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## An Introduction to the Student Pieces

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## An Introduction to the Student Pieces

*By Hadar Aviram\* and David Takacs\*\**

In the fall of 2017, we co-taught a seminar, *Environmental Criminology*, in which our students examined the intersection of criminal justice and environmental protections. In designing the seminar, we were keenly aware of its timing—the first year of the Trump administration and a time of political-legal crossroads in the United States in the context of environmental protection and criminal justice. Dramatic legal interventions by Attorney General Jeff Sessions and Environmental Protection Agency Administrator Scott Pruitt exemplified the Trump administration’s approaches to these legal realms. Fall 2017 saw a unique juxtaposition of declining governmental attention to impending environmental harm (illustrated by the U.S. withdrawal from the Paris Climate Change Accords and attempts to weaken pollution standards throughout the nation) and the disturbing reemergence of traditional conservative tough-on-crime approaches—a complicated political setting.

Against this discomfiting backdrop, we invited our students to join the emerging field of green criminology, which emerged in the literature in the 1990s and has since yielded interesting and innovative writing by environmental scholars, lawyers, criminologists and public policy experts. We encouraged our students to ask difficult questions about the values and efficacy of examining environmental harms through the lens of crime control. The bibliography was a mix of traditional case law and interdisciplinary materials examining, among other issues, climate change and social conflict; abuse and harm to animals; illegal wildlife trade; pollution, toxic waste, and corporate malfeasance; environmental perpetrators and victims; the International Criminal Court and environmental “crimes against humanity”; enforcement, liability and appropriate forms of punishment; environmental forensic studies; “monkeywrenching” and other nonviolent but illegal forms of environmental protest; and environmental crime prevention.

Our conversations in the seminar sessions revolved around two axes: criminological theories and environmental ethics. We asked ourselves whether the

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usual ways of explaining and studying crime—as a free choice, a moral or clinical failing of an individual, or a broader social phenomenon—could help us better understand environmental crime. We also asked ourselves whether the laws that defined some aspects of environmental destruction as crime (and left others unsanctioned) reflected particular ethical lenses on the planet and its inhabitants.

Happily, the seminar yielded excellent scholarly works of high quality. We are very proud and pleased that three of these works, plus an additional fourth work from Professor Takacs' climate change seminar are being published in this special issue. These four papers call on us to delve deeply into the motivations, ethics, and theories surrounding environmental harm; to ask whether criminal law is the appropriate vehicle for protecting us from such harm; to identify unique categories of perpetrators and victims; and to confront difficulties in the enforcement and adjudication of environmental issues through the courts, in both criminal and civil contexts.

Moreover, each of these pieces addresses “environmental justice,” albeit in unique and boundary-stretching ways. The environmental justice movement emerged and has evolved in the United States thanks to a cadre of dedicated activists (and their equally dedicated lawyers). The movement recognizes that some communities—usually marginalized communities of color—face an unduly high share of environmental burdens and a correspondingly low share of environmental benefits. The movement seeks to empower these communities to fight for equal rights to a healthy environment.

The first piece, Meredyth Merrow's *Towers, Trees, and Transition Lines*, is a perfect example for competing concepts of environmental justice. Merrow takes on the ambitious and controversial project Northern Pass: 192 miles of towers, lines, and structures engineered to provide clean energy to the Northeast and planned to be erected through the state of New Hampshire. At first glance, there are no “good guys” and “bad guys” in Merrow's example; rather, the project confronts the environmental idea of clean energy with a rivaling environmental idea of conservation and the importance of landscape. But Merrow's article complicates the story with a profound analysis of the power and wealth differentials between the parties: as she argues, it is bad environmental policy to expect the poorest people of the region to incur the costs of providing wealthier out-of-state residents with clean energy. Indeed, Merrow marshals the criminal law and tort concepts of criminal theft and nuisance to make a case for the residents who lose a precious, albeit intangible, value to this project, making the case for legal recourse of the powerless against the powerful.

Power and privilege play an important role in the second piece as well, Elizabeth Lincoln's *Accountability for Pesticide Poisoning of Undocumented Farmworkers*. Lincoln's article is a reminder that environmental destruction tends to harm primarily the disenfranchised. In this case, she takes on the use of pesticides in agriculture, arguing that the population most affected by these poisonous substances is the least protected population in the United States: undocumented immigrants, who are the backbone of American agriculture, and who have little to no negotiating power over their work conditions. In her examination of state and federal remedies—particularly The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”)—Lincoln concludes that the existing

protections are of no avail to victims whose very appeals to fair legal remedies could expose their unlawful immigration status and lead to their deportation. Lincoln suggests an effective solution, which creatively exploits immigration categorization: she recommends expanding the existing U-visa, a legal status awarded to victims of violent crime who cooperate with the authorities, to cover agricultural workers seeking redress for pesticide poisoning.

The third piece broadens the environmental justice framework to the international realm. Jessica Durney's *Crafting a Standard: Environmental Crimes as Crimes Against Humanity Under the International Criminal Court* takes on the prima facie language of the Rome Statute, an international treaty ratified in 2002 that defines, and enables the prosecution of, four categories of international mass atrocities: genocide, crimes against humanity, war crimes, and the crime of aggression. While the statute's reference to the environment is opaque, Durney convincingly argues that environmental protections could be read into two categories in particular: extermination and deportation or forcible transfer of population. Durney relies on recent trends in international courts—the African Charter, the European Court of Human Rights, the Inter-American Commission of Human Rights—to claim that certain acts of environmental destruction, to the extent that they harm the human population, fit within the jurisdiction of the International Criminal Court. This interpretation maintains the court's anthropocentric perspective, while at the same time opening the door to environmental considerations, particularly when they are deadly exercises committed by the powerful towards the powerless. Durney demonstrates how this broadened perspective can come into play in the prosecution of two international crimes with a strong environmental dimension: the extermination of the Rohingya Muslims in Myanmar and the forced deportation of civilians in Cambodia.

A further challenge to the territoriality of justice comes from the final piece, Philip Dabbagh's *Compacts of Free Association-type Agreements: A Life Preserver for Small Island Sovereignty in an Era of Climate Change?* In this article, Dabbagh analyzes the existential challenges faced by small islands, who stand to suffer considerably from the threat of rising sea levels, and asks the provocative question: can a state retain its sovereignty and political autonomy if its entire territory is submerged underwater? Dabbagh's creative solution is to rely on bilateral treaties between small island nations and more developed nations, which could be modeled after the "Compacts of Free Association" that are in force between the United States and three Pacific island states. The benefit of relying on such treaties would be to enable, and require, developed nations to assist the islands through land reclamation and other "island hardening" infrastructure projects that many of these nations would not ordinarily be able to afford, but without rich will cease to exist. Here environmental justice extends to the disparities between rich and poor nations, where citizens of the latter will suffer the depredations of climate change created, largely, by the former. The treaties would hold the more developed nations accountable for their contribution to the emissions of greenhouse gases responsible for climate change.

Taken together, the four articles highlight the failure of the legal framework, and in particular of criminal law, to adequately address environmental harm and to mitigate the unequal environmental burdens suffered by some citizens. They

illuminate the power imbalances that place environmental protections out of reach for vulnerable and disenfranchised victims, human and nonhuman alike. They also show that existing definitions of crime and of justice often fail to capture the true devastation of environmental harm and properly vindicate environmental interests. But they are also shining examples of what creative legislation, interpretation, and litigation, within sovereign borders or transcending them, can do to enrich and improve our defense of ecological values and environmental interests. We are encouraged by the intellectual endeavors undertaken by the authors in this section and can only hope that current and future political leaders will have the political good will to follow in their shining example.