucky, West Virginia, and southern Ohio. It is important to distinguish that the broad swath of Appalachia is not entirely the image of the poor, white, trailer park residents often associated with the region. There are growing cities, beautiful parks, and a higher population of African American residents in rural Appalachia compared to rural America. However, continuing this line of comparison between the rest of rural America, rural Appalachia does possess lower income, lower employment, and lower education rates. There’s a correlation between these rural areas of national concern and industrial practices with subterranean and surface mining. Counties within the Central Appalachian Coal Basin (eastern Kentucky and southern West Virginia) face higher unemployment, lower wages, and a higher mortality rate.¹⁵ Essentially, the issues associated with the image of Appalachia persist in spaces defined by a prevalent coal history.

The commission, forged in the ideations of President Johnson’s Great Society, documents the region’s statistics and funds projects to alleviate poverty. It is one of the fundamental sources of information regarding Appalachia, supplemented by Esri mapping technology, EPA data, and

¹⁴ About the Appalachian Region, Appalachian Regional Commission, <http://www.arc.gov/about-the-appalachian-region> (last visited Mar 20, 2024).

¹⁵ Eric Bowen, John Deskins & Brian Lego, *An Overview of Coal and the Economy in Appalachia*, (2020), https://www.arc.gov/wp-content/uploads/2021/04/Coal-and-the-Economy-in-Appalachia_Q4_2020-Update.pdf.

other governmental entities. While an objective project centered on data collection, its creation is owed to the overwhelming historical presence of photojournalism. With the ARC being the foremost source of a statistical definition of Appalachia, it is necessary to note its origins, and what informed the intent that persists within the continual reports. The War on Poverty was a major force in developing a consumptive narrative for outsiders of what Appalachia had endured, and to garner political clout amidst a dwindling New Deal order that had established federal programs. On the stoop of Tom Fletcher's cabin in Martin County Kentucky, President Johnson is photographed in black and white surrounded by melancholy children and a gap-toothed Mr. Fletcher.¹⁶ In his side profile, the president appears to be solemn, looking beyond the porch in contemplation. Yet he does not fully sit alongside the family, he remains tediously balanced on his heels slightly above Mr. Fletcher.

A response worthy of a presidential arrival would not have occurred without Harry Caudill, whose anecdotal support for drafting a biography of the region was from surface mining-induced flooding. Instead of detailing the systemic predation of mining companies, Caudill targeted his frustration with environmental damage and poverty at the Appalachians themselves because of their ancestry, because of inherent "wildness."¹⁷ Being an Appalachian native, along with his writing's academic tone, the dramatized assumptions made in the book *Night Comes to the Cumberlands* formed a real account of Appalachia for outside interest. After publishing his written portrayal of Appalachian suffering, it became the dominant conception of the region for many decades and motivated both the federal government's and photojournalism's

¹⁶Pam Fessler, Kentucky County That Gave War On Poverty A Face Still Struggles, NPR (2014), <https://www.npr.org/2014/01/08/260151923/kentucky-county-that-gave-war-on-poverty-a-face-still-struggles>.

¹⁷ Harry M Caudill, *Night comes to the Cumberlands, a biography of a depressed area.* (2019).

arrival in Martin County, which remains one of the poorest counties in central Appalachia today.¹⁸ Even in the sixties, there was a clear, accessible history of how venture capitalists acquired land and misused it. Rather than reevaluating the boundaries of industry or progressing laws on the sovereignty of Appalachians as stewards, a story had to be told- one that was indicative of a burgeoning post-war nation that could not conceptualize industrial relentment. As a political symbol for repairing domestic problems amidst the global, Cold War conflict, Appalachia in the sixties received its first major instance of federal interest. On the surface, Appalachia had only been dramatized as lawless for fierce civil disputes between families and between unions and corporations- until this new age of sympathy. The long-term effectiveness of War on Poverty social programs has been extensively scrutinized, but it hasn't been until recent years that the imagery and framing associated with federal interest have been thoroughly acknowledged. Some of the most famous and persistent photos of Appalachia are those from LIFE magazine's "The Valley of Poverty" publication alongside the CBS special "Christmas in Appalachia, these black and white snapshots of dimly lit cabins, children covered in dirt, and rusting cars.¹⁹ Are these photos an incorrect view of Appalachia? Not necessarily, but it operates within the narrative Caudill constructs of a dilapidated people.

It is more digestible to view the region's poverty as predestined, due to the lawlessness of their place and forebears, than to wonder if the fuel for American democracy and modernity was perhaps more turbulent, more dangerous than we thought. A photojournalist stepping foot in a coal town or holler operated within the Caudill imagination, "...in a vast land wholly unrestrained

¹⁸ Pam Fessler, Kentucky County That Gave War On Poverty A Face Still Struggles, NPR (2014), <https://www.npr.org/2014/01/08/260151923/kentucky-county-that-gave-war-on-poverty-a-face-still-struggles>.

¹⁹ Ben Cosgrove, The War on Poverty in the Pages of LIFE: Appalachia Portraits, 1964, LIFE (2014), <https://www.life.com/history/war-on-poverty-appalachia-portraits-1964/>.

by social organization or effective laws...” Caudill wanted to see coal phased out of Appalachia and hoped for a strong energy infrastructure that didn’t leave residents dependent on federal welfare. In their willingness to accept federal funds, Caudill used the rest of his career to ponder theories of eugenics to lament against the impoverished Appalachians- condemning his legacy to impermanence.²⁰ He told the wrong story, one that other disciplines like photography and federal law could acquire and transmute to a larger narrative. This is the narrative that circles *around* the central issues of Appalachian poverty, and instead focuses on rehabilitation *after* black lung, *after* a mountain has been stripped, and *after* poverty became generational. Today, Martin County has seen improvements in infrastructure and education, but it is still one of the poorest counties in the country, dependent on Johnson-era programs like Supplemental Security Income. These initiatives have kept the county alive, but residents wonder if this is truly the conclusion the War on Poverty envisioned. With many political campaigns, interests can rise and also wane. The nation could not slow the progressing advancement of technology and consumption in a postmodern world, with energy demand increasing each year. Appalachia continued to produce, but what has persisted since the sixties impression of Appalachia? Policy misconceptions surrounding rural Appalachia that followed the 2016 election echo how the region once entered the national spotlight. In her book, *What You Are Getting Wrong About Appalachia*, Elizabeth Catte identifies that “The Huffington Post called it (Appalachia) ‘the America that voted Donald Trump into office.’”²¹ Instead of journalism’s election analysis revealing more complexity to just

²⁰ Andrew Aoyama, *The Photographer Undoing the Myth of Appalachia*, *The Atlantic* (2022), <https://www.theatlantic.com/ideas/archive/2022/12/stacy-kranitz-photography-book-appalachia-harry-caudill/672261/>.

²¹ Elizabeth Catte, *What You Are Getting Wrong about Appalachia*. First edition, Belt Publishing, 2018.

“Trump Country,” outside reporting justifies the region’s exclusion as a separate America- with its racism and bigotry- as a scapegoat for political abandonment.

Since this poor reporting, there’s a resurging interest in retelling the story of Appalachia once again. If the same narrative brought both photojournalism and federal investment to the same place and time, it’s worth wondering what narrative intertwines them now. More scholars and activists are carefully working to dispel embedded stereotypes and investigate the lived experiences of Appalachian residents. Perhaps there’s potential for new methods of reporting and storytelling, especially as Caudill’s account continues to be associated with controversy. Preconceived notions of Appalachia are unraveling, leaving stakeholders to question: Does this unraveling demand a new narrative, or the absence of one entirely?

Entering *As it Was Give(n) to Me*, The Exhibit

Stacey Kranitz’s photo series in Appalachia exists on an online platform, but also as a traveling, global exhibit. This research refers to her online publication and presence, but also to the physical exhibit in the Institute of Contemporary Art gallery space at the University of Tennessee at Chattanooga in the spring of 2023. As a body of work within the 2023 Tennessee Triennial for Contemporary Art, Kranitz’s photography series must be understood alongside the curation theme of “RE-PAIR.” Curators contextualize the theme as being intuitively aware of the instability of the moment, and the role of contemporary art in energizing community²².

Moving through the exhibit, photos are displayed in various sizes beneath bracketed sections that we’ve established being *Arrival*, *Exploration*, *Extraction*, and *Salvation*. This

²² Tennessee Triennial: RE-PAIR, TENNESSEE TRIENNIAL For Contemporary Art, <https://tennesseetriennial.org/2023-re-pair> (last visited Mar 22, 2024).

overarching narrative structure is not unique to Kranitz's experience but a thematic pattern she observes in various sources attempting to document Appalachia. Arrival is a tentative, almost observational beginning, yet it is difficult to linger without being distracted by other sections. Exploration dives into more raw, shock-producing images with brighter colors. Extraction is the center of the room, where all the images related to coal are displayed on a black wall. Two glass-covered tables on either side of the center wall are filled with primary source material like newspaper clippings, headlines, and anecdotes that many Appalachian artists, activists, and scholars recognize. The materials include but are not limited to, transcripts of union testimonies, an x-ray of black lung, and a letter describing a woman's fear of torrential flooding. Salvation has a warmer light and a twinge of optimism. The navigation of the exhibit is not dissimilar to the essay structure of legal source material with scene setting, the breaking down of the familiar, the central commonality of coal extraction, and a reminder of the future propelling forward.

As you wander through the exhibit you find yourself asking, who is Stacey Kranitz? Or, maybe it's more likely you wonder, who is the woman appearing in several photos? Both of these questions work to inform the other. Kranitz does insert herself in each section, often in a vintage costume staring at the camera- almost daring questioning. In placing herself in her work, Kranitz is noting the irony of photographic efforts separating the subject from the photographer. Displaying herself in period clothes or on the back of a horse, Krantz herself occupies the tourist's imagination. She claims to emulate the character "Christy" from the nineties romance drama, which depicts a young girl moving to pre-World War I Appalachia.²³ While a distinctly

²³ Andrew Aoyama, *The Photographer Undoing the Myth of Appalachia*, *The Atlantic* (2022), <https://www.theatlantic.com/ideas/archive/2022/12/stacy-kranitz-photography-book-appalachia-harry-caudill/672261/>.

fictional place, Kranitz's reference demonstrates that media and storytelling influence how a place is perceived by outsiders. With time, fiction may not be distinct from reality. Many photos in the exhibit operate in this subversion of stereotypes, not claiming that Appalachian stereotypes are completely false or accurate but perhaps there is some truth to outside myths, stories, and assumptions that Appalachians have interiorized in their own lived experience. With so many accumulative years of media attention, it's impossible to separate the reality of Appalachia from a journalized one. Kranitz's work wonders if this division would be worthwhile, or if the repetitive associations with issues like racism, alcoholism, and violence have constructed an internal truth in their repetition.

Upon arrival, there is no clear recommendation from Krantz, but in an initial walk through the gallery, there is a sense of contradiction. Some photos seem posed, some appear candid. There are lengthy documents of archival material, but no captions or titles with any photos. There is plant material with no taxonomy and older photographs with no reference. The space demands to be absorbed fully, but it's an incomplete story. Even the order of sections leads you to walk in a spiral, weaving in and out of a beginning and end centered around *Extraction*, or wandering off into a side room filled with various literary materials like a church pamphlet, the novel *Christy*, and a black lung compensation claim from the Department of Labor. The exhibit is dedicated to Appalachian history, and overtly aware of many sources of knowledge, but Kranitz offers an atypical commentary- or a lack of commentary at all.

Like environmental law as a discipline, Krantz's exhibit is multi-textural in that it absorbs vastly different sources of informative material. However, there's a subjectivity within the discipline of photography that Kranitz utilizes. Her photos toe the line between the expectations of photojournalism and the freedom of artistic expression. The photos constituting

an exhibit give them a sense of beauty and artistry, whereas the realism of the images, the archival material, and her interviewed critique of journalism give the exhibit an edge. Are we constrained by the exhibit space to critique form, composition, etc or is there an obvious connection to history, to politics, and to energy? For comparison with environmental law, considering both artistic technique and perceived objectivity should not be two separate actions framed as art vs journalism. As Susan Sontag writes in *On Photography*, "...any attempt to restrict photography to certain subjects or certain techniques... is bound to be challenged and to collapse. For it is the very nature of photography that it be a promiscuous form of seeing..."²⁴

The claim of photojournalism to be objective is dissolving in contemporary work, as it's becoming more understood that while a single photo may have a utilitarian use for verification, forming a photo series or curating an exhibit invites mutability and debate. In using the terms photography and photojournalism interchangeably, I question "the camera's ability to grasp reality" and how "collections reinforce the arbitrariness, the subjectivity of all photographs..." especially those attempting to disseminate reality.

The Legacy of Coal

Circling the exhibit, it's nearly impossible not to glance at the center wall, *Extraction*. With photos on both sides, you immediately notice it upon entering, but also glance back while walking through the rest of the space. Much like the functionality of coal as a topic in academic projects, it is central to the perceived identity of the region. In an article on Kranitz's work, the

²⁴ Susan Sontag, *On Photography* (1977).

exploitative legal history of mining is deemed necessary to establish a conversation about art on Appalachia. The journalist Andrew Aoyama writes:

Mining in eastern Kentucky was backed by broad-form deeds—exploitative legal agreements that let landowners keep their rights to the surface but granted mining companies all the mineral resources below. By destroying the land, strip mining rendered the rights that landowners retained functionally meaningless and allowed mining companies to extract wealth from the region while those who lived there saw little benefit

Andrew Aoyama, *The Photographer Undoing the Myth of Appalachia*, *The Atlantic* (2022), <https://www.theatlantic.com/ideas/archive/2022/12/stacy-kranitz-photography-book-appalachia-harry-caudill/672261/>.

It is necessary, given that Krantz aims to work in an awareness of the history Caudill constructed. The statistics are clear that areas of the most suffering, generating the highest interest, are dominated by coal's footprint on the environment and employment.²⁵ Now, is this the comprehensive story of such a massive region, and the cornerstone of its identity? It's difficult to assume, but this reinforced association does heavily impact the portrayal of rural existence in the environment, and how the nation perceives its relationship to energy extraction. This is an important association, but it can't be the reducing element of lives, culture, and future. Mining is not the theme of Krantz's series, and as someone who has lived in the region for many years, she is aware it isn't the focus of every story. In a piece for *Reading the Pictures*, Krantz discusses riding all-terrain vehicles (ATVs or 4-wheelers) on former strip mine trails, a common form of recreational reclamation. She notes, "No one I met on the trails that day mentioned the "rape of Appalachia" nor did anyone mention that they missed the mountain."²⁶ Mining is

²⁵ Eric Bowen, John Deskins & Brian Lego, *An Overview of Coal and the Economy in Appalachia*, (2020), https://www.arc.gov/wp-content/uploads/2021/04/Coal-and-the-Economy-in-Appalachia_Q4_2020-Update.pdf.

²⁶ Stacy Kranitz, *Stacy Kranitz: The Rape of Appalachia*, *Reading The Pictures* (2014), <https://www.readingthepictures.org/2014/02/stacy-kranitz-the-rape-of-appalachia/>.

certainly pervasive, but what Krantz notes from this observation (and in many of her photographs) is that residents continue to live and operate in natural spaces with adaptability. Coal, strip mining, and environmental destruction is not a “theme,” these aspects of the region are inseparable from lived experience. This tension, the push and pull of confirming historical associations to mining vs what this history means to residents, is something that legal scholars concerned with reclamation could reflect on to avoid stagnant research.

Historically, minimal improvement in Appalachian lives can be traced directly to federal *legal* interference, union power associated with strong-arming political decisions and protecting livelihoods was a mobilizing force for miner welfare.²⁷ At the turn of the twenty-first century, the practice of traditional coal mining has been on a steady decline, as an Appalachian Regional Commission report notes that “the largest loss in coal production has tended to occur in the areas with the highest dependence on coal mining jobs, pointing to high levels of economic stress as the economy adjusts to lower levels of coal production.”²⁸ In the national story of environmental regulatory success, this is largely attributed to improvements in air quality standards and a turn to natural gas as a cheaper, “cleaner” burning energy source. After decades of seeing Appalachian men covered in soot, the national conception of coal decline may very well be a positive one in terms of human health. However, today’s environmental law research must wonder how labor can transition to natural gas or renewables with or without cohesive federal support, and in what ways the Appalachian region may even divert from the national narrative that advocates for cleaner energy.

²⁷ Evan Barret Smith, *Implementing Environmental Justice in Appalachia: The Social and Cultural Context of Mountaintop Removal Mining As Seen Through the Lenses of Law and Documentaries*, 4 *Wm. & Mary Pol’y Rev.* 170 (2012)

²⁸ Eric Bowen, John Deskins & Brian Lego, *An Overview of Coal and the Economy in Appalachia*, (2020), https://www.arc.gov/wp-content/uploads/2021/04/Coal-and-the-Economy-in-Appalachia_Q4_2020-Update.pdf.

Many outsiders are quick to scoff at Appalachian's desire for a return to coal, and some journalists reported that President Trump's 2016 election was because of his empty promise to "bring back coal."²⁹ The current state of surface mining is more machine-operated, resulting in fewer jobs available for coal-dependent counties. The image of a miner covered in black dust, cannot be considered the dominant face of Appalachia any longer, it has been replaced and depersonalized by flattened mountaintops that modify the hydrology and geology of the land so drastically that liveability is not a priority.³⁰ Images of mountaintop removal can even be considered dystopian, devoid of life. In previous displays of mining strife, discussions could be focused on improving labor conditions, and healthier energy practices. Today, surface mining carries a weight of permanent, ecological manipulation disparate from associations with employment and progress.

Legal scholarship on surface mining typically opens with a similar entrance concerning the legacy of coal that is based on federal criticism. Opening with a similar conclusion as the ARC, the correlation between energy-producing areas of Appalachia and poor environmental health and policy response is solidified. This is almost always referenced in scientific knowledge gathered by environmental studies. Typically, scholarship follows by acknowledging broad-scale governmental tolerance of energy industry practices that contrast with the overt devastation mountaintop removal causes. There's a repeated language that surface mining (at its worst mountaintop removal) could even be worse for Appalachia than traditional coal mining. Scholar Mark Cherry notes, "It has had an outsized impact on the region," reinforced with violent

²⁹ Eric Lipton, "The Coal Industry Is Back," Trump Proclaimed. It Wasn't., The New York Times, Oct. 5, 2020, <https://www.nytimes.com/2020/10/05/us/politics/trump-coal-industry.html>.

³⁰ Jedediah Purdy, *The Violent Remaking of Appalachia*, The Atlantic (2016), <https://www.theatlantic.com/technology/archive/2016/03/the-violent-remaking-of-appalachia/474603/>.

imagery of “blasting,” “flattened mountains,” and compromised aesthetic “beauty.”³¹ Legal research on surface mining also returns to a lack of legal enforcement in favor of energy profit, this often being demonstrated about a specific lawsuit, usually within the Sixth or Fourth Circuit of federal appeals. Despite this consistency in legal research in the past decade, efficient reforms for regulations are still unseen. The criticism of environmental law also works hand in hand with the criticism of the War on Poverty era photography interest, with both emerging from unsustainable interest and ineffective engagement in long-term problem-solving. Like Kranitz, an article, project, or research that involves Appalachian suffering is always going to have to maneuver through context, wading through decades of documentation and imitation. While photography curation and journalism are receiving more assessment from an Appalachian perspective, legal scholarship must also be held to similar standards. As environmental law commits to an even higher degree of objectivity, the responsibility of authority and outside interest must be evaluated.

Narrative Mechanisms of Environmental Law

To venture into the academic world of environmental law, it’s important to register the overall objectives of the relatively modern discipline. A collective understanding of environmental law in the United States often begins in the late 1960s, when the onset of regulation and environmental consciousness coincided with President Nixon’s controversial administration. The most comprehensive environmental laws were enacted at the turn of the decade as a response to mass protest and activism efforts across the country.³² It is often

³¹ Cherry, Mark. Permit to Poison: The Failure of the Federalist Regulatory Regime to Address the Human Health Impacts of Mountaintop Removal Coal Mining, 47 Colum. Hum. Rts. L. Rev. 198 (2015)

³² Emily Martin, How the first Earth Day ushered in a golden age of activism, National Geographic (2022), <https://www.nationalgeographic.com/history/article/how-the-first-earth-day-ushered-in-a-golden-age-of-activism>.

perceived as a point of pride- being the first nation to develop a policy statement that links human health to environmental health with the National Environmental Policy Act. At the time, the protests before this mass passage of legislation were the largest the country had ever seen, giving rise to the national Earth Day holiday. Occurring only a few years after the War on Poverty, high expectations of a federal response were present due to the massive environmental damage accumulating across the country that was not isolated in low-income areas. These landmark statutes are certainly a product of their time, dependent on political and cultural context but it is important to note their passage employs a subjective dimension of environmental law. Laws of the seventies like the National Environmental Protection Act, The Endangered Species Act, and what is now known as The Clean Water Act could not exist without the use of narrative devices in congressional discussion and in writing that fundamentally reshaped what federal law *could* do. Scholar Jedidiah Purdy writes about politically contested ideas on nature in his article, “The Politics of Nature: Climate Change, Environmental Law, and Democracy.” In his understanding of the era which created the Environmental Protection Agency and its first major statutes, political interest in the environment began to emphasize that American society may be inherently opposed to the operations of the natural world, and discourse centered around the “discovery or invention of the environment as a unified phenomenon and the use of environmental crisis as a moral master narrative of modern life.”³³ To express major environmental goals on a national scale necessitates a proclamation of values. While this may appear to be a logical technique for communicating the severity of environmental issues, at the

³³ Jedidiah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 *The Yale Law Journal* 1122 (2009), <https://www.yalelawjournal.org/article/the-politics-of-nature-climate-change-environmental-law-and-democracy>.

time this radically altered what justified judicial response. Before federal statutes and the formation of the Environmental Protection Agency, complaints of environmental harms were channeled through common law public nuisance suits, which “rectify harms to the rights of aggregates of individuals within a community. Thus, property rights, including those in environmental amenities, were protected by an approach through which past harms were compensated and future harms thus discouraged.”³⁴ This avenue has the potential to be effective because of injunctions, which in the case of *Georgia vs. Tennessee Copper Co.* the decision effectively intervened in private industry pollution. Yet this process is focused on tangible injury to individuals, addressing damage could not just be in the preservation of natural space or following a national goal. To create some overarching regulatory authority like the EPA, a mechanism of a centralized government, there had to be a new outlook on the environment that policymakers and legal framers wrestled to convey. Purdy discusses this shift in management coming from drafters of the statutes that the newly formed EPA would enforce. He writes:

Senators also drew on the apocalyptic backdrop in public discussion: they contended that immediate threats to the survival of the species and life on earth made weighing costs and benefits irresponsible. It is arresting, from the vantage of a time accustomed to regarding pollution control as a matter of the expert management of costs and benefits, to see it repeatedly identified in congressional debate as a question of survival... Some supporters of pollution-control legislation also identified it as the keystone of a new kind of moral calculus, premised on the idea that ecological interdependence is the condition of first importance in assessing human interaction with the natural world, and that it must imply a comprehensive reevaluation of economic life.

Jedidiah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 *The Yale Law Journal* 1122 (2009), <https://www.yalelawjournal.org/article/the-politics-of-nature-climate-change-environmental-law-and-democracy>

³⁴ Steven Eagle, *The Common Law and the Environment*, 58 *Case W. Rsrv*, 583 *Case Western Reserve Law Review* 583 (2008).

Essentially, Purdy identifies the origins of major environmental regulation as immediately existential. The conception of dominant environmental statutes was contingent on a domestic narrative that it was *imperative* to reconsider our relationship to the natural world. So much so, that a whole new bureaucratic arm of the federal government was to delineate industry behavior with little consideration of available technology or if standards were economically feasible because these statutes were “committing the country to a new set of goals and values, whose significance was only beginning to come into focus.”³⁵ As the significance of biodiversity and emission reductions is glaringly transparent to us today, legal scholarship in Appalachia should go beyond questioning the weak federal enforcement in the region and wonder: Why is there not a corresponding resurgence in developing national regulatory standards?

While there were expectations of federal intervention backed by storytelling in former political environments, enforcement of environmental standards has reorganized, shifted, and dwindled. Spanning many different administrations the efficiency of centralized environmental authority cannot be generalized to each department or even each piece of legislation, yet it is important to consider its creation when we talk about what motivates federal response. Like how Caudill’s writings brought photographers and President Johnson to Appalachia, a narrative of dystopia and survival are central to the creation of modern environmental law. The stories of widespread pollution and corresponding political salvation in the late sixties and early seventies are often retold within the academic discipline to affirm the capabilities of regulation and reinspire policy response. With the narrative mechanisms present in environmental law, are there

³⁵ Jedidiah Purdy, *The Politics of Nature: Climate Change, Environmental Law, and Democracy*, 119 *The Yale Law Journal* 1122 (2009), <https://www.yalelawjournal.org/article/the-politics-of-nature-climate-change-environmental-law-and-democracy>

solidified processes and principles of the discipline that support a claim to objective truth? There are certainly administrative aspects of environmental law that are delegated to function objectively, but many definitions and actions are vague and contested in the courtroom every day. In fact, since the environmentalism era laws, most practices and interpretations are still concerned with deducing statutory intent. Basically, courts are consistently wondering- what does the Clean Water Act intend when applied to this specific instance? Environmental law in America is highly procedural in that it is designed to solve conflicts, but this process isn't always intuitive when poised between man and nature. Chris Hilson discusses how narrative reading of environmental law is essential to understanding how it transpires in practice. He writes:

...law can be read as narrative, but law can also be seen as stemming from and being dependent on prior shared narratives. There is a tension between the two. With the latter, narrative precedes law and gives rise to it. On this account, the narratives that underwrite the way our societies are ordered inevitably shape the laws that exist. However, with the former, law itself contains an independent narrative force that is capable of reshaping those existing societal narratives

Chris Hilson, *The Role of Narrative in Environmental Law: The Nature of Tales and Tales of Nature*, 34 *Journal of Environmental Law* 1 (2021).

This reading presents two options. One, you can read the statutes and literature themselves as employing literary devices aimed to influence society. There's a context, an ecological problem necessitating human response, and a subsequent approach to achieve an ideal set forth by Congress. The writing often employs themes of responsibility and stewardship, but it is also highly scientific in its determination of *what* extent of damage is dangerous. This is somewhat contextual to related trials or Supreme Court decisions, but a literary analysis can also be performed of simply the language of the law. The other option is evaluating the extent of cultural, shared social constructions on informing the law itself. This is more indicative of the tension between authority and the collective, and it also wonders how much law dictates our

relationship to the environment or how much law simply describes present structures. The tension Hilson outlines is a question that can be interpreted at multiple points in time and place. However, I argue that law both *determines* an experienced relationship with the natural world and is based in what the current contextual forces imagine this relationship should *ideally* be. This is tangible in Appalachia. As photojournalists have the power to show an audience a potentially warped kind of reality from their camera lens, “environmental lawyers and scholars need to explicitly recognise they are making choices about how societies choose to ‘know’ about environmental problems”³⁶ As previously discussed, a photo series is vastly different from viewing a single photo. One trial, or one lawsuit, is vastly different from considering a comprehensive statutory record. As Kranitz’s exhibit absorbs a journalistic postmodern history and questions a narrative set forth by past authorities, a similar process can be applied to the postmodern environmental law discipline. As we return to the contemporary legal energy issues in Appalachia, this research will continue to question the framework ideals of federal environmental law that aim to convey an objective understanding of human activity in the natural world.

Whether legal scholarship is tracking healthcare data, judiciary rulings, or mining industry practices, most current research that is readily accessible contends to (1) search for a certain issue that has been buried by corporate greed; (2) reiterate how economically and politically disempowered the population of Appalachia remains to be; and (3) advocate for further study and federal oversight. Photography can lead us further in exploring these dense

³⁶ Liz Fisher, Environmental Law, Scholarship, and Epistemic Responsibility, 33 Journal of Environmental Law 521 (2021).

subjects of exploitive power in Appalachia. Upon arrival, it's clear that discerning a comprehensive regional identity based on law and photojournalism is no easy feat.

EXPLORATION

Law and Photography Within the Environment

To analyze the efficacy of outside interest in Appalachia, the promises of certain legal and artistic approaches are compelling points. For example, Hilson writes, "...the public trust doctrine is presented as a narrative about protecting the environment for future generations...public trust approaches are legal doctrines like the necessity defence, but unlike that narrow defence, they are also conceptual frameworks offering distinct stories about our relationship with nature and the responsibilities we have towards it."³⁷ While other subjects in law have serious philosophical and ethical weight like the necessity defense within criminal law, environmental law frameworks like public trust not only have to grapple with abstract notions of justice but also justice extending into the natural commons. Photography has a unique reach compared to other art forms for how it has to contend with ethical considerations of subjects that extend into the physical like homes, or bodily autonomy. As environmental law gathers pieces of knowledge from courtrooms and scientific research, photography:

...searches for meaning, searches for subject matter, searches for ways to depict, and searches for modes of putting those depictions together into larger projects...photographers physically move through the world, working with their equipment to frame scenes and translate them into flat imagery...as a portable practice then photography always speaks, directly or indirectly, of physical encounters mediated by a camera...we might say that photography is an embodied activity and also a located activity.

³⁷ Chris Hilson, The Role of Narrative in Environmental Law: The Nature of Tales and Tales of Nature, 34 Journal of Environmental Law 1 (2021).

Physical Space, Image Space, Psychological Space, David Company (2018), <https://davidcompany.com/physical-space-image-space-psychical-space/>.

In developing a larger project, both disciplines must absorb material and transform it. While a photographer typically enters the scene themselves, legal scholars reference field material or court opinions- both activities which demand physical presence. Regarding an embodied and located activity, environmental law as a subject is tangibly located in deliberate measures necessitated by regulation, like mining permits or water quality tests. However, the law is also embodied with gains or losses in ecological preservation that can be felt beyond intellectual and moral considerations. Certainly, in dimensions of economy, psychology, and aesthetic appreciation, federal law can physically impact the movement of bodies as well as health and wealth. While both disciplines have tangible manifestations of how they approach their subject, there are also elements of detachment from the body and the physical world. The camera functions as a tool to sublimate embodied observation, or “disembodied spatial domination.”³⁸ Essentially the camera is a kind of partition between man and nature. The act of photography divides a present, captured world into a subject for study intended to be reviewed again later. Environmental law faces criticism for often adhering to the idea that man and nature are distinct from one another or that humanity possesses an inherent dominion over constructing the boundaries of nature. As both work within their respective fields, they must engage with these different boundaries, or settings of nature molded by human activity. For photography, lighting, infrastructure, and wilderness are all ways the environment influences subject matter. Their locations do not exist in a vacuum. As environmental law builds on knowledge of streams,

³⁸ Physical Space, Image Space, Psychological Space, David Company (2018), <https://davidcompany.com/physical-space-image-space-psychical-space/>.

mountains, and cities, collections form the meaning of the medium, much like how, “photography in art, as just about everywhere else in our culture, has become a matter of assembly.”

Constructing statutes composed of a collection of environmental concepts, or an exhibit from a photo series is an attempt to formulate a theme, a description, or even a *prescription* of how humans operate in the natural world. Contemporary photography theory questions if “all representations are inadequate descriptive systems, regardless of the authority invested in them,” which could be a powerful evaluation for environmental law to consider. If we consider a statute to be a representation of a certain environmental subject (clean water), or human behavior (surface mining), it’s important to assess what the “authority invested.”

The Ideals of Cooperative Federalism

Effectively distributing standards among states, counties, and communities is a tedious process of environmental law. Theories of environmental federalism, whether or not the states or the federal government are more “optimal” authorities, are discussed in a myriad of literature with scholars identifying the widely held notion that “localized control of environmental policy will produce environmental measures that are more likely to reflect the preferences and needs of those who will be most affected by them.”³⁹ This is a valid principle, but how does localized control function for a disempowered people? Developing sustainable management at a regional or local level is based on historical policy, and these policies trigger path-dependent processes. As policies become entrenched in bureaucracy, economy, and values- predictable policies or an

³⁹ Daniel L. Millimet, Environmental Federalism: A Survey of the Empirical Literature, 64 Case W. Res. L. Rev. 1669, 1695 (2014)

absence of reforms are constrained by what has already been accepted. Despite well-meaning intentions, “policy emerges from the interaction of a large number of forces many of which are beyond the control of decision-makers.”⁴⁰ This interaction is not dissimilar to the uncontrollable and often unpredictable reception photography receives in museums and news sources.

Therefore, an important mechanism of both fields is feedback. While photography may be considered the most democratic or accessible art form, environmental law is often highly expert-driven compared to other branches of government. The requirement to consider public comments in Environmental Impact Statements, the form for potentially environmentally degradative federal projects, is a prime example of regulatory feedback. With a regulatory framework that requires state involvement, policymakers must also be aware of issues raised in lawsuits, council meetings, and protests. Executing this dimension of legal doctrine that is relevant to Appalachian states with the concept of cooperative federalism, where collaboration of authority is emphasized rather than total state or federal sovereignty. Embedded within the statutory language of The Surface Mining Control and Reclamation Act (SMCRA), the primary federal law on mining, is the clause:

because of the diversity in terrain, climate, biological, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to this Act should rest with the States.

30 U.S.C. §§1201-1211, 1231-1251, 1252-1328

All federal environmental laws have an awareness of primacy, where states are expected to implement their own plans to meet federal standards with the possibility to regulate even harsher

⁴⁰ Guy Peters, Instruments of Public Policy, in American Public Policy.

than what federal authority dictates. It is a distinctive feature of the Surface Mining Control and Reclamation Act, to have this overt recognition *and* recommendation of state authority that isn't expected to meet preimposed limits as stringent as those in The Clean Air Act or Clean Water Act. The most articulated sections of the law are in Title IV on the reclamation of abandoned mines, whereas actual regulation of operations is truly managed by the states.

To consider why a federal law is so state-focused, it is necessary to establish what energy extraction the statute is regulating. The practice of surface mining is not necessarily a well-understood process for the average American, but the switch from constructing subterranean mining shafts to essentially scraping the surface for resource extraction is somewhat a logical advancement of technology. It is cheaper without the construction of tunnel systems that require electricity and water, it's more mechanized, and it doesn't directly endanger workers. Out of all forms of surface mining- open pit, contour, and area stripping- mountaintop removal is the most controversial. Just as alarming as the name sounds, the peaks of mountains are cleared of vegetation which then can be blasted with explosives to dredge the coal underneath. This leftover debris of soil and rock, also known as "overburden" is placed into adjacent valleys which potentially suffocate streams in a process called "valley fill"⁴¹

Within a secondary legal source evaluating the Act, "Permit to Poison" by March Cherry quickly arrives at discussing the conflicting ideologies in how The National Environmental Policy Act (NEPA) and SMCRA provide expectations for state's environmental protections.⁴² NEPA is a policy ideal to strive for, a moral commitment to the environment that is broad

⁴¹ Programs | Office of Surface Mining Reclamation and Enforcement, www.osmre.gov, <https://www.osmre.gov/programs#:~:text=The%20Surface%20Mining%20Control%20and>.

⁴² Cherry, Mark. Permit to Poison: The Failure of the Federalist Regulatory Regime to Address the Human Health Impacts of Mountaintop Removal Coal Mining, 47 Colum. Hum. Rts. L. Rev. 198 (2015)

enough to guide national issues. However, SMCRA almost feels separate from the goals of NEPA and the EPA, especially because the office that enforces the law is through the Department of Interior instead of the EPA. Cherry writes, “SMCRA was designed to operate under the principles of federalism; state programs are, so long as they meet federal minimum standards, responsible for regulating surface mining within the borders of that state.”

Relinquishing environmental procedures to states, in theory, sounds like it could empower the distinct concerns for the variance that different mining communities face. While mining occurs across the country, it shouldn't be surprising that the primary law that influences a major industry and identifier in Appalachia was intended to be carried out independently from a national, federal perspective. All states have their own interpretations of the bold claims that federal laws aim for. In 1972, congress's original goal was for no polluted waterways after 1985.⁴³ The country has a relationship with raising environmental law to an almost unreachable statement to appeal to the public, where over time socioeconomic factors constrain and renegotiate standards. Therefore, it is necessary to consider why SMCRA appears dissonant from the narrative deployed by previous policy and legal work. Perhaps cooperative federalism needed to be explored as a potential democratic approach to regulation. Or, maybe policymakers perceived mining as being so entrenched in Appalachia that it would be pointless to envision a regulation, or timeframe to phase the industry out, leaving the act designed to “reclaim” after destruction. The SMCRA drafters could not envision an America, or an Appalachia without coal, even seeking to “strike the balance between protection of the environment and agricultural

⁴³ EPA History: Water - The Challenge of the Environment: A Primer on EPA's Statutory Authority, [www.epa.gov, https://www.epa.gov/archive/epa/aboutepa/epa-history-water-challenge-environment-primer-epas-statutory-authority.html](https://www.epa.gov/archive/epa/aboutepa/epa-history-water-challenge-environment-primer-epas-statutory-authority.html).

productivity and the Nation's need for coal as a source of energy."⁴⁴ This balance between the protection of livelihood and national consumption is a directly comparable tension for photojournalism to navigate as well. With the consumption of coal fueling the nation's modern lifestyles, there's a similar desire in modern photography and journalism to showcase poverty for national media consumption. If mining as we know it today is shown to wreck natural spaces, contribute to unemployment, and endanger the health of residents, then what has this balance truly maintained, and what role does photography play in documentation?

Ethically Approaching the Subject

Susan Sontag writes in her book, *On Photography*, "In teaching us a new visual code, photographs alter and enlarge our notions of what is worth looking at and what we have the right to observe."⁴⁵ While law has the power to articulate values, photography has the power to direct the visual focus of an audience. Three tenets of photography describe the institution's role in documentation which overlays with environmental law. These are technical determination, hierarchy of subject v photographer, and truth. A photographer's technique in the framing of a scene, like the language choices in statutory writing, evokes deliberation on authority. With hierarchy, one must ask if the camera holder operates under a journalistic moral code, or if the EPA adheres to responsibilities set forth by Congress. Lastly, photography always maneuvers between art and evidence, especially as a slice of reality to a larger narrative. As we've seen, environmental law has to navigate subjective and objective truth as well. It is often divided by the desire to be predominantly justified by science while still being adaptable to socioeconomic

⁴⁴ 30 U.S.C. §§1201-1211, 1231-1251, 1252-1328

⁴⁵ Susan Sontag, *On Photography* (1977).

needs and even an appreciation for natural beauty. With aesthetic goals “in deciding how a picture should look, in preferring one exposure to another, photographers are always imposing standards on their subjects.” Laws also impose standards rooted in preference, like determining what constitutes a healthy stream, or a reclaimed mountaintop. Photographs and legal code both, in a way, “fiddle with the scale of the world.” The disciplines work to reduce, emphasize, permit, and restrict aspects of human nature. There’s an attempt to define using the objectivity of the lens, or judicial authority, as both are concerned with evidence. Yet, how close are the disciplines to portraying reality in their attempt to redress the past or to set precedence for the future? Perhaps communicating a complete narrative of poverty or environmental damage shouldn’t be a goal at all. To “mobilize consciousness” and encourage participation from subjects are worthwhile endeavors within both institutions.

Stacey Kranitz’s work in Appalachia supposes that claims of true representation will always fail, she even asserts that photography shouldn’t shy away from the subjective reality of documenting life no matter how messy or controversial it appears. To her, photography should not oversimplify, generalize, or comfort by retelling the same story *or* avoiding that story altogether. She writes that a “photograph is valuable because it shows us how little we actually know when viewing this image, any image...how the circumstances of a people cannot be defined through an individual still photograph.”⁴⁶ As one explores the exhibit in moving from grouped images, to wall space, and to archival material, we see that Kranitz doesn’t fear a power imbalance between photographer and subject. There’s an element of inauthenticity to pursue photography of people as an equitable endeavor- the photographer has the ultimate control.

⁴⁶ Stacy Kranitz, Stacy Kranitz: The Rape of Appalachia, Reading The Pictures (2014), <https://www.readingthepictures.org/2014/02/stacy-kranitz-the-rape-of-appalachia/>.

However, without captions or lofty claims of the “real” Appalachia, maybe Kranitz is attempting to let the existence depicted speak for itself, whether it’s seemingly forced, stereotypical, ugly, or beautiful. Even the title of the exhibit, *As it Was Give(n) to Me*, is a command situated to receive no answers. She asks for an account of Appalachia (give it), while also knowing countless stories have already been told (given).

EXTRACTION

With all the forces at play detailed in *Exploration*, what can we truly derive from photography and environmental law to both extract meaning in Appalachia and reform what it means to extract natural resources? If “photographs do not create a moral position,” and they reflect, amplify, or reject a present political consciousness, is creating a moral position the responsibility of environmental law? If the law is the ideal, perhaps photography is a mirror that forces us to reflect on whether or not standards are upheld.

The Impact of Surface Mining

Kranitz’s center wall in the exhibit depicts train cars full of coal, a former miner on oxygen, and disturbed mountains. If coal is the core, there could be no complete discussion of extractive efforts in the region without revisiting SMCRA. As research has established, the Central Appalachia Coal Basin has been deeply mined, and it is more expensive to dig deeper than invest in natural gas or renewables. The ratio of viable coal to waste produced is imbalanced, as are the mechanical costs with further extraction. Exports from central Appalachia have been volatile even through the turn of the century, and are always subject to national and global energy portfolios and steel manufacturing. This correlates to the common understanding that dependent coal communities follow a bust and boom cycle. Yet the industry persists.

Tracking and mapping an updated mining footprint is difficult, and a lot of recent data acquisition available is from non-profits and community organizations, *not* from the EPA or the Office of Surface Mining. According to SkyTruth:

Mining today disturbs three times more land per ton of coal produced than mining did in 1985. We are unable to determine the causes for the disturbance trends from satellite imagery. However, we speculate that the increase in area per ton compared to 1985 is a reflection that more easily accessible coal has been mined, and mine operators are now extracting deeper or thinner coal seams that are more disruptive – and expensive – to produce.

Christian Thomas, The Latest Data on Mountaintop Mining in Central Appalachia, SkyTruth (2020), <https://skytruth.org/2020/12/the-latest-data-on-mountaintop-mining-in-central-appalachia/>.

This is a key feature of modern day mining, that *actively* mined land has decreased but not *disturbed* land. Other projects are concerned with public health issues generated from this continued extraction. A study in West Virginia found that residents near mountaintop removal sites had higher mortality and illness rates than non-mining areas.⁴⁷ Initially, response from the scientific community questioned if the resident's own health choices contributed to the raised statistics, once again bringing into question the ability of Appalachians to take care of themselves by shifting blame to individuals. However, researchers note shockingly high rates of birth defect risk in mothers with non-occupational exposure, concluding, “the effect of mothers living in a mining area was six times higher than the effect for mothers who smoke.” The culprit? The dust from the blasting process itself, but also the transportation and washing of the coal. The particulate matter composed of aluminum, silica, and polycyclic aromatic hydrocarbons being 2.5 micrometers also makes these substances inhalable, and capable of entering the bloodstream

⁴⁷ Richard Schiffman, A Troubling Look at the Human Toll of Mountaintop Removal Mining, Yale E360 (2017), <https://e360.yale.edu/features/a-troubling-look-at-the-human-toll-of-mountaintop-removal-mining>.

through the lungs. This health danger cannot be considered a necessary risk because of economic growth. The noise, air, and water pollution generated has isolated mining communities from employment opportunities. As researcher Micheal Hendryx infers, “The perception that people have is that this is kind of a trade-off between the environment and jobs, and it’s really not — it’s a trade-off between the environment and the profits of a few people.”⁴⁸ Labor opportunities being framed in opposition to environmental welfare is a worn-out narrative in Appalachia, and photography can convey how both are truly more intertwined.

Intervention from the Outsider

Legal scholars have identified the danger of prioritizing mining profits over sustainable environmental and economic regulation for quite some time. The Porter hypothesis describes how strengthening environmental regulation results in more efficient and innovative industry productivity.⁴⁹ Some scholars also associate this process with Kuznets curve, that initial industry growth results in pollution that is remedied once industrial activity in a community generates enough affluence. Michael Faure writes, “Economic development and environmental protection go hand in hand with the improvement of a country's institutions, and more particularly the environmental regulatory regime. The empirical evidence hence suggests that a county can benefit environmentally not only from economic growth but also from developing the rule of law and strengthening its governance structures.” The remedy for predatory mining practices that many legal scholars put forth is to strengthen a localized interpretation of federal environmental

⁴⁸ Richard Schiffman, *A Troubling Look at the Human Toll of Mountaintop Removal Mining*, Yale E360 (2017), <https://e360.yale.edu/features/a-troubling-look-at-the-human-toll-of-mountaintop-removal-mining>.

⁴⁹ Michael Faure, *Effectiveness of Environmental Law: What Does the Evidence Tell Us?*, 36 *Wm. & Mary Env'tl. L. & Pol'y Rev.* 293, 299 (2012)

law standards while knowing that to do so will require economic empowerment, something Appalachian study areas often lack. If “environmental problems often involve conflicts over how communities wish to live” and raise these economic and administrative “concerns about the legitimacy of how communities are governed,” then how should outside interest intervene? An environmental law scholar would advise more comprehensive regulation in SMCRA, banking on the promise that industry will innovate, and speed up economic growth. Then, this increased affluence will correspond to more political engagement. This process, this narrative that scholars repeat, still has not become a reality. In an analysis of the epistemology of environmental law, Liz Fisher acknowledged that “processes of knowledge production enlarge or constrain understandings for how we imagine future possibilities.”⁵⁰ If livability in Appalachia is not improving in line with exterior recommendations, perhaps legal understandings are constrained in the imagination of new solutions, new approaches, and new narratives.

It is a worthy quest to wonder what Appalachian identity looks like with increased federal intervention built into environmental regulation. With similarities between law and photography outlined in *Exploration*, discourse on the intervention of the photographer may provide some new insights for legal theory. Krantz supposes that “there is a lot more to the evolution of a people than the victimhood that has been placed upon them. Heroes can be villains and villains can provide valuable insight into how to reimagine what we think we know about our own history”⁵¹ Quite often has the villain of mining and pollution been staged to be saved by national leadership, due to Appalachian's fall into victimhood time and time again. It's not enough to say

⁵⁰ Liz Fisher, Environmental Law, Scholarship, and Epistemic Responsibility, 33 *Journal of Environmental Law* 521 (2021).

⁵¹ Stacy Kranitz, Stacy Kranitz: The Rape of Appalachia, *Reading The Pictures* (2014), <https://www.readingthepictures.org/2014/02/stacy-kranitz-the-rape-of-appalachia/>.

this is the wrong story, many Appalachians are truly victims of reckless industry, but what if there are new ways to communicate our history?

Dissemination of Images and Narratives

In *Surveying the Anthropocene*, a collection of photography projects around the world navigates the absurdity of climate change. One project by Pradip Malde captures both life and infrastructure in Haiti, a country heavily associated with extreme weather and economic suffering that will only be exacerbated by global warming. Malde includes a piece of writing adjacent to his photos, concluding with:

Much has been said, and photographed, about Haiti's trauma. This work looks sideways at trauma. It is less about dramatic events than it is about love, kindness, and hope; less about solutions than about a state of being- like heaven. But heaven and beauty cannot be considered without hell and the sublime. Thus, this other space, not the heaven of being, nor that of aspiration, but a third one that contains all, even itself. This third heaven becomes both a window and a mirror

Patricia Macdonald, *SURVEYING THE ANTHROPOCENE : environment and photography now*. 98–100 (2021).

Malde is one of the only photographers in this environmentally-driven collection to incorporate people in his images. Like Kranitz, human subjects can be depicted in motion, facing the camera, or out of the frame in his work. With an awareness of human suffering in connection with the natural world, Malde aims to photograph without a grand promise of getting things right.

Looking sideways means knowing what portrayal cannot achieve, but also knowing that “being” is not without seeking some temporally forward state. In Kranitz's own words, moving through pain, joy, and history with a camera means being “completely undone by the people that I engage

with.”⁵² It is bold, in knowing that your work will inhabit the same spaces of past attempts, to be exhibitivite and “participate in another person’s (or thing’s) mortality, vulnerability, and mutability.”⁵³

Environmental law undeniably participates in the mutability of where humans and nature collide. Moving forward, the ideations of environmental law need to not be constructed out of man’s estrangement from integration with nature, but in acknowledging the collision of both is vulnerable to achieving objectivity. Setting standards offers a window through which society can work through ecological notions we’re only beginning to fully understand. It is a directionally future-oriented process, despite the weight of precedence, to evaluate language and power in law that aims to command a national ambition. In forcing us to examine such constructions of humanity within the natural world, photography as a mirror encourages us to reflect on the reality of our ambitions. As curators have “an acute awareness of the broader context – social, cultural, political, commercial and technical – within which images are created and disseminated,” environmental law parallels this in the concept of stewardship.⁵⁴ More integration within the communities subject to certain laws and policies is undeniably important, with the understanding that some approaches will have a contextual relationship to power and abandonment. An analysis of *Bragg v West Virginia Coal Association* notes the contradiction that while SMCRA gives federal courts jurisdiction to hear private citizens' claims, the ruling of the case determined that federal courts lacked jurisdiction. This confusion is what occurs with

⁵² Andrew Aoyama, *The Photographer Undoing the Myth of Appalachia*, *The Atlantic* (2022), <https://www.theatlantic.com/ideas/archive/2022/12/stacy-kranitz-photography-book-appalachia-harry-caudill/672261/>.

⁵³ Susan Sontag, *On Photography* (1977).

⁵⁴ *Perspectives on Ethics in Image-Making* • Sim Chi Yin, *Magnum Photos* (2019), <https://www.magnumphotos.com/theory-and-practice/sim-chi-yin-three-perspectives-on-ethics-in-image-making/>.

vaguely written regulation, when “Congress did not pursue, although it could have, the direct regulation of surface coal mining.”⁵⁵

SALVATION

Returning to the title of this project, “The Gavel and the Camera: Environmental Law and Photojournalism's Relationship to Appalachian Identity,” it can be said that the regional narrative of Appalachia is certainly influenced by outside interpretations. Where environmental law has appeared to leave mountains stripped and creeks flooded, photography has also reiterated the drunk trailer park redneck, and the injured coal miner. These aren't just associations- they shape lives and the efficacy of these institutions to effectively contribute to reclamation efforts. Both institutions' biggest fault is they repeatedly view the region as a separate America, either out of contempt or fascination. Yet life within, nature, labor, and culture persists internally everyday, with genuine legal work and artistic creation conducted from collaboration of both outsiders and residents. Drafting better NEPA provisions and the Southern Environmental Law Center aiding in citizen suits against coal companies are just two examples of current legal methods of “salvation” that come from both the awareness of history and of hope for the future. Roger May's crowdsourced photography project, *Looking at Appalachia*, is another great example of creativity internalizing an antithesis to history. In an effort to broaden documentation of the region, the project received a vast amount of submissions spanning all thirteen states. Some are what one expects of the rural south with crumbling fences, farm stands, miners, and fast food

⁵⁵ Crystal Moore, A Lack of Subject Matter Jurisdiction or Political Deferral: An Analysis of Analysis of Bragg v. West Virginia Coal Association Bragg v. West Virginia Coal Association, 17 Journal of Natural Resources & Environmental Law Journal of Natural Resources & Environmental Law (2002).

restaurants. But some are contrary to obvious expectations with depicting drag queens, lush forests, and beautifully gentle portraits. The narrative of what Appalachia can be, and what constitutes the image of the land and its inhabitants, is already changing. It's the responsibility of photojournalism to capture it, and the responsibility of environmental law to respond.

As the U.S. continues to extract natural resources, we delve further into a strange, shifting climate that places many regions in precarious relationships with their environment. While Appalachia specifically has had to wrestle with the failures of cooperative federalism in regulation, this struggle is not separate from the rest of the country in a uniquely victimized space. I argue that conversations on the topic of mining in Appalachia are indicative of how environmental law must adapt on a national scale in that improvements cannot be isolated in addressing one lawsuit, one statutory clause, or one federal law. Until mining in Appalachia is absorbed into the national conversation as integral to the country's relationship with energy, industry and policy will never substantially change. One scholar, William H. Rodgers boldly claims that "critical legal studies are all concerned primarily with method rather than with substance. In the language of non-equilibrium ecology, environmental law has reached its successive climax stage and cannot evolve beyond its current state."⁵⁶ If environmental law remains focused on objectivity, intricate policy response, and maintaining vague language in concession to various stakeholders, what more can it truly achieve not only in regulating mining but in confronting uncharted crises like climate change? Moving forward, I would suggest environmental law be more audacious. As contemporary photography prompts, constructing a complete, cohesive narrative is unachievable. Environmental lawyers and scholars must employ

⁵⁶ William H. Rodgers, *The Environmental Laws of the 1970s: They Looked Good on Paper*, 12 *Vermont Journal of Environmental Law* 1 (2010).

a kind of creativity to imagine what environmental law is capable of because the power of the institution does not stop in devising methods of management. The most fundamental contributions of environmental law “are found instead in the stunning compilation and expression of values that redefine the relationship of human beings on earth to their world and all life within it”⁵⁷

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