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The violence of silence: some reflections on access to information, public participation in decision-making, and access to justice in matters concerning the environment

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Abstract The proposition put forth in this paper is that whether—and the extent to which—harm or potential harm to the environment (its natural resources, living beings, and their ecosystems) is identified, resisted, mitigated, or prevented is linked to the nature and scope of public access to information, participation in governmental decision-making, and access to justice—which are often referred to as "environmental due process" or "procedural environmental rights." Using examples in the United States of attacks on law school clinics and denial of standing in court, this paper argues that restrictions on public access to information, participation in decision-making, and access to justice create legacies and "cultures of silence" that reduce the likelihood that future generations will be willing and able to contest environmental harm.

Green criminologists have devoted the preponderance of their attention to illuminating and describing different types of environmental harm and to identifying the causes, contributors, and perpetrators of injurious activities, behaviors, and practices—from individual "ordinary acts that contribute to ecocide" [1] to business/corporate violations and state transgressions. To varying degrees, green criminologists have also examined the presence of environmental injustices and the possibility of environmental justice (see, e.g., [4, 26-29, 34, 35, 42, 44, 47-53]).

The proposition put forth in this paper is that whether—and the extent to which—harm or potential harm to the environment (its natural resources, living beings, and their ecosystems) is identified, resisted, mitigated, or prevented is

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linked to the nature and scope of public access to information, participation in governmental decision-making, and access to justice. While green criminologists have recognized the need to "expand democratic space, and to broaden the base of expertise and understanding of environments and environmental issues, often against those who wish to restrict discursive spaces" [59:47], this paper takes the additional step of arguing that restrictions on public access to information, participation in decision-making, and access to justice create legacies and cultures of silence that reduce the likelihood that future generations will be willing and able to contest environmental harm.

I begin with an overview of international, regional, and national laws and practices promoting access to information, participation in decision-making, and access to courts in general and in the specific context of environmental law and policy. I next note some of the ways in which such access has been hindered, encumbered, or otherwise undermined, before suggesting that such silencing obstructionism causes violence to the Earth.

Access to information, public participation in decision-making, and access to justice: An overview

While access to information, public participation in decision-making regarding public policy, and access to an effective remedy are integral to the legitimacy and effective operation of a democratic government, they are also necessary for safeguarding human rights and protecting the environment. As Hunter and colleagues [17:1312] explain, "[d]enial of the fundamental rights such as freedom of association, of expression, and of the right to public participation, endangers the protection of substantive human rights, and increases the likelihood of environmental degradation and the chances that such damage will be reversible." The importance of what Hunter and colleagues [17:1312] refer to as "environmental due process"—the triumvirate rights of access to information, participation in decision-making, and access to an effective remedy—are reflected in a number of international and regional human rights instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights (also known as the Banjul Charter), and the American Convention on Human Rights (also known as the Pact of San José), as well as in international, regional, and national documents specific to the environment. Indeed, most environmental regulatory regimes provide some rights to participate [21:100], and a number of countries also have a constitutional right to environment, information, or participation [see, e.g., 8, 19].

At the international level, the Rio Declaration on Environment and Development (often shorted to the "Rio Declaration"), a document produced at the 1992 United Nations Conference on Environment and Development (UNCED) (also known as the Earth Summit), sets forth the general parameters of the principle of public participation, including the related principles of access to

information and access to justice in environmental decision-making. Principle 10 states:

> Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Although nonbinding, the Rio Declaration asserted the integral role that an informed and active society plays in preserving the environment [see 13:31], and set the stage for the first legally binding global environmental instrument to explicitly include public participation—United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)—which was adopted in June 1994 and entered into force in late 1996. Article 3(a) states that parties to UNCCD "should ensure that decisions on the design and implementation of programs to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels."

A more recent example is the United Nations Economic Commission for Europe (UNECE), 'Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters' (usually known as the "Aarhus Convention"), Doc. ECE-CEP-43 (June 25, 1998), 38 ILM 517, which entered into force on 30 October 2001, and which guarantees three procedural environmental rights: access to information; public participation in decision-making; and access to justice in order to enforce information and participation rights [see, e.g., 30, 45]. *Access to information* can include material on (a) the state of the environment (such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements); (b) factors affecting or likely to affect elements of the environment (such as substances, energy, noise and radiation, as well as administrative measures, environmental agreements, policies, legislation, plans and programs); and (c) the state of human health and safety, conditions of human life, and cultural sites and built structures, inasmuch as they are or may be affected by the state of elements of the environment. The *right to public participation in environmental decision-making* requires public authorities (at the national, regional or local level) to enable public individuals and environmental NGOs to comment on proposals for projects affecting the environment or on plans and programs relating to the environment; public authorities must take these comments into account in their decision-making and must provide information on the final decisions and the reasons and rationales for those decisions. And with respect to *access to justice*, the Aarhus Convention grants individuals and organizations the right to review procedures before a court of law (or some other independent and impartial body established by law) to challenge decisions that have been made without respecting

the right of access to information or the right to public participation in decision-making, or environmental law in general.

Although the United States is not a party to the Aarhus Convention—much to the chagrin of some commentators [see, e.g., 13, 19]—a number of laws and practices in the United States attempt to promote transparency and accountability through provisions for public access to information, participation, and justice. These include both general and environmentally-specific legislation. The importance of public participation in federal *environmental* decision-making can be observed throughout U.S. environmental and natural resource law [3, 10, 16, 20]. Most U.S. environmental law grants administrative agencies significant discretion in setting standards and enforcing them, and provides interested parties with the opportunity to engage with these agencies to determine the implementation of the laws. This engagement may include critiquing environmental impact statements, commenting on proposed regulations, participating in scientific advisory committees, providing data and information for agencies, and testifying at administrative hearings.

For example, opportunities for public comment are required under the Coastal Zone Management Act, Comprehensive Environmental Response, Compensation and Liability Act, Endangered Species Act, Federal Land Policy Management Act, the Multiple Use and Sustained Yield Act, National Forest Management Act, National Environmental Policy Act, and the Resource Conservation and Recovery Act, among others. These comments are not simply *pro forma*. The National Environmental Policy Act ("NEPA"), 40 U.S.C. §§ 1501.4(b), 1506.6, 1508.9 (1970), requires agencies to involve the public throughout the implementation of NEPA procedures, including participation in the preparation of an environmental assessment (EA) and in the determination of whether an environmental impact statement (EIS) is necessary, as well as opportunities to comment on draft EIS and underlying comments. Agencies must then take these comments into consideration in issuing a final EIS and must respond to them; failure to do so may constitute reversible error and a court may invalidate the final EIS (40 U.S.C. §§ 1502.9(b), 1503.4). The Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6939a(c) (1976), encourages the public to report to the U.S. Environmental Protection Agency ("EPA") exposure to hazardous waste at treatment, storage, and disposal facilities. RCRA also requires the EPA to facilitate public comment on any settlement that it negotiates with facilities found to pose immediate and substantial threats to the environment and human health before such settlements are finalized (42 U.S.C. § 6973(d)). Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERLA"), 42 U.S.C. § 9167(a)-(b) (1980), the EPA must provide notice and analysis of a proposed plan to clean up a contaminated site, provide opportunity for the submission of written and oral comments on the proposed plan, and provide notice of the final plan, along with a discussion of any changes in the proposed plan, before commencement of any clean-up action. The Bureau of Land Management (BLM), pursuant to the Federal Land Policy Management Act ("FLPMA"), 43 U.S.C. § 1712(a) & 1712 (f) (1976), must establish procedures, including public hearings, to give the public the opportunity to comment on and participate in the formation and, when appropriate, revision, of plans and programs relating to the management of public lands. Similarly, the National Forest Management Act ("NFMA"), 16 U.S.C. §1604(d) (1976), requires the Forest Service to "provide for public participation in the development,

review, and revision of [national forest] land management plans." The Coastal Zone Management Act ("CZMA"), 16 U.S.C. § 1455(d)(3) (1972), requires public hearings in the development of state CZMA management plans. As a last resort, most of these statutes grant interested parties the opportunity to sue administrative agencies that fail to fulfill their legal duties [3, 9, 19, 31].

To further demonstrate the role and significance of public participation in the development of environmental law and policy, consider the provisions in the U.S. Endangered Species Act ("ESA") to protect species that are in danger of or threatened with extinction. The ESA protects only "listed" species and thus a species that "crosses the listing threshold" becomes officially "endangered" or "threatened" and therefore able to receive an assortment of benefits and protections [46:31]. A species can be considered for "listing" either at the initiative of the U.S. Fish and Wildlife Service ("FWS"), which administers the ESA, or pursuant to a petition by any interested person or group (16 U.S.C. § 1533(b)(3)(A)).

The provisions which allow citizens to petition the FWS to list any unprotected species, as well as those that enable citizens to use litigation to challenge any FWS listing decision, have been highly controversial, with some claiming that citizen-initiated listings are driven by political motives, such as to block development projects, rather than by concern for biological threat [see 54], and others contending that the provisions encumber the ability of the FWS to prioritize scarce resources for the species most in need of protection [see, e.g., 33, 38]. Recent research by Brosi and Biber [7:803], however, reveals not only that "[c]itizen groups play a valuable role in identifying at-risk species for listing under the ESA," but that "citizen-initiated species are overall *more biologically threatened* than those selected by the FWS" (emphasis added). Based on a data set of 913 terrestrial and freshwater species listed as "threatened" or "endangered" under the ESA, Brosi and Biber [7] endeavored to compare species listed by FWS on its own accord to those listed after petition or lawsuit by citizen actors to determine whether petitioned/litigated species are less biologically threatened than species selected by FWS. (Brosi and Biber excluded lawsuits aimed at delisting species.) Brosi and Biber suggested that a finding that petitioned/litigated species are less biologically threatened than species selected by FWS would support the argument that citizen groups focus on species whose selection might be based on reasons other than biological threat, such as species that are in conflict with development, and that as such, citizen involvement in selecting species to be formally protected under the ESA should be curtailed. Instead, Brosi and Biber found that "citizen-initiated species" (i.e., those that had been petitioned and/or litigated) "face higher levels of biological threat than species identified by FWS" [7:802]. "Citizen actors—including numerous scientists—have specialized knowledge about biological taxa and geographic locales," Brosi and Biber [7:803] concluded, "Contrary to criticisms of citizen involvement in the ESA, petitions and litigation are potentially very important in selecting species worthy of protection" (citing [6]).

The impact of Brosi and Biber's research remains to be seen. Although their research demonstrates that nongovernmental actors are, at times, *better* at selecting species that are biologically threatened, there have been—and, most likely, will continue to be—proposals to constrain citizen petitions, such as by capping funding to the FWS for processing new ESA petitions [see 18, 33], or otherwise exclude the public from standard ESA involvement in the decision-making process, such as through industry-backed

amendments to legislation to exempt specific species from ESA protection [see 36]. Despite the benefits to democratic society that accompany increased public access to information, participation in governmental decision-making processes, and access to justice—and despite the environmental harm that can be prevented or mitigated with access and participation—a number of commentators have suggested that measures like the proposed legislation to undermine the ESA and block the listing of threatened and endangered species are part of a larger undemocratic and ecocidal trend, discussed in the next section.

Creating a culture of silence: undermining access to information, public participation in environmental decision-making, and access to justice

One of the hallmarks of a democracy is the idea that citizens should decide collectively how they are to be governed [39]. Nevertheless, some commentators have suggested that commitment to this principle in the United States has waned. According to Rowan [39:47], "[t]here is no question that the aim of minimizing the public's influence on policymaking is elitist and undemocratic." Unfortunately, Rowan [39: 55, 52] claims, "in a society like the United States, . . . political debates have long been shaped by acute inequalities of economic and political power. . . . Inequalities in power . . . influence institutionalized deliberation in at least two very important ways. First, less powerful members of society may have less access to deliberative forums and less capacity to participate meaningfully in them. Second, and more importantly, the very questions and range of 'politically possible' solutions which are up for discussion may be defined in advance, so that any changes which threaten to fundamentally alter existing institutional or structural arrangements would be off the table" (internal citation omitted).

White [60] builds upon Rowan's first concern. Some people, White explains, such as people of color, ethnic minority groups, and indigenous people in the United States (as well as in places such as Australia and Canada) are more likely to bear a disproportionate burden of the negative environmental (including human health) impacts of pollution or other environmental consequences resulting from commercial, industrial, and municipal activities and operations. Such disparities stem from and are further exacerbated by the lack of information about potential hazards and risks and the lack of participation in decision-making forums.

O'Connor [32:47] takes a slightly different approach to the issue of public participation in environmental decision-making: "democratic ideas that were part of the founding of the United States are critical to modern environmentalism; the promise of American democracy's rule of the people has been subverted by the rule of the few; environmental laws have been designed to fail in order to protect the financial interests of the world's largest polluting industries . . . ." According to O'Connor [32:48], the history of democracy in the United States is a history of expanding rights—first to white men, then to African Americans, and then to women. "Environmentalism is an extension of democratic rights to both nature and people," O'Connor [32:48, 50] continues, but "[d]emocracy [has been] undermined as its constitutionally mandated institutions have been captured by those whose sole motive is financial gain to the exclusion of environmental protection as well as the economic welfare of most Americans. Today,

multinational corporations undermine democracy through both their power to control information and their lavish spending on elections."

For O'Connor [32:51], the entire regulatory system is "fundamentally undemocratic." As O'Connor [32:51] explains, "[t]he decision makers are not the people, or even the people's representatives, but rather administrative law judges, engineers, technical experts, and private industry-bound bureaucrats who produce regulations inconsistent with the will of the people, and sometimes at odds with the letter of the law." While his position does not contemplate the collaborative decision-making processes that became more common in the 1990s and which, as Dernbach [13:32] describes, brought "more perspectives, information, and ideas for finding solutions to the table," there is little question that industry plays a disproportionate role in the environmental regulatory process. As Peterson and colleagues [36:32] lament, "[w]henever environmental protections are proposed or enforced, industry proponents predictably forecast dire economic consequences. However, these gloomy predictions rarely materialize. There is no stark dichotomy of economy versus the environment when it comes to developing natural resources; the issues are much more nuanced. Overblown rhetoric about environmental regulation obstruct the public's access to open and honest debate about the best uses for scarce natural resources" (footnotes omitted).

In addition to the above-noted ways in which economic power produces political power that can shape the contours of political debate and the nature (and even the existence!) of information about environmental hazards, risks, and harm, and public participation in decision-making regarding environmental regulation, industry's clout can be seen in the courtroom and in its effectiveness at impeding access to justice. Two examples can illustrate this phenomenon.

1. Attacks on U.S. law school clinics

In the United States, law school clinics serve an important role in training future lawyers and in providing legal assistance to traditionally underrepresented individuals and groups [23, 24]. Most clinics provide "one-client-at-a-time" representation in more or less routine civil and criminal matters [24:57]. The students, who are not paid, but who receive course credit for their service, represent clients under state "student practice rules," which enable them "to meet with clients and witnesses to gather facts, analyze clients' legal problems and provide legal advice, negotiate matters on behalf of clients with opposing parties, and represent clients before courts and administrative tribunals. In other words, student practice rules empower law students to become 'student-lawyers'" [23:1973 (footnote omitted)]. While the work of law school clinics is usually not controversial, such as fighting evictions in landlord-tenant cases or obtaining protective orders for domestic violence victims, environmental law clinics "often oppose development and lock horns with business interests" [24; see also 25:237]. In the 1980s, the University of Oregon's Environmental Law Clinic came under attack from timber interests incensed at the clinic's filing of a lawsuit to protect the habitat of the endangered northern spotted owl [23; see also 24]. With the timber industry urging university officials to terminate the program and faced with a proposed bill in the

state legislature to withdraw state funding of the *entire* law school, the Environmental Law Clinic voluntarily moved its litigation activities off campus [23]. More recently, after the environmental law clinic at Tulane Law School in New Orleans, Louisiana, successfully prevented a polyvinylchloride factory from locating in a low-income African-American residential neighborhood known as "Cancer Alley," angry business groups complained to the Louisiana Supreme Court [22, 24, 25]. In response, the Louisiana Supreme Court amended its student-practice rule, making it harder for students to represent environmental groups. Luban [25; see also 24:57] describes how attacks on law school clinics and student-lawyers (and public-interest lawyers, more generally) who represent underserved populations and left-of-center causes seek to win political disputes and strive to win legal arguments not by offering better ones, but "by defunding or otherwise hobbling the advocates who make the arguments for the other side." He concludes: "[i]f the chief virtue of the adversary system lies in giving opposing parties a hearing, its greatest vice lies in giving those parties an incentive to silence each other. . . . You can't have an adversary system with only one adversary. . . . 'Hear the other side' is a principle of justice because in the absence of dissenting voices, a kind of smug consensus—a lie, really—takes their place, and the adversary system becomes little more than a field of lies" [24:54, 58].

2. Denial of standing

In the United States, a party must have "standing" in order to make a legal claim or seek judicial enforcement of a duty or right [see 19:517–18, 528–30 for an overview; for a discussion of standing in environmental cases in jurisdictions outside the U.S., see, e.g., 37]. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992), the United States Supreme Court held that in order to have standing, a plaintiff must establish: (1) "an injury in fact"—an actual or imminent injury—a concrete and particularized invasion of a legally protected interest—by the defendant; (2) "causation," i.e., a fairly traceable connection between the alleged injury in fact and the alleged conduct (action or inaction) of the defendant; and (3) "redressability," i.e., the likelihood, as opposed to mere speculation, that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit.

On numerous occasions, business and industry interests have thwarted organizations' and groups' attempt to prevent environmental harm or secure compensation, reparations or other remedies for environmental harm by successfully arguing that the plaintiffs cannot meet one of the prongs of the standing requirement and therefore lack standing [see, e.g., 17:1315]. For example, in *Native Village of Kivalina v. ExxonMobil*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), the Inupiat Eskimo village of Kivalina, Alaska (approximately 400 people), brought suit against ExxonMobil, Shell, BP, Chevron, and other oil companies, alleging that the companies' massive production of greenhouse gas emissions had resulted in climate change, which, in turn, had severely diminished the Arctic Sea ice that protects the Kivalina coast from winter storms, and that the resulting erosion and destruction would require the relocation of Kivalina's residents [see also 43, 58]. Unfortunately for the residents of Kivalina, the district court dismissed their suit for lack of standing, explaining that the plaintiffs could demonstrate neither a "substantial likelihood" that the oil

companies' conduct caused their injury nor that the "seed" of their injury could be traced to the emissions of the defendant energy producers.[1]

While the standing requirement originates in Article III of the U.S. Constitution, the rigor with which courts have applied the elements of standing set forth in *Lujan* frustrates judicial resolution of many environmental harms. Eight years after *Lujan*, in *Friends of the Earth*, *Inc. v. Laidlaw Environmental Services* (*TOC*), *Inc*., 528 U.S. 167, 181 (2000), the United States Supreme Court explained that "[t]he relevant showing for purposes of . . . standing . . . is not injury to the *environment* but injury to the *plaintiff*" (emphasis added). While this determination actually created a *lower* standing hurdle in *Laidlaw*, in subsequent cases, it has stymied the efforts of citizen-plaintiffs bringing suit to block activities that are harmful to the environment, but that do not "directly affect" them—and it will certainly continue to create obstacles for litigants to engage federal courts in implementing climate change solutions in particular [see 58; see also 19]. According to Waver [58:10947–48], not only is climate change likely to cause some type of injury to nearly every person on the planet, but because there are a seemingly endless number of greenhouse gas-emitting sources, "courts are wary of pinning the blame, and therefore the damages, on just one individual or group of polluters," and "have had a great deal of difficulty understanding how injuries stemming from [climate change] could possibly be remedied by assessing damages or imposing an injunction on one or a handful of defendants."

The current application of the Article III standing doctrine also constricts an already narrow field of options for those attempting to expand animal rights in the United States. In *Tilikum ex rel. People for the Ethical Treatment of Animals*, *Inc. v. Sea World Parks & Entertainment*, *Inc*., 2012 WL 399214 (S.D.Cal.), the People for the Ethical Treatment of Animals (PETA) brought suit on behalf of five orca whales against Sea World, arguing that the wild-captured whales were enslaved by Sea World because they were held in tanks against their will and forced to perform in Sea World parks in violation of the Thirteenth Amendment to the Constitution of the United States, which prohibits slavery and involuntary servitude [see also 12, 55, 56]. The district court dismissed the suit on the grounds that because the "slavery" and "involuntary servitude" are "uniquely human activities," there was simply no basis to construe the Thirteenth Amendment as applying to non-human animals, and therefore the plaintiffs lacked standing to bring a Thirteenth Amendment claim [2, 57].

Tilikum illustrates how under U.S. legal doctrine, non-human animals under human control are considered "property," rather than beings with legal standing of their own. While state animal cruelty laws and federal legislation, such as the ESA, discussed above, offer non-human animals some level of protection, non-human animals are not endowed with a distinct set of rights and are not likely to be granted any constitutional rights anytime soon because their cases are dismissed for lack of standing.

[1] In late September 2012, the United States Court of Appeals for the Ninth Circuit affirmed the judgment of the district court to dismiss Kivalina's case. On 4 October 2012, Kivalina filed a petition for the United States Court of Appeals for the Ninth Circuit to rehear the case *en banc*.

Attacks on law school clinics and rigid application of the Article III standing doctrine to dismiss lawsuits represent just two ways in which business and industry interests have undermined or otherwise encumbered the access to justice component of environmental due process. But the common theme in these examples is that all of these measures silence dissent and thereby facilitate environmental degradation. While these and other tactics by corporate (or corporate-state) entities to quash public resistance to environmental harm is troubling for the specific damage or injury that such muzzling enables—such as animal cruelty or the destructive effects of global climate change—there is a broader and potentially more problematic and long-lasting environmental harm caused by silencing schemes: they may discourage or thwart the development of a "culture of participation" in environmental decision-making [21:112, 115, 116].

To explicate, access to information, participation in decision-making, and access to justice all help ensure perceptions of legitimacy in and of government, as well as improve governmental accountability, credibility, and effectiveness. While access to information enables citizens to make better decisions in their daily activities [13:31-32], public participation in decision-making helps "to improve the quality of decisions by bringing more information, views and expertise to the table . . . ." [21:113]. Access to information also empowers the public to "identify[] breaches of environmental law and ensur[e]that those responsible are held to account . . . ." [40:45–46]. But the willingness to locate violations of environmental law and call attention to environmental harm—and the readiness to turn to the courts to employ the law as a "resource for resistance" to environmental harm or the threat thereof [14:6]—rests, in part, on public perceptions of their ability to stop environmental degradation and bring about justice. If the public comes to believe that their efforts will be futile—that access to justice will be impeded and that they will be unable to make their claims in court (to say nothing of prevailing)—then procedural environmental rights will have little meaning, the assurances of environmental due process in many international, regional, and national legal instruments will ring hollow, and the assertion that citizens and NGOs play an important role in the creation of environmental policy and the enforcement of environmental law will be little more than lip service. The "culture of participation" that is (purportedly) reflected in various legal documents could well become a "culture of silence" and a public with the potential for engagement could grow passive and then take the short trip to apathetic. In other words, if a "culture of silence" replaces a "culture of participation," then we may come to bear witness to a "culturally silent" society [5] inattentive to the violence wreaked on the environment.

Conclusion

In *Violence and the Word*, Robert M. Cover [11:1601] writes:

> Legal interpretation takes place in a field of pain and death. . . . Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is

about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence.

Although Cover recognizes that the relationship between legal interpretation and the infliction of pain exists even in the most routine of legal acts, he focuses on the violence of the criminal law and the act of sentencing a convicted defendant. But as Austin Sarat [41:8] makes clear, the "law is violent in many ways—in the ways it uses languages and in its representational practices, in the silencing of perspectives and the denial of experience, and in its objectifying epistemology" (internal footnotes omitted).

In the present paper, I have considered the role of the public in achieving environmental protection and discussed ways in which environmental due process has been frustrated, thwarted, or otherwise undercut. While "[t]h[e] practice of silencing society's critics through a legal system is as old as democracy" [15:81], the muzzling of concerned environmental citizens through impediments to access and participation are particularly troubling. This represents not just another type of Saratian "silencing of perspectives"—another means by which the law is violent—but another way in which violence against the Earth, its human and non-human animal species, and its ecosystems, continues unabated.

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