Green criminology
# Green criminology

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Editorial: The politics of journal publishing

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In a recent initiative, the Flemish Interuniversity Board has asked Vrije Universiteit Brussel (host institution of Criminological Encounters) to examine the phenomenon of intimidation of researchers, against the background of harassment and abuse in academic contexts. Academic freedom is, arguably, one of the cornerstones of any university; a free and vigorous debate is vital to education and research, to evidence-based policy and various democratic institutions (Brennan et al., 2021). Research (particularly in the social sciences) challenges social and material arrangements and power distributions (Madison, 2011), which may spark criticism.

That scientists are challenged by special-interest groups is a healthy ingredient of the public debate, and doubts formulated by research participants and gatekeepers with regard to the position of researchers is intrinsic part of the job (Talleh Nkobou, 2021). However, there is a thin line between a discussion between different stakeholders and intimidation of researchers. COVID-19 has highlighted the extent to which researchers who publicly share their expertise (and researchers expressing skepticism of health and security policies) face harassment and personal threats, as exemplified by the hunt in Belgium for a soldier who made threats against prominent virologists. This kind of intimidation of experts may affect the safety, well-being, and work of those who produce knowledge (Kreiter, 2014). Orchestrated attacks on researchers that seek to silence or discredit them threaten not only individual scholars but also public trust in evidence-based scholarship. It may also damage public debate, undermine the quality of policy-related discussion, and compromise public action if the environment becomes so hostile that experts can no longer publicly or openly share the results of their research (Wright et al., 2022). Inversely, intimidations and threats can generate fear and paralyze researchers, but it can also backfire and motivate researchers and activists to keep fighting, to “plan, strategize, organize and mobilize,” as rapper, actor and activist Killer Mike proposed to US protesters after the death of George Floyd1.

A report by Scholars at Risk (2019) documented 324 verified attacks on researchers in 56 countries from September 2018 to August 2019 (Talleh Nkobou, 2021). Of course, since the death of Galileo, we know that researchers can be subject to criticism and violent attacks. Pierre Louis, for example, was vilified nearly two centuries ago for suggesting that bloodletting was an ineffectual therapy (Deyo, et al., 1997). More recently, special-interest groups such as the National Rifle Association (Deyo et al., 1997) and animal-rights activists (Loder, 2000) have threatened researchers.

In the most extreme cases, researchers lose their lives as a result of these intimidation strategies. Dom Phillips, a UK-based journalist, and Bruno Pereira, an expert on Indigenous people and a guide, travelled the Amazon for four years in order for the former to complete a book on sustainable development in the rainforest. Pereira worked for Funai, an organization which is charged with protecting Brazil’s estimated 235 indigenous tribes, and also for Univaja, an Indigenous rights organisation in the area near Brazil’s border with Peru. He clashed with the political powers-that-be, who disdained indigenous peoples and the activists working on their behalf.

Similar to journalism, academic journal publishing is a political enterprise, which should endeavour to honour activists and writers such as Phillips and Pereira who were abducted and killed while advocating for human rights, environmental rights and vulnerable groups. From the start, the Criminological Encounters editorial board welcomed contributions by practitioners and activists in order to call attention to pressing issues. This mission is illustrated by the interview in this issue with human rights and environment activist Claudelice dos Santos, by Marília de Nardin Budó and Marijke Van Buggenhout on the harm caused by asbestos companies. It is also evidenced by the special issue addressing research into environmental crimes, topics which generally may put researchers in the firing line by a variety of political and commercial stakeholders.

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1 https://www.youtube.com/watch?v=kSWasOhArfM
Bibliography


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Editorial for the special issue: Critical green criminology goes rural: Environmental crimes, harms and conflicts in rural areas and communities

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Introduction

Figure 1

This special issue of Criminological Encounters is being launched at a peculiar moment in contemporary history, when concerns about the environment are increasing due to climate change and, paradoxically, environmental crimes and/or crimes against environmental activists are also increasing.¹

The Brazilian Amazon has recently become the focus of international attention not only because of the advance of deforestation - which, as we know, can mean a risk that goes beyond the Amazon biome itself - but also because of the murder of two activists who worked on behalf of the rights of indigenous peoples: Dom Philips, a British journalist, and Bruno Pereira, a Brazilian indigenous activist, have disappeared on June 5th when they returned from a visit to indigenous territory in the Javari river valley in Amazonas state, Brazil.

International civil society continues to be stunned by the search for answers about who was behind these murders.²

We open this issue with a piece of art by the Brazilian cartoonist Carlos Latuff which shows, in the


critical green criminology goes rural: environmental crimes, harms and conflicts in rural areas and communities

centre, an indigenous village and, at the top, four human figures merging into the forest (from left to right): Chico Mendes, Dorothy Stang, Bruno Pereira and Dom Philips. Above them, is the phrase: “The struggle continues”.

Chico Mendes was a rubber extraction leader from Amazonia, who was murdered in December 1988, after receiving several death threats. Dorothy Stang was a religious nun who worked with peasant communities in the Amazon and was murdered in 2005 at 73 years old. Therefore, in the image, these four activists were added: all of them are environmental and human rights defenders.

Months before he died, Chico Mendes declared that his struggle for the environment was first and foremost a struggle for his people (peasants), and for the right of his people to remain on their land, preserving their way of life in the forest. The recent history of the Brazilian Amazon has been the story of tragedy that is both human and environmental.

With this special issue we want to provide our readers – through the different texts that make up this issue – with a perspective that Green criminology is a fruitful perspective when it takes as its presupposition the idea of the inseparability between environment and society. The crimes implicated in the cartoon by Latuff (see earlier) tragically highlight this inseparability.

The interview with environmental and human rights defender Claudelice dos Santos that is included in this issue, shows how land conflicts and environmental crimes are two sides of the same coin. Claudelice dos Santos became a well-recognised human rights defender through her struggle for justice following the 2011 killing of her brother José Claudio Ribeiro dos Santos and his wife, Maria do Espírito Santo. Claudelice had fought alongside her brother and sister-in-law for the right to access to land and denounced human rights violations resulting from land grabbing, logging and crimes against the environment. She was subjected to a number of threats due to her human rights activities. Claudelice was one of the nominees for the 2019 Sakharov Prize for Freedom of Thought, organised by the European Parliament.

An invitation to read

At a time when climate change is a heavily discussed subject, debates in green criminology are more important than ever. Since the 1990s, with the seminal works of Lynch (1990), Benton (1998) and South (1998), criminology has increasingly extended its focus of study to include environmental harms and crimes, environmental conflicts, and environmental law, regulation and (in)justice.

Grounded in critical criminology, the burgeoning perspective of green criminology has - since its inception - been opened to a variety of theoretical orientations and approaches (White, 2013). Authors such as Ruggiero and South (2013), Sollund (2015) and Lynch (2020), for example, have highlighted the insights that green criminology provides into the political economy of environmental harms. This perspective essentially considers the social roots of environmental conflicts, harms, and crimes and analyses them as deeply embedded within a neoliberal regime of global inequality. In particular, Lynch, Long and Stryeskey (2019) have called attention to the exploitative and metabolic rift that exists between urban and rural settings. Noting the urban bias which has historically characterised the discipline of criminology, some critical and green-cultural criminologists have reflected on environmental harms and crimes in rural areas (Donnermeyer 2012; 2018; Donnermeyer and DeKeseredy 2014; Brisman, McClanahan & South 2014). Within green criminology, for example, Donnermeyer and DeKeseredy (2014: 93) acknowledge that ‘much of what is defined as environmental crime occurs at rural localities and affects rural people’. Brisman, McClanahan and
South (2014) have also considered the intersection between green, cultural and rural criminologies and identified venues for further research in the area.

Building on this scholarship, this issue aims to advance the green-critical criminology of the rural by bringing together perspectives from critical green criminology, critical rural criminology and critical perspectives from other disciplines. The articles in this issue critically analyse environmental harms, crimes and conflicts in rural and Indigenous areas both in the Global South and in the Global North, as well as rural social movements and activism. According to White (2013: 28)

‘From this perspective, the focus is on the strategic location and activities of transnational capital ... and how to counter systemic hierarchical inequalities. Such analysis opens the door to identifying the strategic sites for resistance, contestation, and struggle on the part of those fighting for social justice, ecological justice, and animal rights’.

The - inseparable - themes of the struggle for social justice and ecological justice are the basic threads of our “loom”, from which the tissue of this special issue was developed. This inseparability is made absolutely explicit in the testimony of our interviewee for this issue, Claudelice dos Santos. She continues to receive death threats as she persists in denouncing human rights violations resulting from land grabbing, logging and crimes against the environment.

This online interview was conducted by Larissa Mies Bombardi and Victor Porto Almeida in December 2021, when Claudelice was in Europe for security reasons: she adopted the strategy of “self-exile” during the end-of-year holiday period, knowing that the police and legal accompaniment were more limited during this time, and therefore, that environmental and human rights defenders like herself were more vulnerable. During her stay in Europe, she also attended the COP 26 in Glasgow as a delegate (Brazilian Forestry Advocate), but as clear from her interview, she does not believe that the decisions taken at COP 26 will change the situation in the rural areas of Brazil.

During the interview, Claudelice cried as she remembered the loss of her brother and said - forcefully - that when the perpetrator of the crime was absolved by the courts, it was as if her brother had been murdered again. Claudelice’s family is one of the examples of how the defenders of the environment are always also defenders of human rights. Environmental and human devastation go hand in hand, and Claudelice’s fight encompasses “the right to land and to [human] life”. Rural areas, peasant communities and indigenous communities are without a doubt, at the frontstage where most environmental crimes occur; together with the harmed ecosystem, they are directly and very negatively affected by these impacts.

In addition to the interview with Claudelice, this special issue includes nine full papers, two short papers, one artistic and creative piece and two commentaries. Each has responded to one or more of the interrelated themes addressed in this issue, notably: political and legislative actions that legitimise the attack on rural and Indigenous people; strategies and processes of resistance on behalf of movements and communities; ordinary harms and their extraordinary consequences; and wildlife crimes, harms, and conflicts.

**Legitimising violence on rural and Indigenous people**

Five articles and one commentary in this issue address the theme of legitimised violence against Indigenous Peoples and rural communities, that have been harmed by big corporations and the state which – also exploiting the law – prey on their land and resources and undermine their livelihoods. Whilst four of the articles specifically focus on Brazil and the ways the state and corporations have
targeted rural areas harming ecosystems and rural and indigenous communities (see also the article by Garvey et al. below), one addresses the Likhubula water project in Malawi, showing how rural resources are exploited to meet the needs of the urban.

In the article *When crime becomes law: Legislative attacks on rural people's rights and nature in Brazil*, Marco Antonio Mitidiero Jr, Lucas Araújo and Brenna Conceição analyse political-legislative actions of both the legislative and executive branches of government during the period 2016-2020 which legitimate environmental and social crime for rural populations.

Similarly, Fabio Alkmin in *The Legislature and the anti-indigenous offensive in Brazil: An analysis of the proposals in the Brazilian Congress concerning Indigenous Lands (1989-2021)*, based on a survey and analysis of bills at the Brazilian Congress, emphasises the role of the legislative branch in the war against indigenous people in the last three decades, especially aggravated during Bolsonaro’s government. The analysis shows that such bills have an economic purpose, enabling the opening of indigenous lands to private capital such as agribusiness and the mining sector, and a political purpose, which is the expansion of the State’s authority and control over indigenous territories.

In "*Expressions of dependency: green crimes and the phantasmagoria of “development” in the extreme west of Bahia, Brazil*" José Gilberto Souza and Isabela Braichi Pôssas adopt a Marxist theoretical lens to reflect on how the international demand for products creates and perpetuates dependence in Brazil – a dependence that unfortunately relies on the exploitation of labour and natural resources to the detriment of the local rural populations, their ways of life and human rights. In particular, the authors describe the green crimes caused by the agrobusiness – with the complicit and support of the state – while expanding the soybean monoculture cultivation in the Matopiba region (a region in the far west of the Bahia state). Such expansion has been predicated on gradual land grabbing, change in labour relations and land use, the intensification of water consumption, and environmental harms and crimes through the use of pesticides. This has had repercussions on local production and social reproduction, and ignited local land and water conflicts.

Julian Durazo Herrmann comments on Souza and Pôssas’ paper addressing possible weaknesses and suggesting several ways to expand their study in the future, both theoretically and empirically. Among the comments we’d like to highlight, there is one that specifically addresses green crimes. As the author suggests, Souza and Possas could have more explicitly articulated the idea of green crimes in relation to their available empirical data. For Durazo Herrmann, green crimes configure in the study at least in three instances: (1) when norms and procedures are used to favour private businesses and impair community access to natural resources; (2) when legal frameworks protecting the environment and communities are not enforced; (3) and when actual crimes – from illegal land and water grabbing to violence against land defenders – are committed with the complicity of state authorities. It is also important to study local resistance in the face of heightened privatisation of natural resources and violence against rural communities – an endeavour undertaken by Garvey et al., who focused on community resistance on three sites, including in the Matopiba region.

Dave Namusanya, Ashley Rogers and Daniel Gilmour in "*Taking from the rural to serve the urban: The Likhubula water project and the slow violence of water abstraction in Malawi*" focus on the Likhubula water project in Malawi, which is a project that abstracts water from the Likhubula river and transports it for approximately 70 kilometres to the city of Blantyre. In recent years, this city has increasingly suffered from water shortages due to climate change and increasing urbanisation – and therefore desperately needs to increase its water supply by drawing on the rural. As the authors contend, the exploitation of rural areas and their resources is rooted on historical colonial constructs of the city as a privileged human space, which is to be prioritised over the rural and its
needs. Mainly drawing on ethnographic observations and using rural green criminology as a theoretical framework, these authors conceptualise the Likhubula project as a form of slow violence (Nixon, 2011) causing social harms to rural communities and Indigenous Peoples.

**Resistance and activism**

Two articles in the special issue address resistance and activism on two different continents and in totally different realities and contexts. But in both cases, resistance has been the way to face the challenges.

Brian Garvey, Thays Ricarte, Maria Luisa Mendonça, Maurício Torres, Daniela Stefano, Ana Laida Barbosa, Fábio Pitta, Jerônimo Basílio São Mateus and Juliana Busnelo in the article “Green crime, territorial resistance and the metabolic rift in Brazil’s Amazon and Cerrado biomes” focus on the contestation and resistance by Indigenous Peoples affected by massive scale agro-, hydro- and mineral industries, and hence also by violent land grabs, threats, violence and human rights violations. Drawing on (among others) a political economy analysis of green crimes and harms and on the concept of ‘metabolic rift’, this article shows how capitalism – with the help of the state – disrupts the human metabolic relations with nature and ultimately commodifies nature with damaging consequences for both the environment and the health, the livelihood, the social and cultural reproduction of Indigenous people and rural communities. But the article does more than this: using data from their fieldwork and analysis of relevant legal documents, Garvey et al. document community efforts to challenge megaprojects and violent land invasions through collective organising and legal actions, which so far have proven successful; as such, they deserve our attention.

Sabrina Puddu in “I pastori non si arrestano! Herding and its spatial agency in the Sardinian penal colonies” shows how herding and wandering of the prisoner herder with goats, sheep, and cattle in search for pastures and waters, is a creative practice that simultaneously challenges and is challenged by the spatial and institutional principles of the penal colony where they take place. In other words, herding in the penal colony is certainly more sedentary, regulated and less relational than it is outside; however, it endows people and non-human animals a certain degree of freedom and autonomy to wander, therefore disrupting the strict space-time disciplinary and surveillance regime that is typical of penal institutions. Puddu concludes her work by arguing that herding in the penal colony offers a lens through which to think about the ‘pastoral (carceral) trap’ also for ‘free’ herding in the countryside – a discussion that also taps into the history of penal colonies in Italy. The paper draws on field research by the author in the penal colonies of Mamone, Isili, and Is Arenas in Sardinia, and uses drawings and photographs as key research tools.

**Human-made harms and their consequences**

Two articles, one commentary and one short piece address the theme of green harms having extraordinary consequences on humans and beyond in rural areas. As Lundberg suggests, these areas also include spaces that are currently rural, but are soon to be absorbed in the urban through the gradual sprawl of our cities.

In *The fight for Fairbourne* - *A Welsh study of environmental harms and its victims*, Lowri Cunnington Wynn focuses on the impact of climate change on the Welsh seaside village of Fairbourne and its community, whose future is threatened due to the rising sea levels and the warming climate and the implications of what is deemed to be the first case of UK’s future climate refugees. Written from a green criminological perspective, the author considers whether the residents of Fairbourne can be considered environmental victims and the ways in which the experiences of coastal communities
can help shape wider social, economic and political processes relating to climate change and environmental harm.

In his commentary *The Fight for Fairbourne: Climate Change and its Impact on Sea Level Rise*, Hamilton discusses the ways in which Cunnington Wynn's article contributes to the green criminology literature through its recognition of harm that arises from both legal and illegal activity and the effect that this has on individuals and communities. At the same time, Hamilton encourages further research into Fairbourne's sea level rise predicament on non-human victims such as flora and fauna, and the future generations of humans.

In *Walking at the edges of green criminology: The edges of the city and the extraordinary consequences of ordinary harms*, Kasja Lundberg broadens the discussion to include the more-than-human. In particular, she takes up the idea of urban edges and atmospheres to discuss the ways in which these can contribute to urban and green criminological thinking around cities, the ordinary harms they produce, the extraordinary impacts of these harms and our responses to them. The article focuses on horizontal (suburbs) and vertical (skyscrapers) urban edges, which are the spaces of cities currently being expanded and where ordinary harms are (and will likely be) produced. These harms, however, as Lundberg explains, extend well beyond urban edges and affect equally humans as well as the more-than-human. Her take on atmospheres – which, in her paper, are either phenomenological (perceived by humans through the senses) or ontological (a category that captures what lies beyond human perception) – will likely spark further debate in both green and critical sensory criminology.

In the short piece ‘Truth, reparation and social justice: Victims’ and academic perspectives on the harms caused by asbestos companies’, Marília de Nardin Budó and Marijke Van Buggenhout address the harms caused by asbestos on Eternit workers in Kapelle-op-den-Bos, a village located in the rural province of Flemish Brabant. Using personal testimonials of asbestos-related harms, the authors discuss the importance of environmental restorative justice to address the harms experienced by the victims, to meet their (so far largely unmet) justice needs, and ultimately to ensure that these harms will not happen again in the future.

### Wildlife crimes, harms, and conflicts

Two articles and one artistic piece address the theme of wildlife crimes, harms and conflicts in this special issue.

In “It’s just totally lawless out here”: A rural green criminological exploration of foxhunting, policing and ‘regulatory capture’, Lynne Graham, Nathan Stephens-Griffin, & Tanya Wyatt turn their attention to an understudied topic within criminological research: the wildlife crime of foxhunting. By conducting qualitative research with police, they explore the policing of foxhunting through a rural green criminological lens in rural England and Wales. They consider the influence of the hunting industry, offenders as informers, and police who hunt. The authors argue that the concept of ‘regulatory capture’ provides a compelling explanation for police reluctance to address wildlife crimes like foxhunting.

In the short article “Hunting as crime? A cautionary note concerning how ecological-biodiversity and anti-hunting arguments contribute to harms against Indigenous Peoples, the rural and the poor”, Lynch and Genco critically address the anti-hunting position taken by green and conservation criminologies, which tend to conceptualise it as a crime against nature. Lynch and Genco invite green and conservation criminologists to take a more critical and nuanced look at hunting – one
that considers the negative implications of hunting and fishing bans on Indigenous Peoples and poor rural communities who require access to nature for their survival. Taking a political economy approach to the study of hunting bans, they also remind the reader that efforts to protect biodiversity largely depend on global capitalist development and the ecological destruction it often brings about, and should not deprive the poor of their subsistence.

In the poetic and creative piece *Violently meeting in the emptiness: Drafting sharing skins*, Gema Varona provides thought-provoking reflections on wildlife-human conflicts, violence, care and coexistence by threading together hints, utopic proposals, tales, laws, dreams, and ideas of different ways of living together.

**References**


Larissa Bombardi, is an Associate Professor at Department of Geography – University of São Paulo – Brazil, currently living in Brussels. She is a specialist on the subject of pesticides use for the last 12 years, with dozens of lectures, several published articles and more than 100 interviews given on the matter, in national (Brazil) and international means of communication. She is the author of the atlases: “A Geography of Agrotoxins Use in Brazil and its Relations to the European Union”, launched in 2019 in its English edition in Europe (Scotland and Germany) and “Geography of Asymmetries: molecular colonialism and poisoning Circle in Trade Relations Between Mercosur and European Union”, launched in 2021 at European Parliament. She is also a member of the National Forum to Combat the Impacts of Pesticides (Brazil) and Board Member of the international organization “Justice Pesticide”.

Anna Di Ronco, is Senior Lecturer in Criminology at the Sociology Department of the University of Essex and Director of its Centre for Criminology. She holds a doctorate in criminology from Ghent University, Belgium. Before starting her PhD, she completed a five-year degree in law at the University of Trento, Italy. Her research focuses on urban incivilities, the regulation of sex work, local-level policing, urban resistance, criminalised eco-justice movements and social media protest. Among her most recent publications, she co-edited a book titled ‘Harm and Disorder in the Urban Space: Social Control, Sense and Sensibility’ (Routledge, 2021).

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Walking at the edges of green criminology:
The edges of the city and the extraordinary consequences of ordinary harms

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Keywords: Atmosphere, city, green criminology, more-than-human, ordinary harms, urban criminology

Abstract:
Positioned at the periphery of green and urban criminology, this article focuses on the heuristic value of the edge. Examining the urban physical edges – the continued horizontal (outwards) and the vertical (upwards and downwards) sprawl of our cities – exposes serious harm. I employ the concept of atmosphere to explore both phenomenological and ontological atmospheres. This leads me to interrogate the edge between ordinary (slow) and extraordinary (more immediate) environmental harms, highlighting the need to move beyond binary conceptions of human and more-than-human concerns. I develop the concept of ‘the city beyond the city’, which transcends the material urban edges to further untangle green and urban criminological boundaries.
Introduction

To zoom in on an edge or a border is to examine what lies within or outside a physical space, a discipline or a definition. In this article, I take up the idea of edges to examine what I term ‘the edges of the city’ (the horizontal and the vertical edges), and I discuss what the scrutiny of these spaces can contribute to urban and green criminological thinking related to cities and harm. The horizontal edge is found at the outer suburbs of cities, and in many ways, at the periphery of the urban imaginary: not fully city but neither rural nor small town. The vertical edge, in contrast, reaches upwards into the sky through the construction of taller and taller buildings and downwards into the underground. As a parallel epistemological question, I question another type of edge that lies between ordinary (slow) and extraordinary (more immediate) environmental harms, warranting a transition beyond binary conceptions of human and more-than-human interests and injuries.

Although certainly a form of ‘edgework’, my take on edges resides far from Lyng’s (1990) conception of the term. The urban edges examined here refer to the physical limits of the city, whereas Lyng discussed voluntary participation in dangerous and adrenaline-inducing (and sometimes criminal) activities, such as skydiving or motorbike riding. In particular, Lyng highlighted the seduction of ‘the particular sensations and emotions generated by the high-risk character of these activities’ (2004, p. 360). This article is indeed interested in experiences on the urban edges; however, instead of engaging with the thrilling, masculine expressions associated with ‘living on the edge’, I pay attention to the most mundane behaviours and their associated harm.

As emphasised by urban criminologists, the city is central in understanding the harm and crimes which take place within it (Atkinson & Millington, 2019, 2020). Despite this, ‘criminology has rarely moved beyond thin portrayals of the city (and by default the “urban”) as a criminogenic space’ (Atkinson & Millington, 2020, p. 63). Even street-level crimes that take place in the nooks and crannies of our cities have suffered from this lack of attention (Hayward, 2004, p. 87). Cities are constantly evolving, reacting and reforming, and they are also places where, for the first time, a majority of the world’s population lives, a proportion estimated to increase to 68% by 2050 (United Nations, 2019).

The edges of the city evoke associations with the early 20th century Chicago School and its work outlining the concentric zones of the city – moving outwards from the central business district, through deteriorated areas and working-class residences and on to the more exclusive suburban and commuter zones (Burgess, 1967 [1925]). This work highlighted social mobility and the changing nature of cities, which is analogous to the capricious nature of the urban edges. Nonetheless, Hayward wrote, ‘the [Chicago] School’s interpretation of “space” set the geography of crime down a very particular and… rather narrow conceptual path from which it has rarely deviated’ (2012, p. 443). Instead, drawing from the ‘spatial turn’ in cultural geography, Hayward emphasised the ‘complex urban social dynamics’ that make up space and construct the conditions for various crimes and disorders (2012, p. 444). The emergence of more complex understandings of the physical, cultural and social contexts of criminological inquiry contributes distinct and new ways of conceptualising crimes, harm and their effects.

The city’s edges denote physical spaces where residential areas end and grasslands, agricultural areas or simply the sky commence. The edges are far from fixed; instead, planning zones are often amended to allow further residential development beyond the horizontal edge and new structures that tower over more dated buildings in the urban centres. There is something ultimately momentary or fleeting to these edges, characterised by an in-betweenness and propensity to change. This examination of the edges of the city contributes to urban criminology’s challenge of, as Peršak and
Tulumello (2020) put it, ‘grasping the complex interrelations among social, cultural, political, economic, and spatial phenomena’ (p. 3). The edges of the city can be represented upon a map, but with time, ‘ripping up the map’ will be inevitable (Kindynis, 2014). Despite criminologists’ generally unsophisticated and uncritical use of cartography, Kindynis (2014) wrote that ‘it is possible to imagine alternative mappings of densely enmeshed and multidimensional, criminogenic and criminalizing processes—urban (socio)spatial configurations, individual biographies, institutional dynamics and so on—that would constitute a more vivid rendering of the interrelationship between space and crime’ (p. 232). The zoning that allows different forms of development in various spaces (including the height of buildings) is ultimately a cartographic exercise, and I pursue criminological attention to its complex social, spatial and environmental dynamics.

In this article, I examine the urban edges of the city as they interact with our experiences and behaviours; in particular, those that harm the environment and contribute to the changing nature of our climate. Hence, I am concerned with ideas primarily conceptualised within green criminology, a perspective which focuses on environmental harm and crimes (Hall, 2014; Ruggiero & South, 2013a; Sollund, 2017). Similar to the elasticity of city borders, the edge between what is considered ordinary and extraordinary harms is in constant flux. Thinking about this boundary is a way to question taken-for-granted assumptions, uproot previous understanding of harm and reconsider the ways in which we live. I argue that doing so will contribute to resituating our priorities in building, rebuilding and expanding our cities. It would also allow us to reflect on environmental harm, its consequences and our responses, and to do all of this in new ways. Ultimately, this endeavour helps to articulate what I call ‘the city beyond the city’,¹ and to transcend current understandings of the material boundaries of the city.

**Approaching harm**

The edges of the city and their associated harm are the subjects of a larger project in which I explore urban development in Melbourne, Australia. This article concentrates on data that was gathered with a range of methods for the purpose of tracing the urban expansion of Melbourne, Australia, in order to generate ‘a deepened, complex interpretation’ (Ellingson, 2014, p. 444), or ‘thick description’ (Geertz, 1973) of everyday life and its criminological challenges on the urban edges. I draw on methods which include auto-ethnographic observations and my own sensory, affective and atmospheric experiences in two growing Melbourne suburbs – Docklands in the Central Business District and Craigieburn in the outer north of the city. As Sollund (2017) has argued, ‘we think because we feel,’ and attention to such feelings are, thus, ‘fundamental for thinking and questioning “taken for granted truths”’ (p. 248). Interviews were also conducted with people living in or near these neighbourhoods, centred on their experiences as residents, as well as with planners and architects on the particular issues facing the edges in terms of social and environmental sustainability. Finally, local council and state government planning and policy documents on Melbourne were examined to identify semiotic and thematic relationships, contrasts or consonances between the documents and the practices represented by residents, planners and architects.

Harm taking place on the urban edges is conceptualised by means of what Agnew (2012) termed ‘ordinary harms’. This concept emphasises the frequent and broad-ranging mundane behaviours that harm the environment through their gradual accumulation. These include, for instance, living in large homes that are kept at a comfortable temperature through artificial heating and cooling systems, the driving of cars and other gasoline-powered vehicles and over-consumption. Agnew (2012) highlighted ‘the ordinary acts that contribute to ecocide’; that is, ‘the contamination and destruction of the natural environment in ways that reduce its ability to support life’ (p. 58). Or-

¹ A term inspired by Miéville’s (2009) novel *The City & the City* and Young’s (2014b) ‘Cities in the City’.
Ordinary harms pollute land, air and water, disrupt ecosystems, extinguish natural habitats, contribute to climate change and exhaust natural resources. Although such harms may be routinised and commonplace, their impacts are far-reaching and extraordinary. Such an approach of scrutinising harm rather than crimes is in line with critical criminology’s break with ‘(actual or potential) legal definitions of harm’ and moves towards the broad set of social harm associated with zemiology (for example, Tombs, 2018).

Agnew examined ordinary harms using classical social–psychological theories which contribute to understanding the interesting relationships between individual strains and behaviours in relation to the social world around them (2012). In this article, I posit that the interactions between the physical features of a city and ordinary harms require scrutiny to conceptualise the city as ‘the place where things can (and must) be changed’ (Atkinson & Millington, 2020, p. 63). Poor planning that perpetuates such harms by increasing dependency on cars or profit-driven housing development with barely minimal insulation of new buildings generates the conditions for unsustainable ways of life. However, links between the city and harm refer to much more than the physical features of the city and include how cultures, people, movements, affects, laws, emotions and behaviours interact (Hayward, 2012; Kindynis, 2019; Philippopoulos-Mihalopoulos, 2013).

Hayward (2012) argued for attention to ‘phenomenological place over abstract space in an attempt to take seriously the cultural and structural relationships that contribute to crime and disorder or, for that matter, community safety and stability’ (p. 442). He developed five ‘new’ criminological spaces to create a more complex interpretation of urban spaces (p. 459). One of these is ‘more-than-representational spaces’ which are attentive to ‘experiential, affective, and inter-material aspects of space’ (p. 449). Such a focus on affective and phenomenological experiences of spaces would benefit from the concept of atmospheres.

Atmospheres have both a meteorological and an affective meaning, as they consider how bodies affect each other and are affected by/affect the material elements of the environment (Anderson, 2009; McCormack, 2008). As Adey (2013) wrote, ‘air is more than just air but constitutive of the material affective relations that animate the experience of the city in a way which we might say is atmospheric’ (p. 293). Atmosphere is a theoretical concept prominent in philosophy (Bille et al., 2015; Böhme, 2013), geography (Adey, 2013; Adey et al., 2013) and more recently in legal studies (Philippopoulos-Mihalopoulos, 2016) and criminology (Kindynis, 2019, 2021; Young, 2019, 2021). Following Young (2019), ‘deeper engagement with the concept of atmosphere offers ways of enriching cultural, spatial and affective criminologies …’ (p. 777).

I draw on such work to develop what I term phenomenological and ontological atmospheres. Phenomenological atmospheres denote what can be humanly perceived, and ontological atmospheres describe what resides beyond human perceptions. Phenomenology examines awareness, perceptions and impressions: the way we see the world as opposed to the way the world really is. Phenomenological atmospheres are deeply entangled with our senses, and it is through these that “the environment” emerges in the social and criminological imagination’ (McClanahan & South, 2019, p. 14). In contrast, while ‘retaining the ambiguity of atmosphere as both a meteorological and an affective event’, Philippopoulos-Mihalopoulos examined the ontology of atmospheres (2016, p. 152), which denotes the world detached from our senses and experiences of it. ‘Although intimately relying on these bodies (there can be no atmosphere without planet, gravity, a variety of gases, inanimate and animate things), atmosphere precedes and exceeds them’ (p. 155).

In this article, I employ concepts of both phenomenological and ontological atmospheres to pick apart the relationships between the edges of the city and ‘green harm’. This approach unravels
the boundaries and limitations of criminological inquiry and resituates the green criminological gaze towards spaces and harms that were previously mostly located on the wrong side of the disciplinary limits.

The edges of the city

The horizontal edge

Urban sprawl has long been a feature of urban development. Urban boundaries extend to accommodate rising population numbers, upsizing of residential homes and the building of more affordable houses on the outer boundaries of towns. These regions are also known as peri-urban areas, a terminology with ‘roots in the need to transcend the traditional urban-rural dichotomy’ (Buxton et al., 2006, p. 1). The urban is at times clearly distinct from the rural with a ‘hard edge’, and other times it is a more gradual transition (Buxton et al., 2006, p. 1). The urban fringe is commonly featured in urban studies and in health, water and environmental sciences. This work has generally concluded that excessive sprawl should be avoided. Despite these well-documented harms, many major cities continue to spread out horizontally.

Urban sprawl contributes to less cost-effective delivery of services, including transportation, waste collection, police and fire protection, libraries, education and more (Carruthers & Ulfarsson, 2003), and studies indicate an association between urban sprawl and increased risk of obesity (Lopez, 2004). Moreover, urban sprawl is associated with the loss of important agricultural land, increased run-off, poorer water quality and the loss of biodiversity as natural habitats become engulfed by the city (Maheshwari et al., 2014, p. v).

During my repeated visits to Craigieburn in mid-2020, the continued outward push of the suburb (and the edge) was evident. Closer to the train station, the suburb was well-established; meanwhile, nearer to the suburb’s northern and north-western boundaries, I was surrounded by construction sites. Reaching a major road to the north of Craigieburn, the edge was clearly visible. ‘North of Mt Ridley road, houses are separated by large distances and farmland. There are horses in paddocks and green areas of land. And on the side I am standing on, residential areas continue’ (Fieldnotes, Craigieburn, 3 November 2020, 3pm).

The horizontal edge has infrequently made it into the criminological literature. In green criminology, virtually nothing is written on urban sprawl and its effects on crimes or harm to the environment. Criminological research around peri-urban areas tends to focus on the intensified bushfire arson risk in such areas (Cozens & Christensen, 2011; Stanley, 2020). Nonetheless, the suburban, horizontal edge is an important green criminological space, transitioning outwards in the form of new developments and infringing on agricultural land and green fields. Due to the affordability of these areas in Melbourne, as in many other cities, lower-income residents tend to accumulate here. These populations are at risk of further marginalisation due to their distance from the urban core. A lack of holistic and long-term planning in these outer suburbs (Buxton et al., 2006, p. 2) has serious implications for the activities in which new residents can engage, leaving the urban fringe susceptible to a variety of social and environmental harm.

The vertical edges

The second form of urban edge is defined by the vertical expansion of the city: the construction of increasingly tall buildings is moving urban residents upwards in the sky. Similar to expansion on the urban fringes, such construction is meant to accommodate growing urban populations. On arriving in Docklands, the first thing you see are the tall buildings reaching into the sky, and when struck by light, they glimmer in different shades of grey, purple and blue. Docklands is also showing
clear signs of ongoing construction, and as I moved through the area, I noted that: ‘I can both hear and smell the construction work. The sound is of tools at work and the smell is of dust in the air’ ... Docklands is still very much a construction site’ (Fieldnotes, Docklands, 24 June 2020, 3pm).

In contrast to the horizontal edge, the tallest buildings are often found in the more expensive and attractive urban cores. The central location provides access to many services, local amenities, entertainment precincts, good public transport and many sources of employment. However, the vertical dimensions of urban life have long been neglected in urban research which has failed to keep up with the vertical rise of cities and the implications on the political struggle in public space (Graham and Hewitt, 2012, p. 73). Criminology is not an exception; it also suffers from this neglect (although see Walters, 2013).

Encouragingly, urban scholars are increasingly taking on the challenge of addressing the social and political nature of urban verticality. Such research recognises the unequal vertical characteristics of urban life (Murray, 2004). In metropolitan cities, such as London and Mumbai, vertical construction is allowing further urban segregation as the rich and powerful segregate themselves in the air (Ayoub, 2009; Rao, 2007). Such separations, South (2019) notes, ‘become even more suggestive when examining the boundaries drawn and initiatives pursued to preserve a “healthy” environment for some, at the expense of, or with disregard for, “others”’ (p. 5). Privatised and artificially created environments are increasingly constructed to defend against outside threats, including threats associated with the Anthropocene (South, 2019, p. 7). Nonetheless, apart from luxury apartments owned by the rich, inner-city apartments in Melbourne are not always luxurious nor are they always very liveable. Moreover, just as the distance from the streets can be associated with security and privilege, it can also lead to detachment and isolation from the streets and communities below.

Even though the vertical edge has lessened dependency on cars compared to the horizontal edge, it is burdened by other types of ordinary harms. High-rise buildings tend to encompass large amounts of embodied carbon (the combined carbon footprint from the building materials, construction methods and the building’s maintenance) (Zhao & Haojia, 2015). Large glass screens are common and act as terrible insulators, thereby requiring artificial heating and cooling (Moroz, 2017). Finally, elevators and common areas that are a functional need contribute to the building’s energy footprint and increase what Wood (2021) termed ‘generative technicity harms’ (p. 628). A vertical approach to urban research contributes to an understanding of life on the edges as a multifaceted and volumetric experience.

If we imagine the horizontal edge looping around the city periphery, the vertical edge has an upper and a lower dimension to it. The lower edge stretches below our feet into the underground. Underneath cities are sewage and water systems, tunnels, underground panic rooms and bunkers, root cellars, basements and even transport routes. This below-ground region is for some consonant with filth, delinquency and demise (Graham & Hewitt, 2012, p. 87), acting in stark contrast to the perceived luxury at the upper edge of the city. Despite its bad reputation, the lower vertical edge of the city provides an alternative to many everyday challenges and harms. For example, root cellars were used to preserve food long before the use of refrigerators became commonplace, and underground subway networks offer alternatives to private vehicles, allowing rapid underground access across the city. Nonetheless, the vertical sprawl towards the sky disconnects residents from these same roots, taking us closer to private helicopter rides (Adey, 2010) rather than to the subterranean places below.
Ordinary vs extraordinary harms

Green criminology tends to emphasise crimes committed by the powerful and the inequalities of law (South, 2014, p. 8), while the ‘crimes of individuals and non-profit organizations have received remarkably little attention’ (Shover & Routhe, 2005, p. 326). Brisman and South (2018, p. 204), therefore, encourage attention to ‘individual-level environmental harms and crimes’. Ordinary harms are not primarily associated with environmental harm, nor are these harms properly recognised by green criminology or the criminal justice system. Ordinary harms are instead legal and normalised, which disqualifies them from criminal justice scrutiny. Green criminological work highlights the relationship between capitalism, consumerism, exploitation and harm to the environment (for example, Lynch et al., 2013; Lynch et al., 2018). Ordinary harms are associated with consumption in all of its forms, including consumption of energy and petrol and of increasingly large spaces in which to live.

To understand the difference between ordinary harms and harms deemed extraordinary, consider the 2010 BP oil spill in the Gulf of Mexico. An explosion on the Deepwater Horizon oil rig killed 11 people and led to the largest offshore oil spill in United States’ history. For almost three months, BP attempted to contain the leak, which they later spent years cleaning up (Uhlmann, 2020). BP was criminally charged with manslaughter, various environmental crimes and obstruction of Congress (Department of Justice, 2014) and ended up paying over US$60 billion in penalties, damages and clean-up related costs (Uhlmann, 2020). The oil spill was a crisis that required immediate action. It grasped the attention of the media, the public and the criminal justice system.

Walters (2013) noted that in the emphasis of catastrophic events, such as nuclear disasters at Chernobyl and Fukushima and the BP oil spill, ‘the dangers associated with trade and air pollution become normalized within a doctrine of exceptionalism’ (p. 137). In contrast, ordinary harms are slow, accumulative processes that fail to generate many headlines, and, following Walters, such harms are also normalised and forgotten due to the emphasis on more extraordinary events.

Ordinary harms can also be conceptualised in terms of their slowness as opposed to the speed of extraordinary harms, such as the BP oil spill. Nixon’s (2011) concept of ‘slow violence’ refers to ‘a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all’ (p. 2). Slow violence does not refer to climate change and environmental harm in isolation but is a concept apt to describe these more invisible and gradual types of harm. Nixon (2011) sought to widen the concepts of violence, harm and social injustice, moving away from faster, more action-filled and spectacular definitions (p. 2), akin to this article’s transition from the more thrilling edgework (Lyng, 1990, 2004). Ordinary harms are a form of slow violence to the environment. It is not until we examine the accumulative effects over time that the harm from individual incidents becomes apparent. Importantly, ‘harm typically does not have particular beginning or end nor a definable boundary between harm and non-harm’ (Lundberg, 2022, p. 6). Nonetheless, if we conceptualise ordinary harms as characterised by these slow and invisible features, extraordinary harms should be understood as more immediate, outstanding and much harder to ignore, giving them a more prominent place on the academic, political and social agendas.

Apart from being a problem of visibility and attention, ordinary harms do not satisfy the human bias prominent in criminology and society more generally. Ruggiero and South (2013b) wrote, ‘(r)eflecting society generally, criminology tends to be anthropocentric, positioning and privileging human beings as the central and most significant species’ (p. 363). Environmental harm is often accepted as an inadvertent and inconsequential outcome of the neo-liberal agenda (Ruggiero &
Walking at the edges of green criminology: The edges of the city and the extraordinary consequences of ordinary harms

South, 2013a, p. 13). Without minimising the inequalities that exist between human groups and populations, the human bias renders some forms of harm more relevant and urgent than others. I examine the distinction between ordinary harms – which often lack consideration – and extraordinary harms – compelling immediate action – in more detail as I reflect on the relationship between phenomenological and ontological atmospheres.

**Phenomenological atmospheres**

To develop the concept of phenomenological atmospheres in more detail, let us start with air; a neglected substance in the criminological literature despite its significance for life on this planet (although see Walters, 2013). Air is a combination of gases that occupies space (Philippopoulos-Mihalopoulos, 2016, p. 153); it not only contains the oxygen that we breathe but also a range of other gases. More often than not, air goes unnoticed, and the reflex to breathe is an unconscious one. However, when polluted, air can become visible, grey and smoggy, and yet it can also give rise to beautiful, yet unsettling, nuances of orange and red.2 Thinking about air allows us to theoretically transition beyond solids and consider new ways that life is entangled with the health of the environment (Choy, 2010).

The term atmosphere is also used to denote something very different, a mood or a particular presence in a room (Anderson, 2009, p. 78). Choy (2010) wrote: ‘the sensation of confronting simultaneous, parallel, sometimes incompatible units of analysis, methods of sensing, etc. — is a singular feature of what I am terming the atmospheric’ (p. 4). In the air, gases move, bounce and combine; and between different bodies, in a similar fashion, affect circulates (Adey, 2013, p. 293). In this article, I follow Deleuze’s (1988) definition of affect as a form of interpersonal tension, as bodies affect each other (1988). Affect can be understood as that which alerts the body to an experience or a sensation (Young, 2014a, p. 162) and should be distinguished from emotion, which is the semantic ordering of these intensities (Massumi, 1995, p. 88). Affect is an important aspect of an atmosphere; it contributes to the tensions and the mood of a particular space. But more than that, atmosphere refers to culture, materiality, perception, senses, land, weather, laws, light, textures, smells, architecture, bodies, movements and more.

McClanahan and South (2019) called for a ‘sensory criminology’ and suggested that “atmospheres” are already always spaces configured in the totality of sensory information’ (p. 13). From their perspective, atmospheres are particularly suited for green criminology. Since we experience the world through our senses, ‘it is through sensorial immersion that “the environment” emerges in the social and criminological imagination’ (McClanahan & South, 2019, p. 14). The phenomenological perspective requires attention to the senses and our experiences of the atmosphere in terms of, for example, light, smell, sounds, touch and rhythms. Hence, different parts of the city can have distinct atmospheric presences that are both formed by and constitutive of our lives within it. An area might be perceived as idyllic, dangerous, luxurious, tranquil or haunted. By attending to each of our senses, we can start to break down phenomenological atmospheres and their implications with respect to ordinary harms.

**Ontological atmospheres**

Philippopoulos-Mihalopoulos (2013) pointed out that ‘most attempts at pinning down atmosphere are largely phenomenological’ (p. 41). Nonetheless, ontological atmospheres are about what lies beyond human perception and self-serving ideals. I disagree with McClanahan and South (2019) ‘that a sensory green criminology would (or should) arise to consider human-environment interac-2 During the Australian 2019/2020 ‘Black Summer’ bushfires, there was an unnerving beauty to the sunrise and sunset reflected in the particles from the smoke.
tions as entirely configured by our sensory perceptions’ (p. 14). I also oppose Böhme’s (2013) conclusion that ‘atmospheres are something entirely subjective’ (p. 2). Although it is true that, to some extent, atmospheres are always subjective, experienced and sensed, I disagree that ‘(w)ithout the sentient subject, they are nothing’ (Böhme, 2013, p. 2). Let us for a moment redirect our attention to the atmosphere around the Earth, shared by millions of species beyond our own. This perspective is central to a better understanding of environmental harm and its consequences.

A purely phenomenological perspective, as Philippopoulos-Mihalopoulos (2016) argued, eludes ‘a supracorporeal emergence that does not rely on consciousness, individual apperception or subjectivity’ (p. 155). He, therefore, developed an ontology of atmospheres that exceeds the phenomenological binary of subject and object in which there is a human subject acting on an object (p. 156). That is, atmospheres apply pressure to animate as well as non-animate subjects in ways that are not perceivable to us. This perspective draws attention to often-surpassed elements, such as gases, dust and rock, and how the environment acts on the human instead of only the human acting on nature (Philippopoulos-Mihalopoulos, 2016, p. 155). Philippopoulos-Mihalopoulos (2016), therefore, encourages us to ‘withdraw from the illusion of human centrality, while retaining the ontological knowledge that the human is, by now, everywhere’ (p. 163). For this article, the challenge of withdrawal is to consider our role in the more-than-human ontological atmosphere. The first step is to recognise overlooked harms and to disavow criminology’s anthropocentric tendencies. Following from Philippopoulos-Mihalopoulos’ arguments, this article argues for a redirection of our attention towards the ways that we are contained in and responsible for the atmosphere shared by all species on Earth.

Drawing from posthumanism and ‘more-than-human’ philosophies, the understanding of harm must be shifted towards what has previously mostly been considered outside the criminological agenda, such as harm to non-human species, biodiversity and the ecology at large. Posthumanism can be understood as a shift towards what lies beyond humanity (Panelli, 2010). Others, such as Whatmore (2004), prefer the term ‘more-than-human’, emphasising ‘what exceeds rather than what comes after the human’ (p. 1361, emphasis in original). These re-conceptualisations question mainstream distinctions between human and non-human, including at what point the human ends and ‘the other’, such as the animal, begins (Derrida, 2002, 2003). Binaries of the discursive world are elements that come to structure our thinking and the way we interact with the world around us. I am especially concerned with the erroneous binary between human/non-human or culture/nature.3

Following Braidotti (2013), nature–culture is a continuum that represents ‘the vital, self-organizing and yet non-naturalistic structure of living matter itself’ (p. 2), thus emphasising non-human intelligence and agency.4 This notion contributes to disruption of the human privilege, categorical distinctions between human and non-human and the apparent divide between each set of concerns. For example, Rose (2017) wrote about ‘multispecies kinship and connectivity’ found in ‘the Dreamings’, ‘the creators of much of the biotic life of earth’ in Aboriginal Australian peoples’ storytelling traditions (p. 52). The Dreamings are the founders of various kin groups, including human and animal species. Having been accepted into a group of ‘flying fox people’, descendants from the flying fox ancestors, Rose had to consider how one ‘might live an ethic of kinship and care within this multispecies family’ (p. 53). Such kin groups represent an alternative way of categorising the world’s species outside the binary of human/non-human. In fact, the fate of the flying foxes is en-

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3 Although importantly, Sundberg (2014) has highlighted how posthuman thinkers tend to reproduce colonial epistemologies, subordinating alternative worldviews and ways of knowing.

4 Todd (2016) reminds us that various concepts and ideas ‘produced’ by posthuman scholars strongly resemble established Indigenous epistemologies that predate posthuman writers by many thousands of years (p. 7).
This can be expressed in terms of the relationship between phenomenological and ontological atmospheres as they interact and depend on the state of the other. Human experiences and harm are inseparable from those of non-human species and the more-than-phenomenological world, although the threat of ordinary harms and their climactic effect on human lives is not as clear as, for example, during a global pandemic. By destabilising the boundaries between humans and animals, we also come to disrupt ideas around harm and non-harm, or rather, ordinary versus extraordinary harms. Destabilising the polarities of ordinary and extraordinary harms warrants ordinary harms to be recognised for their far-reaching, devastating consequences.

The urban edges identify and feature the edges of cities as relatively stable material structures. Atmospheres, on the other hand, extend beyond the material edges of cities. In this sense, ontological atmospheres represent ‘the city beyond the city’; that is, beyond the visible, experienced and even psychological parameters of the city. Consider the urban resident on a flight between Canberra and Melbourne or the way the urban sky extends well beyond even the tallest skyscrapers. Let us also think about how polluted air from the city affects the atmosphere way beyond its structural limits. Despite occupying only 2% of the world’s surface, cities are responsible for more than 60% of the Earth’s greenhouse gas emissions (United Nations, n.d.), and hence, the city extends well beyond the limits of its physical structures. I have argued elsewhere for the importance of mobility in green criminological thinking; a ‘green criminology in flux’ (Lundberg, 2022) brings our attention to the fact that since air vibrates, expands and travels, activities undertaken in one place, such as in our cities, have consequences on air all around the globe.

**Harms and the city**

Engaging with phenomenological and ontological atmospheres uncovers various harms which are prominent on the urban edges. Böhme (2013) suggested that ‘atmospheres are involved wherever something is being staged’ (p. 2), entangling atmospheres with urban design and architecture. For example, air differs in different spaces, and inner cities often experience the worst air quality due to heavy fuel-driven traffic. Choy (2010) highlighted that air when scarce or polluted becomes a part of the political consciousness. Moreover, access to better or worse air tends to follow economic inequalities in that the rich access the best air and the poor end up in areas with the worst (Choy, 2010, p. 27). With economic stability comes the ability to choose where to live and how to avoid a range of problems – long commutes, dilapidated and less-aesthetic areas, heavily congested roads, criminality or bad air. Vertical developments have the ability to lift some people above the smog, smells and the lower classes on the ground (Adey, 2010, 2013). Others escape the smog and associated conditions by moving towards the outer edges of the city. The lower vertical edge comes with its own experiences: at this substratum, air often feels wet and leaves the taste of soil on your tongue. These are all aspects encompassed by the phenomenological experience of atmosphere, a perspective that fails to capture more-than-human harm and harm to the city beyond the city.

Ontological atmospheres, in contrast, highlight the fact that urban air affects more than its human residents. Air quality affects all species that require oxygen to live, and high rates of greenhouse gases contribute to climate change, which underscores the often-times extraordinary, evasive, and extensive consequences of ordinary harms. Combining the affective, climatological and chemical components of atmospheres, Verlie (2019) constructed ‘climatic-affective atmospheres’. This approach merged two often separate atmospheric approaches, the meteorological and the affective. For example, the way weather conditions alter mentality and mood or how people experience anxiety due to a changing climate (Verlie, 2019). Such an approach acknowledges how different weather conditions alter mental and emotional states.
er conditions induce behaviours, including attempts to heat or cool different living spaces, often with an adverse impact on the natural environment. As Verlie pointed out, hot weather can make the experience of public transport insufferable, promoting other forms of transport. This creates ‘affective-climatic feedback loops’ as people drive more, leading to associated effects on the atmosphere and the climate (Verlie, 2019, p. 3).

Attuning to the senses allows an exploration of atmospheres in more detail (McClanahan & South, 2019). Before artificial light sources, life’s rhythms followed that of the sun. Today life in the city never stops, and an important reason for that is electric light upending our dependency on our path around the sun. Light, lack of light and different forms of light all contribute to the affective experiences and atmospheres of spaces (Kindynis, 2021). Inner-city life is associated with light in all its colours, calling attention to a bar, an ad or a building. The underground is darker, but artificial lights have allowed us to explore and exploit the substrata more thoroughly. Similarly, sounds construct our atmospheric engagement with the city, and different sounds are conducive to pleasure, relaxation or even emergency. Expanding on Verlie’s (2019) climatic—affective atmospheres, the design of the urban edges constructs phenomenological atmospheres with implications on behaviours, ordinary harms, and the city beyond the city.

Ordinary harms in the city are associated with light, touch and sound, and many of the activities that have a negative impact on the environment also produce energy in the form of noise, smells and light. The notion of ontological atmospheres alerts us to how light and noise pollution affect not only urban inhabitants but also non-human species with a concomitant loss of biodiversity. For example, there are indications that noise pollution disrupts bird migration patterns and that bee populations are decreasing due to ambient environmental circumstances (García Ruiz & South, 2019, p. 131). Thinking phenomenologically as well as ontologically about atmospheres identifies the wider consequences of our actions and of affective—climactic feedback loops (Verlie, 2019, p. 3).

**Conclusion**

The edges of the city are peculiar places, moving outwards and upwards in constant flux; their in-betweenness brings about distinct appeals and challenges. This article examines the drive to develop and move the edges outwards and upwards and the harms that ensue as the edges transition and new spaces become part of the city. I have argued that green criminology should pay attention to the urban edges, the ordinary harms taking place there and the extraordinary consequences of these. In addition, the edges of the city contribute to work in urban criminology, adding another layer of complexity to the crime/harm/city nexus and pushing the boundaries beyond the urban/rural dichotomy.

At the time of writing, urban life is undergoing major changes due to the COVID-19 pandemic that has altered the lives of people all around the world since 2020. Many people are suddenly carrying out their work from home and schools and childcare facilities have temporarily closed, reducing the need to commute. As a result, city dwellers on continents and in countries such as North America, Australia and in Europe are looking to escape the inner cities for suburbia, summer houses and smaller towns (Hughes, 2020; Lasker, 2020; Marsh, 2020). These changes are also affecting ordinary harms in various ways, for example, by taking people off the roads during peak-hour traffic, increasing household energy consumption, and increasing the energy demand associated with working from home technologies. Given that people continue to work from home while dispersing around the country, our understanding of the edges of the city and perhaps our definition of cities altogether will be challenged.
Ontological atmospheres highlight important connections between us and the world around us as well as between the city edges and the cities beyond our cities. They have implications on the methodologies we employ and the ways we approach green and urban harm. For example, it draws attention to the importance of regulating urban expansion and considering the social, spatial and environmental implications of sprawl. Moreover, ordinary harms achieve something extraordinary as they implicate so many of us (residents in wealthy countries) as perpetrators and all of us (human and non-human species) as the victims of these types of harms. Moreover, we live in societies that not only encourage ordinary harms but have economies organised around continued consumption. Avoiding these types of harms sometimes seems like an impossibility or at least an uncomfortable task. Instead of rendering the idea of offenders who cause ordinary harms meaningless, it shifts the offender status away from individuals towards an economic system and a culture which encourages us to offend.

Nonetheless, the consequences of these harms rest most heavily on non-human species and more vulnerable human populations. Hence, people who enjoy the rewards of ordinary harms are those who suffer the least from them, a common narrative in the neoliberal society. Instead of concerning ourselves with the exact nature of offenders and victims, green criminology could pay more attention to the broader implications and consequences of an activity or a set of activities, in addition to who is immediately affected and by whom. In addition, Brisman and South (2018) rightly argued that ‘(o)ur inter-relationship with nature...needs to be conceptualized in relation to our means and capacity to act’ (p. 211). They highlighted the disproportionate responsibility between someone taking from nature what they need and someone poaching wild animals in pursuit of pride and pleasure. A shift to phenomenological and ontological considerations within green criminology will help expand the edges of green criminology and expose the extraordinary consequences of ordinary harms.

Alternative development of our cities aimed at reducing the harms outlined here would see public transport and services implemented in an area before residents settle there. Urban policies should consider increased densities and encourage building in already established middle-ring suburbs. In addition, high-rise development requires further regulation to improve both social and environmental sustainability, to provide affordable housing and to improve the energy performance of buildings to reduce the energy needed to heat and cool these spaces. Ultimately, urban growth requires a holistic consideration of social inequalities and the far-reaching consequences of urban development on the more-than-human world.

Apart from the edges of the city, this article has drawn attention to several other edges: the border between ordinary and extraordinary harms, the limits of human perception of harm and finally, the edges of green criminological inquiry. Walking at the edges of green criminology exposes the limitations of criminology’s current research imagination. What spaces and what harms matter and what is instead relegated to (or kept outside) the boundaries of the criminological gaze? Following the argument that binary oppositional categories such as nature/culture, harm/non-harm and offender/victim are in flux (Lundberg, 2022, p. 6), I question the taken-for-granted nature of the edges separating these often binary concepts. Bringing the periphery to the centre is crucial to advance the criminological conception of environmental harm and its expansive consequences. The city beyond the city is an attempt to resituate the green and urban criminological gazes to supersede the binary distinction between the inside and the outside of cities.

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**Bibliography**


Walking at the edges of green criminology: The edges of the city and the extraordinary consequences of ordinary harms


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Abstract:
The focus of this paper is the study of the Welsh seaside village of Fairbourne, located on the Mawddach Estuary, Gwynedd. Due to rising sea levels and as a direct result of a warming climate, there are palpable and stark warnings that Fairbourne will be decommissioned by the year 2045, with very real consequences for its some 800 residents. This has triggered the media to deem its population as the UK’s first ‘climate refugees’ (Barnes & Dove, 2015), highlighting the community’s vulnerability and uncertain future in the face of a deepening climate crisis. Written from a Green Criminological perspective, this paper presents a conceptual exploration of whether the residents of Fairbourne are subject to climate change as a form of environmental harm, and whether they can be considered environmental victims. Although they cannot be treated as victims of environmental crime as defined by criminal law, their enduring adversity as a result of a warming climate and rising sea levels cannot be neglected. Accordingly, secondary sources of information will be analysed to explore particular types of harms, including economic, social and individual, determining how the experiences of coastal communities can help shape wider social, economic and political processes relating to climate change and environmental harm more generally.

Keywords: Green criminology, climate crisis, coastal communities, environmental victims, environmental harm

‘The Fight for Fairbourne’ - A Welsh study of environmental harm and its victims

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The Current Climate Debate within Green Criminology

The climate crisis is at the forefront of debate surrounding the effect of anthropocentric harm (Halsey & White, 1998) on our ecosystems. Over the past two years, this debate has been gaining traction and it is no longer possible to deny climate change and its effect on humanity and our ecosystem with any credibility (Oreskes, 2004). As Halsey (2004) argues, our destructive actions can no longer be regarded as ‘blips’, in the history of our time on this planet and those who seek to whitewash these arguments are being asked to justify their position. As a result, Criminology has been responding with a multidisciplinary approach to the climate crisis, attempting to improve our understanding of the causes and consequences of climate change and with the intention of informing decision-makers at the local, regional, national and international levels.

To this end, Criminology as a science is no different, and within the discipline, there is now a significant body of work aiming to develop our understanding of criminological, societal as well as public health consequences of environmental harms and injustice (Beirne & South, 2007; Herbig & Joubert, 2006; Lynch, 1990; Sollund, 2008; South, 1998; Walters, 2010; White, 2008). Some have argued, however, that Criminology’s response to the climate crisis has been sluggish and too much of its focus has been on the more ‘orthodox’ crimes, often ignoring non-human and human victims completely from its discourse (Halsey, 2004, p. 834). The narrow focus on environmental crimes has been widely contested by green scholars within the discipline, who argue that it could partly be responsible for an apathetic response to environmental degradation and its effects more generally. This is also true when considering the concept of environmental victims, which will be discussed in more detail later.

In response to this failure, Green Criminology has reached beyond the traditional focus on crime as the making and breaking of laws, and instead ‘operates as a tool for studying, analysing, and dealing with environmental crimes and wider environmental harms that are often ignored by mainstream Criminology’ (Nurse, 2017, p. 2). It is what Nurse (2017, p. 3), refers to as a ‘call to arms’, implying that mainstream Criminology’s lack of response to our increasing planetary destruction has been inadequate, or even disturbing. To this end, Green criminologists have put a particular emphasis on the concept of environmental harm as well as crime, arguing that harm to our environment, in any form, poses a significant threat to the health of our planet’s systems, which in turn results in widespread and manifold victimisation of human and non-human actors (Lynch & Stretesky, 2014). Although the concept of ‘harm’ has limitations and is somewhat contested, it is useful in that it encompasses a wider range of considerations than a narrow legal focus, ‘concerning rights, justice, morals, victimisation and criminality,’ (Nurse, 2017, p. 1) a point which will be discussed later in the paper. This article will consider environmental harm in relation to the village of Fairbourne, and whether the residents can be considered victims of environmental harm as a direct result of the effects of anthropogenic climate change. Rather than undertaking primary research, the paper will be a conceptual exploration of environmental harm with an analysis of secondary sources relating to Fairbourne. Although this method can be limited in scope, gaining access to individuals and key stakeholders within Fairbourne proved difficult. Over recent years, the community has been the focus of a number of consultations, reports (many of which will be discussed within this paper) and regular media attention. As a result, and as described to the author by a key stakeholder within Fairbourne, the residents are experiencing ‘consultation fatigue’, which suggests the complicated and emotional predicament that the residents find themselves in.

The Community of Fairbourne

Located at the mouth of the Mawddach Estuary, the village of Fairbourne is situated within the
ward of Arthog, Gwynedd, and within the boundaries of the Snowdonia National Park. In terms of its demographic, it has a population of approximately 800, located in 420 residential and business properties, with 700 of these residents living in the area permanently (Welsh Government, 2019). The village itself houses a village shop, a butcher’s, school and deli. In the summer months, the population increases to approximately 3000. It is therefore an important holiday destination in Gwynedd. It is a relatively ‘new’ village, which was built on reclaimed land in the late nineteenth and early twentieth century as a Victorian resort project, founded by Arthur McDougall of McDougall’s and its miniature railway was built in 1895 to carry materials for the building of the village (Fairbourne Moving Forward (FMF) Partnership, 2019). Perhaps unsurprisingly, an article in The Guardian in 2019 suggested that the community is a somewhat ‘eccentric’, English-speaking village, which is not representative of this part of Wales as a whole. According to the 2011 census, 65.4 per cent of Gwynedd residents are Welsh speakers compared to the figure of 35.9 per cent in the Llangelynnin electoral division where Fairbourne resides (StatsWales, 2013). Its population includes a high proportion of retirees. Recent data from Gwynedd Council suggest that 62 per cent of residents in the Arthog Community Council area (Fairbourne, Friog and Arthog) are 55 and over and 83 per cent own their houses outright (Fairbourne Moving Forward Partnership, 2019, p. 4).

By way of sea defences, the village of Fairbourne is surrounded by a natural shingle bank, with a reinforced crest wall for additional protection from the sea. It is further defended from flooding by a tidal embankment within the estuary, which was strengthened in 2013 (FMF Partnership, 2019). According to the Welsh Government (2019, p. 9) ‘Fairbourne is currently defended on both its estuarine and coastal frontages, however rising sea levels mean that much of the village would be below normal high tide levels within the next 50 years’. In conjunction with this forecast, Gwynedd Council founded a project board to consider in detail its implications. As part of the council’s response to this, Fairbourne Moving Forward (FMF) was established in 2013, with the aim of responding to the situation with a multi-agency approach, that ‘addresses the complex issues identified, drawing upon expertise and knowledge from a range of organisations and the local community’ (FMF Partnership, 2019, p. 4). They have also argued that although the village is currently protected to a ‘good standard’ (2019, p. 4), climate change will inevitably lead to increasing sea levels and a heightened intensity of rainfall, augmenting the community’s vulnerability to extreme weather events.

Current climatic predictions suggest a global sea level rise of at least 12 inches (0.3 metres) above 2000 levels by 2100, which is based on a low-emission’s pathway. If greenhouse gas emissions continue to rise, sea level rise could be as high as 8.2 feet (2.5 metres) above 2000 levels by 2100 (Lindsey, 2021). The latest Intergovernmental Panel on Climate Change (IPCC) report (2021), suggests that the rise in global temperatures is set to reach 1.5 °C between 2030 and 2052, significantly impacting the probability of extreme weather events globally. As the climate crisis intensifies, flooding incidents in Fairbourne will increase and protecting the village and its inhabitants will become progressively challenging. As evidenced by the FMF Partnership:

Predictions, accompanied by evidence from local monitoring, show that by 2054 it will no longer be safe nor sustainable to remain in Fairbourne. It is important to note that in the event of a significant breach of the sea defences prior to 2054, it is possible that relocation of the community may occur at that time. (2019, p. 6)

At Barmouth, which is three miles north of Fairbourne, current increases in sea level rise are approximately 4.7 mm per year for this span of the Ceredigion Bay coastline. On average, this aligns with, or is slightly higher than, predicted levels, which are generally accelerating as the century progresses (FMF Partnership, 2019, p. 7). In addition, increasing atmospheric greenhouse gas emissions will generate more extreme weather events (Coumou & Rahmstorf, 2012; Huybrechts et al., 1991; O’Gorman, 2015). In turn, this will intensify the vulnerability of coastal communities increasing the risk of a breach to the flood defences at Fairbourne. These issues were raised as part
of the West of Wales Shoreline Management Plan (SMP2) in 2013, details of which will be discussed below.

**Shoreline Management Plans**

Over the past decade, the Environment Agency and local councils have been developing Shoreline Management Plans (SMPs) to attempt to manage the threat of coastal change. An SMP is an extensive assessment of the uncertainties associated with coastal processes (Natural Resources Wales, 2021). The Welsh government have suggested that they administer a timetable for policy and guidance for communities (Welsh Government, 2019, p. 14). Their purpose is to seek to reduce the risks to individuals living on the coast as well as aiming to conserve the developed, historic and natural environments. As noted by Natural Resources Wales or the NRW (2021) the SMPs establish a strategic policy direction for coastal management over a number of years. These are divided into particular epochs, which include the short term (Epoch 1, 0–20 years), medium term (Epoch 2, 20–50 years) and long term (Epoch 3, 50–100 years). Shoreline policies are then tailored to specific epochs and are then assigned ‘policy unit’ for each SMP epoch (Natural Resources Wales, 2021). Individual SMPs have been produced for the whole coastline of Wales, England and Scotland, and in 2010 the original West Wales Shoreline Management Plan was published, with an updated version, West of Wales Shoreline Management Plan 2 (SMP2) in 2013 (FMF, 2018). It was drawn up by international flood defence experts, adopted by Gwynedd Council and approved by the Welsh Government in January 2014. Until 2025, as part of the first epoch, the proposal for the Fairbourne Embankment is to ‘hold the line’, attempting to maintain artificial defences so that the current shoreline remains. Over the second and third epoch, until 2105, this will change to ‘no active intervention’, meaning that there will be no planned investment in coastal defences. The policy outline therefore is one of a managed retreat or relocation (Welsh Government, 2019, p. 17).

The significance of these policies has faced strong opposition from the community, with a recent article from The Guardian concluding that the residents feel a ‘mixture of sadness, denial and confusion about the long-term threat’ (The Guardian, 2019). Some have questioned the possibility of flooding in the area, with others suggesting that the council have responded in ‘panic’ (The Guardian, 2019). In a report commissioned by the Welsh Government (2019, p. 9) it was suggested that there have been ‘concerns’ with how the delivery of the SMP2 was communicated to local residents and that improvements could have been made in regard to local engagement. The media have focused widely on these concerns and the inadequacy of the consultation process. Articles, containing often sensationalised headlines, reporting on both the local, regional and national level, nearly all make some reference to the residents of Fairbourne as the ‘UK’s first climate refugees’ (BBC News, 2020). Although an increasingly significant issue, this paper will not focus on the concerns surrounding climate-induced migration and in particular the residents of Fairbourne as ‘climate refugees’ (Barnes & Dove, 2015), as this in itself deserves its own analysis. This paper will instead focus on the specific harms to which the community are increasingly exposed.

As part of a continued effort to engage with the local community, Gwynedd Council have been working with local stakeholders in the development of a management plan for the community. This process has been an attempt to plan for the future and, as a direct result, the Fairbourne Facing Change (FFC) Community Action Group 2 was established in 2014, partly in response to the increasing media attention that the residents were facing. Arguably, the group were also reacting to what they considered to be a lack of consultation on the future of the village, and expressed a need to ‘inform, engage and involve the people whose lives have been deeply affected by the situation, which could

1 Can be read here [https://www.westofwa.co.uk](https://www.westofwa.co.uk)
2 A community action group established with the intention of supporting the residents and homeowners of Fairbourne who are contesting the SMP2.
have been considerably lessened, had we been consulted and engaged at the time stated in the Council’s timeline’ (Welsh Government, 2019, p. 22). Engaging with the local community has been challenging for Gwynedd Council, with the issues raised in the SMP2 having a profound and emotional impact on residents (FMF Partnership, 2019).

Gwynedd Council have no statutory obligation to provide flood and coastal defences, which contrasts with the statutory obligation to protect European sites conserved for their biodiversity. They do however have ‘permissive powers’ (Joseph Rowntree Foundation, 2011, p. 14) to defend from flooding. This raises some important debates surrounding the protection of communities over natural habitats or what is often referred to as ‘birds vs people’ (Joseph Rowntree Foundation, 2011, p. 14).

Although Fairbourne is the first community of its kind to be defined as unsustainable in the UK, it is not unique in its current predicament. There is a growing body of evidence drawn from research undertaken in relation to other places facing coastal realignment (Welsh Government, 2019, p. 7) that suggests that many communities will have to confront their increasing vulnerability to the climate emergency. Over the last 10 years, the Shifting Shores +10 Research by the National Trust3 recognised a developing shift in UK coastal adaptation policy, drawing attention to gaps between existing policies and plans, understanding the future and funding and capacity issues for SMPs. The next section of this article will consider whether the residents of Fairbourne can be considered environmental victims and what implications this might have for coastal communities across the UK.

Environmental Harm and Environmental Crime

As previously mentioned, Green Criminology can refer to a focus on environmental harm or environmental crime. It is always concerned with justice or injustice towards biodiversity and ecosystems as well as victimisation. The study of Green crime is not a new phenomenon, however its deliberation within Criminology is relatively recent. This is partly because of the uncertainty surrounding the label of ‘Green crime’, which is often used to describe activities that are in fact lawful, for example fishing or cutting down trees (White & Heckenberg, 2014). Indeed, as expressed by White and Heckenberg (2014, p. 9) ’environmental crime itself is consistently undervalued in law’. In addition, environmental harm is often deemed acceptable if the economic benefits outweigh the potential risks to both human and non-human entities, with harmful actors and actions protected, subsidised and condoned by notions of economic and societal progress. This acceptance is systemic in our current global society. Trawling fish on an industrial scale or deforestation cannot be considered intrinsically ‘criminal’, however their effects are harmful and frequently destructive to human and non-human actors, who we might in turn characterise as victims.

The key focus of Green Criminologists has been the study of environmental crimes (White & Heckenberg, 2014, p. 8). Lynch and Stretesky (2003, p. 231) have strongly criticised this approach, arguing that the perspective needs to ‘awaken’ to the extent environmental harms are destroying the environment and those who reside on this planet. The concept of environmental harms can be discussed within a sociological or socio-criminological framework (see Wright Mills, 1959 & Young, 2011), ensuring that the historical, cultural, societal and political context of environmental transgressions is considered and observed. White (2011) defines environmental harms as activities that are harmful to humans, non-human animals, and environments, regardless of whether they are legal or not. He places responsibility for environmental harms on the state, corporations and powerful actors, who have the influence to construct definitions of environmental crimes as well as the processes that allow or condone them. Planetary destruction is accepted in the name of profit, under the influence of global capitalism and exploitation of humans and non-human animals and

3 Please see https://www.nationaltrust.org.uk/features/living-with-change-our-shifting-shores
entities (White, 2020). As suggested by Buckley and Newell (2010), environmental harms continue to increase and yet those who exercise the greatest influence continue to support policies and practices that contribute to the current climate emergency.

When discussing the concept of environmental harm, it is impossible not to consider victims and victimisation, which can be both human and non-human. There is a distinct perspective within Green Criminology, which focuses on climate change as a specific harm. Climate Change Criminology focuses on harm to both human and non-human victims, such as animals, rivers, trees and mountains (White, 2020). However, he also frames the human victims of environmental harm within an environmental justice perspective, whereby environmental rights are an extension of human or social rights. This paper is aligned with White (2020), limiting its focus to human victims, although the effects on non-human actors are of equal relevance.

As with Green Criminology, Hall (2012) suggests that victims of environmental harm have also been largely ignored within current victimisation literature, and crimes or harms committed against the environment are in fact ‘victimless’ (White, 2020, p. 81). Hall (2012) maintains that environmental victimisation is an elaborate and holistic social problem. He usefully embeds environmental victimisation within the ‘social harms’, approach as discussed by Hillyard and Tombs (2003, p. 2). Consequently, the use of ‘harm’ rather than ‘crime’ when discussing environmental victims allows for a cross-section of individual experiences of victimisation, such as ‘emotional suffering’ (Hall, 2012) as well as the involvement and opinions of wider organisations. In turn, this allows for a holistic and integrated understanding of environmental harm and its victims, rather than those actions and consequences defined only by law. As previously discussed, the community of Fairbourne are already experiencing the negative emotional consequences of their situation but have no legal recourse.

As will be demonstrated, the environmental harm concept is especially useful when discussing Fairbourne if we consider that no specific environmental crime has been committed and that there is no definitive transgressor to punish. However, the community can be considered human victims of environmental harm, the effects of which will be a loss of security and financial damage, negative implications on health and well-being as well as the loss of community (FMF Partnership, 2018, p. 20). The focus on harm considers those who are primarily affected by these transgressions as well as the political and societal decisions that may have led to their adversity. When determining responsibility for the suffering of particular people and places in the context of environmental harm, it is important to differentiate between the causes of environmental harm and the choices made by political actors (usually at a closer geographic distance) in response to the challenges faced. In the case of Fairbourne, both rising sea levels due to anthropogenic global heating (environmental harm) and a lack of political will on the part of the local authority and the Welsh government are responsible for the current and future experience of people and place.

Although an important concept within Green Criminology, the concept of environmental harm is not without its limitations. As a methodological approach, it is difficult to quantify and, as suggested by Hall (2012), traditional criminology has struggled with the idea of harm. Hillyard and Tombs (2007) have argued that identifying specific harms that are experienced by people is objectively difficult, especially as it cannot depend on an existing body of law. However, Hillyard and Tombs (2007) argue that a new social harms approach is required if Criminology is to develop scientifically, because the concept of crime ‘lacks ontological reality’ (Lynch et al., 2013, p. 997). The concept is far more responsive to the rapid pace of harmful change than a narrower focus on crime – this is especially beneficial in the area of environmental harm given future climatic projections. Thus, it allows for both a greater focus on the present situation and potential futures. It also provides a fo-
focus for those who are being affected by these damages and presents an argument for environmental victims more generally (Hillyard & Tombs, 2007). In this vein, Hillyard and Tombs (2007, p. 17) make a case for the potential of an environmental harms approach to define a ‘harmed community’, who are harmed physically or financially in a particular geographical area. This approach is particularly useful in imagining how the community of Fairbourne could be impacted by rising sea levels caused by climate change.

For the purpose of this paper the concept of harm will be used to analyse the effect of climate change on the residents of Fairbourne and the status of the residents as victims of environmental harm. The fate of the community of Fairbourne will not only impact this small area of Wales but will also have wider implications for the rest of the UK and beyond. Understanding this community’s experience can help inform our understanding of the wider social, economic and political processes relating to climate change.

Climate Change as Environmental Harm

Some examples of environmental harm include air pollution, deforestation, water pollution, resource depletion, animal abuse and, more recently, climate change. As expressed by White (2020, p. 9) ‘Climate change is the most important international issue facing humanity today’. Within Criminology, the effects of climate change are only just being discussed (White, 2020) but there is no longer any question whether climate change is occurring, but rather how quickly and what its effects are.

Climate change is caused by greenhouse gases, which can absorb and secrete infrared radiation. Although there is a natural greenhouse process, which makes life on earth possible, a concentration of particular gases (mainly CO2) has exacerbated this natural process leading to climate change (White, 2020). This interference with the natural process is mainly a result of human behaviour, such as the burning of fossil fuels for power or heat, and deforestation. The period of global changes brought about by human activity is called the Anthropocene (Shearing, 2015), which began during the Industrial Revolution (Shiva, 2008). Even as our awareness of the human cause of climate change has increased, destructive behaviours have continued to be condoned under the guise of economic development and growth. The collective human response to climate change has been broadly defined by a lack of political will. This inertia has resulted in insufficient mitigation and adaptation, with the current situation and future projections deteriorating year on year (White, 2018). Undeniably, we are experiencing changes to our environment that are becoming the ‘new normal’, but which will have devastating repercussions on our ecosystems and the multiple systems that comprise human life.

As White (2011, p. 2) suggests: ‘in many ways and from the vantage point of future generations, present action and lack of action around climate change will most likely constitute the gravest of transnational environmental crimes.’ While with the lens of history the criminal basis of much of humanities current doings will probably seem self-evident, current international and national legal and criminal frameworks are not keeping pace with the destructive action. The conceptual lens of environmental harm helps bring the future eye to the present tense.

Research suggests that disadvantaged coastal communities, such as Fairbourne, will also bear the brunt of the climate crisis (Joseph Rowntree Foundation, 2011). Work undertaken for the Department for Environment, Food and Rural Affairs (DEFRA) on community adaptation to coastal change established that coastal communities do not have enough awareness of how climate change will impact their lives and the communities in which they live (Fernández-Bilbao et al., 2009). Climate
change is a global problem, however its implications will be experienced at the local level, often in rural settings, and experienced differently by different groups and communities (Ionescu et al., 2005). The varied response of involved political actors in these places will also have a significant bearing on local experience.

The UK was the first country in the world to provide a legal framework in an attempt to respond to the changing climate and its impacts (Buckley & Newell, 2010). This was called the Climate Change Act 2008, which aims to ensure the UK government responds according to climate change and establishes its commitments in terms of reducing greenhouse emissions and reacting to the impacts of climate change. As part of this Act, the government are required to implement a National Adaptation Programme, which will be informed by an analysis of the risks that the UK will face as a result of a changing climate (Joseph Rowntree Foundation, 2011).

Despite this, little or no research has addressed the social impacts of climate change in the UK. The body of research, until recently, has been predominated by scientific and economic considerations. However, the Joseph Rowntree Foundation (JRF; 2011) recognises that climate change poses ‘unquantifiable risks to people’s health, economic livelihoods and access to services, and to particular population groups, and highlights how climate change is contributing to increasing social vulnerability’ (Joseph Rowntree Foundation, 2011, p. 30). Within Criminology, the JRF’s (2011) emphasis on social vulnerabilities, resonates with the work of Hillyard and Tombs (2007) on ‘social harm’. Hillyard and Tombs’ (2007) analysis establishes how these harms are preventable as they do not stem from natural causes, but rather human (in)action and in the case of climate change the emphasis on financial growth and profit above the health of the planet. Considering how climate change will, and is already, affecting coastal communities, there is a conspicuous lack of research on the potential social impacts of climate change in the UK and how it will be experienced differently by specific groups or individuals.

**Victims of Environmental Harm**

Those who are victims of environmental harm rather than crime are frequently ‘real, complex, contradictory and often politically inconvenient victims’ (Kearon & Godey, 2007, p. 31). There is a strong case that the community of Fairbourne are all of these things. As a result of the increased flooding risk, properties in the village are said to have ‘little or no value’ as estimated by housing surveyors (Fairbourne Moving Forward Partnership, 2018, p. 20). Furthermore, mortgages are no longer available for properties in the village, which affects people’s mobility as well as their ability to invest in their homes. The community themselves have not received any offers of compensation for the potential loss of their properties and/or businesses – an example of where environmental harm combines with inadequate political action at the local and national level to produce a state of environmental victimhood.

Williams (1996) is a prominent writer on the concept of environmental victimisation. He argues that there is a need for ‘social justices to parallel formal legal processes’ (Williams, 1996, p. 200) and defines environmental victims as:

- those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or omission. (Williams, 1996, p. 35)
- Williams’ (1996) definition aptly describes the current predicament of the residents of Fairbourne, in particular how human activity (and inactivity) has caused irreversible changes to the climate, inadvertently raising sea levels and potentially displacing a whole community. However, this perspective considers only the human victimhood of environmental harm. In order to provide a balanced
approach, it would be effective to examine how the protection, decommissioning or relocation of Fairbourne will affect the local environment more generally. Any future management of the area could potentially affect the natural environment either positively or negatively. Continuing to manage the sea defences in the short term could lead to an increased loss of intertidal area in return for limiting the impact of change in the defended area (FMF Partnership, 2018, p. 21). The long-term effects of maintaining current defences would mean significant beach loss. The area being defended from flooding would therefore become progressively detached from the biodiversity-rich habitats of the estuary. Potentially, decommissioning Fairbourne could stimulate wider positive changes to the natural environment. For example, in Morfa Friog, a wetland habitat was strengthened by Natural Resources Wales in an attempt to attain conservation commitments. This would be further strengthened by continued development of the natural environment ‘with the intent to create a naturally functional system that is allowed to adapt in the future’ (Fairbourne Moving Forward Partnership, 2018, p. 22). This emphasises the often contradictory nature of victimhood, especially when both human and non-human actors are studied. There is no easy way around these forms of contradiction. This paper sidesteps the issue by limiting the focus to human victims only. Of course, this does not negate the contradiction.

**Social Inequality and Environmental Injustice**

According to a report by the JRF (2011) the effects of climate change will disproportionately affect coastal communities that may already be vulnerable due to their socio-economic characteristics and their reduced capacity to adapt to a changing climate. In addition, some coastal local authorities have areas of high deprivation. This hampers their ability to prepare sufficiently for the climate crisis. For example, they may be responding to an acute housing need or urgent regeneration. Budgetary constraints may therefore mean that protecting communities from flooding or rising sea levels may not be possible (Joseph Rowntree Foundation, 2011). It is difficult to generalise the impact that climate change will have on individual coastal communities and the capacity of each community to respond to these challenges. However, in light of the predicted severity of these impacts, it is likely that, with exceptions, the most deprived areas of the UK will be exposed to a greater level of harm. Indeed, the JRF (2011) found that people living in deprived areas were 62 per cent more likely than others to be at high risk of coastal flooding.

**Economic Harm**

Even considering the most conservative estimation of rising sea levels, communities along the UK’s coastline are likely to experience high costs and diminished livelihoods when having to respond and adapt to climate change. According to the FMF Partnership (2018) there are currently 430 properties at risk of catastrophic tidal flooding if there were a breach in the existing tidal embankments or open coast defences. Severe risk of flooding has serious consequences for house prices, where it can become near impossible to sell a home or other property. It can also be very hard to purchase house insurance and therefore protect homes and property from potential risks (Joseph Rowntree Foundation, 2011). These economic harms are already apparent in Fairbourne. Indeed, properties in the village are now of little or no value and some residents have had to sell their properties at a low price in order to relocate (FMF Partnership, 2018). Like a domino effect, this has negative implications for the value of property in the village, undermining the local housing market. There are also wider economic harms related to potential business failure, with a loss in business confidence affecting the amount of investment the village receives. There are significant concerns related to the sustainability of investing in an area which may need to be decommissioned in the near future. The area relies heavily on tourism and a reduction in tourism would make facilities and businesses in Fairbourne unsustainable. However, attracting tourists to Fairbourne as opposed to other locations on the Welsh coast requires sustained investment from businesses and local gov-
government, investment which is already disrupted by the prediction of environmental catastrophe hanging over the town. Moreover, Gwynedd and West Wales generally is a relatively economically deprived area of Western Europe. This economic harm will also be experienced at the local authority level, partly because Gwynedd Council will receive less direct income from taxes from individual residents as well as the potential loss of tourism (Fairbourne Moving Forward Partnership, 2018). It has also been suggested that the uncertainty surrounding the sustainability of Fairbourne will affect the health and well-being of the community, increasing the need and cost of local authority services.

Some potential opportunities have been identified, such as business development focused on ‘tourism of the future’ or ‘the village beyond climate change’, where the village can be showcased as an educational tool to demonstrate the impacts of climate change (FMF Partnership, 2019). However, this potential opportunity will no doubt be of little comfort to the current residents of Fairbourne. In addition, some environmental benefits may be possible with the development of alternatives that have also been suggested are cost-effective (FMF Partnership, 2019). These include agricultural opportunities in the form of salt marshes. It calls into question whether these potential benefits outweigh the economic cost of decommissioning and the relocation of the community.

**Social Harm**

The International Association for Impact Assessment (IAIA) defines social impacts as ‘all impacts on humans and on all the ways in which people and communities interact with their socio-cultural, economic and biophysical surroundings’ (Referenced in Joseph Rowntree Foundation, 2011, p. 11). In responding to climate change, social impacts are experienced distinctly by different individuals. This will depend on their vulnerability to climate change (Spickett et al., 2008). Many coastal communities are already vulnerable to significant challenges, which include youth outmigration and inward migration of older people. This leads to aging populations and high proportions of retirees and people receiving benefits. This picture is particularly true of Fairbourne, which has a high proportion of retired individuals, with 62 per cent of residents in the Arthog Community Council area (Fairbourne, Friog and Arthog) being aged 55 and over. There is also an over-reliance on tourism, which results in seasonal employment, low incomes and pressure on services during the summer months (Centre for Rural Economy, 2006). These challenges will only be exacerbated as climate change accelerates, increasing the community’s vulnerability and ability to adapt. Comparable research by Berman et al. (2019), who studied the response of seven coastal communities to climate change, across four different continents, found that each community had an aging population and heightened outward migration of their younger population. This impeded their ability to respond to the challenges posed by climate change. Lack of mobility, inflexible social networks and limited financial capacity were key factors.

Additional data from the FMF Partnership (2018) suggests that these demographic changes will accelerate the closure of the local school, village hall and local shop, increasing the harm to those individuals who do not have the financial means to relocate. This also heightens the experience of social inequality and division, where some members of the community have the financial and social capital to relocate whilst others do not (FMF Partnership, 2018). When considering the future of the residents of Fairbourne, decommissioning the village may disproportionately impact the older population as they may lack the social and financial capital to relocate. Those individuals with the economic means can relocate to more suitable areas, whilst poorer individuals have little choice. This will result in significant changes to the make-up of the community and a severing of the proximate social relationships that are the cornerstone of community. Such changes later in life may also affect their mental health and well-being. Research by Quinn and Adger (2011) suggests that extreme weather events caused by climate change, such as flooding, can result in older adults having
to move a number of times. This in turn can put ‘psychological pressure on the individual’, which can also be disempowering for them so late in life (Quinn & Adger, 2011, p. 2258)

**Individual Harm**

At the core of the social and economic harms discussed above, are the individuals that make up the community of Fairbourne. Unfortunately, there is limited direct source material with which to obtain the qualitative experience of the environmental harms affecting the community. This is a significant gap in our understanding. Our best guide here is the survey data collected by the Social & Economic Adaptation Group for Fairbourne in 2019, which demonstrated high levels of stress and anxiety associated with the current situation.

The survey found that almost 92 per cent of the homeowners interviewed in the village have suffered a significant decrease in the level of their well-being since becoming aware of the impacts of climate change. A further 86 per cent of those interviewed said their level of mental health had declined and 82 per cent of those interviewed said their physical health had deteriorated, whilst 85 per cent of residents no longer felt positive about the future (Fairbourne Moving Forward Partnership, 2018, p. 20). These figures are indicative of the sort of emotional suffering that Hall (2012) theorises. The survey indicates the validity of viewing the people of Fairbourne as environmental victims, in large part as a consequence of the individual experience of environmental harm. Although this survey does not provide much by way of detail, it does give a crystal clear picture of the severe psychological harm caused by avoidable environmental change and a lack of political will to adapt and recompense. The people of the community have lost any secure promise of a future at Fairbourne. This has already negatively affected their mental health and well-being, a situation which will likely worsen as events unfold.

**Responsibility**

There is a clear negation of responsibility from any actors towards Fairbourne – its society, economy, and individual residents. Faced with immense environmental harm caused by anthropogenic climate change, the community are left in a position of victimhood, with nowhere and no one to effectively apportion blame or responsibility. From an environmental harms approach, the effects on the residents are significant and raise some interesting debates about the culpability and responsibility associated with the failure to respond to the climate crisis. If we agree with Hillyard and Tombs on the role of the state in response to social harms (2007, p. 11) that ‘the aim of welfare should be to reduce the extent of harm that people experience from the cradle to the grave’, then the situation in Fairbourne is a clear example of negligence towards a harmed community. Of course, the local and national state actors who might do more to reduce the extent of the environmental harms that the people and community of Fairbourne are experiencing are not those responsible for bringing about said environmental harms. Apportioning responsibility is therefore complex. In the case of Fairbourne, and likely other places, when thinking of responsibility, it is useful to make a clear separation between actors responsible for the environmental harm of climate change on the one hand, and on the other, those actors who could do more to respond to the current and future effects of such harm.

As this paper is concerned with environmental harms, the main emphasis here when considering responsibility is on the institutions and actors responsible for anthropogenic climate change. As the actors with the greatest responsibility for this climatic environmental harm are at such a remove from the small places (such as Fairbourne) where the costs are borne, it is easy to lose sight of their culpability. Therefore, there is perhaps a greater need for emphasis, analytical and otherwise, to be placed here. Indeed, much of the published discourse on Fairbourne, in the press and the grey literature (see, FMF Partnership, 2019) fixes responsibility either on the community itself and its
individual inhabitants or on the local and national government institutions who could do more in response to the environmental harms experienced and to be experienced. The community and its individuals have been told by the local authority and the Welsh Government that they do not have any responsibility towards averting their plight and that the community and its members must, in effect, take responsibility for themselves (Welsh Government, 2019). The community and/or the individual inhabitants are expected to take responsibility for their situation and adapt in the face of the loss of their homes and their village. This reflects an increasing expectation by states and corporate actors that communities will have to mobilise, developing their own resilience and response to the accelerating crisis. This is evident from the discourse surrounding the effects of climate change on coastal areas. As stated by JRF (2011, p. 15):

There is an ever-increasing onus on communities to help themselves to be more resilient, but the way climate change is communicated (e.g. as a future risk), and the lack of clarity on actions needed, may be leading to apathy from local communities.

On the other hand, individual residents of Fairbourne have expressed anger and levelled criticism at national and local government institutions for a perceived lack of action. The implication being that these institutions should take greater responsibility for Fairbourne’s predicament – securing the defences and/or compensating losses. It is interesting that in this case, little emphasis seems to be directed towards the actors responsible for climate change as an environmental harm. Moreover, there is little legal recourse for victims such as those in Fairbourne, to seek justice, to apportion blame, to gain effective compensation or at least recognition of the injustice of their victimhood.

Conclusion

Decommissioning Fairbourne will not displace a significant population and the consequences of relocating the community is unlikely to have an earth-shattering effect on this small part of Wales. However, it represents a stark vision of the future for many coastal communities across the UK and beyond. It provides a symbolic case study for the implications of the current climate crisis. It is also a case which vindicates the value of using an environmental harms approach within Criminology. The situation in Fairbourne reinforces the truism that the climate crisis, although a global issue, will be experienced locally and it will be at this level that communities will suffer and have to respond. In addition, many coastal communities will already be facing significant socio-economic challenges that require immediate attention, and the very real risks posed by climate change, therefore, might remain ignored. As previously discussed, these communities may already be vulnerable to significant challenges, including youth outmigration and inward migration of older people, aging populations and a high proportion of retirees and people receiving benefits. The harms discussed will powerfully affect residents at an individual level, the loss of security associated with increased risk of catastrophic flooding is already and will continue to erode their well-being. Indeed, even where communities are fully aware of the extent of the threat posed by climate change and are determined to take action to mitigate or adapt, it may well be, as in the case of Fairbourne, that the actions necessary are beyond the technical and/or financial capacity of these communities. In situations such as these, it is no doubt unhelpful for community members to be reminded of community and individual responsibility. Little to no space or recourse is made anywhere for the victims of environmental harms to apportion blame and responsibility with the actors responsible for said environmental harms. Whilst adaptation (with assistance) will no doubt be key for victims, an emphasis on victimised communities’ and individuals’ responsibility for their predicament seems unjust. An environmental harms approach perhaps offers an alternate or at least complementary path to policymakers and victims of environmental harm.

The residents of Fairbourne are environmental victims. Climate change is subjecting them to environmental harm, which is significantly impacting their health, well-being, economic stability and,
consequently, the viability of the community in which they reside. As argued by White (2018), human victims of environmental harm are not considered victims of crime. However, the negative effects of human-induced climate change on the residents of Fairbourne cannot be denied. Although its causes are complex, large and seemingly distant, they are not blameless. Indeed, many of the polluting actions that have led to this current situation are legal and often state supported and even promoted. As argued by Hillyard and Tombs (2007), crime excludes many serious harms, and the notion of crime itself distracts from more impactful harms, such as climate change. It is a clear strength of the environmental harms approach that the severe, destructive consequences of human action manifest in climate change consequences, so clear in the case of Fairbourne, can be given full attention within criminological discourse. The products of such an approach may also, in some small way, inform the decision-making of legislators and key actors. A narrower legal approach would miss the wood for the trees.

There are serious questions about who should be responsible for communities such as Fairbourne. From an environmental harms perspective, although the lack of a serious response (from local and national government institutions) is of significant consequence for the victims, the main weight of responsibility is placed on those responsible for the environmental harm in question (i.e. climate change). The bulk of the discourse addressing responsibility in the case of Fairbourne has, to date, focused on either the need for individual or community responsibility from Fairbourne’s residents or the need for institutional and governmental responsibility from local authority and national governmental actors. This emphasis within the discourse pays far too little attention to the actors responsible for the environmental harm that is necessitating community, individual and governmental responses at the local and national level.

Fairbourne is not unique in its predicament. Many coastal communities who are already facing significant challenges are unlikely to be able to adequately prepare for their future. Preparing coastal communities should be a key policy priority and will require targeted support from central government with additional support for the local authorities in which these communities reside. Preparation for communities facing significant environmental harms should go beyond education and awareness raising. It must include technical, financial and psychological assistance to suit particular challenges faced. In addition to adaptive support, it would also be a major improvement from a justice perspective if there were legal mechanisms by which victims of environmental harm could seek damages, reparation and/or at least recognition. Thinking through the shape and texture of such mechanisms is beyond the scope of this paper and the expertise of this author. However, it is hoped that it turns the dial in some small way. It will not be enough to expect small communities to respond in isolation to the big challenges posed by environmental harms – or to shoulder the sole burden of responsibility.

As suggested by the councillor for the Fairbourne area; ‘This is an unprecedented situation and there are many difficult questions that we will need to work together to answer’ (Fairbourne: A Framework for the Future Community Consultation, 2019).
References


harm. Routledge.
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Abstract:
Despite having been banned by the Hunting Act (2004), and widespread public opposition, the practice of fox hunting with hounds still persists on a significant scale (Agerholm, 2019). Nevertheless, fox hunting remains a relatively understudied topic within criminological research, potentially as a result of it being an example of both rural and green crime, each of which have been traditionally marginalised in mainstream criminology (Donnermeyer & DeKeseredy, 2014). In an effort to partially redress this, this paper applies the concept of ‘regulatory capture’ to the case of fox hunting, in order to explore the policing of fox hunting through a rural green criminological lens. Drawing on 43 qualitative interviews and freedom of information requests to police forces, the paper critically examines the policing of fox hunting in rural England and Wales. The concept of ‘regulatory capture’ is useful in identifying “the process through which special interests affects state intervention in any of its forms” (Dal Bo, 2006, p. 203). We examine three related themes that were identified within the data. These are: the influence of industry; offenders as informers; and police who hunt. Whilst further research is needed to confirm it, we argue that regulatory capture might provide one compelling potential explanation for police reluctance to address wildlife crimes like fox hunting.

Keywords: Fox hunting, rural criminology, green criminology, regulatory capture, policing

“It’s just totally lawless out here”: A rural green criminological exploration of foxhunting, policing, and ‘regulatory capture’

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Introduction

As we approach the 20th anniversary of the 2004 Hunting Act in England and Wales, it seems a perfect time to reflect on the contentious issue of fox hunting with hounds. Despite overwhelming public opposition to the practice (Cowburn, 2017), and a statutory ban on hunting with hounds, fox hunting (disguised as ‘trail hunting’, as we discuss) is perhaps more prevalent than ever (Agerholm, 2019).

Green criminology has been instrumental in pushing beyond the traditional boundaries of mainstream criminology to better understand issues of environmental crime, harm and conflicts (White & Heckenberg, 2014). It examines the complex ways in which criminal justice and other mechanisms are deployed to protect and police the environment, or more frequently, protect the interests of those exploiting it, and police those preventing exploitation (Nurse & Wyatt, 2020). Criminological studies of rural areas remain less common, even though “much of what is defined as environmental crime occurs at rural localities and affects rural people” (Donnermeyer & DeKeseredy, 2014, p. 93). The topic of fox hunting with hounds represents an opportunity for green criminology to ‘go rural’, especially given the ways that the issue cuts across core green criminological questions around crime, harm, policing, and regulation, but also speaks to broader questions of culture, community, and species, which have been persistent topics of interest within the field of study. Furthermore, in doing so, collecting empirical data on the relatively under-researched topic of fox hunting works towards addressing the traditional urban bias of mainstream criminology and speaks to issues that affect rural communities, non-human animals, and ecosystems.

Drawing upon Freedom of Information requests and data from 43 qualitative interviews conducted as part of a mixed-methods doctoral research project on the policing of fox hunting, in this paper we argue that at least some of the inadequacies of the policing of illegal fox hunting with hounds might be explained through the theoretical prism of ‘regulatory capture’, whereby special interests can impact and manipulate the state agencies that are supposed to regulate and control them (Dal Bo, 2006). We demonstrate three key themes that relate to the policing of fox hunting and regulatory capture, specifically: the dynamics of special interests and how they seek to influence the way in which fox hunting is policed (the influence of industry); the way in which police rely on hunters for help in dealing with other ‘higher priority’ issues (offenders as informers); and the problematic connections between rural police often coming from the rural hunt communities that they seek to work within (police who hunt). We begin by presenting background on fox hunting today, before discussing the notion of fox hunting as an industry. We then present our theoretical framework of ‘regulatory capture’, before discussing the methodological approach. We then offer our key findings, discussion, and conclusions arguing that, whilst more research is needed in this area, regulatory capture provides a useful prism through which to potentially understand the way fox hunting is policed.

Background on Fox Hunting

Fox hunting is a ‘sport’ where hunters on horseback use a pack of foxhounds to track, chase and kill a fox. Traditionally, the pursuit can cover many miles. Hounds are controlled via voice and horn calls by the huntsman, who directs the pack to find and kill the fox. Foxhounds hunt by scent, therefore they must pick up the scent of a fox to chase and kill it. They are bred for stamina rather than speed. This enables better sport, as hounds can run for long distances rather than quickly outrun and swiftly kill their quarry. It is thought that English fox hunting was first conducted in 1534 by a Norfolk farmer who used his farm dogs (Johnson, 2015). This is understood to have led to the tradition of organised fox hunts led by a Master with a pack of hounds. In 1753, 18-year-old Hugo Meynell, the father of modern fox hunting, began to breed hunting dogs for their speed and stamina (Johnson, 2015; May, 2013). En-
English fox hunting has been described as a “ritual of social class”, contributing to mythologies surrounding aristocratic life and rural society (Howe, 1981, p. 278).

Fox hunting is governed by the Master of Foxhounds Association (MFHA) (Osbourne 2021), which represents 170 registered foxhound packs in England and Wales, and eight in Scotland. The Hunting Office is responsible for the running of all associations related to hunting with hounds (The Hunting Office, 2021). The hunting of a wild mammal (fox, stag, hare and mink) was banned under the Hunting Act (2004). However, according to the League Against Cruel Sports (LACS; 2018) and other critics (Casamitjana, 2015), the Hunting Act includes loopholes enabling hunting to continue. S1 of The Hunting Act particularly states “A person commits an offence if he hunts a wild mammal with a dog, unless his hunting is exempt”. There are many exemptions and defences, as outlined by the Crown Prosecution Service (CPS). A significant challenge of the Hunting Act is one of proving intent to hunt illegally. Following the Hunting Act, trail hunting was invented, which reports suggest has enabled hunts to evade proof of intent (LACS, 2018). Trail hunting, as an alternative to fox hunting, involves laying a trail of fox urine along a predetermined route, for riders and hounds to follow. This takes place in areas where foxes live. The aim is to replicate traditional quarry hunting as closely as possible (LACS, 2021). When hounds pick up the scent of a live fox, pursue and kill it, hunts can then claim it was an accident. This is not illegal.

Trail hunting should not be confused with drag or clean boot hunting, which do not involve hunting live animals. Drag hunting follows a non-animal-based scent (drag), or in the case of clean boot hunting, a human runner. Both drag and clean boot hunts are governed by the Masters of Draghounds and Bloodhounds Association (Money-Coutts, 2015). There are no records of wildlife being harmed during a drag or clean boot hunt. LACS estimates 16,000 cases of illegal hunting annually linked to trail hunting (Allen, 2017). The trail hunt myth was highlighted in a 2020 webinar meeting, leaked by the Hunt Saboteurs Association (HSA). These leaked webinars consisted of high-ranking hunt officials from The Hunting Office, the police, government, and the Countryside Alliance (CA) instructing 150 hunt masters on how to continue hunting illegally, and deceive the police, the CPS, and the courts (Fox Hunt Evidence, 2021). Despite compelling evidence regarding the scale of fox hunt-related illegal activities, enforcement and prosecution are at an all-time low (Kirby, 2019). This raises the question as to why this is the case, which we explore in this article. First, though we make the case for why hunting can be regarded as an industry.

**Hunting as an Industry**

Whilst fox hunting may make a relatively small contribution to the rural economy, it is important not to dismiss the financial and business benefits. Networks of individuals and businesses do have a specific financial interest in fox hunting, as well as the often cited cultural, social and political arguments for its preservation, and for this reason fox hunting should be understood as an industry in and of itself, albeit a relatively small one in comparison to other rural industries like farming and tourism. Whilst the economic significance of fox hunting has frequently been exaggerated in arguments defending the practice (Ward, 1999), the socio-economic dynamics and industrial and financial interests associated with the practice are important in understanding the complex motivations for hunting.

Prior to the Hunting Act, debates centred on tradition, culture, heritage, economics and animal welfare. The economic case for hunting was emphasised by the British Field Sports Society (BFSS) in 1997 who claimed that any ban on hunting would have “a severe and detrimental impact on rural employment and social and economic rural infrastructure” (cited in Ward, 1999, p. 390). A large banner at a 1997 CA rally claimed that country sports annually contribute £3.8 billion to the economy, though this included economic activity from a wide range of other sporting pursuits (Ward,
1999). Ward (1999) estimated that fewer than 1000 full-time equivalent jobs would be at risk from any ban on hunting with hounds. The Burns Inquiry (2000, para. 18), which sought to examine the foxhunting debate, with a specific focus on the potential consequences of any ban on hunting with hounds, estimated that:

Somewhere between 6,000 and 8,000 full-time equivalent jobs presently depend on hunting, although the number of people involved may be significantly higher. About 700 of these jobs (involving some 800 people) result from direct employment by the hunts. Another 1,500 to 3,000 full-time equivalent jobs (perhaps involving some 2,500 to 5,000 people) result from direct employment on hunting-related activities by those who are engaged in hunting. The remaining jobs, in a wide variety of businesses, are indirectly dependent on hunting. Of these, many will be in urban, rather than rural, areas.

Although debatable, the Burns Inquiry’s assertions lent significant weight to economic arguments in favour of preserving fox hunting. It is difficult to estimate the extent to which these predictions came to fruition, partly because hunting with hounds did not stop in rural areas as a result of the ban. By way of example, Agerholm (2019) detailed more than 550 cases of illegal fox hunting reported to LACS in the preceding year; and in 2014 over 250,000 fox hunters are said to have attended the Boxing Day hunts (Murphy, 2019). In an opinion column in The Telegraph newspaper, Green (2019, para. 3) argued that “hunting – and field sports generally – is one of the chief economic drivers for the countryside and a key social glue that binds remote rural communities”. With a financial impetus for fox hunting, as well as the financial power of organisations like the CA (Anderson, 2006), there is a risk that special interests surrounding foxhunting could potentially impact on the policing of such an industry, which is why we turn our attention to the concept of ‘regulatory capture’.

**Theoretical Framework**

With hunting being an industry (rather than a leisure activity or hobby), like other industries then, the government acts as the regulator. Regulation in the context of hunting ensures that hunting and wildlife laws are followed and that wildlife crimes, like baiting, coursing, illegal hunting, and trafficking do not take place. For hunting, which is governed by a complicated web of legislation (Vincent, 2014), most of the regulation falls to police constabularies, although non-governmental organisations like the Royal Society for the Prevention of Cruelty to Animals and Royal Society for the Protection of Birds are also involved (Nurse, 2015). As mentioned, although there is evidence that fox hunt-related crimes are taking place, there are very few arrests, prosecutions and convictions, indicating that such regulation is not happening. According to Nurse (2015), the lack of regulation and enforcement of wildlife crimes by the police stems from the lack of priority placed on wildlife crimes by constabularies and governments. We suggest that in addition to lack of priority, police fail to enforce hunting and wildlife laws because of regulatory capture.

Stigler (1971), an economist, is perhaps the most influential scholar in this realm from his studies on regulatory capture in relation to monopolies. He observed in the case of monopolies that the industry was able to acquire or ‘capture’ the regulation resulting in it being designed and operated in ways that benefited that industry. As Dal Bo (2006) notes in his review of regulatory capture, there are broad and narrow forms. The former is “the process through which special interests affect state intervention in any of its forms” and the latter is “specifically the process through which regulated monopolies end up manipulating the state agencies that are supposed to control them” (Dal Bo, 2006, p. 203). Dal Bo (2006) also identifies that the level of discretion on the part of the regulator has a role to play in regulatory capture, though the exact impact has not been concretely determined. The scholarship on regulatory capture has investigated how it is that regulators can come under the influence of industry. Some argue this occurs through the offer of incentives (e.g.
bribes, political contributions, and so forth) by the industry to the regulator (Laffont & Tirole, 1993; Tirole, 1986); others note the influence may stem from the availability of information about the industry that is needed by the regulator (Calvert, 1985) or the threat to withhold this information (Dal Bo, 2006).

In the more common application of regulatory capture theory, ‘revolving doors’ are a prominent element of the conflict of interest existing between a regulator and an industry. In these instances, revolving doors are “many regulators come from industry, or end up there, [this] has long been thought to be a source of bias in regulatory decisions” (Dal Bo, 2006, p. 214). Whereas police constables may not go on to management positions in the hunting industry or vice versa, we suggest that there is an equivalent conflict of interest stemming from the number of police who are hunters. In essence, at times, police are tasked with regulating their colleagues when those colleagues are hunting, perhaps leading to a similar bias in regulatory decisions that is seen when public and private actors move between agencies through the revolving door. As Ayres and Braithwaite (1991) have noted, police corruption or capture is more likely to be found where there is regular contact between police and those repeatedly breaking the law over a long-time frame, as is possibly the case with some hunters.

Carpenter’s (2004) work on regulatory capture has been significant in expanding understandings of the phenomena. Carpenter (2013, p. 57) advocates a high burden of proof, arguing that regulatory capture is very difficult to evidence, and that the “evidentiary standards of the capture literature are rather low”, arguing that authors must take care not to overclaim. He outlines some strategies through which forms of regulatory capture might be evidenced, and within this argues that “empirical studies of capture must have some notion of the public interest in mind as a counterfactual” (Carpenter, 2013, p. 58). As we have outlined above, an overwhelming majority of the British public oppose fox hunting (Cowburn, 2017), and as such, a clear argument can be made that police are not serving the public interest in failing to adequately enforce the hunting ban. Carpenter (2013) also argues that valid capture diagnoses require intent, or, in other words, some evidence of attempts to lobby, bribe or stack the deck of an institutional process, in line with the interests of the group seeking to capture the regulator (in this case, the pro-hunt lobby). This is something we cannot evidence with our data, and so the claims we make around regulatory capture are caveated by an agreement that further research would be necessary to definitively prove it.

We explore the police-hunting relationship in England and Wales in three ways: the regulatory capture regarding the influence of industry lobbying groups (e.g. the CA), who police employ as informers in rural areas, and police as hunters. The methods used to investigate this relationship are first detailed followed by the findings and a discussion.

**Methodology**

The data were collected as part of a larger doctoral research project. This employed a qualitative mixed-methods ethnographic approach to policing fox hunting. This article draws on data from 43 qualitative interviews, exploring individual’s perceptions and experiences of the social and cultural issues that influence fox hunting with hounds. Interviews were conducted with a range of stakeholders categorised in subgroups and coded, as described below. We do not give the location beyond England and Wales to protect participants’ identity.

A purposive snowball sampling strategy was used to enlist participants. Sampling involved selecting respondents based upon their knowledge and experience of fox hunting, and willingness to discuss it (Moser & Korstjens, 2018). Participants were anti-hunt activists (such as hunt saboteurs, hunt monitors, hunt investigators and campaign groups), members of rural communities, foxhunt-
ers or individuals with a background in hunting, and the police, including rural and wildlife crime officers. Participants were coded with their primary role if they fell into more than one.

Initial recruitment commenced within existing social networks. As the first author (Principal Investigator (PI)) was an insider within the anti-hunt community, this provided credibility and trust in accessing this group. Shared experiences and an understanding of the culture and risks involved facilitated access (Kaufmann & Tzanetakis, 2020). The PI’s experience as an anti-hunt activist arguably places this work in the tradition of ‘insider’ social science research. Insider research, like any approach, has advantages and disadvantages. One such advantage, as discussed by Oliver (2010) is that insiders are already familiar with the field of study, making it easier to formulate an approach, and allowing them to appreciate and capture the subtleties of the field, which an ‘outsider’ might miss. However, insiders might overlook things that may seem obvious or mundane, that an outsider might catch (Oliver, 2010). This is something that informed the thematic data analysis process, which is discussed below.

Where the PI was an insider in relation to other activists, they were an outsider in relation to the hunt fraternity. This highlights what Merton (1972) has identified as a false dichotomy that can emerge between ‘insiders’ and ‘outsiders’ and challenges notions that a ‘neutral’ position is possible within research. Gatekeepers were used to access additional unknown contacts from all stakeholder groups. These gatekeepers were recruited either through existing networks or they made initial contact through the project website. Respondents from the hunt and police subgroups would have been impossible to access without a gatekeeper.

Thirty per cent of respondents were accessed through existing contacts, 24% via social media or the project website, and 46% through either a gatekeeper or snowball sampling. According to Ritchie et al. (2013), obtaining truth and knowledge in research can be subjective and dependent upon the personal experiences of participants. Therefore, interviewing participants with a range of perspectives enabled multiple viewpoints on the policing of fox hunting to be obtained. Due to Covid guidelines, respondents were interviewed remotely over the phone. According to Novick (2008), telephone interviews do not gather the same richness of data that face-to-face interviews would. However, conducting interviews over the telephone helped enable greater perceived anonymity and privacy (Drabble et al., 2016), which was invaluable in this research. Moreover, it was more convenient, and participants were able to feel more at ease, safe and comfortable opening up in their own environment. As telephone interviews are less intrusive, respondents are afforded a greater degree of power and control over the interview; they were able to negotiate times to suit them (Drabble et al., 2016). Prior to conducting fieldwork, ethical approval was gained from Northumbria University. Participants were given information regarding the study aims as well as anonymity assurances, and they signed consent forms before participating. To preserve anonymity, no names or other identifying characteristics, including location, are included about the participants.1 The interviews were loosely structured, using an interview guide rather than specific questions. How the interview is structured is reflective of the element of power and control the researcher has (Block & Erskine, 2012). Loosely structured interviews allowed the interviewee greater control over the narrative. Consequently, the interviewer role was more of a facilitator and a recipient of the participants’ story (De Fina & Georgakopoulou, 2015); this enabled unanticipated themes to emerge. This approach empowered individuals to tell their own story, which also ensured that questions did not lead the interviewee towards a particular response. This contributed to safeguarding the narrative from risk of bias.

1 Respondents are instead each identified by code relating to their role (GK – gamekeeper; H – hunter; HI – hunt investigator; HM – hunt monitor; HS – hunt saboteur; LR – local resident; PO – police officer; RPO – rural police officer; and WO – wildlife officer) and a number.
Additional data were obtained through Freedom of Information (FoI) requests submitted to each constabulary in England and Wales. These provided data on policies and processes, which would not have been obtained through interviews. Both sources of data are presented under the three themes in the findings section. The research adopted a thematic data analysis process to identify themes (Braun & Clarke, 2006). This began with the PI transcribing interviews, making notes and becoming familiar with the data, before systematically producing codes relating to each individual transcript and FoI. Then the PI reviewed and consolidated these codes based on the data set as a whole, to produce the themes discussed below. The PI coded and analysed the data, with the co-authors contributing to the development of the argument and to the writing process. Discussions with the wider writing team during this process (as part of a wider PhD project) allowed the PI to 'step back' from the work, and to ensure interesting findings were not being overlooked due to proximity to the topic (Oliver, 2010).

Findings

The Influence of the Hunt Lobby

The influence of the CA and the National Farmers' Union (NFU) in shaping rural and wildlife crime priorities is a concern that was raised during interviews. To some, it appears fox hunting proponents are in powerful positions to influence a strategy that enables them to govern their own members’ actions and interests. This concern was raised by a hunt monitor, who said:

Why [sic] hugely powerful pro-hunt lobbying group, are afforded such privilege? We [the anti-hunt supporters] could only dream of their access to the upper echelons of the institution… They [CA] get to get a meeting with the right people and convince them of the right things.

(HM40)

This suggests, the hunt lobby holds an influential position, whilst the less powerful are excluded from a seat at the table. However, the CA cannot be excluded from rural initiatives because, as a wildlife officer succinctly put it, the CA “are the mechanism to communicate with their members” (WO26).

The National Rural Crime Network (NRCN) is instrumental in raising awareness of rural crime. However, a former police officer argued it simply exists “to protect wealthy landowners” (P038). This would indicate rural and wildlife crime strategies focus upon issues that affect wealthy landowners, prioritising their needs, and what impacts them, rather than what is in the public interest. This explains why fox hunting might not be considered a wildlife crime priority. As one participant argued “It [fox hunting] should be, because of the sheer number [of] hunting incidents” (P038). However, for a former rural police officer any attempt to make fox hunting a wildlife crime priority would receive a “backlash from influential people and the Countryside Alliance” (RPO42). This police officer further discusses how expectations differ between policing hare coursing and fox hunting, stating how:

hare coursing is a massive national police operation, operation Galileo. Because it suits the farmers and suits the hunters – it affects their land, their income crops or their pheasants ...
But take illegal hunting, and it’s not in the equation. It’s too political. (RPO42)

This suggests that the CA holds an influential position regarding wildlife crime strategies. This results in discrepancies in how the police respond to wildlife crime, with their response apparently dependent upon the nature of the crime, the informant, and the offender. As one police officer put it: ‘If a rich landowner says, ‘we’ve had people travelling here with their dogs and sending them off after deer’, we were expected to investigate. This is no different than fox hunting, yet we were expected to deal with it differently’ (P038). An anti-hunt activist discussed how the police had failed
to investigate all hunt crimes they reported, and the reasons provided for this. "I've had several meetings with them, and they say that they are told not to get evidence on fox hunting offences. They are not allowed. ... I'm confident this is a national thing" (HS3). Without insider access within the police, it is very hard to corroborate these claims, so further research is needed.

The CA, however, is not only instrumental in influencing wildlife crime priorities, they also provide the resources to defend their members. As an experienced hunt investigator claimed,

it is going up against powerful, rich, wealthy people with networks who have good resources. When they are in court it is the Countryside Alliance who supply the finances, the lawyers, the expert witnesses that will help them in court ... They usually have a representative turn up in court. (HI27)

The perception that certain wildlife crime is worthy of investigation, and others are to be ignored is a reflection of the CA's management view. A hunt saboteur discussed this perception stating that, "There's an ethos in hunt communities that wildlife police are there to protect certain wildlife at the detriment of others" (HS39). This is supported by a gamekeeper whose views align with that of the CA: “For every fox I kill or every fox the hunt kills then they are saving all this other wildlife so it’s a bonus by saving other wildlife" (GK24). This suggests that some species are more worthy of law enforcement protection than others. Police, therefore, may act robustly when there are "outsiders coming in and stealing the wildlife – killing the animals that the landowner wants to kill" (HI43).

The influence of the CA and the hunt lobby’s countryside management view over wildlife crime priorities was raised by a significant number of respondents. Parry (2019) has demonstrated the ways that wildlife/countryside management have frequently been deployed as justifications for fox hunting within popular discourse. As a hunt investigator with many years of experience said:

You would expect that they [National Wildlife Crime Unit] would deal with wildlife crime, for wildlife crime is in the title. But they only deal with the wildlife crime that is interpreted as property, or somebody stealing wildlife. They don't deal with hunting at all; they never have done despite it being the number one wildlife crime in the UK. The idea of animal suffering is irrelevant. The only relevant thing for them in terms of policing wildlife is wildlife stolen from the rightful owner who wants to kill it in a way they want. They don't look at it as an animal welfare issue. That's the problem with the legal system, they don't understand that animal protection has to do with the animal suffering not the rights of owners to decide what to do with them. (HI43)

The dominance of the hunt lobby may not be limited to influencing wildlife crime strategies. They are also in a powerful position to influence how the police perceive their lobby members compared to the opponents. As a hunt saboteur put it: “the Countryside Alliance is a 'PR organisation'. So, their role is to paint any situation in a positive light for hunting and in a negative light for antis” (HS3). They further claimed how “The CA labels anyone who opposes animal cruelty or hunting crimes as extremist”. This CA influence was discussed by one activist recounting how the police referred to “vegans and anti-hunt activists as rural extremists” (HM40). Another participant said, “There is a negative bias [by the police] towards us [anti-hunt] and that bias must stem from somewhere" (HS28). In addition to police activities being influenced by the hunt lobby, the police are also impacted by their reliance on communities where hunting takes place to provide information on wildlife and other forms of crime.

Offenders as Informers

Rural crime often happens in remote isolated locations. Therefore, policing can be dependent on good relationships between the police and the local community (Nurse, 2015). This reliance on
farmers and the community to assist with rural crime is evident within the data. As one wildlife officer argued, the police “may be hand-in-hand with landowners and gamekeepers to stop poaching” and other rural crime “but then the next day I may need to speak to them about Hunting Act Offences” (WO16). This supports that rural police are heavily reliant upon the cooperation of landowners and farmers both of whom can be victims, informants, and perpetrators. “They are helping me solve crimes, but they still want to go out and hunt, so it is a balancing act to do what they want” (RPO25). One former rural police officer discussed how he had commonly experienced this particular tension.

It is very common in terms of that transfer of allegiance and interest by the person reporting. In terms of policing, it’s very much an issue because it can be very difficult to do both jobs. I was very careful as to who I told about it or who I took on the job. There is certainly broken allegiances by some. (PO38)

This risks affecting the relationship between police colleagues and also the community, particularly if the rural police are considered to be, as one hunt monitor put it, at the farmers’ “beck and call” (HM40). They went on to state how “one day the farmers are reporting thefts of machinery or poachers. However, on a [fox] hunt day, those people who they [the police] are serving as their community become the offenders”. This was a common theme and supported by a number of respondents. As one hunt saboteur claimed, “These same farmers are illegally hunting and blocking badger setts” (a badger’s active underground dwelling, consisting of numerous entrances and tunnels) (HS28). Another hunt saboteur claimed that “Police who investigate wildlife crime should not have links to those communities because those communities are predominantly the ones committing those crimes ... There is definitely a link in these communities with this crime” (HS39). This role confusion may result in incompatible demands placed upon rural officers due to a conflict in balancing their roles and relationships. This is especially true if police are sympathetic to hunters and farmers, but not to the poachers and coursers considered by some to be ‘undesirable outsiders’.

Not all rural communities are supportive of hunting, and this was true within our sample. One member of the community cited the link between farmers and the hunt, and how it affects the community:

The farmers get away with goodness knows what. They’re constantly killing and poisoning badgers, which are supposed to be protected ... I mean, it’s just totally lawless out here, it really is. They [the farmers] know that and that’s another reason they get away with it, because farmers have always got away with it. (LR2)

Limited resources have been revealed as impacting on the policing of hunts. This means rural police may need assistance from the very same farmers who are hunting. According to Nurse (2015), investigating wildlife crime is often impacted by a lack of police resources, knowledge and expertise. A rural police officer stated that because of cuts and lack of resources there were “only two officers covering 100 square miles, so I relied on their (the hunt) support and help with solving crime” (RP023). This reliance provides the pro-hunt community with power over rural policing. If the police are reliant on the farmers to solve acquisition crimes such as theft and/or priority wildlife crimes, such as poaching and coursing (perhaps committed by people outside the community), then it may be necessary to turn a blind eye to crimes such as fox hunting (committed by people in the community). One hunt monitor quoted a police officer as saying, “we can’t piss them off too much as we need their help to catch the poachers” (HM40).

Respondents claimed those who go against the hunt are ostracised from the community. One hunt saboteur told a story of how a rural police officer was cold-shouldered by the hunt community due
to responding to hunt-related crimes. This is a particular concern for those with businesses that rely on the rural network. Another hunt saboteur cited how locals who voice concerns about the hunt are afraid for their livelihoods. "They just can’t raise their concerns above the parapet because they wouldn’t survive" (HS39). Likewise, a local resident stated how other members of her community are afraid to speak out: “Here, it’s socially unacceptable to challenge the hunting fraternity” (LR2). Their concerns are very real as one resident described how a vulnerable neighbour who spoke out against hunting was evicted from their home by the landlord who hunted. Likewise, local hunt monitors relayed how they had received threats including dead foxes on their doorstep (HM25).

A rural police officer claimed the police are “not provided with the sufficient resources to police fox hunting” (RPO23). We were unable to obtain a figure on fox hunt offences, despite our Freedom of Information requests. A common response was: “Your request is not held in an easily retrievable format as there is no specific category relating to incidents of illegal fox hunting.” There is no obligation on the police to record fox hunting, which results in gaps in knowledge. Without knowing the full scale of the problem, police will continue not to receive the necessary resources with which to combat wildlife crime and will remain reliant on local communities for information.

One hunt saboteur stated how they felt that rural police were only concerned with meeting the needs of the NFU,2 arguing how, “It’s all about heritage crime and supporting the farmers. It’s NFU this and NFU that, that’s all they’re interested in” (HS28). Rural crime initiatives, such as “Farm Watch” and “Poacher Watch”, rely on maintaining relationships with landowners and farmers. A respondent expressed how a hunt monitor group applied to initiate “Hunt Watch”, working with the local police to prevent illegal fox hunting. The application was refused by the local police. “What is the difference between a poacher watch and hunt watch?” (PO38). The difference is that Poacher Watch is a network of locals preventing outsiders travelling into the area, whereas, for the most part, hunt crimes are committed by locals and the hunt saboteurs are generally considered outsiders. As one hunt saboteur put it: “there’s definitely an inside / outside thing going on” (HS39).

A rural police officer explained the difficulty in managing the police–community relationship particularly when there is a lack of officers, which makes rural police overly dependent on the cooperation of the hunt community in policing rural crime.

   They work with us on all sorts of things to try and stop the undesirables coming from other areas. Then the next day it might be that we may potentially be having to give them an appointment to come to the police station and be interviewed about hunting act crimes, so it’s very difficult to manage. (RPO23)

The respondent explained how poachers often impact on profit-driven industries, which are linked to hunting.

   They [farmers] have their shooting grounds, which is a big economic boom to the area. So, they don’t want poachers. But by the same account, they still want to be able to go out and hunt. They have a balancing act as well as to what they want, how they want to work with us. (RPO23)

Police activities in rural areas are affected by the hunt lobby and the rural police themselves must balance enforcing laws and maintaining the trust and cooperation of the community in order to succeed in that enforcement. Policing of fox hunting may be further complicated when the police are themselves hunters.

2 Whilst the NFU and CA are highly relevant organisations in relation to fox hunting, we did not directly contact either group as a means of enlisting participants. This is something that might be useful in a future study.
**Police who Hunt**

Hunting is often a visible element of tight-knit rural communities. The experience of participants suggests that this affects attitudes and operations of rural police. As one hunt saboteur argued: “You will find that rural police serve their own communities, which results in a conflict of interests” (HS39). As another hunt saboteur said:

“It’s the same rural crime officers that go to ‘Mr McDonald’, when his quads were pinched. Yet, that same person is digging out badgers and foxes at the weekend. There’s that personal link between each other and therefore that’s why I don’t think it’s taken seriously. (HS3)

A close relationship between hunting and the police means the police may be sympathetic to hunters’ views. This risks a bias in favour of hunting. “I grew up in a rural area where it was a tradition on Boxing Day to go down and watch the hunt meet” (RPO23). The positive cultural perception of hunting as a tradition is cited as a contributing factor in lenient policing. As one community member argued: “Here, it’s utterly cultural. It really is. They know they can wiggle around the law where the police won’t attend, they just know it” (LR2). Another member of a different hunt community agreed, arguing: “Rural police have often grown up in the same areas, they know each other, and they went to school together. So there’s probably potential for bias or something more sinister, like corruption” (LR31). This suggests that some police may have already been caught up in a culture that supports hunting, and potentially view opponents as outsiders. As one hunt saboteur shared, “From a very young age, they generally will be shooting or they’ve gone to school with these people so there is a conflict of interest there” (HS39). Police may be seen to be enforcing a law that impacts on the community’s way of life and which has been thrust on them from outsiders. A local resident discussed how hunters consider their right to hunt. “They really, really believe that they still have that power to do it and anyone who tries to stop them is breaking their law” (LR32).

The data also suggest that rural police are often immersed within the hunting and shooting community. Almost all respondents cited an association between the hunt and the police, especially with the police hunting with hounds. For example, the following quotes are from members of the community and hunt saboteurs who have cited the prevalence of police who hunt. “The master of the hunt near here is also Deputy Sheriff” (LR14); “I know a lot of senior police officers ride and the lawyers ride” (LR2); “There are a lot of policemen that actually go out riding with the hunt. So of course, they’re not going to want to see it prosecuted” (HS3); “The sergeant of our rural crime team is very pro-hunt” (HS28); “If there is a police presence, they’re there to protect the hunt; they’re not there to protect the wildlife” (LR3).

In general, from hunting opponents, there was consensus that police officers have individual and institutional links with the hunting and game industries. A hunt saboteur claimed that a particular rural officer is involved in pheasant shooting as well as doing business with the local farmers – “It’s very, very, very corrupt” (HS28). This was also cited by a local hunt monitor, who argued that,

A lot of people who foxhunt also take part in organised shoots, and anybody involved in organised shooting will have keepers setting snares and traps. The same people have been putting down poison bait, killing large birds of prey. So it’s the same people that chase them down with dogs who shoot them with guns. (LR14)

There is the potential for it to affect police judgement and impartiality regarding hunting. A hunt saboteur identified this conflict of interest as a significant contributory factor in a lack of enforcement of wildlife crime when the investigating officer was involved in field sports: “I’d report illegal foxhunting and badger sett interference. The investigating officer was a pheasant shooter and he...
wasn’t interested” (HS4).

A Freedom of Information request identified that police forces have no policy with regards to hunting with hounds. Nor do police officers need to declare a potential conflict of interest regarding hunting. A police officer claimed how “We’ve still got police officers who follow hunts, which is quite legal because strictly speaking, they should be hunting under the exemption” (PO42). This would be acceptable if it were drag or clean boot hunting. However, overwhelmingly, as mentioned earlier and as a majority of the respondents agreed with, evidence indicates trail hunting is used as a smokescreen for illegal hunting. Interestingly, the only respondents who were of the opinion that hunts may be genuinely trail hunting were rural police officers. Nevertheless, police officers hunting with hounds as part of a supposed trail hunt may be placing themselves in a situation where they are at risk of participating in an illegal activity.

Another dimension to police hunting is at the highest levels of constabularies. A significant number of Police and Crime Commissioners (PCCs) are pro-hunt (Fox Hunt Evidence, 2021). As an established and experienced hunt investigator argued “It’s become more political because of Police and Crime Commissioners, and for some conservative ones in particular” (HI3). This was supported by a hunt monitor who said:

If you’ve got a conservative candidate in a PCC role, who is pro-hunt, they’re not going to be doing a great job of holding anybody to account in respect of a hunting accident … The police and institutions have now become very much part of the political machine. So we’re looking at basically political policing … What we have at the moment is a very hostile government in terms of the hunting act and animal welfare, and certainly, in relation to wild animals. So without a shadow of doubt the police are falling into line” (HM40).

**Discussion and Conclusion**

In applying the concept of regulatory capture to fox hunting, we have contributed to the field of rural green criminology, and in doing so helped to expand the focus of criminology beyond the human, and beyond the urban (Donnermeyer & DeKeseredy, 2014; White & Heckenberg, 2014). The close connections between police and pro-hunt actors, and the impact on the policing of fox hunting evidenced offers potentially useful insight into the ways in which the distinct and often overlooked dynamics of rural life can produce uniquely significant outcomes in relation to wildlife crime. Furthermore, it illustrates the value of shifting the lens towards the rural, revealing complex social dynamics that might otherwise have gone unnoticed.

Those who oppose the Hunting Act – a law designed to protect wildlife – are instrumental in shaping the regulation of rural and wildlife crime. The CA, who are intertwined with The Hunting Office, have knowledge and expertise in rural and wildlife crime, which affords them an advisory position. This enables them to influence the regulation of rural and wildlife crime. Their powerful voice seems to impact upon the lack of policing of illegal fox hunting and directing police resources away from the interests of the hunt fraternity.

In support of Stigler (1971), this dominance of the pro-hunt lobby and the exclusion of alternative interest groups indicate that they hold a monopolistic position. This position has enabled them to influence the policing of their industry, which, we argue, may have resulted in a rural and wildlife crime strategy that is designed to target crimes impacting their members, such as poaching and hare coursing. At the same time, illegal fox hunting likely committed by members of the pro-hunt lobby appears to be being excluded from policing.
Our data suggest this advantaged position at the macrolevel may be influencing operational policing at the community and individual levels. This result appears to support the claim of Ayres and Braithwaite (1991) that regulatory capture is most likely a result of close and regular contact between the police and those people being regulated, in this case hunters. This suggests that rural police serving their own hunting and shooting communities are at risk of capture. In the case of the offender as an informer, our research suggests rural/wildlife crime officers are accountable for priority rural crimes, such as poaching, but fox hunting is not included. There will then be an incentive to direct enforcement away from illegal fox hunts, towards priority crimes like poaching, which as stated above, seems to target crimes in favour of the interests of the pro-hunt lobby. This is particularly pertinent when policing involves oversight of colleagues who hunt. These data suggest a potential conflict of interest and consequently may lead to bias in enforcement decisions. Moreover, a lack of resources within a rural location means the police are heavily dependent on cooperation from landowners and farmers to provide information on priority rural crimes. Yet, these community members may participate in illegal fox hunting. Therefore, the police may act in a way that benefits the landowners’ and farmers’ interests to maintain a working relationship to combat certain crime priorities, whilst perhaps overlooking fox hunting as a compromise. As Dal Bo (2006) proposes, information exchange is a possible element of regulatory capture. Since the pro-hunt landowners and farmers often have information crucial to police operations, we suggest this could be another element of the relationship that renders the police at risk of capture.

The relevance of information to regulatory capture is also evident at the macrolevel. The implementation of rural and wildlife crime strategies is purportedly underpinned by facts, figures and statistics. As wildlife crime is not a recordable offence, statistics on the prevalence of fox hunting are not readily available. Despite a majority of the public opposing fox hunting, opponents to hunting appear to be excluded from setting priorities, and the hunt lobby is relied upon to provide data on rural and wildlife crime. Therefore, it is possible that the information related to hunt-related crimes has been intentionally withheld during the process of setting priorities. Thus, police may be overly reliant on information provided by the industry they are regulating, which as Calvert (1985) suggests, happens when information is not available. Other sources of information – local residents – are silenced by the hunt community or their concerns dismissed by the police.

The exclusion of wildlife crime and fox hunting data from statistics also means there is no accountability in terms of what wildlife crime offences are being handled by which police and how. Police accountability is essential in maintaining trust between the police and the community. Our data contribute to a clearer understanding of the conflict of interest that police may face when investigating wildlife crime in rural areas, and the difficulty in balancing the relationships within rural communities. The hunt lobby are in a powerful position to place pressure on the police to conform to the hunt fraternities’ social norms and values. This approach, largely influenced by the CA, means prioritising the protection of wildlife who are considered the property of farmers and landowners. Without transparency about the response of police to wildlife crime and their potential relationship to the hunt lobby, the true extent of possible regulatory capture is unknown.

Although the police do not appear to go on to work for the hunt lobby, there is a similarity in their relationship to that of more traditional conceptualisations of the revolving door between regulators and industry. Rural police officers themselves cited police being hunters as a problem they had encountered, and which had impacted upon their relationship and trust with colleagues. They recognised the difficulty of carrying out their role with impartiality if they were hunters.

The CA argues that it represents the interests of the rural community (Anderson, 2006). PCCs, too, are supposed to represent, and respond to the concerns of, their rural constituents – though critical
perspectives on policing challenge this assumption (Neocleous, 2021). Taking this view, rural and wildlife crime priorities could be said to be devised in the public interest. The process of regulation, then, targeting poaching and coursing and not illegal fox hunting, might be argued to be in the interests of the public represented by the CA and the PCCs, disputing the theory of regulatory capture. However, our data suggest that the voice of those opposed to hunting, both activists and community members, has been marginalised and at times silenced. Violations of the Hunting Act are not enforced, and anti-hunt members of the community face threats and intimidation for speaking out. Given 85% of the British public support a ban on fox hunting (Cowburn, 2017), it can be argued that it is in the public interest to police fox hunting effectively. Yet, rural police priorities are influenced by the hunting lobby, which has a seat at the table, when opposing voices do not. Our data have shown that individual officers may be pressured to conform in order to get information on other crimes (which are more of a priority), and thus maintain their working relationship with their communities. Some of these police, and the PCCs who set the priorities, are themselves hunters, indicating potential conflicts of interest. For these reasons, we suggest the regulatory capture presents a potentially useful explanation for the way in which fox hunting is policed, although further research would be beneficial in supporting this argument, particularly following Carpenter’s (2013) view that claims of regulatory capture often rest on unsatisfactory evidence. The process of setting rural and wildlife crime strategies and priorities must be transparent and reworked to ensure that wildlife such as foxes, are truly protected.
**Bibliography**


“It’s just totally lawless out here”: A rural green criminological exploration of foxhunting, policing and ‘regulatory capture'

munities/ Accessed 05/07/2021.


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The legislature and the anti-indigenous offensive in Brazil:
An analysis of the proposals in the Brazilian Congress concerning Indigenous lands (1989-2021)

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Keywords: Brazil, Indigenous Peoples, indigenous lands, Brazil’s legislative branch, colonialism

Abstract:
The Constitution of 1988, conceived after 21 years of civil–military dictatorship in Brazil, represented advancement towards the acknowledgement of indigenous rights by the State. However, since then, several political and economic sectors have articulated against these rights, especially those of a territorial nature. Based on a survey of bills at the Brazilian Congress, I seek to emphasize the active role of the legislative branch in this process. Although not exhaustive, the research found the creation of 81 proposals between 1989 and 2021, being bills that intend to change the regulations on Brazilian indigenous lands. Critical analysis of this set of projects highlighted two main aims: the first, which is economic, is the opening of indigenous lands to private capital, especially agribusiness and the mining sector. The second, which is political, is the expansion of the State’s control over indigenous territories. I conclude by demonstrating how the accumulation of bills and argumentative strategies strengthened this anti-indigenous offensive in recent years. In this regard, the current Bolsonaro administration represents a dramatic moment, because in addition to the commitment of the Executive Power to advance this anti-indigenous agenda, the Federal Congress is the most conservative since the last civil–military dictatorship.
Introduction

As Manuela Carneiro da Cunha points out in the book *História dos Índios no Brasil* [Indigenous Peoples’ History in Brazil] (Cunha, 1992, p. 133) if, in the first three centuries of Brazilian colonization, the legislation surrounding the ‘indigenous issue’ concerned, above all, the regulation of access to the indigenous workforce, from the nineteenth century to the present day, the central matter is, basically, access to their lands and wealth.

Contrary to what common sense supposes, which places colonization as an already concluded historical episode, the gradual economic mobilization of indigenous territories and their wealth is a contemporary phenomenon that some authors conceptualize as ‘internal colonialism’ (González Casanova, 2007). This process, understood from the State perspective as the mobilization of its ‘territorial funds’, is configured as a spatial dynamic inherent to the Nation-State, within what would become known as the ‘colonial path’ of capitalist development (Moraes, 2011).

This process of deterritorialization relies on various strategies from the State, not occurring homogeneously throughout history. Nor is it exempt from conflicts, contradictions and disputes, not only within state powers, but also from their relationship with indigenous peoples, their political agencies and organizational strategies (Oliveira, 2016).

Seeking to understand this process in Brazil, especially in its legal-territorial aspect, I aim here to offer answers to the following research problems: what has been the role of the Brazilian legislative power in the contemporary offensive against the territorial rights of indigenous peoples? What strategies have been used in the projects and what challenges do they pose to indigenous movements and organizations? Can geographic reasoning help us to understand this question, both at a theoretical and political level?

As methodology, I carried out a survey of bills dealing with indigenous lands (ILs) in Brazil, created by the Brazilian legislative power from January 1989 to June 2021 (see Appendix, at the end of the article). The data were obtained from the search engines of the Deputies Chamber (www.camara.leg.br) and the Federal Senate (www.senado.gov.br). The research found 81 bills, which can be accessed through the following link: https://bit.ly/3ytbeC4.

Archived projects were not considered, only those that are active or that have been attached to active projects. Proposals that refer to issues other than indigenous lands were also not considered. Finally, legislative proposals considered ‘positive’ for indigenous lands were not included, both because they constitute an exception to the total universe of projects, and because most of them were shelved. As an example of positive projects found, I can mention initiatives that directly or indirectly support environmental conservation in indigenous lands.

Clarification about the analysis was divided into three parts. In the first part, I seek to provide an overview of the so-called ‘indigenous question’ in the context of the Federal Constitution of 1988. I emphasize the legal advances achieved, as well as the limitations in the realization of these rights. I also present data on the anti-indigenous offensive underway in Brazil, suggesting a geographic logic and historical continuity in such actions, highlighting, however, a dramatic rise in violence in the current government of president Jair Bolsonaro.

In the second part, I begin the analysis of anti-indigenous legislative proposals involving ILs, presenting the data found in the survey, such as types of projects, status, origin, etc. Although the Brazilian State has recognized indigenous peoples as subjects of law, the participation of this portion
of the population in institutional policy is almost null at the federal level. Since 1988, only one indigenous woman – Joênia Batista de Carvalho, from the political party ‘Rede’ in the province of Roraima – has been elected a federal deputy. This is reflected in the projects found. Again, I suggest a geographical logic in the creation of these projects, taking the state of Roraima as an explanatory example.

In the third part, I deepen my analysis using a qualitative approach, where I classify the projects into eight different ‘macro-aims’. I demonstrate that the legislative power plays a central role in the contemporary war against indigenous peoples in Brazil. Two aims stand out in the projects found: the political control of Funai and indigenous lands in general, and the opening of indigenous lands to the exploitation of private capital, especially mining and agribusiness.

I conclude by pointing out the challenges faced by Brazilian indigenous peoples in the current conjuncture. Considering the political alignment between the executive and the legislative branches, in the sense of a pragmatic strategy to advance the anti-indigenous agenda, I point out that indigenous peoples are fighting a war on two different fronts. In their own territories, against multiple illegal or criminal actors, and on the front of institutional politics, against the Brazilian State itself.

The Brazilian State and the indigenous peoples after the Federal Constitution of 1988: a brief background

The Constitution of 1988, conceived after 21 years of civil–military dictatorship in Brazil, represented advancement towards the acknowledgement of indigenous rights by the State. Within the context of the ‘Citizen Constitution’, the country recognized itself as multi-ethnic and multicultural, formally ending the long period of State assimilationist policies (Lima, 1995). At the constitutional level, indigenous peoples are no longer under tutelage and are now legally considered subjects of rights (Article 232), with their own cultures, languages and social organizations.

In general terms, there has been a demographic growth of the indigenous population since then: the 1991 census recorded 294,000 people, while the 2000 census recorded 734,000. According to the latest official data, the indigenous population in Brazil in 2010 was 897,000 people (0.47% of the country’s total population), with 305 different ethnic groups and 274 different languages (IBGE, 2012). This population has also had increasing access to education, strengthening indigenous organizations in the defence of their socio-territorial rights. According to INEP’s Higher Education Census data, in 2019, 56,257 indigenous people had enrolled in higher education institutions, a growth of 675% compared to 2010 when there were 7,256 (INEP, 2020).

Following the theory of the indigenato, the Constitution recognized the original and imprescriptible rights of the indigenous peoples on the lands that they traditionally occupy, admitting therefore that this right is even prior to the creation of the Brazilian State. The legal-territorial concept of the ‘Indigenous Lands’ was then formulated regarding inalienable and unavailable areas that belong to the federal government, but of permanent ownership and exclusive fruition of the indigenous peoples [Article 231] (Amado, 2019). By law, these areas cannot be leased, nor can they be exploited by private mining or agribusiness capital. In the Constitution it was also defined that by the year 1993 all indigenous lands in Brazil would have to be demarcated.

Almost 30 years after this period, the indigenous peoples are living a dramatic moment. About one-third of the territories claimed by indigenous organizations as indigenous territories are not yet demarcated, and none have been sanctioned since the 2016 parliamentary coup (ISA, 2021a). The

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1 As a matter of curiosity, the courses with the highest demand from the indigenous population in 2019 were Law, Pedagogy, Administration, and Nursing (in descending order) (INEP, 2020).
demarcated ILs currently represent 13% of the Brazilian territory, where some 517,000 indigenous people lived in 2010 (57.7% of the total population), according to the last census (IBGE, 2012). Even though indigenous peoples are all over the country, 98% of this area is within Amazon.2

The Brazilian indigenous and environmental policy has been under serious attack over recent years. Thus, anthropologist Manuela Carneiro da Cunha does not exaggerate when saying that there is a ‘war’ against the indigenous peoples in Brazil (Cunha, 2021). The number of assassinated indigenous people, which is perhaps the most evident aspect of this war, has almost doubled since 2003 (Graph 1):


![Bar graph showing the number of indigenous peoples assassinated in Brazil from 2003 to 2019. The number increased by approximately 170% between 2003 and 2019.](chart)

*Graph 1*

The number of indigenous people assassinated in Brazil increased by approximately 170% between 2003 and 2019. The considerable increase from 2014 is due to a change in the source of the data, as they began to be provided by the Special Secretariat for Indigenous Health (SESAI), based on the Access to Information Law (12.527/2011). Graph elaborated by the author based on the ‘Violence against the indigenous peoples in Brazil’ annual reports (CIMI), from 2003 to 2019.

At the core of this war, there is an important element: the indigenous lands. Around this legal territorial figure, tensions, disputes and radically different forms of conception and production of space are mobilized. As Sonia Guajajara, from the Executive Coordination of Brazil (APIB, Brazilian acronym for *Articulação dos Povos Indígenas do Brasil*), points out:

You cannot look at us, indigenous peoples, and think that we have the same understanding of territory as you [non-indigenous person], which in your case is one of exploitation and destruction thinking about profit, and thinking of money. That is not our understanding. For us, our territory is sacred, we need it to exist. You look at an indigenous land and call it an unproductive land. We call it life [...] we defend life, we defend our identity, and we will shed

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2 It is important to emphasize that there is a historic situation of confinement of indigenous people outside the Amazon, with innumerable cases of violence and social misery. According to the Instituto Socioambiental, ‘from a total of 298 Indigenous Lands outside the Legal Amazon, 146 have not yet had their recognition process completed. These lands represent only 1.6% of the total area of Indigenous Lands in Brazil, although they are home to 45% of the indigenous population in Its’. Confer: [https://terrasindigenas.org.br/pt-br/quem-sao](https://terrasindigenas.org.br/pt-br/quem-sao)
even the last drop of blood to defend our territories, to ensure the existence of our peoples (Guajajara, 2019).

On the one hand, the main political demand of the indigenous peoples is the guarantee of their territorial rights as stipulated in the Constitution, there included the autonomy for them to develop their ways of life and relations with the entities in their territories (fauna, flora, supernatural, humankind). Regarding this, the territory is the foundation of these peoples’ existence, it is the space of life and diversity from which all their culture is articulated (Capiberibe & Bonilla, 2015, pp. 294–295).

In opposition to this perspective, there are interests from agribusiness, mining, and the development of megaprojects. Such sectors understand space as any other goods so, for them, indigenous lands are basically areas for the expansion of economic activities. The aforementioned groups’ main political demands are the opening of the ILs to capitalist exploitation and the indigenous peoples’ submission to the market logic.

It is precisely within this geographical, economic and ethnic ‘border zone’ that agrarian conflicts are currently intensifying in Brazil. In these areas, indigenous peoples are portrayed by agribusiness advocates as an impediment to ‘development’ and ‘progress’, with violence being one of the main approaches to economic expansion and modernization of capitalist social relations. In 2019, of the 113 indigenous people murdered in Brazil, 40 were from Mato Grosso do Sul and 26 were from Roraima, states where agribusiness and mining/logging are expanding, respectively (Map 1):
Indigenous peoples assassinated in Brazil (2019).

Map 1

Although no Brazilian president from 1990 to 2018 failed to accept the demands from the agribusiness and mining sectors, no one did so with such support and enthusiasm as Jair Bolsonaro. Known for his racist and authoritarian positioning, Bolsonaro extended political control over the National Indian Foundation (FUNAI, Brazilian acronym for Fundação Nacional do Índio) early in his term, in 2019. This meant the weakening of the technical staff and the appointment of anti-indigenous allies in management positions. The indigenous agency is responsible for land demarcation and guaranteeing indigenous rights. Currently chaired by the Federal Police chief Marcelo Augusto Xavier de Souza, FUNAI has become an extension of the Ministry of Agriculture, firmly controlled by the ruralist caucus.

The ruralist caucus, as the ‘Parliamentary Front of Agriculture’ (PFA) has become known as, is a thematic and non-partisan group that represents and defends the interests of agribusiness and, in general, major landowners. At present, the ruralist caucus is one of the most influential in Congress, and in the current Parliament (2018–2022) constitutes 195 Representatives (38% of the total) and
32 Senators (28% of the total).

Bolsonaro has declared at several interviews and public speeches that ‘there will not be a centimetre more for the indigenous lands’, thus being the first president of Brazilian history to openly defend actions against these peoples (Neto, 2019). He supported illegal mining activities and illegal logging in the ILs (amidst the COVID-19 pandemic) (Schreiber, 2020), criminalized indigenous organizations (Amado & Vieira, 2021), persecuted leaderships of the indigenous movements (Galvani, 2021), facilitated for farmers the license to carry firearms (Deutsche Welle, 2019), and even nominated a former evangelic missionary to command FUNAI’s General Coordinating Body of Indigenous Communities in Isolation and Initial Contact (Jucá, 2020).

Added to this, there are Bolsonaro’s disastrous denialist policies regarding the COVID-19 pandemic, including spreading false information and distributing medicines without scientifically proven efficacy to indigenous peoples. The federal government has also tried to prevent differential medical care in indigenous lands, notwithstanding the immunological fragility of this population to a virus like COVID-19. (Pires, 2020; Vasconcelos & Alkmin, 2021). At the end of 2020, the indigenous Raoni Metuktire and Almir Suruí denounced Bolsonaro to the International Criminal Court, with headquarters in The Hague (The Netherlands), for crimes against humanity (Oliveira, 2021). This accusation was also made by the APIB in August 2021.

This policy increased the environmental destruction and agrarian conflicts in Brazil. In 2020, the Documentation Centre of the Pastoral Land Commission (CPT, acronym for Comissão Pastoral da Terra) reported 178 events of trespassing on indigenous territories, affecting 55,821 families. To get an idea of the increase in this phenomenon, in 2019 the CPT had registered nine occurrences of trespassing, involving 39,697 families. Therefore, the increase in the number of occurrences from 2019 to 2020, the year of the pandemic, was over 1,800% (CPT, 2020). In turn, Legal Amazon recorded 8,381 km² of deforestation between August 2020 and June 2021, the biggest devastation for the period in ten years, according to the Institute of People and the Environment of the Amazon (Imazon, acronym for Instituto do Homem e Meio Ambiente da Amazônia) (Imazon, 2021).

**The Legislative Branch’s proposals involving indigenous lands in Brazil**

Despite this recent upsurge in violence against indigenous peoples, the political offensive against these groups of the population has structural roots within the logic of the Brazilian State. Certain political and economic sectors began to articulate themselves in the following year of the Federal Constitution, seeking to extend political and economic control over indigenous lands supported by the Legislative Branch.

At the federal level, the Brazilian legislative power is practised by the National Congress, hence composed of two houses: the Federal Senate and the Chamber of Deputies. Senators and Federal Deputies are elected by direct and secret vote. It is up to them, among other tasks, to propose, analyse, discuss, vote and approve the laws that rule the daily life of all Brazilians. The Chamber of Deputies is composed of representatives of the population, and the Senate of representatives of the provinces and the federal district.

The survey presented here comprehends distinct types of bills before the Legislative Branch, whose intents aim at, somehow, to attack indigenous territorial rights. The spreadsheet is unrestricted access ([https://bit.ly/3ytbeC4](https://bit.ly/3ytbeC4)), and the empirical pieces of evidence that sustain the arguments here presented can be consulted and confronted on that basis. Although our search does not possess an exhaustive character, the research found the existence of 81 proposals within this premise, created...
between January 1989 and June of 2021 (please see the appendix graph at the end of the article). Of these 81 projects, 19 are still pending their approval in Congress (having the remaining 62 been appended to these). It is through the following propositions that the anti-indigenous agenda currently advances in the Legislative Branch:

Anti-indigenous pending bills currently in progress in the Brazilian Legislative Branch

<table>
<thead>
<tr>
<th>Proposal/Year (link)</th>
<th>Party</th>
<th>Province</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill 4881/1990</td>
<td>Multiparty</td>
<td>-</td>
</tr>
<tr>
<td>Bill 2057/1991</td>
<td>Multiparty</td>
<td>-</td>
</tr>
<tr>
<td>Bill 1610/1996</td>
<td>PFL</td>
<td>Roraima</td>
</tr>
<tr>
<td><strong>Bill of Legislative Decree 381/1999</strong></td>
<td>PTB – <em>Partido Trabalhista Brasileiro</em> – Brazilian Labour Party.</td>
<td>Paraná</td>
</tr>
<tr>
<td>Bill of Legislative Decree 2540/2006</td>
<td>PTB</td>
<td>Roraima</td>
</tr>
<tr>
<td>Constitutional Amendment Bill 45/2013</td>
<td>PSD – <em>Partido Social Democrático</em> – Social Democratic Party</td>
<td>Tocantins</td>
</tr>
<tr>
<td><strong>Bill of the Senate 349/2013</strong></td>
<td>PSD</td>
<td>Tocantins</td>
</tr>
<tr>
<td>Bill 2395/2015</td>
<td>PSB – <em>Partido Socialista Brasileiro</em> – Brazilian Socialist Party.</td>
<td>Tocantins</td>
</tr>
<tr>
<td>Constitutional Amendment Bill 187/2016</td>
<td>PSB</td>
<td>Tocantins</td>
</tr>
<tr>
<td><strong>Bill 9051/2017</strong></td>
<td>PP – <em>Progressistas</em> – Progressives.</td>
<td>Rio Grande do Sul</td>
</tr>
<tr>
<td><strong>Bill 191/2020</strong></td>
<td>Executive Branch</td>
<td>-</td>
</tr>
<tr>
<td><strong>Bill 2633/2020</strong></td>
<td><em>Solidariedade</em> – Solidarity.</td>
<td>Minas Gerais</td>
</tr>
<tr>
<td><strong>Bill of Legislative Decree 177/2021</strong></td>
<td>PMDB</td>
<td>Rio Grande do Sul</td>
</tr>
</tbody>
</table>

Table 1
Elaborated by the author using data from the Chamber of Deputies (www.camara.leg.br) and the...
Among the 81 projects found, the predominant share was created by the Chamber of Deputies (85%), being followed by the Federal Senate (11%), and the Executive Branch (4%). Regarding the types of projects, the following panorama was discovered: Bills (66.7%); Proposals of Constitutional Amendment Bills (23.5%); Bills of Legislative Decree (4.9%); Bills of Supplementary Law (3.7%); and Senate Bills (1.2%) (Map 2):

Bills aiming to flexibilize the indigenous territorial rights (Legislative Branch, 1989–2021)

Map 2
Location and number of projects that aim to flexibilize indigenous territorial rights, the interval between 1989 and 2021. Map elaborated by the author using data from the Chamber of Deputies (www.camara.leg.br) and the Federal Senate websites (www.senado.gov.br).

Since the bills represent political engagements at a local/regional level, there is a strong correlation between their economic purposes and their geographical origin. As shown above, the provinces that created more anti-indigenous projects between 1989 and 2021 were Roraima (12), Santa Catarina (9) and Mato Grosso (9), whose economies are strongly tied to agribusiness and/or mining. The analysis found that the projects have different strategies or approaches. For example, one side advocates that the Brazilian Congress should first approve these activities; in contrast, another side eliminates this necessity, allowing private capital agreements directly with the groups. In the same vein, one party defends the impacted indigenous communities to be heard (not just consulted). At the same time, there are those that do not mention this need.
Of all the projects, at least 11 Brazilian provinces sought to regulate, parting from the Federal Legislative Branch, mining or hydroelectric exploitation in ILs. Among these, Roraima stands out, with seven projects in total. In addition to having a solid anti-indigenous parliamentary base, Roraima is currently one of the most violent provinces against these peoples.

As seen in Map 1, this province has the second-highest rate of indigenous assassinations in Brazil, in addition to several cases of territorial invasion by non-indigenous people. Roraima, in the northern part of the Brazilian Amazon, is abundant in gold, diamonds and other minerals and has about 46% of its area demarcated as indigenous land (ISA, 2021b). It is estimated that there are currently more than 20,000 gold miners illegally in Yanomami IL (Valente, 2019) and another 4,000 in Raposa Serra do Sol IL, both located in this province (Vidon, 2021).

Seeking to understand the huge effort of deputies and senators of this province in the opening of indigenous lands to mining, I drew a map with the ‘mining processes’ registered there (Map 3):

**Mining processes in Roraima, Brazil (June 2021)**

*In the map above, the areas in red represent the mining processes registered in Roraima up to June 2021, while the areas in green represent the indigenous lands. The overlapping polygons demonstrate the previous positioning of the mining capital aiming to regulate, by legislation, the mining in the ILs. The information is official, provided by the Geographic Information System on Mining (SIGMINE) [https://bit.ly/3ranSor]. Map elaborated by the author.*

A mining process is a polygon that defines the area where a person or company has priority and exclusive right to commercialize the mineral substances of an economic value mapped within these limits. Each mining process receives a unique identifier number when registered with the National Mining Agency (ANM, Brazilian acronym for Agência Nacional de Mineração), becoming an administrative process of this body, therefore mappable and quantifiable. While not necessarily meaning
authorization for mining, this record allows us to understand the economic and political interests related to mining in specific regions.

The spatial extension of the mining processes, with large areas overlapping demarcated indigenous lands, provides us with an idea of the dimension of mining companies lobbying within the Congress. The progressive rise in the price of gold and other minerals, at least since the 2008 crisis, has further increased the pressure for mining exploitation in ILs.

An anti-indigenous Legislative Branch: Control and economic exploitation as central intentions of the Brazilian State

Intending to identify common logic between the 81 projects, I have conducted a qualitative interpretation of their interests, which allowed me to organize them into eight 'macro-aims'. This has made it possible to visualize the main interests involved and each of their weights in the sum of the projects found (Graph 2):

Anti-indigenous projects organized by macro-aims

The graph shows that 37% of the projects have as their primary aim the opening of indigenous lands to the mining and/or exploitation of water resources, which include the hydroelectric potential. This category possesses the highest number of projects created so far – precisely, 30 –, many of them from 1989, the year that followed the constitutional convention, which demonstrates the tremendous long-standing interest of mining and energy capitals in the exploitation of indigenous lands.

In second place, totalling 28.4%, 23 proposals aim to undermine the power of FUNAI to favour non-indigenous in incidents of agrarian conflicts. The criticisms revolve around the legitimacy of the work conducted by the agency, which violates the right to private property according to the proponents.
In general, the projects aim to make the demarcation process more complex, establishing conditions and demanding the need for compensation for the non-indigenous, in case they have parcels within the area demarcated as IL. Currently, the compensation is restricted only to improvements and not to the land itself, given the original right of indigenous peoples over them. Due to the generalized process of invasions and land grabbing (illegal occupation of land employing forged deeds) of ILs, this would put in practice a great budgetary impediment for new demarcations.

It is worth mentioning that projects in this category began to be created in the mid-2000s by the ruralist caucus. At that time, in Roraima, indigenous people from the ethnicities Wapichana, Patamona, Makuxi, Taurepang, and Ingarikó claimed the approval of the Raposa Serra do Sol IL, then trespassed by rice farmers. This happened in 2005, during the term of President Luís Inácio Lula da Silva, and it engendered strong opposition from the state government and the military forces, who had taken a stand against the indigenous people.

The conflicts continued until 2008 when the federal police forced non-indigenous people to evict the area, which in law is called ‘disintrusão’ [desintrusão], being the act or effect of removing from property someone who has taken possession of it illegally or without the owner’s authorization. Despite all the criticisms, the demarcation followed the legal requirements established by the Constitution, having no problem or defect that would relieve the process. Agribusiness sectors then began to articulate at the national level so that this would not be repeated in other areas of the country, with these legislative proposals being a result of this reaction. It is important to take into account that the Brazilian Supreme Court created a list of 19 ‘conditions’ for the demarcation of this IL, which was a trap to make all other indigenous territories juridically insecure.3

In third place, bringing together 21% of the surveyed projects, some seek to transfer the responsibility of demarcation of indigenous lands from the Ministry of Justice (FUNAI) to the Federal Congress. In other words, the criterion would no longer be technical/scientific, but political. The 17 proposals in this macro-aim, as in the previous category, involved emptying FUNAI’s attributions and turning the Congress into a kind of ‘moderating power’ on the matter and having the final decision over new demarcations, or even the ratification of demarcations already made. Given the mostly anti-indigenous composition of the Congress, this would mean a disaster for these peoples’ territorial rights.

In fourth place, with 6% of the total, five proposals seek to regulate the opening of indigenous lands to agribusiness and forest exploitation. Impelled by the ruralist caucus, these projects were created in 2016, aiming to facilitate the exploitation of ILs via contracts signed directly with the indigenous communities. Some projects even mention the permission to use genetically modified organisms (GMOs) in these crops, although this type of cultivation is currently prohibited in Brazilian indigenous lands.

The other macro-aims have a small volume of projects but are still very dangerous. They were conceived after the 2016 parliamentary coup and take advantage of the situation to promote the anti-indigenous agenda. Like the other projects, they pursue two main purposes: to regulate the exploitation of ILs by the capital and expand the State’s power over indigenous peoples and their territories.

Let us look at examples. Two propositions – Bill 9051/2017 and Bill 5531/2019 – attempt to ensure the validity of non-indigenous possessory titles throughout the demarcation process, which

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3 For more information on these conditions, see: ‘Raposa Serra do Sol: STF imposes 19 conditions for demarcation of indigenous land’. Available at: [https://bit.ly/3HpFVRZ](https://bit.ly/3HpFVRZ)
in most cases lasts for decades. The main argument is that while there is no ratification of IL, the areas should be considered private property. Thus, they must be able to be traded, economically exploited, and even receive government credit for it.

Two other projects – **Bill 10631/2018** and **Bill 334/2019** – seek to expand State control over the civil registration of indigenous people. The justification would be the alleged practice of duplication of civil registrations or the lack of State registration of the indigenous people’s birthplaces. The idea behind the project is to prevent the mobility of indigenous groups between their territories.

In turn, the **Bill of Legislative Decree 177/2021** aims at denouncing the Convention 169 (C169) of the International Labour Organization (ILO). As is well known, Brazil ratified this document in 2002 and it is considered, at a global level, a fundamental text concerning the rights of indigenous and tribal peoples. Currently, the C169 has been one of the primary mechanisms for defending territorial rights by indigenous peoples, as it allows access to international law.

Finally, there is **Bill 191/2020**, urgently sent to the Chamber of Deputies by Brazilian President, Jair Bolsonaro. The idea of the project is to compile a large part of the previous macro-aims as a pragmatic way of facilitating their approval by the Brazilian Congress. In addition to mining and hydroelectric exploitation, the proposal provides the possibility of exploring oil and gas, logging, mining, and the opening of these lands to agribusiness. The project also allows enterprises to be conducted without the consent of indigenous communities, which is contrary to the aforementioned Convention 169 of the ILO (Angelo, 2021).

Taking these ‘macro-aims’ as an analysis element, I sought to categorize the anti-indigenous bills based on the geographical location, even though it is the deputies and not the provinces who propose the laws. However, as seen earlier, this allows us to understand the correlation between the projects’ aims and the economic interests of the provinces where they were presented (Graph 3):

![Macro-aims of the projects concerning the proposing Brazilian provinces (2021)](image-url)
The legislature and the anti-indigenous offensive in Brazil: An analysis of the proposals in the Brazilian Congress concerning Indigenous lands (1989-2021)

The darker the tone/ the larger the area, the more projects were created. For example: In ‘macro-aim B’, Roraima (largest area/darkest tone) has the largest number of projects, followed by São Paulo and then Rondônia. Graph elaborated by the author using data from the Chamber of Deputies (www.camara.leg.br) and the Federal Senate websites (www.senado.gov.br).

The graph above shows that provinces with a solid presence of agribusiness consequently tend to create projects that profit this sector, as in the case of the states of Mato Grosso, Santa Catarina and Rio Grande do Sul. Likewise, provinces with elevated mining or hydroelectric potential tend to act to open up ILs to mining or the construction of dams.

As done with geographical space, I have also classified the ‘macro-aims’ of anti-indigenous projects over time, by year of creation. The aim here was to understand the existence (or not) of patterns by historical periods (Graph 4):

**Macro-aims per year of project creation (1989-2021)**

As can be seen, almost every year since 1999 some type of bill has been created to flexibilize indigenous land rights. However, within this period, four moments stand out from the others regarding the number of proposals: 1989, 2007, 2015, and 2020. It is important to remember that these bills have been added to one another, leading to the 19 currently being processed, which, somehow, sum up the 32 years of anti-indigenous attacks by the National Congress.

The year 1989 stands out for the considerable number of projects (seven, in total) aimed at regulating mining and hydroelectric exploitation in ILs. It is evident that immediately after the constitutional convention, the regulation of mining exploitation was one of the main aims of the Legislative Branch towards ILs.

As of 2004, the anti-indigenous agenda expanded again, reaching its peak in 2007, with seven proj-
In addition to mining, the intentions turned to the demands of agribusiness. That year, seven projects were created to undermine FUNAI’s power, favor non-indigenous people in territorial conflicts, increase the Federal Congress’s authority over demarcations and stipulate mandatory compensation in case non-indigenous people were removed from the area. At the time, Congress tried to shield Brazilian agribusiness, given the unfolding of the case of Raposa Serra do Sol IL.

Later, in 2015, on the eve of the parliamentary coup, there was another peak, with seven proposals. As in previous years, the agenda sought to favor mining and agribusiness activities. However, a new strategy was conceived during this period: in addition to the usual attacks against FUNAI, as seen in previous years, agribusiness and the forestry sector also began to seek a strategic approach with some indigenous peoples (macro-aim ‘C’).

The purpose was to regulate ‘partnerships’ between these sectors and the peoples so that forestry and agribusiness would supposedly be carried out by the indigenous people themselves within the ILs. It is from the same period that the concept of ‘autonomy’ was appropriated by Brazilian agribusiness, which started to use this old struggle flag as a legal justification for such projects. The argument, also used subsequently (as in Bill 1443/2021), claims that the State must recognize and respect the autonomy of the indigenous peoples over their territories, including the opening of ILs to agribusiness and forest exploitation.

In 2020, amid the pandemic, there was a new moment of escalation of the anti-indigenous agenda. Roughly speaking, the projects are similar to those from previous years. The exception for this year was the aforementioned Bill 191/2020, created emergently by the Executive Branch, namely Jair Bolsonaro. The project aims at compiling demands from different economic sectors into a single proposal to facilitate their approval, taking advantage of the political and economic scenario. In addition to mining and hydroelectric exploitation, the proposal grants the possibility of oil and gas exploration, as well as to logging and mining activities, and the opening of these lands to agribusiness, all with no demand for approval from the indigenous communities affected by it.

**Conclusion**

Although the 1988 Constitution brought significant advances concerning indigenous land rights, the fact is that these rights were not fully implemented for these peoples. It is not by chance that the main struggle of Brazilian indigenous movements today is, precisely, compliance with what is determined by the Federal Constitution.

As I have tried to demonstrate throughout the article, since the year that followed the Constitution, part of the Legislative Branch, through several strategies and an increasing number of projects, has aimed at the flexibilization of indigenous territorial rights (see Appendix). In documental research on the websites of the Brazilian Federal Congress, I found 81 bills, created between January 1989 and June 2021, with this aim.

Of this set, 19 are currently in progress (24% of the total), with the remaining 62 being attached to these, that is, linked to active proposals. This survey has unrestricted access and can be accessed through the following link: [https://bit.ly/3ytbeC4](https://bit.ly/3ytbeC4).

A first approach allowed me to verify that there is a strong correlation between economic purposes and the geographical origin of the bills. A good example is the province of Roraima, located in the northern Brazilian Amazon, abundant in gold, diamonds and other minerals. There, a solid anti-in-
The legislature and the anti-indigenous offensive in Brazil: An analysis of the proposals in the Brazilian Congress concerning Indigenous lands (1989-2021)

The indigenous parliamentary base has sought to liberate mining on indigenous lands since 1989, with seven different bills. Even if the data cannot prove it, this indicates a strong lobby of private capital within the federal legislative power.

Subsequently, I performed a qualitative analysis, categorizing the projects based on eight 'macro-aims'. Overall, the projects analysed have two main aims. The first, economic, is the opening of indigenous lands to private capital, with the consequent subordination of the indigenous population to capitalist relations of production. The second, political, is the expansion of the State’s authority and control over indigenous peoples and their territories.

At the private level, the main economic sectors interested in this opening are agribusiness, mining companies and forestry companies. Their intention is to expand their activities into the interior of indigenous lands, which is currently illegal.

At the federal state level, part of the Brazilian Congress has been attempting to supplant FUNAI’s power, not only demanding the last word on new demarcations but also detaining control over indigenous lands previously demarcated, submitting them to 'national interests'. Thus, they are aiming for a free endorsement for interventions within ILs, such as the construction of hydroelectric plants, the flooding of territories, the implementation of power transmission systems, the exploration of oil and gas, railway construction, highways, ports, or any other project considered as 'strategic' to the country.

As I tried to indicate, this anti-indigenous agenda has been magnified in recent years, both in the number of projects (that have been accumulating since 1989) and in legal strategies for the achievement of its intentions. The present scenario of Jair Bolsonaro’s government represents a dramatic moment for the indigenous peoples in Brazil since, in addition to the commitment of the Executive Power to advance this anti-indigenous agenda, the Federal Congress is the most conservative since the last civil–military dictatorship (Queiroz, 2018).

In this context, the severe health crisis caused by the COVID-19 pandemic has been used by the Brazilian government as a ‘window of opportunity’ for the advancement of such proposals. In turn, the indigenous peoples continue their long war of resistance: on the territorial front, against multiple illegal actors or criminals, and on the political-institutional front, against the Brazilian State.

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References


Appendix Graph: Legislative projects for the flexibilization of indigenous territorial rights

Graph made by Frederico Castro Nunes, based on data survey carried out by the author. Source: Chamber of Deputies and Senate websites (www.senado.gov.br), in July 2021. To access this graph digitally, click on: [Link]
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Abstract:
The aim of this text is to present and analyse political–legislative actions of both the legislative and executive branches of government in the proposal of bills which signify retrogressions on the rights of rural men and women and on nature preservation, actions that have prompted us to propose the notion of ‘assault against the rural people’. We focus on the period 2016–2020, the period surrounding the coup d’etat in Brazil, the 2018 election and the first year of an extreme right-wing government rallied around Jair Bolsonaro. The survey results show that the proposal of new bills of law in Brazil constitutes a type of violence which tends to legitimate environmental and social crime.
Introduction

‘Laws are like sausage; it is better not to know how they are made’ (Otto Von Bismarck).
‘Taking advantage of the fact that the press only talks about Covid and go on passing the cattle by changing all the rules and simplifying standards’. (Ricardo Salles, former Minister of the Environment in Mr Bolsonaro’s government).

A major social achievement reached after World War II was the proposal, enforcement and implementation of laws that guaranteed effective rights for the working class as well as the protection of nature and conservation. In different countries around the world – some further advanced than others – a set of rules and legal bases were created which restrict exploitation levels and guarantee workers’ rights and place limits on the use and exploitation of natural assets. These laws did not fall from heaven but resulted from societal conquests by civil organisations and social movements which have urged states to adopt legal ordinances in defence of democracy and civility, above all by means of constitutional texts. In Brazil, the Constitution of 1988 – currently in force – bears the name of Constituição Cidadã (Citizens’ Constitution) because it marked the regaining of fundamental rights after the Military Dictatorship (1964–1985).

The issue at stake in the current global context is that both social rights and environmental protection legislation are under attack, leading to the regression of the conquests or the erosion of the existing rights. This contradictory historic period of regression and backlash can be primarily explained by the crisis of capitalist production systems (such as the 2008 global financial crisis). Among other co-existing strategies, one of the ways to overcome such crises is through changes or the destruction of legislation that reduces if not eliminates working-class rights and paves the way to the exploitation of natural assets, ideally free of barriers and limits. The exploitation of labour and nature, previously swept away and even criminalised in legal norms and standards, is now being allowed and even ‘guaranteed’ under some laws. This amounts to the saying that crime is now protected by law.

While being virtually a worldwide conjuncture, this is nevertheless a more explicit and violent process in certain countries. Brazil, in particular, currently appears to be an important laboratory for such legislative setbacks. We focus on Brazil and base this article on data and insights on legislative attacks involving rural and natural areas. We take dialectics as our method of analysis; to be more precise, Historical and Dialectical Materialism as an intellectual pathway that helps us to understand contradictions expressed in the process of transforming crime into law, that is, to build a legal apparatus to ensure the undertaking of crimes against society and nature. From a data collection point of view, we have sought to follow the attitude of the federal legislative and executive branches in the proposal of laws. We have monitored the daily reports of the Brazilian parliament published on the Chamber and the Senate websites in the period between 2015 and 2021.

The article is divided into four parts. First, there will be a brief discussion about the notion of legislative attacks and the way that these relate to the concept of violence and, eventually, crime. Sec-

1 The translation of this article had a contribution from the Federal University of Paraiba’s Research Support Programme, through the Internal Funding Research Productivity nº 03/2020 –PROPESQ/PRPG/UFPB.

2 For over 30 years now, the Pastoral Land Commission (CPT) has registered and systematised the data on violence against men and women in the rural areas of Brazil. This is a concern of various types of action which materialise, by and large, in physical forms of violence against farmers, Quilombola and indigenous communities, leaders, activists of social movements, environmentalists, etc. CPT’s systematic data analysis has since 1985 shown the act of physical violence – or of the threat of it – to be constant, and it serves as a mediator between agribusiness capital advance in rural areas and the people who live there. In this way,
The contemporary legislative history of Brazil shows a series of parliamentary actions which we shall interpret based on the concept of attacks on rural people (Mitidiero Jr., 2016), thereby acknowledging them as a form of violence that may be thought of as legislative, institutional or political violence. The notion of ‘attack’ as widely covered in the critical literature on the current Brazilian scenario aims to objectively qualify the orchestrated actions that are designed to destroy the conquests of social movements over the last 50 years, among them the rights and guarantees for the working class and Brazilian law.

Legislative attacks as political–legal violence

Capitalism’s most aggressive and perverse forms have been shaping the course of recent history. A look at what has been happening around the world from a social, political and economic point of view reveals that exceptions in civilisation’s advance are rare. Generally speaking, we have been witnessing an intensification of exploitation and expropriation both in the social capital–labour relationship and in the society–nature relationship. Surely the so-called ‘labour reforms’ and the ongoing economic measures of ‘austerity’ and ‘fiscal adjustment’ in different countries around the world has dilapidated both workers’ rights and social security as well as forms of management of natural wealth. It is not hard, for instance, to witness new ways of exploitation of labour that reactivate colonial slavery or to witness the devastation of natural environments that were once protected.

Since the economic meltdown of 2008, the term legal certainty has increasingly filled the news and economic analysis (that expression has turned into a mantra, particularly in economic journalism). The concept suggests that investors require legal certainty for their capital. To put it in another way, capitalists need laws to protect their investments in the ‘free market’. On the one hand, this need leads to the creation of laws that favour capital above all else, and, on the other hand, it leads to the destruction of laws that somehow hinder augmented production and reproduction of capital that is – already or still to be – invested. Legal certainty thus refers to initiatives and strategies taken by economic sectors that wield notable political strength in parliament and can influence and determine the position of the federal legislative and executive branches in proposing and adopting a legal framework – laws, decrees, provisional measures – in their interest and for their own benefit or the relaxation and abolition of already existing laws that disrupt the economic dynamics of their enterprises. Within the Brazilian agrarian issue, the legal certainty of agribusiness capital bluntly stands for the social insecurity of rural peoples (Mitidiero Jr. et al., 2019). In monitoring this legislative machinery, we have found that the protection of nature and conservation is a victim of the same process because building legal certainty for agribusiness capital, which targets the people of the countryside, is a Siamese sister of the legislative proposals aimed at undermining and destroying nature protection laws.

violence against individuals is an outdated and up-to-date strategy of the landowners to protect and ensure a regardful ‘unshakable’ private land tenure, amongst other things. Nevertheless, at the present juncture, we are facing the organisation of new strategies – without abandoning the former ones – which may be violent actions that harm a whole community of rural men and women. The assault on the rights of rural workers does not directly take place against an individual but against all of them, and that is what we will call legislative violence.
For example, the attack on rural people occurs simultaneously with attacks on nature. Such attacks take back forms of primitive accumulation of capital and demand from our social thinkers the production of concepts which express the violent and criminal nature of this process. Science and social movements have been trying to explain the present and future of societies and territories. Very strong concepts are being used in the literature to understand and to define this juncture. We shall briefly highlight two concepts that provide a lens from which to understand the behaviour of the Brazilian executive and legislative branches and the drafting of laws, namely the concepts of necropolitics and terricide.

Mbembe (2011) outlined the meaning of sovereignty as the thing that defines the life or death of its people as ‘necropolitics’; that is, the concept creates the ‘hypothesis that the ultimate embodiment of sovereignty lies broadly in the power and in the ability to decide who may and may not live. To make die or to let live...’ Although Mbembe is musing on Africa and its own particularities, it is not difficult to project the concept to the entire capitalist world, dominated by a neo-liberal ideology hostile to the poor and, in Brazil’s case, with recent political history in the grip of an unprecedented social and environmental crisis. A range of social rights are now being written off, making the strategies and forms of social reproduction of the working class rather difficult. No wonder the social movements and trade unions have changed the motto of ‘fight for the land’ and ‘battle for rights’ to ‘fight for life’.

Quite related to this concept, the Mapuche natives (Argentina and Chile) have been elaborating through the voice of one of their leaders, Moira Millan (2019), the concept of ‘terricide’, understood as criminal acts and genocide against different levels of existence and life undertaken by nation-states and by business corporations. Terricide is the social and territorial expression of a predatory extractivist economic model, of looting, contamination and desecration of spaces where people develop their livelihoods and culture.

Employing the concepts of necropolitics and terricide to the universal reality of capitalism’s crisis and especially to a local/regional reality involving the current Brazilian political and economic situation is a reflection of the attempt to better understand and make sense of the tragedies of today.

Agrarian elites and their role in Brazil’s parliament

Producing legal certainty for capitalist investors mainly takes place in the proposal of laws within both legislative houses forming the Brazilian Congress/Parliament: The House of Representatives and Federal Senate. Since the last two Brazilian presidential elections were marked by a coup in 2016 and by the election of an extreme-right government with fascistic traits in 2018, the parliament’s actions are being marked by incalculable legislative rollbacks which constitute violence against the majority of the population and their land.

During the 2014 elections forming the 55th Legislature (2015‒2019), a more conservative Congress was sworn in than since the Military Dictatorship period (1964‒1985), and it was indeed during that legislative period that an anti-democratic coup d’état took place, ousting President Dilma Rousseff from public office. As for the 2018 election, the formation of the Senate and the House of Deputies for the 56th Legislature (2019‒2023) meant the arrival of the far-right represented by Jair Bolsonaro to the Executive Power, which culminated in the election of the most conservative...
Congress in national history. The deputies and senators linked to ruralist (agribusiness) political parties that are directly engaged with the Brazilian agrarian question have acquired great political power in huge numbers with authority to smoothly propose and approve legislative bills in favour of their own interests. As a result of this historic moment, a conservative and reactionary agenda is being built in Congress that over the last two parliamentary terms has developed actions ranging from the acceptance of a crime-free impeachment request to the relaxations and fragilisation of labour laws; and from proposals of decriminalisation of slave labour to the legalisation of land grabbing (robbery) from public land.

These are the strivings pursued by the agrarian elites, represented in the parliament by the Parliamentary Agribusiness Front (FPA), popularly known as ‘the Ruralist Bench’. Such an agenda is established in the legislative sphere by a set of proposals for laws and standardisations in favour of agribusiness and usually against rural inhabitants and nature. What we see today in Brazil is the architected and planning of a legal toolbox that makes Brazilian democracy more vulnerable. One of its dimensions results in the assurance of legal certainty to capital investment in farming industry, meaning almost straightforwardly legal uncertainty for rural communities and nature.

The Brazilian Chamber of Deputies is composed of 513 Members and the Senate has 81 Senators. The Ruralist Bench in the ongoing Legislature (2019–2022), is made up of 243 MPs and 39 Senators, equivalent to 47.4% of the parliament protecting the immediate interests of big landowners and large agri-food businesses in a country that has an urban population which is 85% of the total population and a rural population of only 15%. In sum, in a predominantly urban country, the bulk of representation in Congress is rural. There are 282 MPs and a battalion of deputies and senators advocating for the same old rural oligarchy disguised as high-tech agribusiness, a real army of ties!4

4 Out of the total number of members of the Rural Parliament, 251 (89%) are men and 31 (11%) are women. A noteworthy fact is that Congresswoman Tereza Cristina, a loyal representative of the Rural Caucus, is licenced because she is the current Minister for Agriculture and Livestock, that is, she has the power to determine the public policies and the future of the country’s agricultural sector umbilically linked to the future of nature conservation and protection.
When crime becomes law: Legislative attacks on rural people's rights and on nature in Brazil

Chart 1
Origins of deputies and senators per Brazilian federation states in the last three legislatures.

The maps depict the spatialisation of ruralists’ representation in the parliament with its roots and presence in all Brazilian states. The greatest number of Rural Caucus members are originally from the South-Central region of Brazil, especially in the states dominated by a large-scale monoculture of commodities for export, as in Mato Grosso (MT) and Mato Grosso do Sul (MS). This is a political force capable of determining new laws, smashing or downgrading legal norms that are of no concern to them and directing public policies in their favour; a force able to pick up the slack of the Brazilian State. Not surprisingly, in the previous Legislature (2015–2018) – tainted by a coup d’état as opposed to a centre-left government – 50% of the votes to dismiss the president Dilma Rousseff presidency of the republic in a fraudulent impeachment process came from the Rural Caucuses. Hence, the coup d’état might be called agrocoup (Castilho, 2018).
The Rural Party in the current legislature denotes the main parliamentary support base of Jair Bolsonaro’s government. The President himself has publicly declared to the ruralists, ‘this government is yours’5. Thus, in this recent Brazilian history, the legislative and executive branches (presidency and the ministries) are the leading players in the worst attack on social rights and the legal principles of nature conservation6.

There are now 400 bills of law in the course of the Brazilian Congress that constitute attacks on human rights. Two elements are important to consider. First, there are laws proposed since the 1980s and 1990s that are being discussed in the Parliament at the moment. This is due to a revival of long-standing propositions of interest to the Rural Caucus today. That is to say, old proposals which were filed away and even forgotten have been unsealed in the current legislature7. Second, as is clearly shown in Graph 1, the intensification of legislative attacks within the 2016 coup d’état and the election of Mr Bolsonaro’s government in 2018 is rather evident. Once the organisation of this coup began in 2015 lasting up to 2020 – the second year of Bolsonaro’s government – law projects that signify attacks and regresses have been proposed and voted on.

6 In Brazil’s Constitution, laws can be proposed by the legislature, by the executive power and on popular initiative. Laws by popular initiative requiring congressional approval are a rarity in the history of the country.
7 Draft Law 3729/2004 aimed at modifying environmental licencing rules is an example of such a proposition. It was unsealed in 2007, 2011, 2015 and 2019 at the request of ruralists. Today it remains at an advanced stage, as one of the biggest legislative attacks on the socioenvironmental rights of rural peoples.
By ranking the list of ruralists’ priorities, it can be observed that the agribusiness battle is establishing legal certainty to a range of capital investments (there are 84 draft laws in progress). Attacks on Indigenous and Quilombola lands come second, with 76 draft bills. They bills aim, on the one hand, to create laws to limit and prohibit land decrees and concessions towards Indigenous and Quilombola populations, and, on the other hand, to cut down on the amount of land already granted, engaging part of the Indigenous lands in agribusiness production. The same logic applies to the proposals of laws which have as a theme the protected natural areas and Legal Amazon, with 59 submissions. The main intention of The Rural Caucus is to economically exploit the preservation areas and to limit and reduce their size. The issue of agrarian reform is heavily attacked in parliament (37 submissions). The goal is to destroy any possibility of either realisation or effectiveness of a fairer and more equitable redistribution of land, thereby ensuring a massive land concentration that characterises the formation of Brazil’s territory. The environmental licencing issue is the most effective attack on nature protection in Brazil, with 27 law proposals. The motive behind these proposals, currently advanced in Congress, is to try to exclude the need for a study of environmental impacts in every business and infrastructural project. The mining issue is also ever more present in parliament. The aim here is to enact laws that enable mining everywhere at any cost. Aggregating the proposals for amendments to the mining laws and the bills to expand Indigenous land for that economic activity shows that there are a total of 51 draft laws. The legal proposals also direct their forces to create laws to ensure sales and pesticide application without any sanitary barriers. Twen-
ty-two proposals aim to make the sale and use of agrochemicals in the country even easier, despite the fact that Brazil is already the largest consumer of such chemical inputs worldwide. The proposals concerning social movements (12 proposed laws) which are primarily aimed at the social organisations engaged in land reform causes have the stated objective of criminalising their social fights. There are proposals which even suggest the notion that social activism is equal to terrorism. The remaining themes shown in the chart pursue the same objectives, denoting a sequence of step backs.

These attempts at rollbacks, legislative in essence, may strike a whole range of women and men who live and produce in these rural areas, Indigenous and Quilombola communities and the conservation zones of Natural Assets. Agribusiness interest in these draft laws means violent actions versus the possibilities that social and environmental equity ensures. For example, many of these draft laws attempt to transform what are now crimes under Brazilian legislation, such as mining on Indigenous lands and in protected environmental units.

The Rural Caucus’ strategy is to submit a flood of proposals and to pass those of ‘urgent interest’ to the agribusiness economic sector. Graph 3 displays all of these strategies, split between ongoing bills, those converted into law and those already archived. As for Graph 4, it shows the total number of approved laws as per the theme, exposing agribusiness strategies in providing legal certainty to their economic activities.
When crime becomes law: Legislative attacks on rural people’s rights and on nature in Brazil

Albeit the largest number of draft laws are still in process or shelved, there’s a significant amount of bills already converted into law, as shown in Graph 4. Outstanding is the intensity of approvals between 2015 and 2020, years that featured the political and economic crisis in Brazil. In the first year of Michel Temer’s coup government, 65 proposals were adopted; in the first year within Bolsonaro’s government, a further 56 new laws were approved. Through the legislative process, many of these draft bills imply legal violence against people and territory, thereby ensuring the interests of only a fraction of the agribusiness-embodied class.

Cases of bills of law in the Brazilian Congress that constitute attacks

The research we have conducted reveals that there are 400 draft laws in progress in the Brazilian Federal Congress that constitute an attack on the rights of rural peoples and on nature. Rural people and nature are two directly connected dimensions, as the assurance of the rights of rural peoples are tightly linked to the protection of nature. A very different ratio is seen between huge agribusiness enterprises for commodity production and the use of natural assets. In this article, we look at the legislative proposals designed to cut the rights of the many and guarantee the rights of just a few. To introduce and address these issues, we have picked only four bills that serve as examples in terms of profiling the historical moment in which we currently live, permeated with violent propositions and mediaeval steps back.

The draft law (PL) 6442/2016 proposed by MP Nilson Leitão, then chairman of the Rural Caucus, sought to relax workers’ norms, specifically those of rural workers by enabling an unimaginable regression on hard-won social rights. This bill is an enlightening example of what may be considered a political action for death, helping us to understand the newly emerging concept of necropolitics. His proposal was intended to assure that farmers could pay their employees’ salaries with food and housing in a legal manner. Thus, part of the worker’s wages, if not all of the wages, would be...
carried out through employer-provided food and as a kind of rent if the workers were residents in the rural housing units owned by the employer. Furthermore, the same draft Act sought to grant a 12-hour working day and constant work, not giving days off for up to 18 consecutive days. This is very much like the rural slavery of the colonial period in which the life expectancy of a worker was 45 years of age.

Figure 1 shows the publicity created by the Rural Caucus to render this proposition legitimate. The image contrasts urban and rural workers, passing on the idea that in the cities, housing and food are to be provided by workers themselves while in the fields, the workers would receive them as benefits (perks) granted by their employers.

![Rural Worker vs Urban Worker](image-url)

*Figure 1: Publicity by Rural Caucus, Source Agribusiness Parliamentary Front (Ruralist Bench)*

This legislative bill with such slave-like features was filed away after several social demonstrations. Project PL 2633/2020, whose author is Mr. Zé Silva, a Federal Congressman, and which is at an advanced stage of progress in Congress, is widely known as ‘PL da Grilagem’ (Bill of Land Grabbing) and has as its objective to make appropriation illegal and grabbing of public lands legal. To put it another way, they are trying to pass a law that legally guarantees land ownership to public land invaders by converting the crime of land grabbing to private legal title of ownership. As Brazil is a country marked by misappropriation of public land, the approval of this bill would mean an award to land grabbers covering a large number of Brazilian territorial hectares. In the example of the PL of Grilagem, the rewarding of the crime of stealing public land overshadows the processes that go far beyond the simple acquisition of a legal title of private ownership of the land by thieves, for land grabbing is the final stage of an eviction process (and even murders) of local people and deforestation and other forms of environmental devastation. The legal title of the land to be conquered

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9 Grilagem is a popular term denoting illegal land invasion.
should this bill be passed is a sad frame of what Moira Millan (2019) calls a terricide.

Also construed as terricide, PL 3729/2004, written by Federal Deputy Neri Geller, has been redeemed at the current juncture and proposes to relativize and undermine the obligation of environmental licensing for different models of natural asset use. Environmental licensing as an instrument to protect natural resources is considered by mostly ruralists and miners to be barriers on free capital investment and nature exploitation, and, naturally, these barriers appear within the speeches and arguments of the rural and mining lobbies as hindrances to the country’s development. The main objective is to exempt a series of economic activities from environmental licensing, and should the need for implementation of such an instrument arise, it is expected to be made as simple and as weak as possible. In the text of that bill there is also an attempt to implement an automatically renewable environmental permit. As per current legislation, environmental licensing procedures must be submitted for revalidation and renewal at given periods of time. Under the probable new law, such revalidation would automatically happen, requiring only a declaration to be made *online* stating whether the firm or the work is complying with environmental protection and impact norms. Thus, they would render useless the duties of public bodies involved in management and planning of environmental protection in Brazil. Instead, it would be enough for investors to fill in a virtual application form as a way of revalidating the existing environmental licence with no checks by experts or environmental management bodies.

Easing environmental licensing arises as part of a set of actions that address serious and systematic destruction of the Brazilian environmental legislation (Amaral, 2020). PL 3729/2004 has been passed by the Chamber of Deputies and currently awaits approval in the Senate. Most recently, this bill was added to the ‘General Licensing Law’ (PL 2159/2021), which we will briefly address in the final part of this text. Last but not least, PL 191/2020 issued by the Federal President Jair Bolsonaro permits further mining and other economic activities inside Indigenous lands. The bill strategically exploits the existing gaps in the 1988 Brazilian Federal Constitution and tries to accommodate an interpretation of how Indigenous lands can have cattle farming, exploitation of hydric potentials and also mining activities which are prohibited by existing laws and regulations. In the current Constitution, it is explicitly stated that Indigenous lands are public lands for Indigenous communities’ exclusive right of use. Article 231 of the Constitution recognises Indigenous peoples regarding their “social organisation, customs, languages, beliefs and traditions, and the original rights over the lands they have traditionally occupied, leaving it up to the Union to delimit and protect them, and ensure that all their goods are respected” (Brasil, 1988). The proposal for new rules would relativise Indigenous rights over their social reproduction place, opening the doors to big agribusiness and mining capital which obviously will be a threat to these native populations.

The relationship between the law and big enterprises: Affirmation and negation of legislation

The list of laws instituted in the Brazilian State and the construction and implementation of major undertakings, such as hydroelectric power stations, reservoirs, roads, railways, mining projects, large monocultures, etc., is deeply contradictory, especially when populations/communities and natural environments are directly affected. It is common knowledge and irrefutable in Brazilian history that when it comes to large infrastructure projects and major economic development investments the target audience is the same as emphatically described in this text: Indigenous people, traditional communities and peasants are the main victims.

It is nothing new to say that between the accomplishment of a great enterprise and securing the communities’ rights and the protection of nature what has historically prevailed was the guarantee
of entrepreneurship at any cost. In other words, in general, the State adopts a position of utmost selectivity: either proposing or making use of existing laws to ensure the implementation of undertakings with adverse social and environmental impacts – working as a guarantor for huge allocations of capital invested in works with a major impact on the territory – or blatantly taking an illegal stance and disregarding the minimum guarantees of earned rights because it somehow considers them an obstacle to the realisation of a project.

In the case of large enterprises, we perhaps have the most complete expression of this contradictory character, as these are regarded as projects and works ‘crucial to the development’, allowing new legislation to be created and formulated to facilitate the construction/implementation of these so-called megadevelopments or the infringement of the laid-down rules by subjecting those works to a typically exceptional regime. This is the reason that, according to Agamben, there is no contradiction in capitalism between rule of law and state of exception, but rather an intentionally produced relationship: ‘the state of exception presents itself as the opening of a fictitious gap in the order, with the aim of safeguarding the existence of the norm and its applicability to the normal situation’ (Agamben, 2004, p. 48).

The contradictions of this process take shape when the Brazilian State itself passes laws to secure the power of capital on community life and nature or when it violates existing laws in the legal system for the completion of an enterprise. This contradiction is sharpened when the venture uses the discourse of supremacy of public interests or of the social and collective interest – as always happens, for example, in hydropower construction – or for private undertakings under the cover of the discourse of advancement, followed by a promise to boost jobs and income – as often happens in large mining and agribusiness areas.

In summary, when it comes to major territorial intervention works in Brazil, which evidently have a negative impact on society and protected environmental areas, the State plays a two-fold and contradictory role: either it creates laws in its favour or oversteps and disregards laws that would somehow impede carrying out such major works. In both approaches, the destruction of the communities’ rights and those of nature on the front line of the so-called ‘development projects’ is a tragic and dramatic reality.

How, then, should the contradictory role of the state be interpreted? A basic approach to understand the matter is to question the traditional perspective of the law in which the state is responsible for drafting/administering the laws; therefore, the State and laws could be seen to confuse. From this perspective, the state and the law would always ‘be ‘above’ any social conflicts and relations and would always be responsible for settling such conflicts – including the social class conflict – justified by the idea of a state ‘common good’ which prevails over the rights of the communities and nature.

Thus, in general, the guarantee that major enterprises will cause socioenvironmental injustices only comes to be fulfilled and perpetuated because of the existence of law and the state, and thereby, the false and illusory premise that law’s existence is brought about by the interests of everybody perhaps has its best performance in the realisation of major ‘common interests’.

It would be even more delusional to conceive of the Justice System independent of the political and economic powers or of the capitalist system of accumulation respecting the barriers imposed by the legal sphere. According to Mascaro (2013), law is not peripheral to capitalist reproduction as a whole, but plays a role in safeguarding the functionality of the exploitation system. That is the reason ‘the State is not the domain of capitalists, it is less and more than that; the state is the political
form of capitalism’ (Mascaro, 2013, p. 63).

For instance, let’s take the case of dams. According to the report of the Special Commission for People Affected by Dams drafted by the Human Rights Defence Council (2010), here lies the concreteness of these aforementioned processes:

Firstly, it is possible to state that, broadly speaking, the Brazilian legal and normative framework provides a range of provisions for protecting the human rights of populations and individuals affected by the construction of dams on national territory. However, it is possible to identify limitations, omissions or inadequacies in the existing legal system, which in practice has prevented or hindered the full realization of the above-mentioned rights. (p. 21)

In the most tangible and concrete dimension of the State and law relationship, the report itself points out the role of the judiciary in legal claims arising from an existing dam:

Not even the Judiciary, which should ultimately ensure respect for the law and preserve human rights has been operating effectively. The appeal to the Judiciary to enforce these rights, in contrast and paradoxically, very often ends in frustration. While companies engaged in the construction and operation of dams can count on well-paid lawyers, whilst the state can deploy its own legal structures and has privileged judicial treatment, those most affected can rarely get adequate support or legal advice. As if this were not enough, they are faced with the usual detachment of judges and tribunals from the tangible situations of social reality. The speed at which injunctions favourable to affected parties are revoked and in granting prohibitory injunctions in favor of companies has as its counter face the slowness and delaying tactics when companies’ actions are being questioned - of which the proceedings are repeated evidence contesting compensation amounts (p. 22).

We have thus far seen the rule of law being fulfilled ‘within the rules of the game’, using its own judicial and legal apparatus ‘in its favour’, even if it means selective interpretations and human rights violations in specific cases or in the disproportionality of the timing of law enforcement, a faster speed for some and slowness for others. In these cases, the dispute is for a sense of ‘law and rights’ prioritising the major project, generally justifiable in the national interest and development, enabling the use of existing legislation – environmental, territorial, agrarian, indigenous, etc. – to unblock the implementation of the work. The use of expropriation rules for public use (Decree Law 3.365/41) in a summary form and the ‘prohibitory interdict’12 as a threat to those populations who have their lives unravelled are examples of how – ‘within the rules of the game’ – the interests of the businesses are asserted.

However, it is not always ‘within the rules’ that the State and private initiatives involved in the realisation of major undertakings ‘win’ the game. The recent history of the Belo Monte Hydroelectric Plant in Pará state serves as a telling example of how development is warranted by breaking the laws and trivialising illegality. As per Glass (2016, p. 417), ‘the government’s first major offence in relation to the population threatened by the power plant was the wilful ignorance of the right to prior, freely given and informed consultation, provided for by the Federal Constitution (article 231, paragraph 3) under these terms’.

The determinant of ‘prior consultation’ with the affected population (which was never consulted, but was, at most, informed) and the fallacious speech of ‘community involvement’ (which never participates) was the kick off of a string of illegalities carried out by the State and/or private initiative on behalf of entrepreneurship. At such moments, the State applies the laws in order to circumvent them.
Building Project Licensing is a privileged place to witness how laws are broken in defence by any means. The history of large project licencing often brings together a long string of illegalities. In Glass’s (2016, p. 416) study on Belo Monte, the author presents a series of objections in public civil actions on non-compliance. Among them are irregularities as to the absence of an integrated environmental evaluation on the river; annulment of the river’s hydroelectric inventory; nullity of the Environmental Impact Study and Report approval (owing to the incompleteness of the study and the report); violation of the principles of popular participation, publicity, reasonability, purpose, motivation and legality; violation of the population’s right to information and participation in decision-making processes about the project; faulty methodology of public hearings; and insufficient hearings for those affected to attend.

Another important laboratory on the subject is the story of the construction of the Jirau and Santo Antônio hydroelectric plants on the Madeira River in Rondônia state. Both plants which were concluded in 2016 constitute an initial part of the Madeira River Complex Project, which also involves the construction of two other hydroelectric plants, namely the Guajará-Mirim and Cachuela Esperança dams, in addition to highways and transmission lines. Hence, Jirau and Santo Antônio are large projects within a megadevelopment. The history of their construction is no different from so many others: manoeuvring and circumventing laws begins with the licencing process. According to Alves (2014), a series of irregularities in the construction of the plants was pinpointed and reported by the Brazilian Institute for the Environment and Renewable Natural Resources (IBAMA) itself and by experts, academics, social movements and nongovernmental organisations. At the root of these great works, environmental licences (Prior Licence, Installation Licence and Operating Licence) were issued after a tangle of irregularities and the announced social tragedy that would strike the populations affected. In conclusion, the researcher sums up:

In view of the foregoing, despite the many examples of disrespect for the environmental constraints of the Jirau HPP project, we can consider that both the licensing process for the Jirau and Santo Antônio HPPs, as to how the LP and the LIs for the Jirau HPP were issued, testify to the fact that large-scale mega-projects for energy production implemented by the federal government in the PAC context, regarded as fundamental to the ‘New Developmentalism’, will not have as limits issues related to environmental, social and territorial impacts. (Alves, 2014, p. 232)

What stems from these stories and so many others marking capitalist development driven by major works? They mark an inventory of social and environmental tragedies, many of them irreversible and routinely present. Protected natural areas and entire territories of communities will never return to their previous situations, causing deep changes in the structure of social relations in these populations and in the landscape of the affected regions. In many cases, there are communities that five, ten or twenty years after the conclusion of the works continue to feel the devastating effects of the execution of the major undertaking, with compulsory displacement as a prime example of these stories.

In general, the affected communities are fractions of a society already marked by socioeconomic injustice – as many Indigenous groups, peasants and traditional communities such as Quilombolas, Ribeirinhos, etc. are currently characterised – and in arm wrestling with the state as ‘administrator’ of the laws, they have a losing record. On the ground of history, these defeats mean worsened living conditions, families ripped apart and the loss of identities and territorial representation. This is why the concepts of terricide and necropolitics are not allegorical expressions or simple semantic analogies produced on academic benches but are, at the same time, expressions of reality and how it is interpreted.
Another theme related to the historical weight of large undertakings is the relationship between state and private capital. Even though this relationship currently operates with a more institutional and legal character with the so-called public–private partnerships, it is historically permeated by corruption and illegalities, as the current Brazilian political moment has brought to the fore. Bribery, theft and embezzlement are conditions *sine qua non* so that the great work ‘gets off the ground’. Again, private capital comes to dominate the ‘territories’. As Gaviria (2015) pointed out, in major works, the private capital seems to operate as an agent of an internal colonialism contradictorily within democratic political regimes. Companies take over and dominate territories, bringing typically colonial situations to the populations of these areas, such as violence, expulsion, expropriation, exploitation and inequality.

In the face of these tragic stories and in the current political conjuncture post-political/parliamentary/legal/media coup which has undermined the foundations of Brazil’s already fragile democracy, the relationship between laws and large enterprises is taking on new and even more dramatic proportions. The parliamentary and legal nature of the coup has opened up space for the government through the legislature to establish laws directly in favour of capital, and it falls to the judiciary to safeguard them. Many are the new laws already in force that favour large enterprises: the new labour legislation (Law 13.467/2017), the outsourcing law (Law 13,429/2017) and the so-called ‘Grilagem MP’, transformed into Law 13.465/2017 and which may have more damaging implications with the eventual approval of PL 2633/2020, as already discussed in this text.

And other laws are yet to come. In parliament, deputies and senators work tirelessly to pass laws in favour of big business. There are many draft laws proposed in this direction, as is the case of PL 2159/2021, known as the ‘General Licensing Law’ –which replaces PL 3729/2004, combined with 20 other PLs added to this one and with the same goal– which is under urgent review. This law, if passed, would weaken and relativise the principles of protection of communities and nature secured by the licencing requirement and its prerogatives. With no debate in parliament, let alone with society, legislators linked to the Rural Caucus attempt to approve a law that would represent the biggest step backwards in the country’s history as regards the protection of communities and nature stricken by major works. What they have been calling a process of ‘modernisation’, flexibility and speed – it is no coincidence that the proposal is being called ‘flex licencing’ – means the end of rules such as prevention, mitigation, compensation and even the possibility of no licencing at all for certain works and economic activities. The same has been happening with the new legal mining framework, a proposal gathered in PL 37/2011.

Faced with today’s situation marked by economic and environmental crises, the strategy of producing laws or the circumvention and destruction of laws is becoming increasingly frequent because of new violent forms of administration of the system. The legislative side of this process has become an important strategy in the expansion and/or creation of a kind of ‘legal security for capital’, whether by building rules of law or by normalising illegality.

**Final thoughts**

Marx (2013) once wrote that ‘violence is the midwife of every old society pregnant with a new one’ (p. 821) to spotlight two crucial historical moments: the transition from feudalism to capitalism and the rise of capital. Therefore, violence has marked a historical moment in the transition and the emergence of an economic production and social reproduction system developed to exploit labour and nature. As reflected upon by Marx and in subsequent studies stemming from his work have made clear, violence was not crystallised in a long distant past but kept pace across the entire development of capitalism on the basis of the capital accumulation process. The strategies of violence
were not and are not just anomalous moments in the system but rather a historic constant; or, as Álvarez and Rubio envisaged (2008, p. 17), lawfulness and illegality in the capitalist accumulation process historically form two faces of the same process. Nevertheless, there have been periods of social and civilisational achievements in the course of an unequal and contradictory system, above all in the context in which law and legal guarantees are set up. Yet a new age is dawning and there seems to be no room for working class rights, Indigenous peoples and nature. We are living under a scenario of expansion and intense expulsions, social and territorial exploitation and expropriation in which both violence and crime are given legal legitimacy; the crime becomes law writing a kind of legalised criminal capitalism.

The range of legislative proposals in Brazil today and a series of recently approved laws must be read in the light of violence and crime legitimisation. This is why the consideration of a set of legal actions as criminal does not depend on a legal distinction alone, but on political, economic and social as well (Álvarez & Rubio, 2008). This is reflected in the immense number of proposals for retrograde and destructive laws presented and analysed in this text. In our view, this historical moment can be read as necropolitics promoting terricide. It is precisely on this ground of history that civil society must organise itself, right now!

References

When crime becomes law: Legislative attacks on rural people's rights and on nature in Brazil

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Taking from the rural to serve the urban: The Likhubula water project and the slow violence of water abstraction in Malawi

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Abstract:
Despite community protests in the Mulanje District of Southern Malawi, the Malawi government in November 2016 launched a $23.5 million project to abstract water from the Likhubula River in rural Mulanje and transport it almost 70 kilometres away to Malawi’s commercial capital of Blantyre. Drawing on findings from ongoing ethnographic observations in Southern Malawi, this paper presents the Likhubula Water Project as a form of slow violence causing social harms that perpetuate colonial legacies. It engages with the complexities of the project, recognising the pressure placed on water resources as a socio-political need in response to the impacts of climate change, population growth and rapid urbanisation while at the same time identifying this as a form of slow violence in which the harms from the water project are not only in the ‘mining’ of water to benefit urban life but also in terms of the disregard for the significance of the water to local communities. We conclude that the act of exposing the area to water exploration and exploitation presents the possibility of perpetuating other forms of environmental harm in areas where there is already significant pressure on land, forest and water resources.
Introduction

The impacts of deforestation and climate change as well as an increase in population have led to rising pressure on water resources in Malawi (Adhikari & Nejadhashemi, 2016; Wilson, 2018). Urban areas that have witnessed a surge in population have been the worst hit in the scramble for water, especially as a result of younger people moving from rural areas in search of ‘greener pastures’. Dry taps can sometimes occur for days, with the situation made worse by a lack of boreholes which are mostly the preserve of rural areas (Chipeta, 2009; Magombo & Kosamu, 2016; Tchuwa, 2018). In urban areas, people are expected – and encouraged – to get their water from community taps or, for the privileged few, their home taps.

The Malawi government has been seeking solutions to address water shortages in urban areas, especially shortages of potable water. In rural areas, much of the effort to address water shortages has been the responsibility of both communities and nongovernmental actors (NGOs). In urban areas, the Water Board (a government institution mandated to provide water to the public at a fee with the explicit purpose of making a profit from the sale of water) is responsible for addressing water shortages, with little NGO intervention.

In Blantyre, a city in Southern Malawi, water shortages have been a recurrent challenge across the years. Magombo and Kosamu (2016) highlighted that as of 2016, the Water Board catering to Blantyre city was failing to meet the demand for water caused by rapid urbanisation. The situation has since been exacerbated by climate change as well as the growth of informal settlements. The ineffectiveness of the Water Board has also been cited as a reason for the water problems in Blantyre. According to Tchuwa (2018), the geographical position of the city means that access to water should be relatively simple, which suggests that access issues are mostly political–economic and largely as a result of poor planning by the state and the ineffectiveness of the state-managed water bodies that not only affect lived communities but also the land upon which they depend (Lasslett, 2018; Willett, 2015).

In response to the water shortage challenges faced by the residents of Blantyre city, the Malawi government in 2016 embarked on a project of abstracting water from a rural location at least 70 kilometres away, that is, from the Likhubula River in Mulanje District into the city. This project likely tapped into the geographical advantage of Blantyre as detailed by Tchuwa (2018) as well as the perpetuation of colonial constructs of the city (Riley, 2020; Tchuwa, 2019). This project is the focus of the current paper.

This paper seeks to highlight the issues of water abstraction in modern Malawi as an example of increasing resource abstraction in which economic interests are being prioritised over environmental or indigenous ones (Heydon, 2019; Kelly, 2021). We focus on the harmful context of the Likhubula Water Project and trace the origins, foundations and philosophies of the project to show that rural areas in Malawi are continuously exploited to support urban areas. We argue that this exploitation is rooted in the historical colonial constructs of the city that have privileged urban life over rural life (Lasslett, 2018; McCracken, 1998; Tchuwa, 2019).

We advance the argument that the Likhubula water project is not just a case of resource abstraction but is also a form of slow violence (Nixon, 2011; Willet, 2015) which makes rural areas bear the burden of climate change rather than their urban counterparts. This is a position similar to that advanced by Lasslett (2018) in centring arguments on the crimes of urbanisation, albeit our arguments are more about rural–urban relationships. Our position is that in sustaining urban communities, little thought is given to rural areas which are often portrayed as resource abundant. While
climate change and resource abstraction have previously been discussed in the global geographies of a North–South divide (Roberts & Parks, 2009), we seek to contribute to these discussions by highlighting that resource abstraction and exploitation are increasingly wearing a more intranational look in which urban elites prey upon rural life (Nixon, 2011).

The article first explores the concept of slow violence to show that even though water abstractions in Malawi may not always be immediately detrimental and are, in fact, packaged as ‘development’ or ‘progress’, they can nonetheless have harmful effects which develop slowly and span both space and time. Second, we present the context of Malawi and the relationship between the urban and rural environments that are the focus of this research. Third, we position the urban and rural environments within the strategy of using water as a political tool. In the fourth section, we present our methodology which is centred on community experiences, and in the fifth section, we explore these experiences by presenting ethnographic data that reveal the slow violence that is occurring. Lastly, we highlight the harms and tensions created by abstracting water to serve a needy urban city but at a cost to an already vulnerable rural area and its people.

**Slow violence**

This article uses the work of Nixon (2011) who introduced the concept of ‘slow violence’ to refer to environmental social harms often visited upon the poor. In his own words, Nixon defined social violence as ‘a violence that occurs gradually and out of sight, a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all’ (p. 2). He indicated that slow violence is mostly considered as harmless and, therefore, non-violent because it is dispersed over a period of time, it is *out of sight* and its qualities are due not only to their lack of immediacy in time but also because the violence is often directed at those who are poorer or, to borrow from Spivak (2003), the subaltern. The non-poor who are seemingly unaffected by this form of violence and actually benefit from it pay no attention to it or dismiss it as non-violence. Nixon builds on Galtung’s (1969) structural violence by suggesting that it is only over time that the violence can be revealed. Using this work of Nixon and in agreement with Davies (2019), we highlight that the out-of-sight notion of slow violence is not necessarily relevant to those affected by the violence. Rather, it falls on the ‘beneficiaries’ of this type of violence; in the context of this paper, the urbanites in Blantyre.

We are mindful that the concept of slow violence can be and has been applied to the environment (see Baird [2021] in southern Laos; Holtermann [2014] in Tanzania; Maathai [2010] on the African continent; Willett [2015] in Kenya), but there are forms of social harm in addition to the harm inflicted on the environment (see Barnwell, 2019; Coddington, 2019). In this paper, we align the concept of slow violence to rural green criminology, taking our inspiration from the observations of Brisman et al. (2014) that rural green criminology is usually an overlooked area in research. We borrow from the definition of Ruggiero and South (2013) to define green criminology as ‘a framework of intellectual, empirical and political orientations toward primary and secondary harms, offences and crimes that impact in a damaging way on the natural environment, diverse species (human and non-human) and the planet’ (p. 360). Doing so draws to the fore the structural conditions of the violence (see Galtung, 1969), which often conceal these slower more pervasive forms of violence (Cock, 2014). In this discussion, our remit under green criminology moves away from traditional understandings and explorations in criminology, which are often limited by legal definitions and constructions of the powerful, to instead draw attention to not necessarily the harm of the Likhubula Water Project on the natural environment (the Likhubula river) or to the planet more broadly but to the secondary harm that the Likhubula Water Project has on the people of the area. The focus is on the social harm to individuals and communities over time (see Brisman et al., 2014;
Goyes, 2021; McClanahan & Smith, 2014). The harm is often hidden because it is not ‘immediate in time, explosive and spectacular in space, [or] erupting into instant sensational visibility’ (Nixon, 2011, p. 2). While our research reveals one particular sensationally visible form of violence – which we describe later – we are most concerned with the legacies of water abstraction in rural Malawi.

Research context

A former British colony, Malawi has a population estimated to be at over 20 million people as of 2022 (Malawi Population, 2022); with an area of 118,484 sq km, it is the smallest country in Southern Africa. It is divided into three regions (North, Centre, South) with each of the regions having a main city. Blantyre, named after the city of Blantyre in Scotland, is located in the South and has become the second biggest city in Malawi after the capital of Lilongwe (Riley, 2020).

Declared a city in 1894, Blantyre mostly developed into a city to cater to colonial interests and perpetuate the racism and violence of the system. Thus, Blantyre was a colonial creation which sought to exclude indigenous black people from white spaces; a legacy it perpetuates to date with race being replaced by socioeconomic conditions (Riley, 2012; Tchuwa, 2019). To rephrase Lasslett (2018, p. 10), Blantyre can be understood as having been deliberately ‘cultivated, given specific meanings (of a city) to play to the rhythms of a colonial capitalist economy’ mostly driven by exclusion, a significant feature of most colonial cities in Africa (see Myers, 2006; Riley, 2012). Thus, Blantyre came to be acknowledged as a city because it excluded indigenous life and lifestyles; the areas that still maintained the indigenous lifestyles were then defaulted to being rural areas, demarcations that run to date with the average Malawian usually regarding the rural as a backward and uncivilised space.

From its historical foundations in colonialism, which ordered productivity and life as they still do today, Blantyre has always been alluring to most people outside of it despite its colonial and systemic violence (Mthatiwa & Ngwira, 2019; Riley, 2012). This attraction has intensified in recent years owing to a population boom in the districts near the city as well as the inequalities that continue to exist between urban and rural areas. The city has thus seen an expansion in both geographical size and population; a situation that has placed considerable pressure on natural resources and services available in the city. As the home of industries in Southern Malawi – a situation that earned it the tag of being Malawi’s commercial capital – Blantyre continues to attract most of the people from the rural areas in the 12 districts that surround or are near it. One of these districts is the district of Mulanje.

Mulanje district is approximately an hour’s drive away from Blantyre and is one of the earliest colonial settlements in Malawi. A predominantly rural area, colonists were attracted to the district as it is at a higher altitude and therefore mitigated risks such as malaria and heat (Potts, 2012). The district also has favourable water sources and soils that are good for farming. It is the combination of these factors that made Mulanje a hub of colonial farming with tea becoming the main crop grown in the area. The district is known for its tea estates which claim at least 30% of its arable land (Nangoma & Nangoma, 2013), a situation which in itself has been a source of consternation among the locals (Namangale, 2021). A key defining feature of the district is the mountain that imposes itself over the district and beyond. With the highest peak at 3002 metres and a breadth of 20 kilometres, Mulanje mountain is regarded as a religious site where historically some of its nine big rivers were used for rainmaking activities. At the same time, the mountain’s size has been a source of various indigenous mythologies and legends which have contributed to and shaped the discussion on resource abstraction on the mountain (Malijani, 2019). Thus, abstracting resources from Mulanje mountain is mostly contentious because indigenous people regard it as an attack on their
own heritage and beliefs. This has not stopped the water abstraction project even though the Blantyre Water Board acknowledged that they were tapping water from ‘Dziwe la nkhalamba’ (literal meaning: pool of the elderly), a historically religious site which in being appropriated, has come to be regarded – and was labelled by the Board – as a tourism site (Blantyre Water Board, 2016).

**Water as a political tool in Malawi**

It is important to highlight that water in Malawi is a political tool. This puts into context the nature of the slow violence that is water abstraction. In elections, politicians campaign on the promise of providing potable water to people (Mathur & Mulwafu, 2018) with boreholes and piped water often highlighted by those campaigning for the lucrative position of a Member of Parliament. Even if it is understood that the actual production of water is not within the remit of politicians, good rainfall is always assumed to be a divine endorsement of the political leadership while poor rainfall is often taken to mean a divine rejection of the leadership (see Cammack, 2012; Gunde, 2017).

While rainfall is central to rural considerations of water, in the urban areas, the failures of the Water Boards to provide water are blamed on politicians. It does not help the case that the Water Boards are government enterprises with a mandate to make profits (see also Lasslett’s [2018] work on state corporations, urbanisation and the environment) such that when they fail, the mass media announces the news with much fervour (see Sabola, 2021). The fact that it is politicians who occupy the membership of the Boards and usually have an influence in appointing employees means that water itself is a political issue, as is the Board’s ‘incompetence’ or failure to ‘deliver’ water (Magombo & Kosamu, 2016; Tchuwa, 2018). It is not far-reaching to argue that water in Malawi is a ‘make or break’ of administrations. The presidential election campaign in 2020, for example, positioned the provision of free water connections as a central promise (the current price for a water connection is at least $20 with monthly charges depending on water usage and disconnection if one fails to pay). Tchuwa (2018) further discussed the position of politics in water provision in Blantyre by highlighting that the government has provided loans to the Water Boards with the explicit expectation of repayment with interest; he sums this up by arguing that ‘Blantyre’s water access problems are not a result of its inherent physical geographical conditions, … (they) are largely political economic in nature’ (p. 6).

Thus, the politics of water in Malawi transcend what Adams and colleagues (2018) referred to as the micro-politics around this fluid resource centralised at communal decision making and politics. They play on the bigger national political scale, regulating the behaviour of government and not just relationships within the community or societies formed around the water, which is an area that previous research on water has mostly sought to understand within the context of Malawi (see, for example, Adams et al., 2018; Chipeta, 2009; Mulwafu et al., 2003). Our work focuses on the national politics on and around water while at the same time detailing how politics affect the daily relationships to water experienced by people from places in which water is abstracted (Orlove & Caton, 2010).

**Research methodology**

This paper is based on primary observations and interactions which explored access to water and community adaptation to climate change impacts documented during ethnography conducted in both Blantyre and the Mulanje districts in Southern Malawi in 2021. The data for this paper is drawn from a larger project that explores climate change impacts, adaptation and eco-grief. Ethical clearance for this research was obtained from the Research Ethics Committee at Abertay University. This research used participant observation and unstructured interviews in Mulanje district and
Blantyre city (over 20 community members and two district council workers) as well as structured interviews with other community members (a total of five) and one journalist (three structured interview sessions) across an intensive period of eight months from March to November 2021. Immersion in the context and a prolonged period of time spent with communities in Malawi provided opportunities to develop deeper understandings of the relationships between community members, the state and water boards, water projects and the land and water more generally.

In addition to the observations and interviews, media coverage of the project was also used as part of the data. Hammersley and Atkinson (2019) highlighted the necessity of using documentary evidence and indicated that such evidence provides some other information that might not be obtained from observation. The use of documentary evidence in the form of media coverage of the project was used to understand the foundations of the water project, and it thus contributed to a triangulated inquiry, an inquiry which May (2011) described as a constant comparison of data that is of interest to the researcher. Documents, observations and interviews therefore formed the triangulated inquiry (what Hammersley and Atkinson [2019] called information corroboration). Furthermore, immersion in the research context for a long period of time also allowed for ongoing member checking throughout the fieldwork.

The data was analysed with the intention to explore: (a) How the Likhubula water project emerged; (b) the relationships with and opinions about the project; and (c) the experiences of those living within the areas affected by the project.

Fieldnotes, interview transcripts and notes, and media reports were explored and analysed using reflexive thematic analysis (Braun & Clarke, 2021). The first stage involved identifying data that discussed the Likhubula Water Project forward from the data collected on the whole research project. The second stage then used the concepts of social harm and slow violence to explore what were identified as emerging issues related to the Likhubula Water Project, a focus guided by the broader observations from when the ethnography began. The third stage involved going through the data once again but this time drawing on the idea of relationships, particularly with regards to state–community and community–land and –water.

The findings presented in this paper are a combination of quotations from participants as well as what Humphreys (2005) referred to as ‘narrative vignettes’ which, in the context of this case, means that ethnographic fieldnotes and observations are woven together to transport the reader to the context and narratives of the participants in a more fluid and logical manner.

**Community response to the Likhubula water project**

Likhubula is one of nine major rivers that flow out of Mulanje mountain. Due to the lack of measuring instruments on the rivers, the actual volume of water is unknown (Nangoma & Nangoma, 2013). However, the water project was established based on the possibility of abstracting at least 20,000 cubic metres of water per day, thereby adding 20 million litres of water to Blantyre Water Board’s water capacity, which at that time, was only producing 101 million litres against a demand of 123 million litres (Blantyre Water Board, 2016; Chauluka, 2020). Apart from highlighting the greater good of the project (something we discuss later), this highlights the volume of the water at Likhubula. The huge volume of the river is not lost on the community members. In a conversation, a community member reported that:

In the rainy season, the river produces such water that it is enough to burst (galvanised) pipes (due to water pressure), it provides water all the way up to the villages around Mkando (20 kilometres away)...people there, they rely on this river and, before this project, it would...
provide water all year round... (Formal interview, 15 April 2021, emphasis added).

Besides the large volume of water the Likhubula river holds, the water itself has historically had a significant spiritual value. As already indicated, the river is home to the Dziwe la nkhalamba pool, which was traditionally understood as a place for rainmaking sacrifices (Malijani, 2019). According to a community member who also works as a tour guide, the pool was historically used as a place that older community members would visit to offer sacrifices when droughts occurred or rains were delayed:

In the past, it was used for rainmaking practices. If there were no rains, like this year, elders would gather and make a pilgrimage to Dziwe la nkhalamba to make offerings so rains could fall. They would take with them food and beer to offer to the ancestors/spirits. Once they did, within twenty minutes, there would be heavy rains. But that was back in the days... these days it does not happen (the rainmaking practices), except for tourism purposes. (Formal interview, 2 March 2021)

The coming of foreign religions or ‘Western knowledges’ that were then embraced by the people of the area have erased the rainmaking practices; however, the area has been turned into a significant tourist spot which receives hundreds of tourists in the summer months. Dziwe la nkhalamba is, therefore, not only of spiritual value but is also a source of employment of primarily young men in the area who work as tour guides to accompany tourists to the (once) sacred spot.

In 2016, however, the Malawi government was faced with a thirsty and dry urban area, and it embarked – through the Blantyre Water Board – on water abstraction from the river just metres below the Dziwe la nkhalamba pool. That area was chosen due to the volume of water, its cleanliness and its steep gradient which meant that water would not need to be pumped from the river (Blantyre Water Board, 2016); but the Water Board faced community resistance. The project site was visited by a government minister responsible for water and irrigation (who was also a Member of Parliament for another area in the same Mulanje district) along with a Member of Parliament for the area, thus underlining it as a political project for which success would belong to the politicians. Although the constituency of the minister (who headlined this visit) was kilometres away from the Likhubula area, he was originally from Mulanje, and thus, he was of the same ethnicity as the people in the communities around Likhubula. The ethnicity of the government minister is important because it resulted in implications beyond his position as the government minister responsible for water and irrigation. For a project that was facing resistance from the community, his visit was, in a way, to make the project more welcome among the community members because, after all, ‘belonging’ in post-colonial Malawi has been understood based more on ethnicity than on nationality (Eggen, 2011; Vail, 1991). Thus, the people in the area were expected to be more receptive to the project as it had been brought by ‘one of them’, an insider who had also risen through the ranks of state machinery. Even some of the media reports on the minister’s visit to the area – which ended in controversy – focused on him as an ‘insider’ in the community merely because he belonged to the district, and with this meaning, he was perhaps more trustworthy.

The controversy surrounding the minister’s visit to the area came from community members who demanded that he specifically meet with them and address their concerns over the project before embarking on his journey to the actual project site on the river. They physically blocked the minister and his team and refused to grant them access to the river. A journalist who travelled with the minister at the time commented:

...as soon as the minister and the other officials went into their cars, the stones started flying everywhere; tree branches were being thrown from all directions. There were men, women and children all over the place and the trip was cancelled. (Formal interview, 20 June 2021)
The minister had participated in a closed meeting with one of the protest organisers and had promised to facilitate a discussion with the community. But he insisted on visiting the site on the river first, which led to the community members and their blockade turning angrier, more frustrated and more violent. They were already concerned about the lack of consultation, the lack of voice in the process, the historical and contemporary value of the site and the risk of exploitation of resources that amounted to a power structure similar to the historic framework that operated during the height of colonialism (Quijano, 2007) and which continues today. As a community member remarked, highlighting how the approach by the state rendered them invisible with the state operating in the area as if there are no people who live there (the emphasised part of the quote in which the emphasis is ours):

There were no meetings. We just started hearing rumours. Then we started noticing some activity, but in terms of meetings, then it was that time [the minister came]. *That there were people here, maybe they were even shocked when they came to find us here...* (Informal interview, 5 March 2021)

In addition, it was reported that the community members had demanded that the government should plant trees on the catchment area of the river first before embarking on the project, largely due to their concern for the wider implications of abstraction. On this day, however, there was no immediate resolution. The visit ended abruptly with the police using force to quell the protest and arresting those involved or, as described by a community member in Blantyre, ‘the enemies of development’. According to a community member from Likhubula, the episode became so violent that afterwards there was no person still willing to protest. He said:

This whole area was filled with teargas. They started from the court. Just after the ruling on bail (all protestors were eventually released on bail and the case was discontinued), when we were discussing the way forward...There was firing of teargas. (Fieldnotes, 15 June 2021)

Similar recollections of the visit and the violence were also recorded in the main newspapers in Malawi (see Malikwa, 2016; Sangala, 2016), thus giving its ‘sensational visibility’ (Nixon, 2011). During fieldwork in the area, the community members indicated that their refusal of the project was not necessarily related to waiting for conditionalities to be met; rather, it was that they did not want any water tapped from the mountain because ‘across the years, [the community have observed that] the water levels have been dropping [so much] that it [the water] is not enough as it used to be’ (Fieldnotes, 1 June 2021). After this failed visit, the government began to engage the community through chiefs and other community leaders, but these meetings were not without controversy themselves as there were – and still are – accusations of corruption and bribery between government representatives and some higher members of the community. In a conversation with one of the journalists who covered the events in Likhubula, the journalist indicated that accusations of bribery were not far-fetched and that ‘the calibre of the people that were sent to negotiate with the community are good at that: divide and rule’ (Formal interview, 14 June 2021).

This use of soft power and manipulation as well as physical violence against protestors is not only applicable to Malawi. Hoag (2019) also indicated the use of similar approaches in the context of Lesotho where once the South African Defence Forces gunned down members of the Lesotho Defence Forces when it seemed that the dam from which water is sent from Lesotho to South Africa was under threat due to political instabilities in the host country. In Chile, Galaz (2004) highlighted the way in which violence, the law, trickery and even money have been used in the contentious issue of getting water from the poor and providing it to the well-off. As in Chile, the water of Likhubula is abstracted from the rural to the urban, from the areas of greater poverty to those in more favourable socioeconomic conditions. In this context, however, this abstraction is not just the violence of
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By the time then President Peter Mutharika launched work on the water project, the protests had dissipated and there was little physical resistance, a legacy of previously violent protests and their equally violent police responses. There were nevertheless two outcomes: first, the government started planting trees on the catchment area of the mountain to meet what the newspapers reported as the ‘demands of the people in the area’ (see Malikwa, 2016; Pensulo, 2018); second, some of the protestors were offered employment on the project either at the tree-planting site or as guards (the latter still hold their positions). In an area with many people in poverty, it was difficult to turn down the opportunity for work. As a community member remarked:

If you go there today, you will find guards at the spot. Most of the boys who led the demonstrations are now there, guarding the spot. Of course, at first it made sense because we were so angry that we could have destroyed the structures there, but now they are just there because it is also a job to them. (Formal interview, 1 June 2021)

Saving the city: Slow violence for a ‘good cause’

The Likhubula Water Project was initiated as a way of saving the city which, in Malawi, has always been privileged over what has been considered as the more primitive and uncivilised life of the rural areas (Mathur & Mulwafu, 2018; Riley, 2020; Tchuwa, 2019). Public debates in Malawi have mostly drawn on the distinctions between rural and urban life – or the indigenous space against the colonial construct. These distinctions have privileged the colonial settler realities of urban life and their socioeconomic situations over rural life (Riley, 2012; Tchuwa, 2019). Mathur and Mulwafu (2018) also explored such relationships with a significant focus on colonial conceptualisations of water, further implicating the city as a colonial predatory space. The presence of industries in urban Malawi, long touted as the profitable ventures rather than agriculture in rural Malawi, have led to urbanisation and have also had an impact on perceptions of, and thus the privileging of, urban life over rural life (Njamwea, 2003). As those in Blantyre pay for water as a commodity and for profit (see Mulwafu et al., 2003), the people of Blantyre are prioritised. As Lasslett (2018) highlighted, it is the nature of urbanisation to prey over the natural world. In Malawi, the rural areas contain much of this ‘natural’ world, and those initiatives which are mostly packaged as developmental projects end up inflicting social harm on the environment as well as on the people who rely on it (see Canning & Tombs, 2021).

This social harm has not just been in the fact that the water abstracted from Mulanje and treated 40 kilometres away in the Chiradzulu district is never redistributed back to the people of Mulanje; it is also in the likelihood that the water project will affect the livelihoods of the people in the area. Unlike in other scenarios in which projects of a similar nature led to forced relocations of people or negative impacts on livelihoods such as farming and fishing (for example, see Baird, 2020), the people of Mulanje now mostly look at the mountain as a tourist attraction site which has its attractiveness rooted in historical environmental materialities that continue to be erased by intrusions such as the Likhubula water project. Although the historical spiritual values of the water of Likhubula appear to have been lost in the day-to-day lives of the community members, they continue to exist not only in the stories sold for tourism but also in the construction of traditional identities among the people of Mulanje (observations in the area revealed common references to ancestors not so much in the way of belief but rather as some form of attachment to the mountain). A disregard of these stories is in itself what de Sousa Santos (2014) would refer to as an act of epistemicide.

This likelihood of the deprivation of livelihood for the young people of Likhubula (a benchmark
for O’Lear’s [2016] consideration of slow violence) can therefore be considered as another form of slow violence – not only in terms of time but in terms of the erasure of valued knowledge and traditional connections that change over time yet are still central to the lives of community members.

In discussing the concept of slow violence within the discourse of climate change, O’Lear (2016) made an important point regarding the prioritisation of scientific knowledge over other types of knowledge. They argued for the need for involvement, openness and inclusion in decision making about the use of natural resources. This would include the use of water from Likhubula. However, as our research has established, the process leading to the implementation of the water project was not one that would have passed as transparent or inclusive. If anything, the way in which the project was implemented could be illustrated by the description a community member in Mulanje gave about how people in the urban areas regard them: ‘...as ignorant people, who know nothing, who do not know any better’ (Fieldnotes, 17 May 2021). Thus, when agreement over the project failed, violence and divisive tactics were used, and the project proceeded. The ‘poor’ that Nixon (2011) imagined in his work who are overcome through violence and other unorthodox tricks to weaken their sense of community are those that the water project at Likhubula engaged and, therefore, were made victims of this slow violence, the groundings of which are certainly colonial (see also Kelly [2021] for their work with the Mapuche). Sharp (2008) highlighted how colonialism assumed the position of having better knowledge of the environmental geographies of the places it colonised and better knowledge of the places and people that were colonised (see also de Sousa Santos, 2014). This superiority of knowledge, of people and of relationships to water is seen here not in terms of colonisers and colonised but in terms of urban and rural and the perceptions held about different ways of life and of knowing.

The myth of abundance

Hoag (2019) argued that some of the justifications for abstracting water from Lesotho into South Africa are that Lesotho has abundant water and that the people of Lesotho do not know how to use the water. Similar justifications have also been advanced for abstracting water from the Mekong in Laos (Baird, 2020). These reasons, among others, have been known to be the drivers of large water projects even if they result in water being unequally distributed within an area. In Mulanje district, similar sentiments have been asserted and observed, especially with regard to water as being always available for the people. Nangoma and Nangoma (2013) highlighted how rivers carry water from Mulanje mountain to the areas near it and beyond all through the year. This perception of availability, however, is not in line with the noticeable effects of climate change that have led to a reduction in the amount of rainfall across Malawi (Adhikari & Nejadhashemi, 2016; Wilson, 2018) as well as its inconsistency. For instance, in the more current rainy seasons, rain has been starting in late November/early December when previously the first rain would have fallen in late September/October. In June in Likhubula, a community member lamented how the previous rainy season had been unreliable:

The rains came late last year. You know, back then they would be here – at least the first ones – by late September or October when late. Then we would plant and maize would be seen in the gardens by November. Last year, late November was very hot and the rains were nowhere to be seen. Usually, such heat in November would signal rains for the crops... (Formal interview, 10 July 2021)

The amount of rainfall in the rainy season has also been said to be less than in previous years as the rivers have not filled as they used to do. During one of many days in the community, a member suggested that the levels of the water were not the same in the river, that they had been dropping across the years. Of course, the community members said that the problem of water shortages
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...before this project, we would have water on these taps. Now, this is June (a wet month in Malawi) and just last week we had no water in the taps for three days, we had to walk for distances to get water from boreholes in neighbouring villages. (Informal interview, 15 June 2021)

However, even the Water Board complained that its targeted daily output for the water abstraction of 20,000 cubic metres was not being met and that they were getting less than half of their targeted output from the river (Chauluka, 2020). In Bangwe, a peri-urban township in Blantyre that receives water from Likhubula, there were times when the community would have dry taps for days, forcing community members to walk long distances to water kiosks or boreholes for their water needs. This scenario has not affected the assumptions that Mulanje district has a lot of water. Even the people living in the district believe that they have a lot of water. Any thoughts about the insufficiency of water are certainly not entertained as ‘the rivers from the mountain are perennial, they cannot dry. The ancestors cannot abandon (us) like that’ (Fieldnotes, 17 May 2021).

Abundance is always accompanied by thoughts and feelings that the people who have the resource place little value on it or do not know how to use it effectively. In discussions on water management practices in Malawi, Mulwafu and others (2003) have pointed out how water management is better organised in urban and peri-urban areas than in rural areas that are close to water. This has also been argued as one of the drivers behind colonialism in which colonists often took up land for agriculture or appropriated water because they believed that indigenous peoples did not know how to use the resources (Potts, 2012; Sharp, 2008; Tchuwa, 2019). This form of slow violence continues. The ideas of value and productivity can be considered to have shifted such that ideas are held by the ‘other’ of the modern post-colonial state who stands to benefit from resource abstraction (see Kelly, 2021; Nixon, 2011). The urbanite of the post-colonial state has become the modern colonist who mostly influenced and even victimised by neo-liberal economic policies and processes of urbanisation (see Lasslett, 2018) gets to see every resource as a commodity for their own benefit.

As Nixon (2011) highlighted, resource abstraction from the poor is also there ‘to maintain the unsustainable consumer appetites...of the urban middle classes...’ (p. 22). In this sense, people from urban areas in Malawi where the political elites have their homes and businesses believe that water in Mulanje is wasted. That in its abundance, the people do not know how to use it and, therefore, it must be abstracted to urban areas where it will be put to better use. Not only is this a degradation of resources and livelihoods but also of a people and their way of life (Brisman et al., 2014; Kelly, 2021). In Blantyre, a person who works in Mulanje but is not a native of the area remarked that ‘Mulanje is a beautiful district with a lot of resources which the locals unfortunately do not know how to use’ (Fieldnotes, 5 June 2021). The slowly constructed ideas about people and their ways of life as well as their relationships to the land and water – often defined in terms of productivity – have had clear consequences.

This notion of abundance combined with a lack of knowledge of how to use (or indeed exploit) a resource is rooted in colonialism (see de Sousa Santos, 2014; O’Lear, 2016; Sharp, 2008; Tchuwa, 2019), and these ideas have come to be ingrained in society, and not just from the outside or other urban areas. Even people within the areas have come to accept this notion of abundance as a reality, oblivious to the implications of such acceptance. During fieldwork in another community within the same district of Mulanje, a participant commented that people in Mulanje (not just the community) did not know how to use the abundant water they have in the district. The participant remarked:

People here are lazy; they do not know how to use the water. We see the water but cannot use it. We have the mountain; we would rather get our money from the mountain...have you been
to Bvumbwe (a slightly rural area bordering Blantyre)? That area produces a lot of vegetables for Blantyre, have you seen its water? Let me tell you: if the people of Bvumbwe had access to the amounts of water we let go to waste here, they would supply vegetables to this whole country. We do not know what to do with the water. We have access to the water, we grow up seeing it, this is nothing new to us.

As we arrived at a house belonging to a tea estate worker which had a small vegetable garden watered from a gulley made to divert water from one of the four rivers within the community, the participant remarked:

The owner of that garden is not from here. So they plant their vegetables there and sell them to the people here. They pay MK100', imagine when they sell to ten or twenty people in a day. That is money one can make here if they just make use of the river, but we don't care here. The mountain takes care of us... (Fieldnotes, 8 June 2021)

The implication of the mountain ‘taking care’ of people – of its personification – combined with the slow processes of perpetuating ideas about the value of land and water, of abundance, of effective use and of productivity can all be considered within the framework of slow violence and, indeed, green criminology (Brisman et al., 2014; Goyes, 2021). The focus for those who reside near the mountain is not so much on the water that it provides but on what the mountainous lands can offer. Wood and its products that the communities source from the mountain and sell to people within the district are of central value, and some people also take the products as far as Blantyre where they fetch a better price (Nangoma & Nangoma, 2013). This creates a dilemma and a tension in the relationship between water, land and people. It is a dilemma that Nixon (2011) captured in discussing the poor affected by abstraction of resources who accept and even participate in the imposition of the exploitative on other than their own landscapes – and, in this case, waterscapes – due to their own poverty and situations of economic deprivation.

**Conclusion**

Throughout the Likhubula water project, the nuances of climate change and long-term effects on rural livelihoods have been ignored and overshadowed by the opportunity to benefit urban life, something that O’Lear (2016) discussed as slow violence in climate change discourse. Thus, if Blantyre city is running low on water and suffering the impacts of climate change – on top of the rapid urbanisation it has faced – Mulanje district, which is also grappling with the impacts of climate change (Nangoma & Nangoma 2013; Wilson, 2018), is still tasked with the responsibility of meeting the needs of the city; that is, the needs of those that are typically constructed as being more productive. The adverse effects of this uneven development or resource abstraction from already vulnerable areas is often hidden, slower and overshadowed by the need to serve the urban. With short-term gains, it is often difficult to mobilise against resource abstraction, and thus, the colonial violence of the city that both Riley (2020) and McCracken (1998) discussed in their work continues as a process of slow and undisturbed violence in a ‘postcolonial’ Malawi, often under the guise of development and progress. As the impacts of climate change worsen and the demands of a growing population increase, there will be a need for various interventions. It is important that such interventions take into consideration the needs and realities of the areas that are involved.

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Abstract:
This essay attempts a reflection on rurality and herding by looking at a particular carceral setting: the Sardinian penal colony as established in the 19th c. and still surviving as a marginal institution within the national penal system. Despite the long-lasting effort to modernise and stabilise animal-farming and to eradicate herding as an allegedly criminogenic practice – effort to which penal colonies actively contributed both by dispossessing land used by the herders and by means of exemplarity as a model sedentary farm - errant herding has lingered in free society and also, in an apparent paradox, within the very carceral estates of the penal colony. I will discuss how, within the territorial project of the Sardinian penal colonies and its uncertain, yet extensive, structures of control and production, herding and the wondering of the herder after goats, sheep, and cattle in search for pastures and waters, is to a certain extent a creative practice whose spatial agency simultaneously challenges and is challenged by the spatial and institutional principles of the prison estate. This essay is grounded on archival and field research in the penal colonies of Mamone, Isili, and Is Arenas and makes use of drawings and photographs as key research tools.

Keywords: Herding, penal colonies, rural Sardinia, pastoral carceral trap

1 This essay is a revised version of the text “The herder inmate. Carceral mobility in the vast estates of the Italian prison farms” presented at the 4th International Conference for Carceral Geography – 14-15 December 2020.
Introduction

The Sardinian penal colonies were established in the 19th and 20th centuries. Three of them, Isili, Mamone and Is Arenas, still exist as examples of a marginal institution within the Italian national penal system and are here considered as grounds for reflection on rurality and herding.

In previous studies (Puddu, 2016a, 2016b, 2018), I have shown how the colonies partook in the wider project of reforming the nomadic realm of the Sardinian countryside (Brigaglia, 2006) towards sedentarism based on agriculture and absolute ownership. I did so by emphasising the original long-term plans for the colonies that proposed their status as prisons to be a temporary phase before being passed over to colonists. In this text, I attempt to combine land and human and non-human animals into a single discussion and to acknowledge the survival of herding as a fiction – which I will refer to as the ‘double myth’ – and as a practice within the space of the very institution that aimed at its disappearance: the penal colony. This analysis will confront herding inside and outside the colonies’ boundaries, considering the prison as more than a self-contained estate set in the rural realm. By mixing insights from architecture, criminology and penology, carceral geography, anthropology, history, literature and cultural studies, this work aims to contribute to research on the ‘architectures of carcerality’ (Kirkham-Lewitt, 2020) as well as on issues of determination, autonomy, freedom and resistance (Crewe, 2009; Sparks et al., 1996; Talay & Pali, 2020; Ugelvik, 2014) in carceral environments. It aims to tackle two questions:

1. Does herding in the penal colony act as a project in itself, one that both adheres and contradicts the disciplining territorial structure laid out by the carceral institution in its 150 years of existence? In another words, is herding a creative practice with agency in the institutional and physical structures of the colony?

2. Why has herding in Sardinia survived within the very institution that targeted its disappearance and to what extent is the practice of herding, its spatialisation and ‘the double myth’ of the Sardinian herder reproduced within the penal colony?

I will use the term ‘creative’ to refer to those processes capable of modifying the spatial form of the territory or the experience of it – by resisting, adapting or misusing the infrastructure of movement, production and containment built by the carceral institution.

This text will discuss the creative agency of herding as a specific practice with its own rhythms, customs and modes of operation and also consider the subjects that perform it. Herding in the colony is administered by the institution through the performance of a concert of actors – the prisoner herder, the staff and the animals. All of them use herding to creatively undertake forms of resistance to the structures of power that are imposed on them. For the sake of this study, I will delve into the way in which just one of those actors (the prisoner herder) exercises liberties, freedom and resistance via herding.

I will eventually argue that to a certain extent, herding in the colonies is a creative practice by which its agency challenges the prison’s spatial and organisational institutional structure and its boundaries and that it does so by adapting to those very structures. There is a mutual adjustment of the herding practice to the prison’s institutional protocols and routines which is reflected in the use of space. Second, I will argue that herding has survived within the prison estate in a condition that amplifies what happened in the free countryside – in a tamed, more sedentary version compared to the past. However, the prisoner herder exists as the surrogate figure of the civilian herder, for he is deprived of any relational activity while in the fields. Finally, I will argue that the penal colonies can

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1 In this essay I will refer to the Sardinian prison farms as penal colonies, recovering the historical institutional label (Colonie Penali Agricole) which is still informally used by staff, imprisoned people, locals, and media.
offer a lens to interrogate the free countryside, to understand to what extent the herder is trapped in an exploited yet proudly identified position in relation to modern narratives of farming, identity and environmental preservation, and how the structure of the territory is used and misused within this framework.

The notion of pastoral (carceral) trap (Stuit, 2021a) is key to an understanding of the extent to which creative agency can unfold in spaces that are carceral and in rurality, in particular, where the destiny of land and human and non-human animals is explicitly intertwined. By carceral spaces, I mean all ‘the sites and relations of power that enable and incentivize the systematic capture, control, and confinement of human beings through structures of immobility and dispossession’ (Story, 2019, p. 2).

The text is structured as a narrative made up of six episodes, including a prologue: the first presents the spatial and organisational principles of the penal colonies; the second provides a summary of how Sardinian herding has developed in free society and narratives that have misunderstood it as criminogenic, static and isolated; the third positions herding in relation to the theories of architecture, focusing on herding as a creative, aesthetic and relational practice that materialises in space in specific forms; the fourth describes herding, the prisoner herders and the herds at the colonies of Mamone, Is Arenas and Isili; the fifth discusses the previous section and reflects on the survival and agency of herding in the colonies; and the sixth, as a conclusion, delves into the notion of the pastoral carceral trap.
Prologue: ‘I PASTORI NON SI ARRESTANO!’

Movimento Pastori Sardi (MPS) is a grass-roots movement of Sardinian herders involved in social actions against the state’s hegemony and market structures. The movement’s overarching goal is to lobby so as to assert the herders’ political agency and social role in their local areas as well as within the global market, thereby safeguarding their economic interests (Pitzalis & Zerilli, 2013b). In a context of increasingly depopulated inland villages where herders are conceived as key figures in guaranteeing economic stability, safeguarding the environment and defending localism, their voice has had a mounting – yet fluctuating – political weight since post-WWII. In 2019, MPS made the headlines of national and international newspapers with their protest against the fluctuation of the price of milk which targeted some major private dairy companies. The protests ranged from blocking major roads to assaulting milk collection vans and, in a most dramatic act, spilling milk onto public roads (Figure 1). Some of the protesters were taken to court over those events, which sparked the association Libertade. Pro is deretos e sa solidariedade\(^2\) to launch the campaign ‘I pastori non si arrestano’, a slogan playing on the double meaning of the Italian verb ‘arrestare’ and sending out a double message: ‘herders won’t stop’ and ‘herders should not be arrested’.

In the context of the protest, a group of shepherds refused to deliver their milk to the dairy companies with which they were affiliated, taking it instead to the dairy of the penal colony at Isili\(^3\). The colony was built at the end of the 19th century as a large rural estate on what was once used as a common\(^4\), triggering a process of territorial transformation made up of experimental forms of

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\(^2\) Libertade is a non-profit organisation that provides legal assistance to people engaged in political social struggles, and it is active in campaigns of information that counteract media attempts to criminalise social movements in Sardinia.

\(^3\) This event took place in February 2019 and involved three farms from the towns of Isili and Gesico.

\(^4\) I will use common to refer to the land that in feudal Sardinia was subject to the doctrine of Dominium Divisum and to the right of use called ademprivium. This was called Saltus and included mostly pastures, forests and ‘waste-
settlement; that is, uses of the land, agriculture and livestock at odds with the traditional herding practice that has historically constituted the socioeconomic backbone of the Sardinian countryside.

The recent episodes related to the MPS’ protest are raising attention as much about the controversial ties between herding, herders and the state as about the complex relationship between this peculiar rural carceral institution and its adjacent territory. It shows how a prison – a garrison of national power – has been absorbed within local communities to the point of being understood as an ally in a protest against the national state itself.

Figure 2

The estate of the penal colony of Isili, 2013. Map from Sardegna Geoportale

Territorial discipline: The spatial and organisational principles of Sardinian penal colonies.

Since their foundation, the Sardinian penal colonies have been characterised as a project for extensive territorial structures aimed at disciplining both an inner community made up of imprisoned people and staff and their outside neighbours (Di Pasquale, 2019; Puddu, 2015, 2016b, 2018).

The birth of the modern prison in the 18th–19th century marked the moment when architecture gained consciousness of itself as a socially empowered discipline shaping people’s behaviours and relationships, and more widely, practices of inhabitation and the movements within them. This was most powerfully demonstrated by the floorplans of prison buildings, which were conceived as footprints of architecture’s disciplining powers (Evans, 1982). But in what ways were such powers scaled-up to territorial design in the vastness of the rural penal colonies? (See Figure 2)

The Sardinian colonies were designed as loosely fenced estates with a hierarchical structure made up of a central settlement and several detached branches. The former was a surrogate village (Pudlands). The right of ademprivium was abolished in 1836, and in 1865, the state acquired the full ownership of all those lands.
du, 2016a) hosting detention, productive and administrative buildings alongside housing and facilities for the staff and their families. The branches were sub-units controlling the estate’s boundaries and in charge of a specific sector of the estate by monitoring the behaviour of humans and non-humans, productivity and movements (Mele, 1996; Puddu, 2015). Communication among the sectors was guaranteed by an infrastructure of movement that was never fully accomplished according to the plans but remains quite exceptional in terms of extensiveness and rationality as compared to the adjacent countryside. At odds with any modern idea of secluded carceral compounds, some of the colonies until very recently could be freely crossed by civilians at any time of day (Murtas, 2010). Some civilians from the adjacent villages also regularly entered the colonies to visit staff, for occasional jobs or for informal/illegal activities like mushroom and wood harvesting or hunting.

We can still appreciate this territorial structure today, despite the closing of many branches, habitation of the village by very few members of the staff, the infrastructure of movement partly laying in ruins due to a lack of maintenance and some colonies having rectified their boundaries to reduce their public permeability.

Similar to the past, the people imprisoned in the colonies are all male individuals⁵ who volunteer to transfer from closed prisons and who satisfy a few main prerequisites: they are in the final years (6–10 years) of their sentence, they are certified as suitable for agricultural work and they are judged suitable for detention in medium security. The number of people imprisoned at the moment of writing is at its historical minimum, with the COVID-19 pandemic exacerbating a process in which the population of colonies has been in decline for the past few decades: Isili counts about 60 people out of 130 available places (there were about 100 people pre-COVID); Mamone about 100 people out of 370 available places (about 140 people pre-COVID); and Is Arenas about 50 people out of 180 available places.⁶

The imprisoned population largely consists of Sardinians of rural origins and foreign people, the majority coming from Eastern Europe and Africa. According to the staff, the number of Sardinian herders taken into detention has decreased compared to the past, thus contributing to a sometimes problematic shortage of skilful herders within the colonies. They are increasingly condemned for new crimes, like drug dealing, which adds and to a certain extent supersedes the more ‘traditional’ crimes associated with herders (i.e., arson, rustling, kidnapping, robberies). Foreigners have instead numerically escalated in the past decade, reaching very high percentages within the overall populations of the colonies with peaks of up to 80% (today 69% Is Arenas, 67% Mamone, 46% Isili).⁷ This is mainly due to crimmigration policies as well as pragmatic reasons that make the colonies more attractive to foreigners as opposed to Italian citizens⁸.

In the penal colonies, labour is highly valued and both staff and imprisoned people are employed in rural activities: horticulture, livestock, forestry, building and road maintenance, dairy farming and slaughtering. Some of them work as herders, which includes shepherds, goatherds, cowherds and swineherds (about 18 imprisoned people in Mamone and 8 in Isili).⁹

In earlier times, imprisoned people were assigned to work crews, but today it is preferable that they work in pairs if not individually, and they are assisted by staff in their jobs. One reason for this

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⁵ The population of Italian Penal Colony is exclusively male; hence I will refer to the prisoner herder as “he”. This does not reflect the gender of the entire herder population: in free society, while most herders are men we also have female herders.

⁶ Data refers to 2021 and derives from the official data published by DAP, Ministero della Giustizia, and by Antigone. Osservatorio sulle Condizioni della Detenzione.

⁷ Data is referred to 2021 and derives from the official data published by DAP, Ministero della Giustizia, and by Antigone. Osservatorio sulle Condizioni della Detenzione.

⁸ i.e. Foreigners, whose families are often in their countries of origins, don’t find the remote location of the colonies as problematic as do Italians.

⁹ These numbers include the grazing workers (‘pascolanti’) and the workers in the stables.
change in the organisation of work is explained by the staff who claim that people in teams develop a ‘vaguer identity’ and a collective de-responsibilisation towards work as opposed to more specialised figures, like the prisoner herder, who acquire a precise individualistic work identity which, in turn, allegedly has a positive impact on the development of the detained individual (Gazale & Tedde, 2015, p. 346).

Another change regards the demise of continuous supervision, especially since the 1950s–1960s: in earlier times, armed wardens would accompany the imprisoned people to work in the fields, while today, this is substituted with intermittent patrols. Intermittent surveillance relies on the features of the territory – topography, thickness of vegetation and quality of the soil – favouring or impeding movement and visual and sound control. More importantly, it relies on building trust and interactions between staff and the people imprisoned while working in rural activities. The colonies have indeed played an anticipatory role in Italy vis-à-vis the closed prisons’ implementation of the concept of so-called dynamic security (Dunbar, 1985). This choice is rooted in the very nature of the penal colony – in its vastness and accessibility – coupled with a chronic lack of staff and the nature of the work performed, wandering herding in particular.

The Sardinian herder\textsuperscript{10}: The reproduction of a myth

Nomadic herding is reported to have characterised Sardinian society since antiquity (Le Lannou, 2006 [1941]) and its myth and relevance have been contradictorily reinforced through modernity by those very narratives of modernisation that called for its necessary disappearance (Pitzalis & Zerilli, 2013a; Salice, 2015). The penal colonies were strategic tools at the service of the modern state’s post-feudal anti-pastoral rhetoric as well as its racist and criminalising counterparts. By forcibly enclosing portions of former common land, they were meant to confront an outside that was misunderstood by post-feudal reformers as an unproductive barbarian domain populated by herders who opposed modernisation by usurping the lands reserved for agriculture, denying the principle of absolute ownership of land and who – due to their anarchist nature towards power – prevented the construction of an ordered modern world. Within such a conflictual context, it was not unusual to encounter a statement like the following, uttered by anthropologist Paolo Mantegazza in 1869:

The wandering herder, a beautiful type for the anthropologist and novelist, is the bane of Sardinia; he is often synonymous with thief (p. 90; my translation). [...] he must be transformed into a peasant and must replace to the contemplative or rapacious idleness of which he is pleased the healthy and moralizing work of the land (p. 199; my translation). When civilisation will erase the wandering herder from Sardinia, that island will be one of the most moral countries in the world (p. 91; my translation).

Attacks towards herding aligned with a general feeling of anti-pastoralism characteristic of modern national states that, as observed by anthropologist James Scott (2017), praised the superiority of sedentary communities over the ‘barbarians’. Yet among the barbarians, Sardinians have been labelled as very peculiar by both exogenous and endogenous moralising arguments. To some (mostly the local elites that have observed rural Sardinia since the 18th century), such peculiarity had historical roots and came into being as the result of feudal domination misread as retrograde (Salice, 2015); to others it had roots in the peculiar geographic, topographic, pedologic and climatic conditions of Sardinia (Le Lannou, 2006 [1941]); to yet others, it was linked to the very ethnical and racial features of Sardinian people (Lombroso, 1889; Mantegazza, 1869; Niceforo, 1897).

\textsuperscript{10} This synthetic account could not properly acknowledge the complexity of Sardinian herding society that, far from being homogeneous, is structured in social classes and presents differences in the use of land and socioeconomic organisation.
Peculiar is the character of ‘perpetual migration’ (Le Lannou, 2006 [1941]) and the movement of Sardinian herds, which were not limited to seasonal, long transhumance. Peculiar is the (mis)conception of the pervasive yet static, ancestral and hard-to-change nature of herding, which is said to seamlessly inform the life of rural communities. Peculiar is the (mis)conception of herding as a practice that developed in isolation, in secluded areas and with little exchange with the outside. More importantly, peculiar is the alleged relation between herding and criminality\textsuperscript{11}, which coexist with a fatal appreciation towards the figure of the herder.

The herder has assumed a positive connotation for his productive relevance within the global market, and in recent times, is taken as the bearer of some local genuine identity at the service of the tourist industry (Angioni, 2004), or even as the bearer of contemporary environmental values in the guise of an ‘unwitting gardener’ (Pitzalis & Zerilli, 2013b; my translation)\textsuperscript{12} or as a rebel set against global capitalism, as demonstrated in the 2019 milk protest (Pitzalis & Zerilli, 2013b).

This ambivalent characterisation of the herder finds historical origins at the passage from the 18\textsuperscript{th} to the 19\textsuperscript{th} century (Salice, 2015). While 18\textsuperscript{th} century sensitivity railed against the herder, the same character would emerge as a romantic hero for the 19\textsuperscript{th} century observer. These narratives contributed to create the made-up character of the Sardinian herder – and it could be argued by extension, the Sardinian individual – as concomitantly a ‘negative other’ defined as a retrograde dangerous individual and a ‘heroic other’ conceived as the romantic, solitary, rebellious hero (Salice, 2015, p. 151; Pitzalis & Zerilli, 2013b, p. 381). In both cases, however, as an individual conceived as deviant.

While this fiction continues to thrive today, recent scholarship has attempted to provide some clarity and to contrast the misleading rhetoric of herding as an unchangeable and archaic practice grounded on individualism and isolation. Scholarship has focused, on the one hand, on the solidarity and relational skills of herders (Maxia, 2005b) and, on the other, on the processes of change and modernisation of herding society and the economy.

A number of structural transformations have stabilised and modernised herding in the second half of the 20\textsuperscript{th} century (Meloni & Farinella, 2015; Ortu, 2017), making observations like those registered by geographer Maurice Le Lannou in 1941 (2006 [1941]) partially invalid today. He described the perpetual movement of the herders in search of land and resources and in continuous negotiation with other groups of inhabitants and institutions. Against the state’s intent to eradicate such ‘peculiar nomadism’, the shift from a feudal economy of subsistence to capitalism in the 19\textsuperscript{th} century pushed the herders to adapt to modernity by seeking more land for extensive breeding. This use of the territory has always hampered any attempt to classify land use – ignoring codification of ownership and uses imposed by the rural cadaster – or has developed parasitic tactics to absorb and exploit state-driven transformations. This was the case of the enclosures (tancas) in north Sardinia that originally were meant to favour the establishment of large horticulture estates but became a fundamental spatial structure for the modern herding economy.

In the second half of the 20\textsuperscript{th} century, seasonal transhumance has waned and is today almost completely abandoned: herding has expanded through the introduction of farming in stables and the permanent transformation into pastures of those lands that were abandoned by horticulture. However, the result is not complete sedentarism but a hybrid situation: modernising practices (sown\textsuperscript{11} Despite recent scholarship attempts to describe criminal phenomena beyond the prejudices that have categorised inland Sardinia as indissolubly pastoral and criminal, such nexus persists. Giulio Angioni’s seminal book (1989) fostered a new season of scholarship on pastoralism, yet reiterated the invitation to reduce the scope of herding as a way to also reduce violent acts and crimes (Angioni, 1989, p. 244).

\textsuperscript{12} ‘The image of the <unwitting gardener> used by the leader of the MPS Felice Floris during assemblies and on many other occasions [...] refers to the idea of a shepherd who builds, preserves and saves the landscape without knowing it.’ (Pitzalis & Zerilli, 2013a, p. 158; my translation.)
pastures, availability of fodder and stall breeding) mix with extensive breeding and grazing in the wild. The latter not only persist, although mitigated, but are also strategically valorised as relevant identarian features within the most recent processes of ‘repastoralisation’ (Pitzalis & Zerilli, 2013a). In this process, ‘Pastoralism resumes its meaning, it no longer becomes a mere economic activity in terms of GDP or number of employees, but a necessary condition for the very existence of man and the survival of the cultural roots of Sardinian identity’ (Pitzalis & Zerilli, 2013a, p. 158; my translation). This brief account shows that herding is adaptive rather than static and isolated; instead of denying a priori the invitations offered by modern and external forces, herding selects what it can incorporate, manipulate and use to its own advantage.\(^{13}\)

The adaptive survival of herding as a double myth and as a practice in strict relation to the making of space has also happened within the allegedly fixed non-negotiable land of the penal colonies. Why and to what extent has this happened? What exactly is the agency of herding and to what extent is this creative within the limitations and transfigurations that are inevitable in prison environments?

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13 This observation partially follows the argument advanced among others by Manlio Brigaglia (1972).

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**Figure 3**

*A Line Made by Walking, 1967, Richard Long. Tate, Purchased 1976. © SABAM Belgium 2022 / Photo: Tate*

**Herding as a creative, aesthetic and relational practice**

Before moving forward, some introduction is necessary as to how herding as a fundamentally walking-based activity can be theoretically understood in architecture as a creative practice that has an agency in space and how anthropological scholarship has helped to trace the agency and spatialisation of herding in the landscape.
Architectural historian Robin Evans (1977) has argued on several occasions that modernity has regimented movement to achieve maximum and frictionless connectivity among secluded parts, and this is equally evident if one were to analyse, as he did, either the prison, the house (and housing) or a whole city. More recently, another architect, Francesco Careri (2017), wrote about ‘Walkscapes: walking as an aesthetic practice’, claiming that walking is an act of resistance able to precisely challenge the dogma identified by Evans in modern normative architecture in favour of an open and indeterminate architecture. Careri claims that walking is relational rather than just a solitary romantic action: ‘The art of wandering, is followed by the art of meeting, of the construction of a threshold’ (p. 28).

Against common understandings of nomadism as anti-architectural (cfr. Supersurface by Superstudio [1972]) Careri insists that walking is creative and materialises in forms and spaces. Among his references is the work of artist Richard Long (Figure 3), who often turned at the countryside as a locus for experimenting with walking as both action and sign/form. In Long’s masterpiece, A Line Made by Walking (1967) ‘the image of the treaded grass […] is also unmistakably the result of the action of a body, and it is an object, something that is situated between sculpture, a performance, and an architecture of the landscape’ (Careri, 2017, p. 211). In Long’s work, the body is ‘a tool for measuring space and time’ and a ‘tool of drawing’ (Careri, 2017, p. 213–214) ‘that can be superimposed on existing forms, both in reality and on paper’, that is, in cartography (Careri, 2017, p. 217–218).

The appropriation of the act of walking by artists and architects is influenced by an observation of how this has been practiced by human and non-human animals. For instance, Careri looks at the work by Sardinian anthropologist Carlo Maxia on goat herding and its agency on the rural territory which materialises in the formal structure of the filàda.

In Sardinian language, this term belongs to the world of goat herding and it has the double meaning of a path occupied by the daily movements of goats in search of pasture and of the directional orders given to animals by the herder. As explained by Maxia, a filàda should not be exclusively understood as a place of passage, of the simple transit from one area to another; it is the main living space of the flock, and as such, it guarantees the fulfilment of their various needs: it is a peripatetic space (Maxia, 2005a, p. 120).

Beginning and ending in one fold, many filadas are created as loops, some longer and others shorter, as shown in the maps produced through Maxia’s field studies, and as I could also confirm through some recent field research in the Sardinian countryside (summer 2021). Some filadas might reach more than 10 km in length where goats walk as much as 12 hours, and one of their assumptions is that the more goats walk, the better the milk production. Every morning (or evening, in summertime), the goat herder evaluates which filàda is best according to certain variables, such as season and length of the day, availability and quality of food and water, and climate conditions, and initiates the flock towards the most convenient one. Then the herder follows the flock for the entire path or just fragments of it, the latter having become the more frequent case in contemporary times as the herder diminished his time and commitment out in the fields and started using mechanical means of movement to reach out to the herd more intermittently. Such process is not without negotiation, as goats, famously animals of strong will (Thwaites, 2016), sometimes refuse to trail the indicated filàda and derail based on their instincts if they sense possible rain or some predator on the route (Maxia, 2005a, p. 113).

In conclusion, a filàda is a space – a peripatetic space – a formal structure that can be mapped and observed in the territory. The basic needs of the goats, in particular, voracious eating, can impact the quality of the landscape and vegetation, the walking of the goats can mark the ground and the
need to contain them can stimulate the erection of enclosing structures like walls and wire fences. The filàda is a tangible product of the agency of herding and the outcome of negotiation between human intentionality (what we can call a daily project), the opportunities and constrains to access the lands adjacent to the fold as well as and some behavioural characteristics of the goats (Maxia, 2005a, p. 114).

But what about carceral filàdas? How does the penal colony interpret, absorb and reproduce herding?

**Herding and the prisoner herder in the penal colonies of Mamone, Is Arenas and Isili.**

If we agree that detention facilities participate in the production and reproduction of ‘normal’ structures, practices and fictions, either as their testing bed or by passively absorbing them from free society to inevitably transfigure them, I will now try to explain how the Sardinian colony has confronted herding and the rural realm.

The way in which herding today is interpreted varies among colonies. It also depends on the animal species that is farmed and that is classified according to their degrees of sedentarism: goats, cattle, sheep, pigs and poultry.

In general, it must be noted that a mix of modernised livestock and herding has always been the case in the incomplete modern carceral–agrarian project of the Sardinian colonies, as already observed in early reports (Cusmano, 1903; Doria, 1912). Hybridity in the colonies derived from the incomplete achievements of the original plans for a modern sedentary farm due to inconsistent investments in infrastructures, tools and techniques. In free society, this is instead the product of the evolution of herding to adapt to market logics as land availability shrunk and a generational shift happened, with the new generation of herders apt to embrace the comforts of a modern lifestyle and abdicating the harshness of previous herding practices.

The penal colony at Mamone has a massive estate of almost 3,000 ha, with considerable variations in altitudes that in the past made it possible to operate a seasonal internal transhumance. The branches are very remote from the main village, and they are larger and more specialised than in other colonies. The estate’s steep topography, rocky grounds and dense vegetation make movement uneasy for humans as many areas are only accessible by foot but easy enough for animals, making it a perfect setting for extensive herding.

Farming is a mix of wild grazing and pasture in enclosed fields (tancas), with many perimeter walls built over time to define the pastures. Sheep are mostly grazed in enclosed fields within two sectors (S’Alcra and Cogoli), and each flock is easily overseen by a single imprisoned shepherd. Cattle graze wild in their own sectors (Nortiddi and Temi), and the extension of the territory often requires that cowherders work in pairs. Sectors are subdivided into tancas with sown pastures to host calves, heifers and cows to complement extensive breeding (Figure 4).

Prison staff instruct the herders on the boundaries that must be respected and on the pastures that can be used, and trespassing between sectors is punished with disciplinary sanctions: animals must not mix and detained people must always be traceable, not only for surveillance but also for their health and safety. There is continuous negotiation between the movement of the animals, the availability of pasture and water and the boundaries of each sector (Figure 6) that overlaps the geographic conditions and the spatial structure of the prison. Surveillance is not the easiest, and staff wonder if drones would be a solution.
During my last visit to the colony of Mamone (28 July 2021), I spent most of my time in the branch of Nortiddi, which is located 15 minutes away by car from the core village. Nortiddi has a large residential building where people sleep in shared dormitories. It is organised around courtyards, and there are a few adjacent farming facilities. It specialises in cattle and can host up to 50 people. Due to a decrease in population for COVID-related concerns, it only hosted 18 people last summer: four were Italian and 14 were foreigners. Curiously, there were no Sardinian herders as they were all employed as shepherds at another branch. At Nortiddi, I did not follow a single cowherder as I originally wanted to do, but I joined in the morning patrol of the branch coordinator (Figures 5a and 5b). He was a member of a trade union, a poet who writes in the Sardinian language, an inhabitant of a neighbouring village and a former herder himself, and he explained to me that as a young adult, his father convinced him to join the prison administration in the hope that he would have a more stable life condition than what herding could provide.

Aboard a white track, we moved through paved and unpaved roads, and in about one hour, we located each of the four herds and accompanying herders, who wore yellow vests. My chaperone explained that the herders are autonomous during the day and work in a morning and afternoon shift. The path is agreed in advance so that the staff can roughly locate the herds during the day. The sound of the cowbells is key to locating a herd and, hence, the herder. In summer, due to the lack of water, pastures are limited to the few that are nearby the branch, while in winter and spring the paths are longer as herds are taken further south to the pasture in the branch of Temi. I was taken to Temi after the patrol finished. Here I noticed signs of animals on the floor due to civilian flocks. The fact that the neighbouring herders left their animals to graze wild in the prison estate – and that this seems to be tolerated – is a clue that this remains a coveted territory for the surrounding villages. Occasionally we assist revindications against what is still perceived as an illegitimate occupation of land that was a common until the 19th century.
'I PASTORI NON SI ARRESTANO!'

Herding and its spatial agency in the Sardinian penal colonies

Figure 5a

Morning patrol to check the four cattle herds at the branch of Nortiddi, penal colony of Mamone

Photograph by author, 2021
While Mamone is located in an inland region with a strong pastoral economy and society, the colony at Is Arenas was founded more recently in the 1960s in a former mining and now touristic district on the coast. The colony itself was established in a dismissed mining village to undertake environmental and agricultural reconversion. Is Arenas estate has a comparable extension to Mamone, but topography and morphology, with a large dune system on the coastline, limit the actual area that can be utilised for farming activities. Flocks of sheep and cattle mostly graze in well-defined enclosed sown pastures positioned along the main paved road, and pigs, poultry and horses are kept in stables. Internal movement is thus limited to paved roads and some sandy paths for an overall maximum distance of six kilometres, and few deviations are tolerated by staff. At Is Arenas, surveillance is said to be easy. Staff more easily keep track of people’s location, evasions are rare and unwanted exchanges with the exterior are limited by topographic and morphologic features which make the boundaries barely accessible either from the inside or the outside.

Trespassing and active relationships with the surroundings are more of a headache for the governor of the Isili colony which, like Mamone, is in an inland pastoral region. This is the smallest of the colonies, but its whole territory is crossed and utilised thanks to the great variety of pastures and landscapes with available water in most parts. The lands that are not cultivated fields or built settlements are used as wild pasture for sheep and goats.

Different from Mamone where most peripheral branches are fully in operation and house the herd-ers that operate in each sector, in Isili, the imprisoned goatherders and the shepherds sleep in the main residential facility located in the core village, which is basically a prison in miniature and governed by the same rules and regimes of any Italian medium-security prison.

14 When I visited Is Arenas on 12 August 2021, my request to follow the daily grazing of a flock of sheep could not be satisfied because the summer heat and fear of wildfire had suspended any grazing activity. I instead visited the animals kept in stables and, separately, the empty pastures.
Figure 6
Approximate routine in the Sardinian penal colonies.
Drawing by A. Murru, A. Taccori, F. Spanu – 2014
The routines in Isili and Mamone are, however, very similar in that they are very flexible and changeable according to the season, the weather and the nature and organisation of work. Institutional routine expects that the cells are opened between 6:30 a.m. and 9:30 p.m. with meals served in the cells, while the morning is spent in work activities and the afternoon in recreational and educational activities inside the prison building. However, the prisoner herder leaves for the fields earlier than this fixed time, he is sometimes free to choose whether to return for lunch or stay out the whole day and he might return later than dinnertime when his work requires that he does so (Figure 6).

During field research in Isili (Figure 7, 8a and 8b), I observed that the work of the herder starts in the fold very early in the morning (around 5:30 a.m.). Located in the core village, the fold is a modern construction built in the 1950s when the last major investments were poured into the colony to modernise herding and in correspondence to wider agrarian reform that was investing in the whole of Sardinia. Intensive breeding in stables, however, was never practiced. Animal feed is in use merely as a complement, and each day the prisoner herders take the flocks to graze. Sheep are taken to the sown fodder where they spend a whole or half day alone, while the shepherd goes back to the fold to do cleaning or other supporting activities, has lunch and rests in the dwelling building, and then is out again until sunset when the sheep are taken back to the fold. Different from the shepherd, the goatherder follows the goats in the filàdas, overseeing them for a whole or half day until the loop is complete.

At the colony of Isili, there are several filàdas (Figure 8b), many short ones of about three kilometres and a long one of about seven kilometres. The latter is only used in spring when days are longer and climate conditions milder. In summertime, the herd walks a morning and an afternoon filàda, with a break of a few hours in the fold during the herder’s lunchtime.
Figure 8a
Sequence of paths and landscapes from the morning summer filàda at the penal colony of Isili
Photographs by author, 2021
On 21 July 2021, I followed the herd in the morning filàda for four hours (Figure 8a). Starting from the fold, we walked at a variable pace through little, loosely-defined paths carved in a thick forest, along the walls of an enclosed orchard where the goats jumped on the other side of the wall and across the full extension of sown pastures. We reached a peripheral branch at the boundary with the free countryside and crossed a public road that as of a few years ago was crossed by civilian herdsmen, then stopped at a water fountain to water the goats. After that, we returned to the fold, walking along the main paved road while the goats made various diversions into the adjacent fields.

The previous morning, I had visited a fold in the adjacent free countryside. Here the goats were in the fold, as they had spent the whole night – from 5:00 p.m. to early morning – in a very long filàda, enjoying the goatherder’s company only in the first portion of the filàda and at the arrival in the fold.

I understood that at Isili, throughout the years, short filàdas were increasingly preferred as they were better adapted to the routine of the carceral institution. Consequently, goat species were selected that were more suitable to this more sedentary condition. Animals are also never left to graze alone in the fields for fear of theft. The filàda is chosen daily by the staff among the many available ones, but for the whole path, the goat herder is alone. He and the herd are in control of the peripatetic quality of the carceral filàda, subject only to intermittent control by staff. His day is one of perpetual movement and is far from being monotonous as the chosen filàda changes every day or even twice a day. This is not only necessary to provide variegated nutrition to the goats but also to avoid for security reasons that the prisoner herdsmen follow fixed and predictable paths.

Figure 8b
Civilian and Carceral filàda
On the left: the five filàdas in a civilian farm in Sardinia, drawn by anthropologist Carlo Maxia, 2005.
On the right: three of the many filàdas at the penal colony of Isili, drawn by author, 2021
The carceral filàda: The transfiguration and agency of herding in the penal colonies

Cattle herding in Mamone and the carceral filàda at Isili show that herding – in its transfiguration inside the prison - seems to allow for a mitigation of the structural violence and disciplinary regimes that geographer Karen Morin (2016) claimed to be a shared structural condition across sites of captivity and carceral for both humans and non-humans. Despite the fatigue of walking windswept and steep lands, and in a dialectic with geographical and institutional opportunities and limitations, errant herding reconfirms inside the prison its status as a practice which favours an extensive use of the territory as well as some degree of freedom and autonomy for human and non-human animals.

In most prisons, daily lives are the output of a negotiation (Sparks et al., 1996) between imposed routines and the tendency of guards and prison administration to accommodate a certain degree of flexibility in order to ensure the self-maintenance of the prison system itself and to meet a number of pressures. In the case of the colony errant herding, as an exogenous force applied to the prison, exercised the main pressures. Seeking a compromise between clock time and the timing of herding and between the need to contain and that of wandering, the prison administration’s routine, which applies to the imprisoned people as well as to staff, is forced to vary according to the natural cycles of the seasons and of the life of the herds (goats, sheep and cattle have different routines), which, in turn, affect the path and the destination of the herd and of its herder.

This has an influence on herding that despite still very extensive and mostly alings with the techniques and proper use of space similar to a free society (filàdas, wild grazing in open fields and tancas), is more sedentary and regimented in prison. Security and carceral routines limit the time-frame and extension of herding; on the other hand, herding has created the conditions that have allowed the colony to anticipate, for instance, the demise of continued surveillance.

Not only does herding have an agency but it also allows the prisoner herder to exercise some liberties while reacting to the encounter with a form of power that is the compromised product of herding and carcerality. Being a herder constitutes a prestigious role among the prison community which is accessible only to the most skilful and trustworthy people; exceptions apply to their life in detention, and they enjoy the highest degree of autonomy and freedom among their peers. The prisoner herder, who is himself of rural origins if not a herder in his prior life, is often already familiar with the features of herding and is confident of his own skills, such as orientation in the landscape and empathy with the animals. He can thus surf the possibilities that herding offers him, taking some liberties and constructing free areas (Ugelvik, 2014). While alone in the fields, he is able to carve some diversions from the tracks that the institution has built for him, with his paths adding a layer to the existing network of roads, and to negotiate the boundaries. In the case of goat herders, it is the nature of the animal and its alliance with the territory and its herder that allows the detained people a larger degree of freedom of movement and the semi-autonomous definition of a peripatetic space for his own daily life (the carceral filàdas).

The prisoner herder also perpetuates the fictional qualities that we have described (Figure 9). He is represented in new fiction, such as promotional videos, as a solitary figure, a negative character on the path to redemption. This representation matches the expectations of the institution to foster responsibilisation through individualistic work identity. Despite being allowed semi-autonomous

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15 Following Sykes (1958), Sparks et al (1996, p. 41) claimed that prison routines are more fragile than what prison governance wishes and that the monolithic character of total power is ‘cracked’ in the actuality of daily life.

16 One instance of this new fiction is the project SardiniaEvasion – Liberamente that in 2019 realised some promotional activities that aimed to enhance the cultural, historical and environmental heritage of the colonies. They also produced a short film about an imprisoned goat herder at the colony of Is Arenas.
actions, the prisoner herder is a surrogate version of his free counterpart for he is asked to abdicate those relational qualities that are instead a key aspect of herding life (Maxia, 2005b) and that, as Careri (2017) argues, are fundamental in the creative practice of wandering.

Although herding survives, what is missing in the prison estate and in its official representations is the ‘social use of the territory’ that contemporary anthropologists have carefully described and recorded (Angioni, 1989; Maxia, 2005a, p. 103, 2005b) with an intention to counteract the myth of herding as a solitary wild realm: solu ke fera (lonely as a feral beast) and unable to collective endeavour.\footnote{And so the herder, the wildest and most solitary of rural workers (solu ke fera, lonely as a feral beast, it is often said of him), is the one who, like and more than others, is forced by his work to have extensive and precise knowledge on the social use of the territory and to entertain relationships of acquaintance and “friendship” with people [...] not only from his village, but also from distant ones even when it does not transhumate’ (Angioni, 1996, p. 350 as quoted in Maxia, 2005b; my translation).} But the social use of territory often re-emerges informally or illegally, as in the many anecdotes of illegitimate kids, dreams of personal marijuana plantations, construction of huts as illegal retreats, banquets with hunted animals, quick chats with other herders – neighbouring or imprisoned – who inadvertently or intentionally cross paths and the exchange of goods at the boundaries – which is not limited to drugs, alcohol and cell phones entering the prison but also includes herd rustling\footnote{Common in the past and accepted as a customary practice that regulated social conflicts and inequality, rustling was criminalised and harshly fought in modernity. Today, it has almost disappeared, but a case of herd rustling happened recently in one of the colonies.}.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{sardinia-evasion-carceral-fiction-frame.png}
\caption{A carceral fiction: the cloven herder.}
\end{figure}

\textit{Frame from video by Ifold for SardiniaEvasion, 2017. © Liberamente}
The pastoral trap.

In conclusion, herding is a practice that has been absorbed and institutionally reproduced. In the 151 year-long modern project of the colonies, errant herding has been tamed to the extent that allows for its survival as a fundamental ‘identitarian’ and productive practice for the colony itself. At first sight, the survival of herding in the institution that was established to extinguish the ‘nomadic realm of the countryside’ (Brigaglia, 2006) in favour of modern productive sedentary farming can be read as a form of internal resistance from a strong local culture to which both staff and detained people often belong. We could hence see the permanence of herding as just an unavoidable, almost ‘natural’, phenomenon. However, it is unavoidable and natural as much as it is Sardinian free society. The emphatic reproduction of the myth of the herder in the colony must be inscribed within that anti-pastoral/pro-pastoral rhetoric and the adaptive character of herding that I have already described.

As often happens while studying carceral institutions, the colonies unveil a condition that we might also observe in the parallel realm of free society: the pastoral (carceral) trap. I am here following Hanneke Stuit’s conceptualisation of the rural idyll and of the pastoral19 as genre in literature studies (H. Stuit, personal communication, Spring 2021a; Stuit, 2020, 2021b). While the idyll is read by Stuit (2021a) as a ‘structure of desire, an emotion originally attached to a specific place but that then can become detached from that place’ and, in short, stands for ‘extreme romanticisation and an idealised and privileged way of accessing the rural’, the pastoral implies tension. It tends to function as an umbrella that entails tension between the idyll and what is being excluded from it. Stuit argues that the pastoral might have an idyllic appearance, but it is a trap – a carceral trap – for the people who live in the countryside.

This is clear if we look at archival images of prisoner herders who were first dispossessed from those very common lands that they had used for centuries, criminalised for being herders – nomadic, anarchic, unproductive, violent – and then employed as herders again in a modern tamed version and once confined inside the prison estates. There is the attempt of a mediatic manipulation, which was made by design by the modern legislators who were aware of the two sides of the countryside – the ‘horror’ and the ‘rural idyll’ (Donnermeyer et al., 2013). The rural idyll is what pervades a reading of the Sardinian countryside today, with the horror side that was prevalent just a few decades ago re-emerging only on specific localised occasions.

A reason why the colonies are still in operation despite continuous threats to be shut down for their economic inefficiency must be found in their induced localism and in their ‘identitarian’ character that mixes pride for a progressive project of colonisation with ‘traditional’ practices, a factor that local staff genuinely tend to stress in an effort to value and protect the existence of the colonies. This is recognised at both local and national levels, and it also recently was served to some visitors on ‘prison tours’20 for whom herding contributes as a guarantor of authenticity. Endogenous and exogenous narratives about the colonies tend to focus on the idyll, but the tensions and contradictions of the pastoral trap (which surely includes the idyll) cannot go unnoticed in an in-depth analysis. The pastoral trap synthetises yet another instance of the relationship between freedom, power, resistance and subjectivation (Ugelvik, 2014) – where the subject is the Sardinian herder, the prisoner and the not necessarily Sardinian prisoner herder – in the space and context of the Sardinian countryside.

19 From now on, the term pastoral is used in its broader meaning and differently from the way it was used earlier in the text to refer to herding economy and society.
20 These tours were held in 2017 as part of a project that promoted the employment in the tourist industry of people imprisoned in collaboration with the private touristic service Società Studio Vacanze S.R.L and a nearby village. From what I could observe, the tours were sensitively organised without stressing the ‘dark’ side of the visit and focused on aspects of landscape and food production.
Acknowledgements

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Expressions of dependency: Green crimes and the phantasmagoria of ‘development’ in the extreme west of Bahia, Brazil

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Abstract:
The article establishes a critical analysis of development and dependency and the forms of appropriation of common goods and extraordinary profit as centralities of the monopolistic capital’s activities in the Brazilian countryside. From a reflection on the elements of dependency, the article identifies the main territorial determinations which arise from the productive internationalisation that is internalised in peripheral economies. The empirical basis of analysis is the extreme west of Bahia, the most intensive area of water extraction for soybean production in the Matopiba region. It is evident that the main territorial determinations of dependency in the context of appropriation of common goods are established based on the expansion of the productive matrix, landscape homogenisation, land speculation, water grabbing, violence and conflicts in the field, which, on the one hand, check the concept of development and, on the other hand, make the character of the dependency explicit.
Introduction

This article makes critical reflections on development and dependency based on the forms of spoliation of common goods and appropriation of extraordinary profit as central features of a monopolistic capital and its territorial determinations on the agricultural frontier. Such determinations are expressed as effects of commodity production, extractive withdrawals and socio-environmental damage that configure severe green crimes in regions of the accumulation frontier (Long et al., 2014; Lynch, 2020; Lynch et al., 2018). It is understood that these determinations are established on two scales: supra-state and intrastate. The first refers to the imposition of a logic of development that is constituted in the production and perpetuation of dependence in a game of forces of subordination to the world market and the internalisation of the internationalisation of monopoly capital (Marini, 2000; Santos, 1998); the second refers, in particular, to the process of spoliation of common goods (land and water; Ostrom, 1990) and its effects in the context of power relations that establish spatial conflicts and confrontations based on territorial constructs established by agribusiness and rural communities, the latter in fair opposition. These analyses have as an empirical base the extreme west of Bahia, which integrates the so-called agricultural frontier of MATOPIBA.

This reflection begins with the presentation of the main theoretical references on development and dependency and how their central categories of analysis demarcate the logics of production of space and territorial constitution which are linked to extractivist and neo-developmentalist logics (Milanez & Santos, 2013; Pitta et al., 2017; Svampa, 2013, 2019) and which gather to explain the capacity for green crimes to materialise in the studied area. These categories of analysis are here understood as: manufacturing, extraction of ‘common goods’, commodity production, production of value, labour exploitation and environmental sustainability.

In addition to the overexploitation of labour power and the structural elements of industrial transformation and consumption that characterise differentiation and the centre–periphery relationship in Marxist dependency theory (Amaral, 2012; Traspadini, 2016), the extraction of value from the control of common goods, such as water (water grabbing) and land (land grabbing), is considered to be foundational in the dynamics of internalisation of dependency given the central agrarian characteristics of the periphery which guide the composition of extraordinary profit and are geographically expressed in a set of territorial determinations (Souza & Borges, 2017) which arise from this logic of internationalisation of the internal productive structure. This process makes dependence not an external phenomenon but a manifestation of the internal (social, political, economic and cultural) structures of the country and highlights development as a phantasmagoria (Marx, 1980) of the capitalist centre imposed on the periphery.

Theoretical support

The discussion of developments that we present here has as its theoretical framework the studies on the analyses of the centre–periphery relations initiated in the years 1950–1970, which were at the time centred on development and underdevelopment. These studies consolidated theses and public policy incursions in the face of the flagrant social and economic inequality between countries which deepened in the framework of the imperialist relations that were being established.

From this debate derives the naive and/or idealistic reflections on the forms of gradual resolution of this process among structuralists, Schumpeterians and institutionalists. In the case of the first, we will focus on the ECLAC structuralists (Frank, 1966; Furtado, 2007; Prebisch, 1949), according to whom endogenous economic policies would alter aggregate demand and promote the strengthening of domestic savings, thus favouring development and the resolution of central knots and dis-
crepancies in the composition of value. The Schumpeterians supported their assumptions on the issue of innovation in sectors that still had comparative advantages (supply of common goods), thereby enhancing their internal transformation (manufacturing) and value addition. Finally, the (neo)institutionalists based their resolutions on an historical form of structuring of the state and, notably, factors such as corruption and lack of strength of stakeholders represent the delay. We take an extremely critical position towards these logics, sustained by the Marxist theory of dependency. Without the internal overcoming of capitalist relations, these inequalities find no resolution; their central elements are markedly supported in the forms of production of value and its appropriation; and technologies do not have an innovative character without structural changes in industrial and science and technology policies.

It is imperative to recognise that the institutional dimension is not a process of consolidation of internal strength but rather a reflection of external political impositions. Therefore, institutional weakness and even corruption are not endogenous and do not carry the dynamics of the interposition of stakeholder interests; in fact, the central condition of the periphery is mirrored in its capacity to allow the overexploitation of labour, the appropriation of common goods and unequal exchanges which perpetuate and deepen dependence (Marini, 2000; Santos, 1998).

These theses lead to an important analytical element in referring to the Latin American economies and their forms of insertion into the world order which concerns the availability of ‘common goods’. In this area, reflections reverberate on a kind of curse known as the ‘resource–curse literature’ which tends to establish and/or determine the path of economic development in these countries (Brunnschweiler & Bulte, 2008). These reflections are also treated by structuralists, Schumpeterians and institutionalists and are flagrantly dismissed in Marxist analyses of dependency.

The bias of structuralists with respect to this debate is that the abundance of ‘common goods’ and their specialisation would become an obstacle to development (Frank, 1966; Hirschman, 1958; Prebisch, 1949). This view gained force with the research of Sachs and Warner (1995, 2001) who searched for empirical evidence of this curse. This debate has regained strength since the commodities boom and the enactment of neo-extractivist and/or neo-developmentalist policies that have wrecked popular governments in Latin America in the first quarter of this century (Milanez & Santos, 2013; Wanderley, 2017). These policies further denote the subservience of popular governments and their ‘only way out’ in the formation of foreign exchange and the financing of income policies once the governments have abandoned concrete strategies to counter the imposing neoliberal policies which turn them into puppets.

The Schumpeterian matrix analyses would cancel the curse with respect to investments that renew and would expand the extractive bases of natural resources with innovations that reverberate (spill-over effects) in order to produce a productive diversification and to consolidate linkage effects (forward or backward; Ville & Wicken, 2012; Wright & Czelusta, 2004) without recognising the limits of patents and public investment in research, development and innovation (RDI). Finally, the neo-institutionalists seek more notorious reasons for why the curse is not realised or actually does not exist, given that the factor inhibiting development is linked to the weakness of institutions and, in this process, marked by a liberal logic which suggests that the answer lies in the constitution of a minimum state. This current or reflected understanding that the control and regulation structures are corrupt presents the absence of a strategy of ‘grabber friendly institutions’ which favour rentierism and the reproduction of wealth outside of productive activities and denote the absence of an entrepreneurial model that could only be produced by consolidating an essentially competitive environment (Mehlum et al., 2006).
All of these views blur the characteristics of the monopoly and the imperialist political–economic actions of its constitution. A set of anachronistic readings on the understanding of the state and its role in the production of value affiliate with the analytical logics of control, regulation and domestication of capitalism in its stage of greatest monopolistic deepening: imperialism.

In the light of these analyses, we highlight three central elements that bring together these discourses of ‘development’ in our empirical research base. The first is that the centrality of the transformation of industry would carry out this process by consolidating, in a manner close to the Schumpeterians, the capacity to contain the deterioration in the terms of trade and increase the supply of labour and remuneration, establishing resolutions in the fields of the mass of salaries and internal demand. The second element relates to the institutionalists, who would point to the strengthening of regulatory agencies in a profound contradiction between strong state and minimum state at the expense of an idealistic perspective that the state is not embodied in a structure linked to the production and reproduction of value (Braunmühl, 1983; Hirsch, 2010). The third is also idealistically established in the understanding of a domesticated capitalism in which a new relationship between society and nature, for which innovation is the way out, as well as between economy and ethics would give rise to a new (green) economy that would produce positive effects on development in a horizontal and ecologically sustainable manner.

In antithesis, we follow a critical perspective which is marked by the assumptions of historical and dialectical materialism, that is, the Marxist Theory of Dependence, by which it is imperative to recognise that the characteristics of this development are not established as linear and staged processes. Rather, the centre–periphery relationship is marked by a dimension of dependence that expresses the subordination between formally independent nations in which the relations of production, also subordinated, ensure an expanded reproduction of this condition (Marini, 2000, p. 4). In this process, the analysis should always be relational and reveal that the demand for primary products (in our analysis, agricultural products) by the large central industry consolidates its manufacturing specialisation and determines the peripheral specialisation in the production of commodities. Such mechanisms consolidate the extraction of extraordinary profit in the face of the technical progress of their economies, the inequality of exchanges and the monopolistic control they have over the production and circulation of goods.

According to Luce (2018), this process is materialised by a profound ‘non-identity’ between the production of value (produced surplus value) and the appropriation of value (appropriated surplus value) and is marked by low-cost production based on the overexploitation of labour and the national intensity of labour as a unit of measurement of value generated and appropriated by social formation. Our observations bring into this debate the processes of control and appropriation of common goods at low cost, while considering territorial determinations as reflexive contributions to extraordinary profit.

In this field, such dynamisms are associated with the concepts of ‘land grabbing’ and ‘water grabbing’ as proposed by several authors, among them Franco et al. (2012), Rulli et al. (2012), The Oakland Institute (2011), Mehta et al. (2012), Woodhouse (2012), Wolford et al. (2013), Souza (2016), Pitta et al. (2017) and Pereira and Pauli (2016). It is considered that this logic of control has left an indelible mark in Brazil that cannot be side-lined and, according to Oliveira (2020), it is the phenomenon of grilagem, not because it is expressed as a particularity of control but because its realisation implies the most violent face of peripheral and dependent capitalism. This brand results in control, the production of value and the realisation of extraordinary profit considering the levels of organic composition of capital, that is, in the degree of exploitation of labour (relative surplus value), in the expansion and intensification of land use (agricultural production and productivity),
in the appropriation of water in the production process and in the social, environmental and economic crimes (socio-environmental dumping) that result from them.

**Methodology**

To carry out this research, we consolidated a detailed literature review of the central concepts of analysis that theoretically and methodologically respond to the assumptions of the dependency theory, as presented in the initial sections of this article. In the second moment, we established a critical reading of the processes of appropriation and territorial determination of large economic groups in the trajectory of commodity production in the region. These processes resulted in analytical frameworks of land and water conflicts demarcated by land grabbing and colonisation in the region. The data on water conflicts and land conflicts were prepared based on the records published by the Pastoral Land Commission between the years 2011 and 2020, given that in the years prior to this period, the data were not presented in individualised form (land conflicts and water conflicts; Alves, 2009, 2015; CPT, 2020). Based on data from the Brazilian Institute of Geography and Statistics – IBGE (Municipal Agricultural Survey – PAM, 2019), we then produced the maps of the advance of the production matrix (soybean farming) in the far west of Bahia and the dynamics of water appropriation and use in the region by irrigation systems, data available from the National Water Agency (BRASIL/ANA, 2020). Prices and demands for land (2000–2016) were available only for this period in the Agriannual reports (FNP Consultoria & Negócios). Prices were corrected by the General Price Index – Domestic Availability (IGP – DI; Getúlio Vargas Foundation – FGV) for June 2021 and converted to dollars at the commercial exchange rate on the same date. The timeframe of the research is from 2000 to 2019, with reduced internal variations within this timeframe due to unavailability of some data.

It is worth noting that for the water use distribution map, in addition to the data made available by BRASIL/ANA (2020) cited above, the allocation data surveyed by Cunha (2017) were also used. The software used for the preparation of all maps was ArcGIS Version 10.8 (ESRI et al., 2020).

**Results and discussion**

The cerrado, Brazil’s second largest biome, has become the great stage for agribusiness. Low land prices, water potential for planting and the relief that favours mechanisation, including the illegal appropriation of public lands, explain the investments in the region, constituting the MATOPIBA agricultural frontier which covers the states of Maranhão, Tocantins, Piauí and Bahia. This logic of production and appropriation of value competes with a socio-spatial dispute as well as projects in territorial consolidation, considering that the qualitative change between space and territory refers to power as the ultimate epistemic centrality of this category. (Raffestin, 1993). In this sense, territory is always established a posteriori from a set of socio-spatial practices (Souza, 2009) that result in territorial determinations, understood as state (situation) and movement of class projects towards hegemony (Souza & Borges, 2017).

The materiality of this value logic therefore gains configurations of land use, occupation and control in which the State has effective centrality (Wolford et al., 2013), especially in the Brazilian case by establishing a credit policy that benefits oligopolistic sectors and that not only ratifies but gives consent to the processes of land grabbing in the country (Frederico, 2018; Jesus, 2020; Oliveira, 2020; Pitta & Mendonça, 2017).

This has been the configuration of soybean production processes in the far west of Bahia and it is expressed as a first determination, the consolidation of an agricultural commoditisation and the
territorial domination of its production relations. Map 1 shows the crop expansion trajectory in the region and Map 2 shows the absolute variation of territorial occupation in the period from 2000 to 2019.

**Map 1**
Territorial expansion of soybean cultivation in extreme West Baiano – Brazil/2000–2010–2019 (ha)

**Map 2**
Variation of territorial expansion of soybean production – extreme West Baiano – Brazil/2000–2009
The territorial expansion of the production matrix concurs not only with a set of environmental damages from the use of pesticides (Bombardi, 2017) but also with a change in labour relations and land use which expanded wage earning, leasing and conflict dimensions. In this sense, it is not only a dynamic of spatial domination but of the determination of the production of value and the appropriation of surplus value, followed by a process of income extraction which implies the imposition of systems of social control and economic power which are, therefore, territorial. Map 2 shows the variation in this growth over the period, reaching dizzying heights of over 400%, due to a dynamic of monoculture productive specialisation which consolidates one of the deep territorial determinations of dependency and the hegemony of a productive matrix and the destruction of cerrado areas.

The expansion of monoculture competes with a second analytical category of determination that refers to homogenisation. Souza and Cabero Diegues (2012) stated that the homogenisation of a landscape expresses the established power relations as form, content and method of production of space, breaking the separation between appearance and essence in the spatial dynamics. The central issue is to understand that the landscape always brings together an ontological property which is a materiality of the concrete projection of human action in a given historical time and geographic space that expresses the appropriation through historically constructed power relations—according to Souza (2009), the territories—which effectively break with fragmented, univocal and dichotomous readings and that has been raised many times in the very abandonment of the use of this category in detriment to others—such as space, place and even region (Fulino & Souza, 2016).

In this sense, the landscape in capitalist logics denotes processes of geographical differentiation and equalisation, while in peripheral economies, its most evident determination is an equalisation of the processes of production of value linked to homogenisation, consolidating what Wolford (2021) calls plantationocene. Souza and Cabero Diegues (2012) analysed the processes of homogenisation of the landscape in Spain which was faced with the expansion of biofuel production and the economic crisis of 2008 and used Theil’s model to denote its impacts on the agricultural productive diversity of the country. The analysis of this territorial determination in the far west of Bahia denotes a process of hegemonic cultural entropy. In this case, soybean acts as a hole that absorbs the other agricultural activities, competing with the reduction of productive diversity and, above all, of food crops. Thus, the closer to 0, the more homogeneous is the analysed area. Map 3 shows the pattern of entropy of the landscape in the region of analysis and the increase in the homogenisation pattern. The indices below 1.1(H) are linked to almost all of the municipalities in the area of analyses and sharply contrast with levels of 2.6(H) or 3.2(H) present in the Spanish Autonomous Communities. It is worth noting that if all production linked to the logic of international markets (corn, for example) were added, we would have an even more accentuated pattern of homogenisation. An important example of the seriousness of this picture relates to the production of cassava, the main regional food element, which was reduced from a production area of 21,600ha in 2002 to 2,656ha in 2019, denoting the trajectory of food insecurity and the increase in prices of basic foodstuffs. Overall, this process, points to a trajectory of dependence on the external market, a markedly regressive specialisation due to the simultaneous amplification of the weight of sectors intensive in common goods and the deindustrialisation of the economy (Carneiro, 2017).

This dynamic of use, occupation, control of land and homogenisation of the landscape has established an increase in demand for land as investment and speculation. These speculative movements are reflected in the price trajectory. Map 4 shows the price performance in the period from 2002 to 2016 based on data from FNP Consultoria e Negócios (2002).
Map 3

Map 4
Agricultural land prices in the extreme West Baiano – Brazil/2002–2009–2016 (US $/ha)
We observe the increase in prices and how these dynamics do not only bring together a quantitative aspect of area and market but also denote a qualitative change in the relationship between production and social reproduction, since production is not food production and breaks with cultural food processes and productive knowledge. Land becomes an object of consumption and exchange value, which is clearly configured as a rupture in ways of life and in the relationship with nature.

The trajectory of land prices and its financialisation logic alter social relations of production. The consequences of these positive inflections in prices are associated with the expansion of the market and leasing practices as well as the types of use and the abandonment of regional food activities, thereby establishing conflicts among peasant populations over communal uses (common pastures). These consequences also reverberate towards a change of vision from labour land to business land, altering elements of the peasant ethos and of other landowners and further altering their sense of social reproduction, whether through wage earning or through the rent-seeking position that a few start to assume in the logic of commodity production.

Map 5
Variation of land prices in extreme West Baiano – Brazil/2002–2016 (%)

Map 5 highlights the evolution of prices in the period of analysis and the appreciation in prices in increasing percentages in the same direction as the territorial expansion of crops, reaching average levels of 200% in price variation. This relationship between use, occupation and control is associated with the behaviour of agricultural activities and, above all, the boom in commodity prices (Svampa, 2013, 2019). In addition, power relations materialise with land-grabbing systems and socio-spatial conflicts that represent in breadth and depth the acute class contradiction in the region (Oliveira, 2020).

Land appropriation by agribusiness to meet the international demand for products increases worldwide the pressure on the use of common goods, particularly water (The Oakland Institute, 2011). According to data from the Conjuncture Report on Water Resources in Brazil (BRASIL/ANA,
2020), about 66.1% of the water consumed in the country in 2019 was used for irrigation, followed by animal supply with 11.6%, an activity also associated with agribusiness.

Based on data collected by the Irrigation Atlas prepared by the National Water Agency (BRASIL/ANA, 2020), it is possible to observe the intensification of water consumption given the expansion of agro-hydrobusiness (Cunha, 2017; Thomaz Júnior, 2010). The main soybean producing municipalities in Bahia total about 1,564 pivot centres, irrigating about 187,979 hectares. Among those municipalities, we highlight São Desidério and Barreiras, which have 431 and 385 pivot centres, respectively, and in these municipalities, the average flow is 7,500m$^3$/h in 28 irrigation days per month, as opposed to the average flow of the São Francisco River Basin, which reached 49,260m$^3$/h. This means that the ANA’s reduced action only shows the impossibility of controlling and domesticating capital in its eagerness to appropriate and control water and expand the production of value in relation to the number of permits, tube wells, and pivots installed in the region, as can be seen in map 6. The expansion of water extraction is not restricted to a control process, as presupposed by institutionalists, but expresses the managerial role of the state in ratifying the mechanisms of spoliation from its regimes of authorisations as well as indicating the trajectory that will be established in the expansion zones of MATOPIBA in other areas with rainfall and fluvial regimes much more vulnerable to this area of analysis.

These processes indicate the reduced supervisory structure and state control action. They also indicate that the regulatory agencies formalise the capitalist exploitation and use of common goods to the detriment of the distribution to and access from communities. This debate breaks with any idealist institutionalist perspective, considering that the state is a direct agent in the processes of commodity expansion and that it acts from the institutionalisation of social, political and legal practices as a mechanism to guarantee the realisation of the value form (Souza, 2021).
All these factors are confronted with the deep imprint of land grabbing and territorial control by the large capital operating in the region. Companies such as SLC Agrícola, Sollus Capital, Radar, Tiba Agro, Ceagro Agrícola and Cantagalo General Grains (Frederico, 2018; Jesus, 2020) promote spoliation and conflict in the countryside. The historical land conflicts are associated with water conflicts; these two dimensions are sides of the same coin with one result: the production of value, and it is worth noting that water conflicts unfold in the aspects of quality and availability (quantity) and access to water faced by local communities (CPT, 2020).

Maps 7 and 8 show the number of families involved in land and water conflicts in the municipalities of the far west of Bahia, showing not only the expansion of control and territorial construct but also the problems of land grabbing and dispute over land and water that affect about 78,000 families. Water conflicts are concentrated in the south of the area of analysis, and it is important to note that they develop from the process of expropriation of agricultural land, considering that the advance of capital over land in a second moment reverberates on water given the intensification of production in the region.

**Map 7**
This is the last territorial determination to be addressed and the most violent because it compromises peasant social reproduction, their ways of life and their relations with the environment. It is materialised in the number of murders of peasant leaders who fight for their rights as they confront the exploitation and concentration of land and income.

**Conclusion**

This analytical framework has allowed us to infer that the logic of dependency is expressed internally in a dynamic of spatial production by its territorial determinations and deepens in the forms of constitution of the power of agribusiness. It is considered that green crimes are territorial determinations of dependency that express internalisation, that is, the internalisation of the internationalisation of production, finance and, therefore, of power which makes these spatialities become territories of accumulation and territories of sacrifice by exposing these communities to various forms of violence.

The imposing forces of agribusiness are amplified by the state’s main action in institutional arrangements, in the regularisation of land occupation processes and in the offer of credit and investment policies to economic groups. These policies accelerate the appropriation of space, consolidating these regions as expressions of the class struggle which distances them from any sphere of understanding of what development would be since they exclude social subjects from the results of their work and deprive them of the totality of human life, fragmenting it and fixing it as merchandise. They also reveal the face of violence; the green crimes are only inaugural processes to exterminate ways of life and the very lives of those who resist their destructive logics. Dependency thus presents its relational dimension between centre–periphery, with the pernicious evidence that situations of violence and environmental and social destruction materialise with the internationalisation of the
internal structure of the periphery, since production and product materialise into extraordinary profit which is realised in the centre of capitalism. This process concludes capitalism’s logic of geographical expansion, the result of its laws of centralisation and concentration. Green crimes are the harmful effects of dependency, the very phantasmagoria of the ideology of development.

Bibliography


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Green crime, territorial resistance and the metabolic rift in Brazil's Amazon and Cerrado biomes

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Abstract:
This paper draws on three case studies in the Amazon and Cerrado biomes of Brazil, where the encroachment of hydroenergy, mining and agroindustrial complexes into rural, forest and riverine communities has triggered environmental destruction and escalating human rights abuses. By unveiling the links between localised, violent land grabs and the broader corporate strategies of resource capture and land speculation, the paper contrasts the destructive, and often criminal territorial advance of these activities with the corporeal and cultural reproduction of communities whose resistance is an obstacle to further accumulation and environmental harm. The contrast and conflict between these distinct organisational and productive forms, imbued with massive power asymmetries, invites a broader conception of labour-capital tensions and highlight contradictions within state making apparatus with implications for both human rights and environmental harm. The paper thus builds upon theoretical advances in understanding human-nature metabolic relations to depict how corporeal rupture is intimately tied to environmental exploitation in these biodiverse territories. It insists that attention to the motivations and outcomes of rights violations at a range of scales is required to understand the perpetuation of these transgressions, while closer attention to the episteme and strategies of the communities may offer pathways to a social and ecologically committed future.
Introduction

There are several emerging threads from the field of Green Criminology (GC) that provide for a dialogue about and extension of our collective analysis of environmental harm, escalating social conflict on the frontiers of resource extraction and cultivation and the indivisibility of ecological damage from corporeal rupture which can be the subjects of this study. The regular transgression of regional, national and international legal instruments that supposedly protect environments and human rights involves the often opaque and complex organisation of and interrelation between local, corporate and state actors that engage in activities which constitute—but are rarely prosecuted as — criminal behaviour. GC has shifted the focus beyond the immediacy of environmental crime to consider the broader motivations for and outcomes of environmental disruption. This invites a closer interrogation of the social relations and tensions that underpin a seemingly uncontrollable territorial advance of environmental degradation and an intensification in conflict in culturally and bio-diverse regions.

This paper builds upon the class-oriented and southern perspectives on green crime to contextualise and analyse resistance by riverine, quilombolo1, indigenous and agrarian communities in the globally important Amazon and Cerrado biomes of Brazil. These areas have been the target of violent land invasions and massive scale hydro-energetic, mining and agribusiness projects, yet the communities have organised with relative success in ways that merit attention due to the different spaces and scales of contestation.

It is the very fact of their resistance that illuminates how resource capture and degradation is practised via local and armed opportunism, transnational financial speculation and state and World Bank-sponsored land and water privatisation. The often opaque interlinkages between localised land grabs, corporate strategies and statehood decision-making apparatuses have profound consequences for forest and river destruction and preclude a privileging of one scale over another in the analysis of green crime. In addition, empirical attention to the collective resistance against further environmental harm in territorial and commodity frontiers highlights the important tensions within state–capital relations. This, in turn, provokes a broader conception of labour towards an analysis that engages more robustly with distinct episteme of those whose existence is threatened by further resource appropriation.

As more recently acknowledged by green criminology scholars, this episteme is markedly absent from conventional social sciences (Escobar, 2004; Porto-Gonçalves & Leff, 2014; Weis, 2019), including criminology (see Goyes & South, 2017). We contend that this absence is underpinned by an inseparability of corporeal rupture from ecological disruption. Consequently, the resistance of these communities to corporate advance makes visible the antagonism between their ancestral, metabolic human–nature interactions and the logic and productive relations based on further commodification of the biodiverse regions in which they live.

This paper focuses on contemporary conflicts over land, valleys, rivers and fresh water in three sites: the Volta Grande of Xingu River and the Upper Tapajos Basin (both in the Amazonian state of Pará) and Salto in Piauí State in the Matopiba region of Brazil’s Cerrado. Amidst a marked escalation in violence and dispossession over the last decade, the question presented in the paper is: In what ways does the corporeal rupture of rural labour threaten further ecosystemic degradation?

In a second question, the paper critically explores labour–state–capital relations through the lens of the aforementioned conflicts. Departing from a tendency in the literature to treat these compo-

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1 The descendants of rebelling and freed slaves who established their own distinct communities and territories.
nants as homogenous entities, the question asked is: What do the social tensions within and across state institutions, regulatory bodies and judiciaries at local and regional scales tell us about the likelihood of or limits to further green crime?

Finally, the paper follows a praxis that aspires to engage with the distinctive knowledge production in these territories and takes an active position in relation to ongoing human rights and environmental abuses. The third question, therefore, asks: How does the actual contestation of green crimes inform an effective framework for analysis of the restoration of more equitable human–nature relations?

To answer these questions, the paper is structured as follows. In the first place, it finds that an examination of metabolic nature–human relations and their linkage to the field of GC provides fertile ground in which to present and analyse the three case studies that are introduced. The methods by which the data were collected, scollated and shared are outlined before the case studies are individually considered. Finally, the contribution of the analysis of these three case studies to the field of GC is discussed.

**Green criminology and metabolic rift**

In a recent review of GC, Lynch (2020, p. 51) asserted that, ‘green crimes are defined in administrative, regulatory, and civil laws, as well as criminal laws, and at various levels of governance’. This acknowledgement that the ‘definition’ of GC is traced across these various corridors and scales offers an important counterbalance to what has been considered the rather elitist frameworks for addressing ecological limits and harm (e.g. Pielke, 2013; Steffen et al., 2015). A closer inspection by GC scholars of the unevenness of environmental harm and enforcement across the dimensions of race, class and ethnic composition is welcome (Stretesky 2008; Stretesky et al., 2013), yet gender is conspicuous by its absence from these discussions. This is despite the evident disproportionality of ecological harm experienced by women and their role in local to transnational responses (Saleh, 2009), a factor that is reinforced by the cases that follow.

The political economy approach favoured by the earliest advocates of GC adopts Schnaiberg’s (1980) treadmill of production theory to capture the relentless accumulation drive of capital that either makes extractive ‘withdrawals’ from environmental systems or polluting ‘additions’, thus leading to environmental ‘disorganisation’ (Long et al. 2014; Lynch, 2020). This political economy approach thus emphasises the trajectory of capital–state–labour relations towards further and inevitable ecological harm; in accordance with the important interventions of Goyes (2016) and others in relation to southern experiences (Weis, 2019), GC has been more attentive to the ‘victimisation’ of and violent aggression against environmental activists and indigenous groups (Lynch et al., 2018). There remain theoretical blind spots, however, in that treatment of these agrarian and indigenous subjects of territorial resistance tend to stray from the broader class analysis of political economy theory (see Mendonça, 2018). Linked to this is the difficulty of conceptualising the inherent links between human rights transgressions and environmental harm despite the centrality of these two dimensions to manifestations of resistance and advocacy. For example, it appears that Long et al. (2014) followed a rather static, normative reading of labour in the work of Obach (2004), whereby ‘the state, labor, and capital all assert that economic growth is critical for social well-being’. This may help to explain the reason that the transformatory potential of labour has been dimmed by Long et al. (2014) who shifted their spotlight to the agency of a (questionably) ‘autonomous’ and seemingly homogenous state. From this springs a surprising conclusion that ‘criminologists must focus on the broad problem of planetary boundaries as opposed to compliance with some particular regulation’ (Long et al., 2014, p. 4).
Given the scale and diversity of ecological concerns, there are pressing reasons for a power-attentive GC to be drawn in this direction: the weight of corporate crimes bears little relation to individual transgressions (Lynch, 2020); and localised regulations, such as environmental impact assessments, are for many critics merely an instrument to accommodate and justify further capital accumulation, while the prosecution of green crimes seems to do little to change behaviour (Garvey et al. 2015; Gould et al., 2008; Marshall & Goldstein, 2006; Stretesky et al., 2013). The authors of this paper draw on evidence from geographical locations remote from state governance and regulatory institutions, and it thus seems premature to dismiss the differentiated zones and scales of contention. There are direct connections between the decisions to prosecute—or not—localised green crime and broader ecosystem destruction. The globalised ramifications of the local transgressions suggest that not only a multi-site and multi-scale analysis of GC as proposed by Lynch (2020) is required but also an analysis that effectively grapples with distinct readings, meanings and struggles for territories by diverse groups of people whose struggles offer alternate pathways for social and ecological justice. Indeed, a political economy approach to GC that leans towards the class-conscious readings of human-nature metabolic relations (Lynch 1990, 2020) and a belated embrace of southern episteme invites a firmer consideration of the key and contradictory role of labour within and against capital accumulation processes and consequent environmental harm.

In what follows, this broadening of the geographical and epistemological reference points for GC and a broader conceptualisation of labour may contribute to the aspiration that GC can ‘become meaningful and to have an impact within and beyond criminology [...] and provide evidence useful to policy makers that might help reduce the ecological stress humans create’ (Lynch, 2020, p. 58). To this end, recent theoretical developments in relation to Marx’s (1975) notion of metabolism are revisited and considered in relation to the human–nature relations of green crime and collective opposition to further harm.

Long et al (2014) followed Obach (2004) in confining labour as a component of capitalist relations and hence economic growth to the distinct wage relation under capitalism. In doing so, they skirted past the contradictory position of labour as not only a source of value for capital but also as the means of production with the capacity to resist and mediate relations for its own interest. They also foreclosed a broader consideration of work/labour and the transformation of nature and the important distinction between ‘production’ that has an immediate use and the exploitative and wasteful modes of production under capitalism.

In his study of the labour process, Marx (1975) observed how humans through ‘work’ have historically transformed nature towards their immediate reproductive needs. Under capitalism, however, this direct relationship or ‘first nature’ is disrupted. In its place, humans are coaxed or coerced to sell their labour for a wage, and for the most part, their physical and mental capacities matter only for the value that is bestowed to the owner of the means of production. Under the new logic and the new relations of production (or after Mészáros [1995], the ‘social metabolism of capital’), there is a metabolic rift whereby humans are deprived of access to and knowledge of naturally provided means of social reproduction, while nature’s capacity to reproduce itself is also compromised through the intensive ‘robbery of nature’ (Foster & Clark, 2020) as resources are extracted and polluted upon capital’s advance.

Underpinning the analyses of this metabolic rift and production of a second nature under capital is the articulation of the ‘uncontrollable’ and relentless accumulative strategies of capital (Mészáros, 1995) that inevitably brings it into conflict with the finite condition of the biosphere. There has thus been a certain convergence with the literature on planetary boundaries (for example, Magdoff & Foster, 2010) but with important distinctions, two of which are advanced here.
In the first place, metabolic rift theory highlights humans-as-nature (Napoletano et al., 2018) and deals with the problem of human interactions with and degradation of naturally produced resources while avoiding anthropocentrism. It also avoids a post-humanism (Moore, 2015) that risks rendering even more complex the navigation and prosecution of green crime. It refutes a human versus nature duality that would, for example, separate out the loss of wildlife species from human rights transgressions (Sollund, 2019) in biomes where both are being threatened. The relationship between illegal deforestation and occurrence of slave-like labour in the Brazilian state of Mato Grosso is a case in point (Portes Virginio et al., 2022; Torres & Branford, 2018). The metabolic rift draws a clear distinction between the strategies of accumulation and commodification, most easily discernible in primary production (Bagnoli & Campling, 2018), and the livelihoods of communities in territories where, for example, indigenous, riverine and agrarian communities depend on direct access to soils, rivers and forests for their material and cultural life (Porto-Gonçalves & Leff, 2014; Weis, 2019). It thus avoids the wrongheaded, occidental notions of pristine environments in need of protection and rather explains why many forests are present because of and not in spite of the people within them (Rocha, 2020). Furthermore, a broadening of class analysis to embrace the large-scale resistance by these communities whose raison d’etre is antagonistic to corporate advance means that GC can and should shift the emphasis away from a green ‘victimhood’ that suggests a passivity among those who have been most resistant to actual green crime.

A more explicit acknowledgement of the episteme, the practices and the self-demarcation against accumulation in distinct territories (Porto-Gonçalves & Leff, 2014; Torres & Banford, 2018) reveals that in many cases, we only ‘know’ of green crimes due to organised struggles against them. In remote areas which are far from monitoring centres and judicial enquiry the frontiers between first and second order metabolic relations are played out violently and the corporeal rift is manifest in 1,576 recorded land conflicts in Brazil in 2020, the highest number since 1985 (Pastoral Land Commission, 2020). For the subjects of these studies, ecological health is inseparable from the material and immaterial human needs within the distinct territories. For the transgressors, the human occupants and the rights they struggle to uphold are an obstacle to deforestation and water pollution that is integral to mineral, hydro-energy and agricultural enclosure. The occurrence and extent of green crimes hinges on the local and regional balances of power and reflects social relations not just across the community, municipal, state and federal levels; it also reflects the relative influence of transnational governance and financial and judicial institutions. Given that legal reinforcement in relation to GC proves to be difficult at whatever scale of analysis, the observations warn against a relegation of one scale over another, and there should instead be an exploration of the tensions within and across the legal and extra-legal processes.

In accordance with Lynch (2020), the material that follows delves into the ‘conflicts’ around what and who produces scientific knowledge, whose interests are served and who influences outcomes. In this regard, there is a significant body of work from the southern hemisphere that not just provides further evidence of green harms (Weiss, 2018) but also the plural knowledge forms in concert with local environments (see Escobar, 2004; Porto-Gonçalves & Leff, 2014). These offer important counterpoints to the linear frameworks and assumptions of growth, modernity, progress and development.

The methods by which research was undertaken and shared across three sites in the Amazon and Cerrado biomes is in keeping with the critical origins of green criminology and is responsive to calls for a praxis that engages with and integrates the episteme and scientific knowledge of actively engaged communities and the academy. The methods are outlined in the next section.
Methodology

This paper is primarily based upon fieldwork undertaken in three territories over a four year period between May 2018 and March 2022. In each of these places, however, relationships between residents, civil society organisations and academics stretch back to 2005, and the article thus reflects the knowledge shared between residents and the research team of community-based, academic and legal practitioners over a considerable period. In addition, an analysis of the legal cases was undertaken between April 2020 and February 2022 to help identify both particular and more common dimensions in the strategies undertaken by communities in the face of green harm. This article thus draws as well on the publicly available case material, the archives of civil society organisations supportive of the communities in question and personal communications with legal advocates involved in the respective cases. A synthesis of the legal proceedings in each case were formally brought together in the online event *Land Law and Legal Strategies to Defend Rural Communities’ Land Rights: Matopiba, Cerrado and the Amazon*, 17 July 2020.

In Montanha–Mangabal, Pará, annual visits were maintained between 2008 and 2017. In 2018, 2019 and 2020, remote communication was maintained by the authors in preparation for a later phase of self-demarcation. In July 2021, members of the research team visited the community in the aftermath of another land invasion to gather testimony and highlight the territorial rights of the residents, and in February 2022, a further visit conducted additional interviews and presented documentation on the outcome of the community’s legal challenge.

In Salto, Piauí, the civil society organisation Rede Social de Justiça e Direitos Humanos (Network for Social Justice and Human Rights) first conducted fieldwork observations and interviews with the agrarian community following the increased land speculation in 2008. The ten interviews with residents of the Salto communities that inform this paper were conducted in May 2018 and in September 2019, and the community was engaged through a series of interviews for written and podcast dissemination in May 2020 and June 20212.

In the Volta Grande region, the civil society organisation Movimento Xingu Vivo Para Sempre (MXVPS) has maintained contact with the fishing and artisanal mining communities of Vila Ressaca and Belo Monte do Pontal since 2008. In 2019, community consultations with 67 people informed a record of further threats and complaints. The most recent field visit was undertaken between 7 and 15 February 2022 when eight residents of Vila Ressaca, PA Ressaca and displaced families of Belo Monte do Pontal along with the Public Prosecutor working on their legal case were interviewed by the authors.

Interviews were conducted in line with ethical norms; data protection and pseudonyms were used for all interviewees for security reasons. In what follows, three case studies are outlined with attention to the legal domain through which capital projects seeks to advance and communities seek to resist further resource capture.

Volta Grande of the Xingu River: Hydroelectricity and gold mining

The Volta Grande (Great Loop) of the Xingu River is an area located in the municipalities of Altamira, Vitória do Xingu and Senador José Porfírio in the state of Pará. There has been profound resistance to the Hydroelectricity project (UHE) of Belo Monte since a 2008 meeting between the


3 These are in line with the Economic and Social Research Council funding body and UK data protection legislation.
owners, indigenous peoples and social movements ended in confrontation and injury.

These collective concerns were well founded. In 2019, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) judged that the mitigation of the impacts of the Dam operation foreseen in the Environmental Impact Assessment (EIA) was insufficient to prevent marked ecological disruption. In particular, the two key hydrographs provided in the EIA were considered flawed. A technical opinion provided by IBAMA in December 2019 concluded that the UHE application would most likely worsen the current environmental situation, and it provided an alternative provisional hydrograph for safer river flows, ecosystem and inhabitant protection.

Contrary to the technical position of its own agency, however, the president of IBAMA signed an Environmental Commitment Term in February 2021 to allow the application of the consensus hydrograph during the year 2021 and established some additional compensatory measures. This contradiction was at the core of an injunction in a Public Civil Action obtained by the Federal Public Ministry (MPF) on 6 June 2021. The judge determined that the provisional hydrograph would be applied until such time that ‘safe flows’ for the functioning of Belo Monte could be determined without compromising the ecosystem and so that the inhabitants could be assured. This decision was appealed and on 26 July 2021, the Superior Federal Court in Altamira reversed the decision, overruling the decision of the lower court. As Movement Xingu Vivo (MXV) pointed out, this was the seventh time the superior court had overturned the lower court decision in favour of the company. It thus validated the hydrograph (B) and seems to ignore ILO Convention 169, which requires that indigenous and traditional communities are consulted before taking any action that affects their livelihoods.

To compound the fears of the communities in the region, the planned installation of the gold mining project of the Canadian mining company Belo Sun was located in the Directly Affected Area (ADA) and in the Area of Direct Influence (AID) of the Belo Monte UHE. The open-pit mine planned an extraction of 73.7 tonnes of gold in 12 years of operation, becoming the largest of its type in Brazil with an estimated cost of approximately $1,076,724,000.00. Two 220m deep pits were planned (Ouro Verde and Grota Seca).

The works are less than 15km from Belo Monte main dam, 9.5 Km from IT Paquiçamba, 13km from TI Arara of the Volta Grande, 30 km from the isolated indigenous territories of Ituna/Itata and Trincheira/Bacajá. The region is also known for the artisanal mining operation of the Mixed Cooperative of Garimpeiros da Ressaca, Itatá, Galo, Ouro Verde and Ilha da Fazenda (Coomgrif). In 2015, a group of these artisanal miners were locked in a work site because they refused to be expelled from the area. The expulsion of families from settlements in Vila Ressaca, Galo and Ouro Verde was subsequently deemed to be illegal in the civil section taken by the Public Defender of the State of Pará, as the company had purchased the lands without the participation of the National Institute for Colonization and Agrarian Reform (INCRA). This participation is mandatory since the installation of the project would take place in an agrarian settlement where private sales are forbidden. In the agrarian reform settlement of Ressaca PA, 1,439 hectares are central to this dispute with at least 29 families affected in the municipality of Senador José Porfirio. As pointed out by the son of a family who had lost their lands, the company took advantage of the illiteracy of his parents and the fact that many families do not possess land documents. The company acquired land in the settlement as well as dozens of houses in the adjacent village (Vila Ressaca).

Here, too, the EIS has been criticised for methodological deficiencies that underestimated contamination risks by cyanide and heavy metals (lead, cadmium, copper, mercury and arsenic)—especial-
ly in the event of an environmental disaster—which are used in gold processing. It is little comfort to the inhabitants that the dam for the mine was designed by the same company (VOGBR) responsible for the notorious Fundão Dam that collapsed in 2018 (Carmo et al., 2017) and the same civil engineer signed the report of the two projects. Furthermore, the Belo Sun dam has a waste capacity of 35.43 million cubic metres of waste, dwarfing the 2.65 million cubic metres of the Fundão Dam. Given the proximity of the tailings dam, the processing plant and the containment lakes to the bed of the Xingu River as well as waste rock piles that are estimated at 1000m and 1500m, respectively, the contamination of the river and the TIs has been deemed inevitable, and the tailings could reach the Amazon River and the Ocean in a large spill. An expert feasibility study and technical opinion funded by Amazonwatch concluded that the project ‘should be rejected by Brazilian regulatory authorities without further consideration’6.

The initial EIA of Belo Sun of 2012 rather incredibly did not deal with possible effects on indigenous peoples to the extent that the word ‘indigenous’ appears only once in the entire document. The company’s claim was that there was no impact on the indigenous community because they existed at a radius of more than 10km from the project site. The absurdity was gradually corrected through lawsuits, and in 2013, the MPF considered that the EIA was deficient in relation to the indigenous component and suspended the Preliminary License; and in 2014, the environmental likening process was transferred from the corporation to IBAMA following a further civil action. Both decisions have been appealed by the company who retains the possibility of validating its Preliminary License and Installation License should the consultation and study of the ‘indigenous component’ be considered adequate by the authorities (not necessarily by the inhabitants).

As a result of sustained community campaigns and effective advocacy by civil society organisations, the case of Belo Sun reached the United Nations, and in 2016, the Special Rapporteur on the rights of indigenous peoples expressed her concern about the possibility of cumulative effects between the two megaprojects and about the lack of consultation with possibly affected indigenous communities7.

The aggregated impacts are vividly depicted by Larissa, 42. Her family was born and raised in the riverine community of Belo Monte do Pontal and were displaced by the Belo Monte dam. With fishing livelihoods destroyed, they were forced to leave the riverbanks to occupy adjacent land and begin life as cultivators, only to be confronted there by plans for an open pit gold mine:

I’m a fisherwoman. They are destroying our territory. They want to take from us our river, our food, our home […]. They want us to stay quiet and leave. But I don’t have another place for me and my family. Our place is here where I was born and where we learned, learned to respect nature, the animals. Traditional peoples suffer a great injustice. They want to expel us, but this place is part of us.

In 2018, the nongovernmental organisation Conectas made a presentation before the UN which denounced violent threats suffered by members of the Xingu Vivo Movement and of the artisanal miners opposing the mining project8. In August 2021, Toni, who was a resident of Vila Ressaca in

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his early sixties, explained how the aggression has not receded:

I was born and raised in the community of Vila Ressaca. We are suffering constant threat from Belo Sun through the security guards hired by them...they say they want nothing to do with us, but their presence is a threat to us from day to day...The courts, the law says they can’t be in our area, our area of planting of reforestation, they are walking over our rights. Here we feel intimidated, they guys are armed, really well armed, while we work just with our machete and our hoe. We feel really bad with this.

Given the federal status of the river and also of the designated agrarian reform land, the protests of these communities reached the MPF and were a factor in the suspension of the operating licence of the company. At the time of writing, both the company and residents anxiously await the outcome of this action.

Montanha–Mangabal: Land grabbing and hydro-dam construction

The territory of the communities of Montanha–Mangabal borders the lands along the Transamazônia highway in the municipality of Itaituba, west of the state of Pará and between the Montanha and José Rodrigues rivers. It covers 54,443 hectares, comprising more than 101 families known as beiradeiros, whose existence dates back to their migration from Northeastern Brazil to work as rubber tappers during the mid-19th century rubber boom. Through the (commonly very violent) incorporation of indigenous women to life on the rubber plantations, a matrix of knowledge was also incorporated that allowed the community to adapt to the conditions imposed by the forest when the latex trade ceased. The Montanha–Mangabal territory lies along the 70 kilometres of the west bank of the Alto Rio Tapajós south of the Amazon National Park and is subject to what the MPF identified as the second largest illegally grabbed area in Pará.

Many families were expelled from a part of their territory due to the creation of the Amazon National Park and construction of the BR163 highway in the 1970s. These major works and the intensified land grabbing that accompanied their implementation resulted in the eviction of many people whose sustainable, extractive practices had helped preserve the forest for nine generations, long before the ‘official’ records of companies and prospectors. Following a period of relative acquiescence, this area has been subject in the last two decades to a legal saga that accompanies what is considered the most grandiose and sophisticated land fraud of the many land grabs in the Amazon region.

The main stages can be summarised as follows. On 20 December 1974, a judicial decision issued via the Torrens Register9 guaranteed the possession of over 1,138,000 hectares in the Tapajós region, including the territory of Montanha–Mangabal by the company from the distant state of Paraná, namely Indústria e Comercio de Madeiras LB Marochi, Ltda. (Indussolo). The land, equivalent in area to the states of São Paulo and Rio de Janeiro combined, covers the entire Montanha–Mangabal territory, and in 1999, the company sent its employees to inform the community that the land now belonged to the company, initiating a prolonged period of insecurity for the beiradeiros in the region. By 2005, the community sought to avail itself of the new legal instruments (via Law No. 9.985) to ensure the right to land linked to the sustainable use of natural resources. They claimed the creation of the extractive reserve (RESEX) for their agroextractivist settlement project known as the Montanha–Mangabal Agroextractive Settlement Project (PAE).

This community action was paralleled by a formal request (official no. 995/2005 of the Attorney of the Republic in the Municipality of Santarém) to identify and find the original process that had

9 Torrens register refers to land transfer system, whereby the state transfers ownership of land by the binding registration of a transfer of title.
registered the areas in the name of the Indussollo company. Despite searches of notary offices and archives, this request was never found. On concluding his investigation into the propriety of the land claim, the Federal Public Prosecutor asserted: (a) significant gaps in the chain of property ownership and the inclusion of public lands, conservation units and agroecological possessions of historically consolidated traditional populations that contravene the criteria for Torrens registered lands; (b) an indication of fraud, as private ownership had been claimed for what were public domains; the matriculation of the Torrens Registry was lost, and the area of the described property was altered in order to reach incongruous proportions; and (c) gross incompetence in the original ruling.

In response to the Public Civil Action (n. 2006.39.02.000512-0), the Deputy Federal Judge granted an injunction in March 2006 that recognised the occupation of Montanha–Mangabal by its residents and made the registration of Indussolo lands untenable. The recognition of their territory as a sustainable, extractive settlement (RESEX) was close to completion when the Strategic Planning Department of the government intervened. In 2008, the agency wrote:

The Tapajós River basin is in the final stages of the hydroelectric inventory studies, [...] the results are indicating the existence of 3 dam alternatives that could present around 10,000 MW of installed capacity [...] Resex Montanha–Mangabal will cause interference in any of the studied alternatives [...] it is concluded that the protected area should not be created.

The beiradeiros then received a message from the company-founded Diálogo Tapajós that part of their territory would be flooded by the dam and that they should register to obtain compensation and look for another place to live. They residents would not sign. An alliance between the beiradeiros and their once sworn enemies, the Sawré Muybu, led to a territorial self-demarcation that prevented the construction of São Luís do Tapajós HPP, the largest dam of the seven planned in the Tapajós Basin Hydroelectric Complex (see Torres & Banford, 2018). A further scheme, the HPP Jaguariaíva, however, recently had feasibility studies accepted by the National Electric Energy Agency (ANEEL) and is planned for the centre of the Montanha–Mangabal area. On 26 September 2013, the beiradeiros released a consultation protocol endorsed by the Public Ministry which was to be followed by the federal government for all decisions related to its territory in accordance with ILO Convention 169. As a result of consistent pressure from the community, the PAE was eventually created in 2013 by INCRA. The designation, however, was not followed by the formal demarcation of the territory as INCRA is mandated to do. As a result, the PAE was subject to illegal attacks, such as from land grabbing, mining, loggers and others, before and after its official recognition, as outlined by a member of the community association:

That’s why we [...] defend the territory because we depend on it to survive. These intense attacks of mining and logging, these illegal acts not only impact the environment, they impact people’s lives. For us traditional and dependent residents of this forest, it is part of our life, from there we take our food. The mining activities directly harm people, animals, nature and our way of life, our livelihood.

The community denounced the owners of illegal gold mines and the mercury poisoning and violent actions that accompanied their lucrative, mechanised activity, including exploitation of the igarapé do Rato river inside the Itaituba National Forest, despite a legal injunction (dating back 15 years) prohibiting this activity. In response, the inhabitants again set out the self-demarcation of the PAE territory, embarking on a five-day and six-day expedition in September and November 2017, respectively, an activity that carried acute risks. During a field visit in July 2021, it was evident from interviewees that new invasions had taken place and land grabbers were encountered in the territory, indicative of the porosity of the boundaries that were still awaiting final recognition in the law. As a local leader reflected:
Life has completely changed. Just for defending the preservation of our area, which is our livelihood; defend the natural resources, the forest, our Tapajós River. It should not be, but defending it is life-threatening, life-threatening again and again.

That tension goes some way to explain the tears of relief that appeared on the faces of many on receiving the news in January 2022 that the claim made by the MPF on their behalf had been upheld. The resistance of the riverside people had allowed extensive genealogical research to be conducted which proved that the community heritage traced eight generations who were born and buried in that place. With the support of the MPF, the community in December 2021 won an important legal victory against invaders, obtaining an annulment of all fraudulent land claims on their lands and the interdiction of 60 thousand hectares of its territory to anyone who was not from the families of Montanha–Mangabal. An interdiction of this type in an area that was not occupied by indigenous people or quilombolas was unprecedented in the history of the Brazilian Judiciary.

Salto in Piauí: Agribusiness and land speculation

The vast plateaus and humid valleys of Matopiba have long sheltered peasant agriculturalists and descendants of freed slaves and indigenous peoples in this region of the Cerrado’s mixed forest and grasslands, one of the globe’s most biodiverse biomes. The traditional riverside community of Brejeira Salto in the rural area of Bom Jesus in Piauí is located at the epicentre of the Cerrado region that makes up Matopiba which is on the border between the states of Maranhão, Tocantins, Piauí and Bahia. Hundreds of traditional, agrarian, indigenous and quilombola communities have lived in the region for hundreds of years.

The topography and favourable climate have also more recently attracted land speculators and those intent on cultivating soybeans and other commodities. While grain harvests grew on average 3.5% each year in Brazil between 2001 and 2013, the annual growth was some 20% in Matopiba. Between 1995 and 2012, the area that was devoted to the cultivation of commodities in Matopiba more than doubled in size with only four crops (soybean, corn, cotton and rice) occupying 89% of the more than 4 million hectares of crops. Some 58% of the gross production value of the monocrops was in the hands of only 0.5% of the 324,000 agricultural holdings in the region (Network for Social Justice and Human Rights, 2020).

Women have been at the fore of the subsequent resistance, a stance motivated by the oppressive environment brought by those encroaching on the lands. Reginalda, 37 years of age, stated that in addition to stands of corn previously destroyed by invading land speculators. As she stated, we’ve been suffering a lot with this illegal land grabbing thing. We don’t have peace, we can’t sleep well. Today you’re alive and tomorrow you don’t know if you’ll be there.

The harassment from employees paid for by farmers and speculators interested in the lands occupied by the communities is a constant torment reported by the residents, which often surprises people arriving with GPS devices who are undertaking geo-referencing inside their backyards. The stories of aggression, threats and arson lead not only to local landowners and land grabbers; seven police reports and a declaration to the Public Ministry (MP) show a series of armed threats and invasions of the homes by those linked to companies such as SLC Agricola, one of the largest agricultural conglomerates in the country. The paucity of investigation and prosecution for these transgressions belies the changes on this agricultural frontier in which the process of forming large farms involves the purchase of land at low prices, most of the time illegally through land grabbing, and the clearing of forest for monocropping.
When the farm is suitably formed towards commodity production, land prices demonstrably go up, with nine-fold increases recorded in just 15 years in Piauí (Network for Social Justice and Human Rights, 2020). The incorporation of new areas for soybean production, in turn, serves as the basis for the expectation of enhanced future land prices and, thus, inflates company portfolios. This is a now well-practised strategy for territorial expansion which hinges on access to further credit and state subsidies and concealment of the initial fraudulent claim to land used by traditional communities. In this regard, the cases of Schneider Logemann Company Agricola S/A (SLC Agricola) and of Harvard University Heritage Fund/Insolo are instructive.

SLC Agricola is the largest soybean producer in Brazil with as main buyers as Cargill, Amaggi and Bunge. In 2012, it constituted the agricultural real estate arm SLC Land Co. in partnership with the English investment fund Valiance Ltd. SLC Land Co.’s business consists of acquiring, forming and selling farms. In addition to its own areas (approximately 236,000 ha) and those of SLC Land Co (approximately 86,000 ha), SLC Agricola leases other areas and has partnerships with other companies, such as SLC-MIT in partnership with Mitsui, which controls about 500,000 ha of land.

According to testimony by a Salto resident before the Public Ministry on 22 August 2017, the community was invaded in June of that year by four armed men who claimed to represent SLC and a second company, JB. They fixed signs and concrete markings within the community with warnings: ‘Accredited and protected by law’, signalling ownership of the invaded lands. This ‘green land grabbing’ occurs when companies invade and enclose adjacent community land, claim it as theirs and forbid access to the historical occupants instead of parcelling off a percentage of their own private farm property as an environmental reserve (as required by the legal Forest Code). The company has also been behind deforestation of the Cerrado. In May 2019, SLC had deforested 1,355 hectares of Cerrado forest and, in the first quarter of 2020, the company deforested a total of 5,200 hectares of Cerrado at the farm Fazenda Parceiro which is located in Formosa do Rio Preto in the neighbouring state of Bahia.

The Harvard University Heritage Fund has about one million hectares of land in the United States, Brazil, Eastern Europe, South Africa, New Zealand and Australia. In 2008, it formed an alliance with the Ioschpe family, one of the largest landowners in Matopiba, to create Insolo Agroindustria S/A (95.8% owned by Harvard) so that Harvard University Heritage Fund could acquire large extensions of arable land in Piauí. Between June 2008 and June 2016, Harvard injected at least $138 million into Insolo to acquire at least six farms distributed over 115,000 hectares in Piauí, leading to further habitat clearance. Trees are cleared in the region by the chain practice in which the extreme ends of a chain are attached to two tractors to uproot standing forest. Deforestation and well construction by Insolo in the municipality of Baixa Grande do Ribeiro in Piauí, close to the Salto communities of Morro D’Água and Rio Preto Settlement, caused enormous impact on the water level of rivers, as recounted by Martha:

A farm next to Galilee of Insolo deforested 10 thousand hectares, and two marshes dried up. The deforestation it was at the head of the two marshes. Now there’s only water in the rainy season. Because before there were no wells on top of the mountains and today each large farm has a well. This causes our waters to dry out. Today we have more or less a track of three kilometres of the marsh that is drying up.

As monocultures replace forest and grasslands on the plateaus, community residents are also affected by pesticide contamination of the water used for drinking, food production and preparation, while the toxins are the suspected cause of previously rarely known diseases. Artur of Salto reported that the water is poisoned during the October rainy season until April:

The water from the mountains goes down into the stream full of agrotoxins. Here we does not
have a well or piped water, we just have water from the river and marshes to drink. We drink the poison that falls from the mountains in the river water.

Another resident commented that, “My godfather died of cancer of the lung two weeks ago. I think his death has to do with breathing pesticides. Never had I heard of cancer around here and now it’s something without end”.

Faced with these human and environmental degradations, the communities formed a coordinating group, the People’s Collective of Traditional Communities, with notable support from CPT and Rede Social and elected representatives to meet on a regular basis and organise. The importance of sharing knowledge given the complexity of new land deals was highlighted by a supportive lawyer from the Association of Rural Workers’ Lawyers:

[T]he World Bank itself, which is a partner of the state of Piauí, has been financing the state’s land agency and sectors of Piauí’s judiciary [...] and declared that their programs aim to pacify social conflicts in the countryside. In reality, what we have seen [...] is precisely the intensification of these conflicts, mainly due to the recognition of private ownership of farms that were illegally occupied.

Yet the perseverance of the communities has been met with rewards. One of the immediate achievements of this mobilisation was the cancellation of fraudulent land titles held by land grabbers representing over 124,000 hectares, an action successfully taken by a local judge in the state of Piauí. Furthermore, after several meetings in Brazil and in the United States, letters and a petition to the World Bank Inspection Panel, the World Bank changed the focus of its project in the region, which was originally designed to privatise community land.

The State Legislator Assembly in Piauí significantly approved a new law (number 7.294/2019) which determined that indigenous, quilombola and other traditional communities have collective land regularisation. In doing so, the state recognised the traditional communities and began a collective land regularisation process. The Land Institute of Piauí undertook anthropological studies in some communities as a first step to land regularisation, while the communities also participated in territorial mapping of their lands. Among these were the traditional riverside communities of Salto de São Jorge and Salto do São Jose that together constitute Brejeira Salto and whose female-led organisation had been demanding land regularisation since 2017. After the anthropological study, it was discovered that all the people residing there are the sixth generation of the same original family. The final regularisation process was thus completed in June of 2021, with a territory of 2,692.7196 hectares designated. Reflecting on the demarcation and collective land title won by the riverside community, Brejeira Salto, their legal advocate, conceded that the titling does not guarantee an end to aggression and invasion, yet pointed to the social and environmental significance:

The titling of the traditional community of Salto, especially since it was a collective and definitive title of traditionally occupied territory in the Cerrado of southern Piauí, is very important to contain the devastation of the Cerrado in the region, and, of course, to guarantee this right to these families who take their livelihood from the land. Above all, it is also important to remember the role of indigenous and traditional communities in the very preservation of the Cerrado biome. So, it is an important achievement.

Discussion

The cases presented in stark relief reveal the contrast and conflict between the speculative tendencies of capital and the distinct nature—human metabolic relations of communities that depend on direct access to forests, soils and rivers for their corporeal and cultural reproduction. The testimo-
nies of the residents of the three regions in question indicates that it becomes increasingly difficult to neatly separate out environmental harm from human rights transgressions. In considering the rural, forest and riverine subjects as labour with activities that transform nature in ways that have sustained the reproduction of generations, this paper underscores how community resistance to violent incursions (often with acute and fatal personal costs) are based upon their livelihood strategies that, in turn, help preserve distinct ecosystems. There are many obvious connections between environmental and human harm; pesticide contamination of waterways and perceived human poisoning are examples provided in the narratives (also see Bombardi, 2019). The implications for individual and collective social reproduction are made clear in the testimonies of those affected, not least by the women who have taken a lead in protesting these injustices. The three cases illustrate how the immediate face of violent incursion—a security guard, hired pistol carrier, company agent—are explicitly or inadvertently linked to strategies by institutions such as the World Bank and famed names of finance to bring public lands and resources into private ownership. That these strategies find partnership and validation by the state is irrefutable, but this should not obfuscate the fact that within government ministries, chambers and courts there are tensions upon which the reduction or advancement of green harm hangs in fine balance. In geographically remote, rural abodes of production and where threats, fraud and illegality often precede and accompany this corporate advance, knowledge and confrontation of these crimes is dependent on the organised resistance of communities whose territories are impacted.

Understanding the motivations for this resistance, the organising spaces upon which it is founded and the judicial strategies that have in these cases impeded further environmental harm is important for confronting green crimes. In the regions of study—Brazil’s Amazon and Cerrado—the non-investigation and non-prosecution of environmental destruction, cases of violence and of murder are prevalent, and the spectre of violence remains among those on these frontiers. Yet it is clear from these cases that the struggles for human rights and livelihoods in the face of massive power asymmetries at regional and international scales provide for an important brake on further ecological destruction.

The paper makes visible the social relations that underpin these ecological transgressions, which often have extreme corporeal costs, and emphasises the inter-scalar character of green crime that precludes prioritising one scale over another in green criminology analysis. It also underscores the remarkable resistance of peoples whose intragenerational existence is tied to and immediately dependent on biodiverse territories. Broadening the conceptions of labour to understand how the ‘work’ of these communities in relation to nature is antagonistic to capital advance strengthens the utility of the metabolic rift as a frame for further analysis of green criminology beyond these exemplars.

Conclusion

The metabolic rift conceptualises how capitalism uproots humans from their first order relations with nature and how it successively commodifies nature with damaging and wasteful consequences through technological advancement. The testimonies presented here demonstrate that there is a distinct corporeal rift found on the frontiers of massive-scale agro- hydro- and mineral industries that are often preceded by lower-scale violent land grabs. Deforestation, water capture and pollution produce immediate harm to ecosystems that have been negotiated, transformed and defended by the human residents over generations. Material and spiritual life is disrupted; there is little alternative but to fight or flee. The escalating deaths on these frontiers demonstrate that the ultimate corporeal rift occurs in the threat and loss of life of those confronting the logic and mechanisations of capital advance. The lack of prosecution on crimes of arson, death threats and assassination is
not encouraging. Yet in these hidden and rural corners of green crime, collective land titling has circumvented the individual parcelling of land and the environmental degradation that accompanies land speculation and resource commodification.

The articulation of ancestral knowledge and of non-market values placed on biodiverse territories exists amidst the community consultations and public assemblies, collectively created protocols and consensus meetings with civil society organisations. The testimonies presented insist on dovetailing human rights with those of the environment and in doing so, offer pathways and invite new praxis towards a future that is both socially and ecologically committed.

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Hunting as a crime? A cautionary note concerning how ecological biodiversity and anti-hunting arguments contribute to harms against indigenous peoples and the rural poor

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Abstract:
This article examines concerns related to hunting (and fishing) regulations that impact the ability of poor and indigenous peoples to engage in behaviors such as hunting that they require for subsistence needs. Often, green and conservation criminological research, theory and policy overlook this issue. Typically, those approaches favor hunting/fishing legislation and bans to preserve wildlife and biodiversity, or for philosophical reasons related to preventing harms against wildlife. Although those approaches may, in some cases, help preserve wildlife and biodiversity, the unintended consequences of anti-hunting policies on the poor and indigenous peoples, who are also often the rural poor, are overlooked. Moreover, anti-hunting/fishing policies are not the best method for preserving biodiversity. Rather, policies should promote regulation of forest and other wild areas, prohibit forest segmentation, and address how economic forces drive the forms of ecological destruction that lead to biodiversity loss.
This brief essay addresses a concern we have with green and conservation criminological views of hunting that we do not believe have been fully articulated in the relevant literature. We will review the general content of that argument which can be employed as the impetus and starting point for a more full-blown critique and assessment of green and conservation criminological approaches which address the regulation of hunting. The specific concern examined here involves the tendency for green and conservation criminology to develop a position on hunting that tends to preference the need to eliminate all hunting either because hunting ought to be considered a crime against nature and/or because the elimination of hunting is considered a useful mechanism for protecting wildlife species from harm over other alternatives. To be sure, many have argued that hunting could be considered a crime against nature. It should be recognised, however, that in recent years, others have also argued that hunting can have positive environmental impacts (e.g., hunting produces pressure for environmental conservation; Dickman et al., 2019; Di Mini et al., 2021). These latter views, which are sometimes viewed as ‘pro-hunting’ responses to hunting ban policies, are useful because they promote the need to think more critically about the implications of hunting ban policies and their impacts. In particular, we are concerned with developing a more nuanced hunting-related position that recognises that some groups within society require access to nature for their survival (Duffy, 2010) and that limiting all access to nature/animals by banning hunting can be detrimental to some people or groups of people. Those groups and individuals that might be harmed by hunting (and fishing) bans are typically comprised of indigenous people and poor rural people who must access nature in order to survive or to supplement their dietary needs. In responding to hunting bans as potentially detrimental in some cases, green/conservation criminology can also become more aware of the needs of and environmental attitudes and philosophies possessed by the rural poor and indigenous people as well as how incorporating and addressing those needs could make green criminology more sensitive and inclusive.

Green and conservation criminology arguments concerning the interests/needs of the rural poor and indigenous populations (who are often part of the rural poor in various locations) are also necessary because they assist in developing a more comprehensive understanding of the forces that lay behind contemporary ecological destruction. This includes paying greater attention to larger social forces that are responsible for the massive, global level of species loss that exists beyond the effects produced by hunting. Moreover, developing a greater consciousness of the environmental needs of the poor and indigenous peoples in ways that promote forms of critical thinking and allow routine environmental policies that – either purposefully or accidentally – limit access to nature by indigenous and poor people. For example, by taking a more critical view, a green/conservation criminology that focuses attention primarily on the behaviour of the poor or indigenous groups as wildlife-crime offenders can be understood as reinforcing the traditional, orthodox view of crime as the work of the poor (for an expanded discussion, see Lynch & Michalowski, 2006; Lynch et al., 2017). Many additional observations can be made on this point. For instance, opening up criminological research to address issues that impact indigenous people not only promotes criminological attention to the victimisation of indigenous people (e.g., de Carvalho, Goyes & Weis, 2021) but also can promote critiques of the ways in which criminology has developed biased views of culture and the lifestyles of people in the global South (for a recent discussion, see Dimou, 2021; Moosavi, 2019) and even for indigenous people in the Global North (Lynch & Stretesky, 2012). In the absence of these approaches, green/conservation criminologists have tended to leave larger questions unaddressed in the criminological literature with respect to the intersections of global economic forces with indigenous cultures (for exceptions, see Crook, Short & South, 2018; Goyes et al., 2021; Lynch et al., 2021; Lynch et al., 2018a).

The traditional image of crime, and of environmental crime in particular, as harmful outcomes generated by the poor can also be revealed as misleading by taking up broader views of local and
global social and economic relationships. These approaches need to be sensitive to the variety of ways in which both local and global class, ethnicity, race and indigeneity intersect and have been historically constructed as well as modified in modern circumstances (on indigeneity, see Guzmán, 2013 [Brazil]; Canessa, 2014 [Bolivia]; Li, 2010 [Asia]; more generally, see Brown & Sant, 1999). Taking up that view can lead to more critical understanding of the external imposition of orthodox interpretations of harm, crime and justice that are common within criminology (for a critique, see McKay, 2021 on policing/protecting indigenous people). Individualising the study of victimisation through a more traditional/orthodox criminological lens also overlooks the many ways in which the structure of the global capitalist system generates ecological disorganisation and commits the robbery of nature in many diverse geographic locations (Foster & Clark, 2021) and distracts from understanding the ways in which global capitalism serves as the main force behind the global loss of biodiversity (Clausen & York, 2008).

Our primary purpose here is to make researchers aware that green and conservation criminology has not been attentive to considering how groups marginalised by contemporary capitalism who lack other means for survival and wellbeing – particularly the rural poor and indigenous people – are turned into the primary offenders in discussions of wildlife crime in views that bend too much to the pressure of orthodox criminological assumptions. This tends to be especially true of research focused on the harm associated with ‘illegal’ (and legal) hunting and fishing activities. In the view we lay out below, we hope to make this critique apparent and to show why it is necessary to focus critical conservation theory and policy upon the detrimental ecological impacts of capitalism and to become more aware of the ways in which restrictive hunting policies fail to contribute to biodiversity conservation and may instead contribute to increased adversity for indigenous people and the rural poor.

**Background**

Drawing upon green and conservation criminology as well as the broader ecological literature, criminologists have explored several concerns related to hunting (and fishing) crimes and legal hunting and fishing behaviour in various ways. In some cases in the extant literature, hunting – even when it is legal – has been depicted as a crime against nature for ethical reasons (i.e., the harm to animals which results from hunting is ethically questionable) and because hunting can generate biodiversity losses (for a general discussion, see Di Minin et al., 2021). Some studies have examined the right to hunt and whether states are obligated to protect that right; others have examined whether the need to protect nature supersedes individuals’ rights (Nurse, 2017). Studies outside criminology have also taken up discussions of the right and need to hunt and the impact of hunting among indigenous people, and there is a broad literature on this subject that explores various social and cultural contexts in which these behaviours occur (see Aziz et al., 2013 on Peninsular Malaysia; Bennett et al., 2007 on West and Central Africa; Foerster et al., 2012 on bushmeat hunting in Gabon; Hitchcock, 2001 on the San Peoples; Houssain, 2008 on international law, human rights and indigenous people; Read et al., 2013 on Guyanese Rupunun).

Most criminological studies, however, focus attention on the study of illegal hunting in a more traditional or orthodox sense related to exploring the kinds and volumes of these crimes and their etiological origins. As Von Essen at al. (2014, p. 633) suggested in their review of that literature, the research has tended to study illegal hunting by framing those crimes in three ways: (1) by exploring the ‘drivers of deviance’; (2) by profiling offenders; and/or (3) by ‘categorizing the crime’. In introducing this examination and typology of the existing hunting crime literature, they noted that in prior research, illegal hunting has been ‘Stigmatized as theft and animal cruelty or celebrated as rebellion against oppressive laws ….’ (Von Essen et al., 2014, p. 632).
Criminological studies often fail to recognise that legal hunting is of import to native people, and in many locations, it is important to other rural people (nonindigenous rural people) and the poor (here, we primarily mean the nonindigenous rural poor, as the urban poor do not have direct/easy access to nature in ways that facilitate hunting behaviours as a routine means of providing food). This recognition of the need of indigenous and the rural poor to hunt has serious implications for how green and conservation criminologists (should/ought to) depict and study hunting crimes. The criminological tendency to study hunting and its outcomes as an activity that ought to be (and is) considered illegal overlooks the positive role hunting plays in providing protein for poor and rural populations (De Merode et al., 2004; Suarez et al., 2019) and its importance for food provision for indigenous people (Burnette et al., 2018; Hoffman & Cawthorn, 2012).

Considered broadly, the primary view of hunting in the green/conservation literature frames it as a crime against nature (or wildlife generally or a particular wildlife species) and as an unnecessary behaviour. That argument tends to be promoted as a universally true statement about hunting and leads to a rather one-sided view of hunting behaviour in the most negative sense. As others have argued (see below), that kind of mainstream approach towards the classification and definition of hunting harm is based only upon a consideration of the detrimental consequences of hunting from an ecological perspective. It can be argued that doing so unknowingly/unintentionally takes up a view of hunting that promotes the interests/perspectives (and opportunities to hunt) of the better-off within society (Jacoby, 1997). From a political economic perspective, we might also say that the typical negative view of hunting promotes the interest of capital and non-indigenous populations and most certainly is discordant with the views and needs of indigenous people and, in many places, the rural poor (who in many countries are also indigenous people). The World Bank estimates that while indigenous peoples comprise about 5% of the population, they make up about 15% of the extremely poor population of the world and up to one-third of the rural poor globally; see https://blogs.worldbank.org/voices/poverty-and-exclusion-among-indigenous-peoples-global-evidence. (See also the following section).

**Overlooking the Indigenous and the Rural Poor**

To understand the argument that viewing hunting as unethical, illegal and/or unnecessary behaviour comprises a biased position, we begin with an observation about the general state of indigenous people throughout the world to make it clear that indigenous people are the most powerless and poor rural populations found across societies. To make that point, consider the view taken by the United Nations in its 2009 report *State of the World’s Indigenous Peoples* (https://www.un.org/esa/socdev/unpfii/documents/SOWIP/en/SOWIP_web.pdf):

The situation of indigenous peoples in many parts of the world continues to be critical: indigenous peoples face systemic discrimination and exclusion from political and economic power; they continue to be over-represented among the poorest, the illiterate, the destitute; they are displaced by wars and environmental disasters; the weapon of rape and sexual humiliation is also turned against indigenous women for the ethnic cleansing and demoralization of indigenous communities; indigenous peoples are dispossessed of their ancestral lands and deprived of their resources for survival, both physical and cultural; they are even robbed of their very right to life (p. 1).

As a result of this separation from power and wealth, and as a consequence of their social, economic and political isolation, indigenous people are globally among the poorest people in the world. Although research suggests that market economies (i.e., global capitalism) typically have adverse effects on indigenous people (Godoy et al., 2005), the effects of capitalism on rural indigenous people has not been well studied and research on this subject is deficient (see also, Foster et al., 2020).
In order to address issues that impact indigenous people, it is important to consider their economic, social and political isolation in most nations. As a result of their marginalised economic location in society, indigenous people in many places are dependent upon local ecosystems for survival. Cisneros-Montemayor et al. (2016) illustrated this point in their assessment of the dependence of 1,924 coastal indigenous communities on seafood harvesting and consumption. These communities represented approximately 27 million people across 87 nations. The volume of seafood consumed by indigenous people was equivalent to about 2% of the global annual commercial seafood harvest. In other words – or in our view – what this study illustrated is that the effect of indigenous people on fisheries is relatively small compared to the effect of the larger market (i.e., capitalist) economy. In policy terms, the ability to shrink seafood consumption among wealthy nations even by a relatively small proportion would have a much larger effect on fishery sustainability than any policies that might be directed toward the consumption of fish by indigenous groups given the small volume of the global fish catch that they consume.

There is also a need to understand that indigenous and rural people may rely on hunting/fishing for subsistence. As Suarez and Zapata-Rios (2019) noted, the need of indigenous people to hunt wildlife or to fish for food subsistence has increasingly come into conflict with the ecological goals of environmentalists who support the protection of biodiversity by minimising hunting and fishing. This conflict was evident at the beginning of conservation movements within the United States, where conservation efforts restricted the subsistence lifestyles of the rural poor and indigenous populations (Jacoby, 1997, 2003). Today, indigenous people number about 370 million, about 4.8% of the global population. The limited impact of indigenous people on ecosystems has also been demonstrated in the legal context. In a recent study connected to a court case in Canada, the ecological footprint of indigenous people was considered to be ‘wide but light’, meaning that they required a good amount of land from which to harvest because they harvest sustainably from the land they use (see Wackernagel, 2004). Given that result, we might say that it is not the ecological footprint of the indigenous people that is of concern. What is a concern, as other research has shown, is the ecological footprint of the wealthy (Lynch et al., 2019).

It has been shown that the uncontrolled global expansion of capitalism has extensive adverse effects on biodiversity within nations across the face of the globe (Besek & York, 2019; Clausen & York, 2008; Marques, 2020). As global capitalism has expanded, its raw material/resource requirements (i.e., the ecological withdrawal of resources for manufacturing, food, water, road development, housing and urbanisation) has produced extensive ecological fragmentation (Jacobson et al., 2019). The result of this expansion has generated a decline in global forests and a shrinking natural, viable global ecosystem. Humans have significantly fragmented an estimated 44% of the global ecosystem not covered by snow or ice (Jacobson et al., 2019). These large scale, adverse outcomes are not significantly impacted by the behaviours of indigenous people.

The escalating effect of global capitalism’s ecological disorganisation has also led to the expansion of efforts directed towards curtailing hunting activities among native and rural people. As Suarez and Zapata-Rios pointed out in their discussion, the problem is how to allow for native/poor rural peoples’ food and survival needs while simultaneously protecting ecosystems and species biodiversity. Although Suarez and Zapata-Rios did not directly point to the cause of these problems as rooted in the constant expansionary tendencies of capitalism, they identified several conditions that contribute to the desire to constrain indigenous/rural people’s subsistence hunting activities in an effort to protect species diversity. These conditions include accelerating/expanding historical trends in habitat fragmentation and degradation, population growth and expansion of global trade networks and ecological extraction promoted by extractive industries. As research in environmental sociology makes clear, these adverse outcomes have been linked to the expansion of capitalism,
both globally and locally (for examples, see Aldyan, 2020 on forest damage in Indonesia; Barbosa, 1996 on the Brazilian Amazon rainforest; McKinney et al., 2009 and Shandra et al., 2010 on threats to bird and animal species biodiversity).

Cultural Conflict in the Conservation Literature

Some effort has been made to address the observations made here in the conservation criminological literature, in which researchers have attempted to acknowledge the subsistence needs of the rural poor and indigenous people. In that literature, the problem of hunting is still often (though not always) framed around illegal hunting and is understood from the perspective of cultural conflict. Conservation criminologists have recognised the potential for wildlife conservation strategies that restrict or outlaw hunting and fishing as efforts that impose ‘outside’ values on the rural poor and indigenous people (Brockington, 2002; Brockington & Igoe, 2006; Duffy, 2016 Duffy et al., 2016; Duffy et al., 2019), and hence as potentially harmful to those groups.

Peterson et al. (2017) has addressed this issue by examining the neoliberal colonialism of conservation stemming from the economic interests of developed nations in the resources located in less developed nations. Duffy (2010) argued that ‘the best’ wildlife reservations in the world have outlawed the lifestyle of local poor communities that are reliant on wildlife hunting. Wall and McClanahan (2015) emphasised the political and financial resources of Americans and Europeans who can own and control land for wildlife ranching and trophy hunting, leaving marginalised groups without access to nature (see also Y. A. Forsyth & Forsyth, 2018; C. Forsyth et al., 1998). Jacoby (2003) analysed historical societal changes in the early US conservation movement which produced laws and enforcement efforts that targeted the now illegal behaviours of the poor who relied upon hunting for subsistence.

This literature influenced scholars to explore community-based policies centred on poverty alleviation as a solution to illegal hunting (e.g., Abebe, 2020; Rizzolo, 2021). These studies have not, however, provided sufficient evidence that poverty alleviation policies work to reduce illegal (i.e., subsistence) hunting (for additional discussion, see Duffy et al., 2016). Additionally, existing research in conservation criminology does not discuss the impact of global economic development on ecological destruction, how global development affects environmental degradation or the need for some groups to rely upon subsistence hunting. In short, conservation criminology tends to take a situational crime prevention approach to wildlife crime, and in so doing, overlooks how the global market adversely impacts indigenous people and rural populations (for an extended discussion of relevant ecological–situational crime prevention strategies, see Lynch et al., 2018b).

A Critique of Anti-Hunting Regulations

Numerous countries could be employed to illustrate the limitations of existing hunting and fishing regulations and their effects on indigenous populations. For our purposes, we refer to an excellent critique offered by Eichler and Baumeister (2018) who wrote about the North American Model of Wildlife Conservation (NAM) and its impact on and exclusion of indigenous people’s viewpoints. According to Eichler and Baumeister, the NAM was framed as a democratic model for undertaking conservation stewardship, thus incorporating a starting point that would appear agreeable to many. The framework for that approach boasts phrases that many people would find welcoming, such as efforts to design and promote ‘the concept of democracy of hunting’ and ‘equal access for all’, which are attached to a favourable interpretation of the history of the ‘North American pioneer spirit’ (p. 76). Eichler and Baumeister contended, however, that what the NAM promotes is the much more limited ‘interests of sport hunters’. Moreover, Eichler and Baumeister stated that rather than
Hunting as a crime? A cautionary note concerning how ecological biodiversity and anti-hunting arguments contribute to harms against indigenous peoples and the rural poor

a democratic approach to conservation, the NAM actually promotes environmental injustices that adversely impact indigenous people. This outcome, they argue, is achieved by NAM’s promotion of a settler colonialism model which generates a system of power relationships that contributes to the repression and genocide of indigenous people. In short, Eichler and Baumeister ‘contend that the principles of the NAM, along with the ontological assumptions that they rest on, are antithetical to American Indian views of property, nonhuman personhood, and knowledge’ (p. 76).

Eichler and Baumeister pointed out that the NAM approach continues a long history of policies that contribute to efforts to eliminate indigenous peoples, such as efforts to eliminate Native North American peoples through the slaughter of bison during the expansion of the ‘American’ west (p. 78). They also argued that the idea that the protection of wildlife safeguards a public trust is based upon American and European notions that relate to concepts such as private property which were unknown to indigenous people and are applied in NAM to reinforce settler colonialism. In addition, Eichler and Baumeister stated that the principles in NAM related to public ownership of nature involve a claim ‘that nonhuman animals, plants, and land are “resources” [which] implies that the primary relationship between humans and the world is one in which humans, existing apart from the world, dominate, extract, and consume the world for their benefit. This type of relationship runs counter to Indigenous notions of relationality and nonhuman agency’ (p. 80).

Expanding upon Eichler and Baumeister and the other arguments that have been presented, our point can be summarised in the following. Green and conservation criminologists need to be sensitive to the production of generalisations concerning the harm produced by hunting, especially when those generalisations are in conflict with the interests and cultures of indigenous people or the needs of other groups, such as the rural poor, who are cut off from a connection to means of survival under capitalism, particularly in contemporary circumstances (although this has been true historically as well, e.g., Robbins & Luginbuhl, 2005). This point has been made on previous occasions with respect to ensuring that poor and indigenous people are not blamed for environmental problems and with respect to criticising the carving out of ‘green polices’ that have unequal, adverse effects on these groups (Lynch et al., 2017). The short lesson here is that green and conservation criminologists must be careful not to blame poor and indigenous people for biodiversity loss when the real, large-scale or global culprit is capitalism (Lynch et al., 2017).

Conclusion

One way criminologists study wildlife crimes and harms is by exploring hunting and fishing behaviours that are defined as illegal behaviour in the law. Taking a legal approach to these crimes tends to replicate a long-standing tradition in criminology wherein the subjects of criminological studies have disproportionately been disempowered persons. Here, we have made that case with respect to green and conservation criminological studies of wildlife crime that involves illegal hunting.

Although we have not extensively documented one of the assumptions of our argument – namely that large corporations and the structure of capitalism are primarily responsible for the disastrous state of the contemporary global ecological system (see Besek & York, 2019) – we believe that greater attention to that assumption will make criminologists more circumspect when it comes to the study of crime against wildlife that involves low-level hunting and fishing violations. Many of these ‘crimes’, we assert, are behaviours engaged in by indigenous people and the poor who are seeking ways to sustain themselves. These efforts to live should not be criminalised but rather should be viewed in a much different light. In closing, we are reminded of a comment made by Friedrich Engels (1973) in his book The Conditions of the Working Class in England in which he summarises the
impact of capitalism on the working class. He noted that ‘Want leaves the working-man the choice between starving slowly, killing himself speedily, or taking what he needs where he finds it – in plain English, stealing. And there is no cause for surprise that most of them prefer stealing to starvation and suicide’ (p. 154). This same general sentiment applies to the ‘illegal’ hunting crimes of the indigenous and the poor who must violate the law to live.

In taking the views expressed herein, we are arguing for the development of a more unique, nuanced and theoretically rich view of the intersection between hunting, green criminology and indigenous and poor peoples. In doing so, we have drawn attention to theories of capitalism and how those theories conceptualise the adverse impacts of global capitalism and colonial relations on indigenous people. Those theories include perspectives developed about the adverse impacts of capitalism on dependent development in Latin and South America (Cardoso, 1972; Frank, 1967, 1970; Furtado, 1965) and Africa (Amin, 1970), which have long and rich intellectual traditions. To do so also requires an understanding of colonial capitalism’s effect on the Global South (Denoon, 1983) as well as on particular locations (Castellanos, 2017; Greaves, 2018). These views are only just beginning to make important contributions to the criminological literature (Dimou, 2021), though here, too, this literature has been in development for some time but has largely been undiscovered by orthodox criminology (e.g., Agozino, 2003, 2004). In developing these views, it is also important to keep in mind the contributions of indigenous scholars to such discussions (e.g., Fanon, 1961; Saro-Wiwa, 1995) and to contribute to the preservation of those voices and the people and issues they represent.

**Bibliography**


Hunting as a crime? A cautionary note concerning how ecological biodiversity and anti-hunting arguments contribute to harms against indigenous peoples and the rural poor

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Truth, reparation and social justice: Victims’ and academic perspectives on the harms caused by asbestos companies

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Keywords: Asbestos, social justice, restorative justice, testimonial, rural criminology, environmental crimes

Abstract:
This short piece stems from personal experience about the environmental harm caused by one of the biggest former asbestos facilities, Eternit, located in the small Belgian rural village of Kapelle-op-den-Bos. Combined with an academic perspective, this piece highlights the relevance of environmental restorative justice in addressing the violations and harms experienced by asbestos victims. It brings to light the struggles of victim associations to challenge the power and complete lack of accountability of (former) asbestos producing companies worldwide and offers an understanding of strategies used to promote immunity to the powerful.
Introduction

"One person dies here at a time. [...] Instead, one by one they become many, if you count them, they are really many. And then it’s very sad when you hear someone still getting sick, and you say ‘but damn, it’s a massacre that continues, very quietly, continues in this silent way, you understand that it is not something that is told on television when one dies and instead look how many there are … “1.

These words were spoken by a woman in Italy who lost her 33 year-old brother 7 months after he was diagnosed with mesothelioma (Budó, 2016). They provide important insights into corporeal crime and environmental victimisation. Day after day the areas contaminated by factories that use(d) asbestos register new cases of many diseases, such as asbestosis, lung cancer and mesothelioma (WHO, 2014).

In this short piece, we would like to address the case of the use of asbestos and its harms in Belgium. Although the factory Eternit (now Etex Group) stopped asbestos use at the beginning of the 21st century, the company has never acknowledged the awareness they had about asbestos risks’ exposure for the workers and citizens in the regions where the factories were located. One of the biggest asbestos facilities in Belgium is located in Kapelle-op-den-Bos, a small rural village2 in the province of Flemish Brabant. Many of Eternit’s factory workers (professional victims), their spouses and children (para-professional victims) as well as inhabitants of the village (environmental victims) died due to a mortal asbestos exposure at work or in the area, making this subject of interest for the field of rural criminology.

One of the authors, Marijke Van Buggenhout, grew up in this area and will provide a testimonial on the harm her family faced and continues to face as her father, an Eternit factory worker, became an asbestos victim. The other author, Marília de Nardin Budó is an academic based in Brazil who studies asbestos cases worldwide, in the research field of corporate environmental harm and victimization. By bringing together personal testimonials with academic perspectives, this article raises awareness that asbestos is not just a problem from the past. We find relevance in the theoretical framework of environmental restorative justice to address the violations experienced by the victims and to enhance the opportunity for social justice in the case of serious harm and the complete lack of accountability expressed by (former) asbestos companies worldwide.

The Belgian case

In Europe asbestos was most commonly used in factories throughout the 20th century. Since the early 1900s there has been scientific evidence about the relationship between exposure to asbestos and various diseases (Mendes, 2001). Asbestos is flexible, incombustible, indestructible, and cheap. The insistence on the use of this mineral is based on its characteristics, which made the industry consider it a “magic mineral”. A Belgian giant company, Eternit, was the first to understand how the mixture between cement and asbestos could produce what the former director affirmed to be the “perfect marriage”3: roofs that would last an ‘eternity’. Eternit spread subsidiaries to all continents

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1 "Qui muore una persona per volta. [...] Invece uno per uno sono tanti, se li conti sono veramente tanti. E poi è molto triste quando senti qualcuno che si ammala ancora, e dici ‘ma cavolo, è una strage che continua, molto silenziosa, continua in questo modo silenzioso, capisci che non è una cosa che viene detta alla televisione quando muore uno e invece guarda quanti sono’...”

2 Kapelle-op-den-Bos has a population of less than 10 000 inhabitants

3 Two recently presented documentaries provide information about asbestos in Europe (Le Tombeau de L’Amiante, 2021) and also in other parts of the world (Breathless, 2022).
in the world. Etienne van der Rest, former president of Eternit who, after the danger of asbestos was already surfacing, said: “Cement and asbestos is the best combination and it would be an act of stupidity to restrict its uses in any which way” (Jonckheere, 2017:32). Many other companies and governments supported the use of this mineral throughout the past century, and today, many countries still mine, produce and commercialise the fibre and its products.

Since 2005, all types of asbestos have been banned in Europe, and nowadays more than 60 countries in the world have also prohibited its extraction and commercialisation because of its hazardous effects on human health. In the USA, despite the absence of a legally mandated ban on asbestos, there has been a decline in its use, because of the millions of dollars in worker compensation lawsuits (Lemen and Landingan, 2017). However, the theory of asbestos differentiation – a theory elaborated in the 1980s – supported the idea that chrysotile, one of the asbestos types, would be less harmful. The thesis of asbestos differentiation is still delaying the ban in most parts of the world (Tweedale and McCullogh, 2004). Although global asbestos production fell from 2.1 million tons in 2012 to 1.4 million tons in 2015, more than 2 million tons of asbestos are currently consumed each year throughout the world (Asbestos.com, 2020).

The World Health Organization (2014) calculates that at least 107,000 people die every year in the world because of asbestos-related diseases (ARD), provoked by the aspiration of small particles of the fibre. Furuya et al. (2018) claim that this number is underestimated and offer another one: 255,000 deaths a year. Algranti et al. (2019) inform that approximately 80% of the global population lives in countries where asbestos has not been banned, mainly in Asia. And even if the use of the fibre were to cease today, the incidence of ARD would start decreasing only 20 years from now, based on current use (Collegium Ramazzini, 2016).

Research published in the last 30 years in different parts of the world has shown that the main concern about the discovery of asbestos-related diseases shared by the companies who profited from the mineral, was the that it would increase costs of production (Budó, 2021). Because of court cases against the companies, once-secret documents have been revealed, showing that the industry found a way out of the controversy by funding researchers to create methodologies and theories for supporting the continued use of asbestos and avoiding liability (Lillenfeld, 1999; Rosner and Markowitz, 2017). This was not an isolated case (Chowkwanyun, Markowitz and Rosner, 2018), as various lobbying organisations were also created to influence both politicians in (de)regulation, and judges in court cases, such as, amongst others, International Chrysotile Institute, Canadian Chrysotile Institute, and Brazilian Chrysotile Institute (Bocking, 2004).

Between the dialectical process of awareness and denial about asbestos harms in the public discourse, asbestos victims have organised themselves in a global movement to dispute not only industry claims about asbestos and its impacts but also to demand reparation, acknowledgement and justice. The global asbestos ban is also one of the central demands of the movement, considering that most of the exposures and denial that people in the global north experienced in the ‘70s and ‘80s are being currently experienced in the global south (BanAsbestos, 2022). But the trajectory of these movements has been difficult, as the diseases are all long-term, with symptoms of ARD showing up 30 to 40 years after exposure. Therefore, people affected do not always recognise themselves as victims (Natali and Budó, 2019; Silveira and Budó, 2021). As Friedrichs notes, “victimisation caused by the different forms of white-collar, occupational, and organisational crime is hard to estimate. While violent consequences, for instance in the environment or people’s lives, may be

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4 Recently it was found that the strategies for avoiding liability are far from merely paying scientists. In 2016, one of the greatest global asbestos victims’ movements was being object of espionage by industry. For details, see Kazan-Allen (2019).
easy to assess, many other harms are not” (Friedrichs, 2010). This aligns with the most well-known literature in green criminology and white-collar crime (Hall, 2018; Natali, 2015). Ambiguities are permanently found in such studies that relate for example to the workplace (Tombs, 2005: 41) and living spaces (Böhm, 2020; Natali and Budó, 2019). In addition, there are several characteristics of these harms that make victimhood difficult to prove. Firstly, victimization in these cases is not the direct result of interpersonal violence. And secondly, the harms experiences are often temporally and spatially distant from their source (Whyte, 2018; Budó 2021).

Even if the scientific consensus about the harms caused by asbestos was reached decades ago, its long-standing denial has had many repercussions depending on the region in which the harms have emerged.

An injustice from the past, injustice in the present: A testimony

My father and grandfather were factory workers at Eternit. My family was born and raised in Tisselt, a small village near Kapelle-op-den-Bos. At every graveyard, we know people who have died from asbestos-related diseases, often decades after they were first exposed to the deadly fibre. Just like many people in the area, we have seen neighbours, family members and friends die. Some have died almost immediately after diagnoses, some six months to a year after apprehending that they too, were not left untouched by this toxic substance.

Just as the fibre hides for years as a lurking danger deep in the lungs to then suddenly strike with unrelenting force, so do we also know that the disease, for years invisible and dormant, could sooner or later spread to our family and turn our world upside down. What we knew was possible, but hoped never to experience, eventually happened. After having enjoyed his early retirement with lots of extra time with his 4 young grandchildren, my father received the diagnosis of mesothelioma as a bolt from the blue in January 2021, at the age of 61. Mesothelioma is an aggressive and terminal cancer that affects the lung tissue (pleura) and for which there is no cure. My father was exposed to asbestos during almost half of his career at Eternit. He started working for the company in 1976 at the age of 17. He jumped on his bicycle and rode kilometers next to the highway to search for a company that would hire him at a young age. Eternit turned out to be the only company in the area that would employ a teenager, who was also compelled to undertake mandatory military service. My father was very happy that he could follow my grandfather’s footsteps and start earning some money in the biggest factory in the area before going to the army. Knowing what we know now, we wish my father would have ridden his bike several kilometers further.

In 1976 Eternit already knew the dangers of the product. The first study relating pulmonary fibrosis to the exposure of a worker to asbestos dust was published by Murray in 1907, and the term “asbestosis” originated in 1924 in a study published by Cooke (Mendes, 2001). In 1943 the first study relating asbestos exposure to mesothelioma was published by Wedler. Since the 1950s, studies have repeatedly proved that both workplace and environmental exposures to asbestos cause lung cancer and mesothelioma (Doll, 1955; Wagner et al., 1960). The finding that mesothelioma is caused by asbestos was communicated to the world by Selikoff et al. in 1965. Eternit tried everything in its enormous power to prevent and slow down every attempt towards restrictive legislation. It paid off scientists, doctors and lobbyist who had (and still have) a large influence in the political landscape. Up until a year before the official prohibition of this product and its applications, the company kept its production up. After the prohibition in Europe, Eternit continued its original course by opening subsidiaries in the global south.

After having received the diagnosis of mesothelioma, my father, like many others, applied for finan-
cial support from the Asbestos Fund. This fund provides financial compensation for professional and non-professional asbestos victims under a bitter and dishonest condition: a person who chooses to receive this compensation must agree not to bring any legal action against the perpetrator; this has been called “the immunity clause”. With escalating medical costs and often too little time left in their lives, victims often choose the compensation over uncertain legal action, which renders the all-powerful company Etex Group immune and effectively untouchable.

Resisting the injustice: the Belgium movement of asbestos victims

The Belgian Association of Asbestos Victims (ABeVA or ‘the Association’) was created in 2000 by relatives of victims and sympathisers with the main objectives of “improving the current situation of the asbestos victims in Belgium and to prevent new dramas by avoiding future contaminations” (ABeVA, 2022). Because many victims remain silent or are not even aware of the origin of their illnesses, the main objective is the protection of asbestos victims. The association has achieved many outcomes during this struggle.

One of the central outcomes has been the establishment, in 2007, of the AFA (Asbestos Fund), as noted above. The Association considers the fund for asbestos victims as “an unquestionably partial and incomplete realisation, but a huge step already in the right direction” (ABeVA, 2022). However, the AFA generates several criticisms. The main issue with the fund relates to the lack of liability which is embedded in the immunity clause; once the victim accepts the compensation, (s)he cannot sue the company anymore. Furthermore, the fund is financed by the state and all Belgian companies, whether or not they ever used asbestos. This means that a company like Eternit does not need to acknowledge the harm they caused, neither financially nor in front of the courts.

However, as Eternit already knew about the risks and continued exposing workers, the environment and the citizens to asbestos, a new lawsuit was recently proposed by members of the Association. In the press release that announced this new case, by Eric Jonkcheere and his lawyer Jan Fermon, explain that the idea is mostly to try to achieve a real sense of justice:

“By introducing this action, in addition to obtaining a complementary compensation, Eric Jonckheere and his lawyer intend to raise the debate on immunity, which has been blocked so far. They don’t want to change a compensation system that is globally effective and useful for many victims, but however wish to improve it by allowing, when it seems necessary and justified, to circumvent the principle of immunity by mobilising the notion of intentional fault. In addition they wish to insure that the polluter-pays principle is respected” (ABeVA, 2022).

The core aim of this new lawsuit is to allow victims to get full compensation, beyond the lump sum compensation provided by the Asbestos Fund. Companies like Eternit, which intentionally deceived the public and the authorities for decades by hiding the dangers of asbestos should be held fully accountable. Yet, Eternit, which carries a heavy historical responsibility for the damage, finances the fund no different from all Belgian companies. As such, this “socialisation of the damage” through a fund financed by the public authorities and all employers deviates from ‘the polluter pays’ principle. In addition, limiting the right of victims to seek compensation for the activities of profit-driven multinational companies with similar behaviour, results in intentional harm to individuals and society, and is even more problematic. In raising public awareness, and calling for other victims to do the same, the case also contributes to a wider reflection on justice. The meaning of what could be called justice in this case, is challenging, as the economic compensation by a state fund is not enough.
Epilogue: Truth, justice, and reparation

From what we addressed in this short article, it is clear that the current justice system is not paying sufficient attention to the claims and experiences of victims. Research has been conducted in Europe and other continents, such as Latin America, in order to understand what “justice” would mean when seen from the perspective of asbestos victims’ (Natali and Budó, 2019; Budó and Silveira, 2021).

From debates around the limitations of the current justice system, other proposals about ways of approaching justice have been developed in the last decades. This includes the notion of environmental restorative justice. As Pali and Aertsen (2021: 6) write, ‘essentially, a restorative ethos and praxis to environmental harms calls attention a) to the necessity to repair the harms that have been done to the environment, to its human and other-than-human inhabitants and to communities, their infrastructure and future generations, and b) to build different relational and ethical systems that prevent future harm.’

The environmental restorative justice perspective is driven by the principles of harm reparation, restoration and healing. In the case of asbestos in Belgium, and many others like it, we can see how reparation must be perceived as more than simply a monetary indemnity, as it is impossible to give a price to life. Reparation processes need also to refer to a guarantee of non-occurrence and find ways to avoid harms being repeated in the future. Victims’ testimonies are crucial here to avoid the erasure and silencing of their experiences and demands. This is also why it is important to bring the community together in this search for justice, understanding that it is possible to construct bridges, using the dialogue between victims, institutions and civil society as a means to promote transgenerational responsibility, and avoiding future harm. Testimonies are also important in order to resist denialism and the lack of liability, as we often see in such cases. At the same time, these testimonies can be meaningful in building public awareness about toxic substances and corporate violence more broadly. For this, it is important to involve the community and the mass media.

In this short article, mostly intended as a testimony, we wish also to provoke readers to join both the struggle of the movements of victims that are trying to challenge the power of the corporations, and to join this field of research, to go further in understanding the strategies that are used to promote immunity to the powerful, and to think, together with victims, about another form of imagination that aims to build a solid project of justice.

Acknowledgements

Our sincere gratitude and admiration to all asbestos victims who have raised their voices and thereby inspired other families, like Marijke’s family, to take up the fight against a powerful multinational. Thank you, family Jonckheere and all ABeVA members, for inspiring us with your courage. Thank you Jan Fermon, for proofreading this text and for the decades of hard and continuous work in defending asbestos victims.

Bibliography

Truth, reparation and social justice: Victims’ and academic perspectives on the harms caused by asbestos companies


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Violently meeting in the emptiness: Drafting sharing skins

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Keywords: more than humans, wolves, violence, welfare, Spain
**Abstract**: 
This artistic contribution has to do with the open debate (and “drafting of positions”) on current changes in the legal protection of wolves in Spain as an expression of:

- The deep conflict (sometimes violent) between the rural interests and the urban fascination for these animals who kill other animals.
- How wolves symbolise our capacity to share the world with other forms of life, also dangerous, beyond consumption, and to change our habits.
- And how initiatives for deep listening and understanding between different human and non-human animals in conflict perhaps in the intersections of knowledge between rural and green criminologies, can be done through critical thinking, avoiding humiliation or urban superiorities.

At the same time, as explained in the final note, we play with the socio-legal notions of “emptied Spain”, glocalisation and “pack” in violence against women. All these different ideas are wrapped within a final vision of restorative justice.

The work combines three illustrations by three different artists and a text envisaged as poetic prose.

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Text by Gema Varona (Basque Institute of Criminology, University of the Basque Country). Illustrations by two generations of artists: Carlos Arruti (http://maushaus.info/) (Drawing 1), Carlos Varona (Drawing 2) and an anonymous artist (Drawing 3). Providing a common understanding of values in conflict, the three artists worked autonomously to foster diverse visual interpretations and extend that diversity to readers’ ideas and imagination.

History and stories: Rural communities, actual suffering and legendary tales about wolves that eat children and sheep.

2021: The pandemic continues showing human vulnerability, particularly in crowded areas. Rural spaces appear to be safer.

2021: Under the name of "emptied Spain", rural world protests go back to the capital city.

2021: A new regulation prohibiting hunting wolves in all Spanish territory is expected.
Conflicting humans say to defend life: the life of innocent lambs, of guard dogs, of wolves, the economy of farmers, the pleasure (some say need) for hunting, biodiversity... Opposing interests emerge from different basic instincts, ethical values and sophisticated legal terms for the management of endangered populations. What life is not endangered under climate change? How to interpret harm justified as the protection of different ways of living?

Human and non-human animals’ conflicts, predators and victims, aggressions and violence over a rural space that is called “emptied”, urban technocrats avoiding listening to all voices, and humans speaking in the name of wolves, once symbols of fearful cruelty and today symbols of beauty and freedom for those living in the city.

Contradictions and absences in our collective memory: the threatening “pack”, used as a metaphor of violence against women in urban and rural areas, and yet the images of the caring wolves in The Jungle Book and the spiritual stories of some First Nations. In different parts of the world, again, we are simultaneously able to attack and care for wildlife and human beings.
And then, is it too utopian to think of restorative futures? Urban wolves, rural humans, homo homini lupus est. Perhaps, for once, looking at each other and exchanging skins does not mean cheating and threatening, but breaking rooted frontiers for a complex encounter of species, human responsibilities, creative pathways, and different ways of being. Many tales on the rural and the urban in a glocalized world are still to be written and rewritten. In this emptiness we temporarily occupy, different howls and voices might question the monologue of human violence in the Anthropocene.
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Abstract:
Complexity in causation, complexity in impact (including a diversity of victims) and complexity in response, makes climate change a 'wicked' problem. One impact of climate change and associated sea level rise is the loss of villages to the sea, as Lowri Cunnington Wynn explores in this edition in relation to the Welsh village of Fairbourne. The residents of Fairbourne are indeed victim of environmental harm. This commentary arises from a review of Wynn's important work, which contributes to green criminological literature through its recognition of harm that arises from both legal and illegal activity and the effect that such harm has on individuals and communities.
Climate change is a ‘wicked’ problem. Such a conceptualisation derives from complexity in causation, complexity in impact, including a diversity of victims, and complexity in response. In terms of causation, climate change is the result of an accumulation of harmful events, often over a prolonged period of time. Such events may be unlawful (i.e., illegal, such as unsanctioned pollution) but more worrying may be ‘lawful but awful’ (Passas, 2005; see also, White & Heckenberg, 2014, p. 3.), such as the burning of fossil fuels to produce electricity, which is sanctioned, indeed encouraged, by the government. I had the pleasure of being a reviewer for Lowri Cunnington Wynn’s thought-provoking contribution to this edition in which she informs us that the residents of Fairbourne, a Welsh seaside village predicted to be swallowed by the sea, are ‘left in a position of victimhood with nowhere and no one to apportion blame or responsibility’. The fact that climate change is a product of both legal and illegal, lawful and unlawful, activity means that traditional prosecution for environmental crime is insufficient. Indeed, the legal/illegal, lawful/unlawful characteristic of climate change causation brings it within the purview of green criminology in which the focus is on environmental harm as well as environmental crime.

Green criminology conceptualises victimhood more broadly than mainstream criminology and includes within the group of those suffering from environmental harm individual humans (presently living; you and I) as well as future generations (our children and grandchildren if the environment is passed on in a worse state than when we inherited it), communities (both Indigenous and non-Indigenous) and the environment (flora and fauna). Indeed, climate change is ‘wicked’ because it has the potential to impact a diversity of victims. Lowri considers ‘whether the residents of Fairbourne are subject to climate change as a form of environmental harm, and whether they can be considered environmental victims’ because of a sea level rise caused by climate change which forces the abandonment of Fairbourne, that is, the relocation of residents. Victimhood relating to the community of Fairbourne is explored by Lowri through three prisms – economic harm (diminished housing values and business failure), social harm (changes in the demographics of Fairbourne’s population and impact on tourism) and individual harm (stress, anxiety and other mental health impacts). The author makes a convincing argument that the residents of Fairbourne are indeed victims of environmental harm.

Responses to climate change and its impact are both global and local. However, the burden is not shared equally. Ironically, it is the undeveloped nations which have contributed the least to climate change that will suffer thegravest impacts in a context in which they have the least financial resources to mitigate those impacts. Global responses include reducing the amount of CO$_2$ released into the atmosphere to limit the planet’s warming. Local responses, for example, related to sea level rise, include mitigation (attempts to mitigate the impact of sea level rise), adaption (strategies to live with sea level rise) and retreat (surrendering land to the sea and retreating to higher ground). Lowri explains that for Fairbourne, ‘decommission’ will be the result of the predicted sea level rise with the retreat of its 800 residents. Such an event is a sign of things to come and this important article continues much needed discussion.

This article contributes to the green criminology literature through its recognition of harm that arises from both legal and illegal activity and the effect that such harm has on individuals and communities. Given green criminology’s focus on victimhood beyond that of currently living humans, further analysis that explores Fairbourne’s sea level rise predicament on non-human victims, such as flora and fauna, and non-living humans (i.e., future generations of humans) is desirable. I encourage Lowri and/or others to undertake that analysis and to first consider whether such victims can be characterised as ‘climate refugees’ and second, whether those victims can adjust to sea level rise in a way that currently living humans cannot.
This commentary ends with the echoing of Lowri's sentiments, as found in her conclusion: Decommissioning Fairbourne will not displace a significant population and the consequences of relocating the community is unlikely to have an earth-shattering effect on this small part of Wales. However, it represents a stark vision of the future for many coastal communities across the UK and beyond. It provides a symbolic case study for the implications of the current climate crisis.
The Fight for Fairbourne: Climate change and its impact on sea level rise.

A commentary by Mark Hamilton.

Bibliography


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A comment on ‘Expressions of dependency: Green crimes and the phantasmagoria of “development” in the extreme west of Bahia, Brazil’

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Keywords: Bahia, extractivism, environmental crimes, dependence theory, the commons

Abstract:
Brief review and comment on “Expressions of dependency: green crimes and the phantasmagoria of “development” in the extreme west of Bahia, Brazil”.
The article ‘Expressions of dependency: green crimes and the phantasmagoria of “development” in the extreme west of Bahia, Brazil’ addresses a critical vector of change in the so-called MATOPIBA, Brazil’s agricultural frontier at the intersection of the states of Maranhão, Tocantins, Piauí and Bahia. This rapidly changing region in North-eastern Brazil has seen an explosion in the past 20 years in terms of both production and demographics related to the extraction of natural resources. The manuscript offers a timely and relevant study focussed on the extreme west of Bahia, the most densely populated sector of this region.

The author argues that the violent dynamics at work in the extreme west of Bahia configure a blatant case of green crime. These dynamics include land and water-grabbing processes as well as the dramatic reduction in food crop agriculture and the destruction of pre-existing social and community ties. As causes, the author points to the dependent position of the MATOPIBA region—and Brazil more generally—in the world economy. He mobilises centre-periphery and dependency theories to prove his point.

While I generally agree with the author’s argument, I think ‘Expressions of dependency’ could more explicitly develop the notion of green crimes. The text allows us to identify three distinct levels, and the author could more closely study their interactions in an empirical context. First, there are norms and procedures that while unimpeachably legal from a technical perspective nevertheless offend local notions of justice and hinder access to common goods, most notably land and water. These goods are increasingly diverted towards exclusively private, extractive endeavours.

A second dimension is the abusive interpretation of the existing legal framework in ways that promote agribusiness by freeing it from some—or most—of its obligations in open noncompliance of the environmental and social rights of local communities. Under Bolsonaro, lack of active enforcement of environmental regulation has become widespread in Brazil, not only in the MATOPIBA region but also throughout the country (Rocha, 2020).

Finally, we observe how actual crimes, ranging from illegal land and water grabbing to physical violence against activists and their communities, play an important role in the accumulation by dispossession processes described in ‘Expressions of dependency’. State tolerance of—and connivance in—these crimes is a startling element of the process which significantly contributes to its scope and complexity. These three levels of analysis allow us to think in insightful ways about the complex interaction between positive law and social legitimacy in relation to green crimes.

‘Expressions of dependency’ has significant but untapped theoretical potential. Classic versions of both centre-periphery and dependency theories are used to propose hypotheses about the construction of the world system in which certain regions are condemned to produce and export raw materials (Wallerstein, 1974) as well as how power relations are structured within dependent countries to allow for the extensive extraction of these resources while guaranteeing the reproduction of the pattern of domination (Cardoso and Faletto, 1969). Systematic reference to and testing of the validity of these hypotheses in the context of the expansion of the agricultural frontier in the extreme west of Bahia would allow us to gain a better understanding of the actual power dynamics at work in this region. Insights could also be gained as to whether or not the so called neo-extractivism trend in Latin America and elsewhere is all that new (cf. Svampa, 2019).

‘Expressions of dependency’ also offers a rare opportunity to effectively combine theoretical traditions that most often talk past each other. In exploring the nature of social resistance to water and land-grabbing, the author cites Elinor Ostrom’s (1990) classic rationalist study Governing the Commons. Again, a more detailed discussion of Ostrom’s hypothesis about the weakness of com-
munal structures in the face of privatisation of communal goods would give us a better grasp of the nature of green crimes, resistance and conflict as they play out in the extreme west of Bahia. In so doing, the author could integrate the individual-level dynamics that Ostrom has put forward with the structural analysis that Wallerstein as well as Cardoso and Faletto have proposed.

In a Latin American context, Le Gouill and Poupeau (2020) proposed an analysis of how Bolivian communities resist encroachment on their water rights and organise to defend these rights. The extreme west of Bahia might be an ideal place to test the notion of self-organisation presented by Le Gouill and Poupeau and the conditions in which such initiatives can actually supplant an absent or indifferent state and confront abusive, even criminal attempts at privatising common goods. In so doing, the author might expand and develop the notion of plantationocene, which he only evokes in passing but may in fact prove critical in understanding the evolution of land, water and agricultural production in the MATOPIBA region.

To conclude, the series of maps presented in ‘Expressions of dependency: green crimes and the phantasmagoria of ‘development’’ is possibly the article’s greatest contribution, as the maps spatially illustrate the expansion of the agricultural frontier, the green crimes committed in this process and the dynamics of social resistance at work in the extreme west of Bahia. I believe the maps are the hinge that allows disparate academic traditions and their insights to be integrated into a fruitful analysis. I encourage the author to further develop this approach and take systematic advantage of both its theoretical and its empirical potential.

Bibliography

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Amazon under siege: An interview with environmental and human rights defender Claudelice dos Santos

Claudelice dos Santos (1) interviewed by Victor Poldo Ameida (2) and Larissa Bombardi (3)

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Abstract:
Claudelice dos Santos is a human rights defender who holds a bachelor’s degree in law and who is the coordinator of the “Instituto Zé Claudio e Maria” - an organization for human and environment rights. She became a well-recognised human rights defender through her struggle for justice following the killing of her brother José Claudio Ribeiro dos Santos and his wife, Maria do Espírito Santo, in 2011. Claudelice had fought alongside her brother and sister-in-law for the right to access to land and denounced human rights violations resulting from land grabbing, logging, and crimes against the environment. She was subjected to several threats due to her human rights activities. Claudelice is one of the nominees for the 2019 Sakharov Prize for Freedom of Thought, organised by the European Parliament. The interview was conducted in December of 2021 by the geographer Larissa Bombardi, currently based in Belgium, and Victor de Almeida, a lawyer and PhD candidate, based in UK.
**Victor Porto Almeida**: Good morning Claudelice,

**Larissa Bombardi**: How are you, Claudelice?

**Claudelice dos Santos**: Fine, thanks. As I was about to tell you, this is the third time that I’m not in my region at the end of the year, since 2019, when I received one of the death threats. They put a note in the mailbox at my mother’s house that reads: “we’re going to kill the rest”, I mean, the rest of the family, right? This is because we have been fighting for justice in the case of José and Maria until today. [Respectively Claudelice’s brother and sister-in-law who were murdered]

**Larissa Bombardi**: It was 10 years ago, right?

**Claudelice dos Santos**: 10 years this year. So, I’m not staying in my region at the end of the year, because unfortunately, this is the period when we are vulnerable. Because the government bodies go into recess, because the police act, but they act less... And, in these years of the Bolsonaro government things have only gotten worse.

We cannot put our lives at risk, nor our families’ lives at risk, so we always make an assessment when the end of the year is approaching, we analyse the risk that we might run. This year, as I was coming to the COP [the 2021 United Nations Climate Change Conference, in Glasgow], we assessed that by coming to the COP - where logically we denounce all the violence that we suffer, that our communities suffer - we assessed that it would be good for me to stay here for a while longer, because we knew that there would be a lot of pressure, and that the threats would be intense. And the result was exactly as we had foreseen: the indigenous leaders Alessandra Munduruku’s house was invaded, Chay received death threats, because there is no point in thinking: “ah, but it's only through the internet”. No. These threats reach us in a very violent way, both emotionally and physically.

These narratives of hatred that have been created against environmental advocates, human rights defenders, they come into our lives, right? In a very violent way, so we were right in our assessment. I’m sorry to be away from my family, but it’s not something I do because I like it. No, it’s rather a matter of safety.

So much so that some defenders who returned to Brazil after the COP are not in their regions. We have to go on what we call self-exile, stay somewhere else in order to preserve our lives.

In 2019, I left with my family, because it’s not easy, you know what I mean. My mother is 84 years old. Just imagine a lady, her daughter goes to the mailbox to pick up something, get a postcard and there’s a message that they are going to kill her. Since Zé Cláudio and Maria were murdered, we have been getting threats. They are normally not material threats, this was the first material threat, with a piece of paper with something written on it. The other threats were phone calls. They were messages, so it’s difficult to point out who threatened. Including with regard to the note, it’s up to the police to investigate this.

**L.B.**: I know what you are talking about. As you know I had to leave Brazil myself too for similar reasons. It’s difficult because all this has a serious emotional component.

**C.S.**: Yes, of course, this is the modus operandi of crime, you know, Larissa? The hurt you have suffered is exactly what the defenders, in the forefront, at the grassroots, experience in a much more violent way. I imagine that with the visibility that you have, because you are an important researcher, right? It’s a shame that our country is not capable of protecting us, of protecting you, of
protecting the other advocates that are fighting to say, look: “if our country continues like this, it will destroy itself, it will destroy the rest of the world. Because that is what is happening. Our country is uncapable of defending us, and we should denounce it. I know that you’re not in our country today, but I know that your work is important. It’s very important. Are you aware of what happened in my state, in Barcarena? This is what you say in your work, and this is what the communities there that suffer these violations are denouncing. This goes for two or three days in the newspaper, then they forget. But life goes on, you have your children, I have my daughters, and nothing happens. This is what we must report and we simply see our lives increasingly at risk.

L.B.: I know, it is horrible. And you lost your brother and your sister-in-law.

C.S.: He was that person who was the pillar of the family, the strong one in the family. We looked at him and we knew we could trust him. Even today I remembered him, because of this sequel, of that accident, he and Maria were the ones who helped me that day. The accident happened there on the plot, and he was the one who was there. So, when the murder happened, I took too long, too long to believe it. I think it took me more than three years for me to ‘realize’ and for us to transform the pain of mourning and fear. Because it is overwhelming. You don’t believe it! You just don’t believe it. And it’s very sad because 10 years have passed and justice hasn’t been served. We are still fighting for justice, with other defenders who are in the same situation.

L.B.: Because impunity is what gives strength, right Claudelice?

C.S.: That’s it! In our country, especially in the North, there’s the coronelismo. The one in charge is who has the financial and political power, who has connections with powerful politicians. If you don’t have that, if you’re poor, if you want to report something, you’re bound to die. If you try to report, you’ll be rejected, you know? You’ll be criminalised, disqualified. You can see the example of this in the media. It’s being normalized, as if it was just one more thing happening. But it is not that, in the meantime, our lives go on being violently affected by this normalization of violence. So, here we are 10 years later, and still fighting for justice, and we are standing firm and strong.

I would say that I cry a lot less, because there are times when it’s necessary to talk. It hurts, it never goes away, but it’s necessary. Because just like the situation José and Maria had in the past, the threats they have suffered, they have fought and denounced, and got absolutely nothing back from the State, not even a simple investigation of the denunciations, everything keeps happening the same way. And, Larissa, my sincere and honest opinion is that I don’t see this getting better in the next few years. There is a need for a major revolution in our country so that the defenders of the land, waters, forests and territories are respected as they should be.

And I don’t see this possibility happening in the next few years. We will still lose many defenders, many people. And this is not what we want. We don’t want more martyrs, we don’t need more martyrs. We need serious public policies. We need to be respected. So, whenever people ask me what I have to say, about how one can help, I think that the solution is through the education of the youth. It is the youth who are going to continue this fight, so we should put our focus on them. Those politicians are not going to change their minds anymore. They’ve already chosen their side, and it’s not ours. Now—more than ever— we have to talk to young people about what’s going on. And they already know this will affect their lives.

L.B.: When you talk about young people, you mean young people in the communities or in general in the country?
C.S.: In general. From the communities and in general, from those who have no connection with this environmental struggle to those who belong to some territory as well. And not only with discourses. We don’t need nice discourses anymore. We hear fine speeches at the COP. What I saw and heard at this COP, you say “guys, as of tomorrow, all the issues of the world will be resolved”. But that’s not the case. In our real life, it is completely different. The agreements made here will never get there, not in a positive way. Because this was not the first and will not be the last COP, and the speeches, you can write down in your notebook: they’ll be the same. At the next COP, it will be the same discourse. The delegation that came from Brazil... Have you seen the list? There’s the first lady, there’s I don’t know who, except the defenders, right? So, now is the time for us to fight, the youth, today’s youth have to take a stand. It’s not only in speeches and not only on the social network. Is social networking important? It matters, but our actions, our practices are what will really make a difference. They will affect today’s world in a way that will have consequences hundreds of years from now. So youth is an important element, politics is an important element. People say: “ah, I don’t discuss politics, but I like the environment”. That’s wrong, you have to like politics too. Because Bolsonaro’s policy is one of destruction and death. Both for the environment and for the people in Brazil, that’s what is destroying the future of this generation. So, you have to discuss politics.

V.P.A.: You spoke about two major problems we have: one is the issue of public policies and the other, which you put in other words, is about the many incidents occurring against defenders, incidents of rights violations. And, these incidents are not investigated in a satisfactory manner. Today, what would you say is the most sensitive issue in Brazil? Do you think that our public policies towards the environment are insufficient or that we do not have mechanisms to preserve the discourse of those who fight for fairer environmental policies for future generations?

C.S.: Look, I would say that it’s a combination of all of this, right? But regarding the laws and mechanisms, we have them. But the words speak much louder than the actions. The public policies of the Bolsonaro regime practically don’t exist, because he destroyed those that existed. To such an extent that you see ICMBio and IBAMA [two bodies of the Ministry of the Environment] hindered by this government. And all this associated with impunity.

Impunity is the main factor that causes the threats against defenders of human rights and the environment to continue. Ten years later, we are fighting to arrest the person who ordered the killing of José and Maria. And yesterday, I can say—yesterday—there was violence, a violation, some peasants were murdered. Yes, they organise themselves like a rural militia, they attack the camps with bullets, with shots, with fire, they burn all the people’s belongings and there is not even a single investigation.

And, with the support of the government... From micro to macro level, from an attack, from a veiled threat, to public policies: all this is what is maintaining this state of violence and destruction.

That’s why I tell you that I have no hope that this will be changing soon. Because if another president comes in the elections in 2022, everything that Bolsonaro has been dismantling, everything that he has been doing to strengthen the militia, and also the policies he’s been dismantling that could minimize these impacts and this violence, will have to be restructured. So this will not happen from one year to the next.

L.B.: Claudelice, do you see any clear difference in the Amazon after the Bolsonaro government?

C.S.: Absolutely! First, the same year Bolsonaro was elected, what happened? Fire! The farmers got together to set fires all together, because they knew that the Bolsonaro government is a carte blanche government to have people killed, and to destroy the environment. Then came deforesta-
tion, great violence and invasion of land and territories of traditional communities as well as indigeneous peoples and the Quilombola, who are peoples who preserve the environment. And then the hate speeches: “but the ones who burn are the small farmers, the big landowners don’t need to deforest any more”. This is a big lie, this is a narrative created to criminalize and disqualify family workers, traditional peoples, indigenous peoples, the Quilombola, and to say that farmers are good and they are not! The meat that goes to the United Kingdom, to Europe, to the United States and so on, comes out of areas of conflict, areas of slaughter.

V.P.A.: And what do you think is the role of digital militias? And the dissemination of fake news for the escalation of these conflicts?

C.S.: The main role is to justify the violence, to justify the murders and to convince people who believe the fake news that those who defend the environment, the people who fight for the land, for the water, that these are bums and that they really deserve to be treated with the harsh rigor of the law. The law does exist for the defenders. However, for the real criminals who are the farmers, the miners, the State itself through its major projects that lead to environmental destruction, the law does not exist. So, this is the role of fake news, the role of hate narratives in the media. There is certain congressman from Pará who said that these indigenous people who have a telephone are “fake indigenous people”! This is the narrative that has been created to say that the indigenous people can’t have a mobile phone, if they have one, then, they can’t use the land. Something else, when I talked about justifying the deaths and murders, when there’s an attack against peasants, like the one that happened in the São Vinicius and Nova Ipixuna camp, where José and Maria were murdered, they say: “ah, but they attacked the farmer”. Guys, it was the farmer with more than 30 pickup trucks with armed personnel that attacked the camp. They invaded a camp where people live in houses made of straw, they set fire to the camp, they tortured, they shot. There is a person who suffered a stroke, who will no longer be able to work, can you believe it? And to say that they deserved this? This is what is going on in the internet. So, the fake news on social media are increasing. The criminalization and violence against those people who defend the right and access to land, territory and forest, this is what fake news has been used for. And, I could give many other examples, but these for me are the most striking, they are the ones that directly affect our flesh, that cut our flesh, because in addition to dying, we are guilty of our own death, and this is in the judgment that acquits the farmer who ordered the killing of José Cláudio and Maria back in 2013.

L.B.: Really? How are the proceedings going?

C.S.: It was sentenced that Zé Cláudio and Maria contributed to their own deaths...

V.P.A.: Did the case go to a Jury, Claudelice?

C.S.: It was a People’s Jury. It’s stated as follows: first for Zé and then for Maria, because Zé Cláudio in some way contributed to her murder, because there were three people judged in 2013, the mastermind and two executors. But this is part of the common reasoning of people who think that “they have to die anyway, because they hinder development”.

L.B.: I know, I know. It’s like saying that a woman who wears a miniskirt deserves to be raped.

C.S.: This is even a justification that is used a lot in violence against women in rapes, in feminicides: “she looked for it”. This is also used against human rights defenders.

V.P.A.: Claudelice, in your brother’s case, did the Public Prosecutor appeal the judgment of acquit-
tal?
C.S.: Yes, there was this first trial in 2013 where there was this absurdity. That day I felt as if they had killed Zé and Maria again. I couldn’t hear the end of the sentence. Do you know that lump in your throat, that cry you need to give? I just screamed and left. My sister outside was sick. Maria’s sister suffered a stroke suddenly.

L.B.: Oh my God!

C.S.: To this day she is paralysed on one side of her body. She had a series of health consequences. Because that’s the way it is, besides killing us, they criminalize us and say that we deserve to die. We have appealed, there was a request for annulment. We presented several requests, the first was an action for annulment of the judgment of the farmer who ordered the crime and to keep up the conviction of the two executors. We also requested a change of jurisdiction to the capital, because it was clear that Marabá, that the People’s Jury in Marabá was not impartial. The whole process, including the judge’s attitude was not impartial, and this culminated in the result that we had, the acquittal of the person who ordered the crime. So, we gathered all these requests, and in 2016 there was a second trial, only of the mastermind, and he was sentenced to 60 years in prison.

V.P.A.: So there was an annulment? There was an appeal from the prosecution asking for the previous People’s Jury to be annulled because the Jury’s decision was completely against the evidence included on the case records?

C.S.: Conviction... with everything, absolutely everything.

V.P.A.: There was then a new trial in 2016 to be submitted, and there was a suspension as well?

C.S.: That’s exactly right. There was also a suspension. The second trial was in Belém, it was in the capital, all our requests were granted. The conviction of the two executors was upheld, the acquittal of the farmer was annulled, and the case was remanded to the capital. In the second trial, already in the capital, the conviction was upheld and the judge in the capital made a point of asking the People’s Jury questions similar to those in the first trial.

L.B.: Ah, it was a People’s Jury...

C.S.: Both were People’s Jury, with completely different results. In the second trial, in 2016, the People’s Jury said no, that Zé Cláudio and Maria did not contribute to their killing. A completely different result.

It involves the issue whether it is the result of fake news, and what impact that has. For example, in the capital people have much more access to information, they have much more access to resources to know if a news story is fake or not. In the interior, what happens there is by word of mouth: “José Cláudio and Maria were hindering the development of the municipality of Nova Ipixuna”. The farmers and the loggers from Nova Ipixuna protested, closed the BR saying that IBAMA was there closing the logging companies, and that was the families’ livelihood, you know? This is the narrative that is used to justify a murder. So, when the first People’s Jury was held in 2013, that was in people’s heads: “they did deserve to die, because they were hindering the development of the municipality,” “because those logging companies, poor logging companies, employ a lot of people.” I say this with complete confidence because I live there, and I hear what people say about those who fight for the land: “they’re all bums, they only want the land to sell it later, they really deserve a beating”. “The least they can have is to be beaten, they have to die”. You know, so this makes me very outraged,
even today I can’t talk about this and not stay outraged.

**V.P.A.** You said that you even lodged appeals in this period, and obviously, so, the Public Prosecutor’s Office is the holder of a criminal action. In this case, did you also have a lawyer acting as an assistant prosecutor?

**C.S.** Yes, I mean, we, precisely because we had, we had, no, we have! The organisation that never left our side is the *Comissão Pastoral da Terra* [Pastoral Land Commission], which has lawyers from the CPT, and the SDDH, which is another organisation from the capital. I say ‘we’ because throughout the process we were there together, looking for strategies and giving support to the Public Prosecutor, to appeal and also to make the accusation.

**V.P.A.** I see, and after this trial in 2016, in which there was the conviction, what steps were taken? I imagine that the defence must have appealed against the sentence.

**C.S.** They did not appeal.

**V.P.A.** So it has been passed as a final judgment?

**C.S.** So he—the mastermind— was convicted.

**L.B.** But he’s free?

**C.S.** He’s been free since 2013, since the first trial in which he was acquitted, in which he walked out the front door, he has remained free since then! The second trial was in absentia. He was not present, he was never put back in jail.

**L.B.** And there’s no warrant?

**C.S.** That’s why we’re now going to appeal to the Inter-American Court.

**L.B.** But the person is convicted and not arrested?

**V.P.A.** So there was no enforcement of the judgement? Of the sentence?

**C.S.** No, no, there wasn’t because he on the run.

**L.B.** Oh, he’s on the run?

**C.S.** So there is no justice, Victor and Larissa. There is none! It’s a network, when I say it’s a militia, it’s because there are masterminds, there are intermediaries. I consider the farmer who ordered the crime an intermediary mastermind, I don’t even consider him a rich farmer. He went to the side of these rich farmers who wanted Zé Cláudio and Maria dead, politicians, businessmen, do you understand? And there’s the third on the scale, the gunmen.

**L.B.** You know, Claudelice, I studied geography and when I was in my third year I went to the Amazon, to this region of southeast Para. One of our teachers, Ariovaldo Umbelino de Oliveira, took us there, and we were received by the CPT. And I remember that at that time there was Dom Tomás Balduíno who gave the data on impunity. I remember that less than 1% of the perpetrators have been sentenced.
C.S.: It’s still the same. The same goes on.
L.B.: 30 years have passed and nothing changed.

C.S.: So much so that the Eldorado dos Carajás massacre continues unpunished. Massacre of Pau D’Arco The Pau D’Arco massacre was yesterday. The other one, at the beginning of this year Fernando was murdered, a survivor of the massacre. Nothing is happening, nothing at all. And it’s getting worse.

V.P.A.: You said that now you’re going to appeal to the Court, but I imagine that you are going to file a petition with the Commission, right? Because the Commission, the Inter-American Commission on Human Rights, takes it to the Court. And what arguments do you intend to bring so that this matter can be accepted by the Court? Because there are several criteria for the Court to accept a matter of human rights violation.

C.S.: Well, we still have an appointment to meet, so, I will go back to Brazil in January, at the very beginning of the year. And then we will sit down, our family, the members of the Comissão Pastoral da Terra and the SDDH, and we will formulate the best strategies. But for sure, the man who ordered the crime still being on the run to this day, and his prison sentence ordered in the second trial, never having been carried out, is one of the factors and one of the arguments.

V.P.A.: So, what are your expectations with regard to taking this case to the Court, for example, for you as human rights advocates? Because let’s make a comparison. The Maria da Penha law was produced as a result of a condemnation of the Brazilian State by the Inter-American Court for failing in its duty to protect a woman. If we look at the post-dictatorship Amnesty Law, for example, it was also...Exactly... And today the cases conducted by the Federal Public Prosecutor’s Office to investigate enforced disappearances, people who disappeared during the dictatorship, are also the result of a condemnation by the Inter-American Court. So, by taking the of your brother and your sister-in-law before the Court, what would your expectation be? Would it be that Brazil should create a similar defence mechanism? Would it be to seek accountability for the perpetrators? What do you expect from all this?

C.S.: We expect both things and perhaps more. Yes, we do expect the State to be held accountable, not least because José Cláudio and Maria have for many years denounced the destruction of the environment and the impinging on human rights, not only against them, but against the community. So the least we can expect is a condemnation of this country, which has never made an effort to protect the community and the environment. What we really expect is that the State is held accountable, and we hope the enforcement of these sentences that were handed down and that were not carried out. The threats against us persist, so we hope that this will at least close or turn the page on the threats against us. The only thing we want is to stay alive and have justice, we don’t want anything more than that. And not only for us, for so many other defenders of land and territory who are still in the same situation.

V.P.A.: Would you say that there is today an institution, and here I am talking about the institution itself, not a person, that you can count on, I am talking about a State institution that is involved in the fight for the rights of the forest, the protection of the environment?

C.S.: I’m sorry to tell you, but, no. We don’t trust them at all.

V.P.A.: Not even the Federal Public Prosecutor, the Public Defender’s Office?
When we blow the whistle, it’s because we want some support, a backing to say: “Look, we are going to blow the whistle on this”, but we don’t see anything concrete happening. So, it’s impossible for me to say that I trust them. But we continue using these agencies, these spaces, because it’s their responsibility to investigate, it’s their responsibility to minimize these impacts against the environment, against our lives.

V.P.A.: Now, would you say that your lack of trust is due to their slowness, that is, their delay in acting, or is it because you don’t believe in the actors that are in these institutions who are in charge of the cases?

C.S.: The first thing is impunity. Not only in the case of my brother and my sister-in-law. This is historical. The second thing is sluggishness. We don’t see anything happening. The accusations that Zé and Maria made, let’s play here.. 1999, 2000, 2001... The same year they were murdered, you look for the result of that, and there’s no result. They died because they reported things in the 2000s, you know? In 2001. Victor, there’s never been an investigation, nothing at all! So, how can I trust these institutions? No! After they were murdered, the mastermind was acquitted. I can’t trust them. But it is their responsibility to deal with that. So that’s why we keep denouncing, and that’s the reason why we will continue to report, even if completely hopeless.

L.B.: What do you think about pressure coming from the outside, for example, from Europe? Would you see it in a positive light?

C.S.: Yes, I would see it in a positive light because it can give us a breath of fresh air. At least if we are denouncing the case before the Inter-American Court. We can go to sleep and say: we are doing something, because the case of José and Maria, if it’s accepted by the Court, may have repercussions in many other cases, and this is what we see when we report to other international courts, to other countries, to the European Union or the United Kingdom. Just now a Member of the European Parliament was in Belém, Pará. We did everything we could to take Josias, who was one of the people tortured in the São Vinicius camp, to see if this could at least give us a glimmer of hope that something might change. On the same day he had a meeting, this Member of the European Parliament had a meeting with the governor of Pará, and what we hope is that such a violence will decrease, that we will really be treated with dignity, such as we deserve. Although, we know that this meeting won’t solve all our problems and we’ll have to keep denouncing.

V.P.A.: Based on common sense, let’s say, it wouldn’t be rational for you to go on exposing yourself to so much risk, when you know, for example, that there is a real threat that they can commit violence against you or your family, or that they can kill your family or your friends, but this is a cause that you are still supporting. And, there is a motivation behind it, what is your motivation to keep fighting so fiercely for a cause that is so dangerous, but which is also so necessary?

C.S.: It’s justice, you know? Justice for our dead people. We don’t want any more deaths. Justice for the environment, because that’s where our life is. And it’s from there that we will continue to exist. So it’s for justice and for our environment. And furthermore, why should I stop condemning, stop asking for justice, while Zé and Maria have fought their whole lives, right? While Fernando, who was murdered at the beginning of the year, was reporting the killing of his 10 comrades who were murdered in the Pau D’Arco massacre. Why? Why should we stop? No, we must continue. They were brave. We have to be brave too. If they didn’t have the support of the State, neither do we, but we have created our own defence mechanisms, which are our voice, the reporting on the Brazilian state that does nothing, and should do. It is the fight for justice. I think that what keeps us moving is our
instinct for survival, and not just surviving now. I have two daughters, I am going to have grandchildren, you certainly want to have your life, your children, your grandchildren alive enjoying quality of life. That is my main motivation. I can't stop now because they didn't stop, so we shouldn't stop either.

V.P.A.: And you said that state institutions are showing a complete collapse and are failing to provide the protection that human rights defenders and environmental defenders need, but would you say that there are institutions, not necessarily state institutions, but institutions that can effectively bring about the kind of effectiveness that you’re seeking, be they non-profit organisations, civil associations and so on?

C.S.: Yes, and it’s them and it’s through them that we continue to have access to these other mechanisms of justice that are missing in Brazil, such as the Court. I will cite one that has always been on our side, whether in the legal field or in the field of our work in the communities, whether it be agroecological production, sustainable production, or with the women’s groups organizations, which is the CPT [Pastoral Land Commission]. The CPT is doing work that is essential to the communities they support. It has always been on our side. Since the creation of the settlement, every time we needed training in sustainable production, for example, a SAF [Agroforestry System], or with organizing the women’s group, they were there. And even in the legal field, so, the non-governmental organizations are also giving us the energy to keep going. Imagine if we only had the State as a partner? That same State that I just said is slow, that doesn’t do its job as it should, like INCRA [National Institute for Colonisation and Agrarian Reform], which doesn’t resolve land issues, like IBAMA, which doesn’t resolve issues of violence against the environment. This State that often kills, as it happened in the Pau D’Arco massacre, or like in Eldorado, or that is negligent, like in the case of Zé and Maria, that failed to investigate the complaints of death threats. So, in these organisations we place our hope that we will continue to stand up because if no one is listening, we are together, doing something for ourselves. And this is the work that we do with the Zé Cláudio e Maria Institute, which we have created to give support to other defenders and also to the local communities.

You know, here in Europe, during this week I was in London, visiting schools, telling this same story, with less intensity, because there are many young people, some of them children, so I can’t give details, and one of them asked me this same question that you asked me, Victor, why I keep doing something that is so dangerous and why I smile and make fun sometimes. Because they can’t take away our smile too, you know? They will win when we stop smiling. They will win when we stop fighting. The bodies of Zé and Maria and so many other defenders are buried, but their story is not! Their story must be told. And we must tell it smiling, because Zé and Maria were great, they were giants, who did a lot for the community, for the environment, and this must be remembered. What they, Chico Mendes, Dorothy, and so many other defenders did for their causes. And they will not win, because we will keep fighting and smiling, when I pass away, you will be there, others will be there, my daughters will be there, they will tell this story. That’s the reason why I tell their story, the most beautiful parts, because their story must remain engraved in our minds and hearts.

V.P.A.: How important do you think it is for the movement that you’re a woman, that you’re a member of a minority and that you give voice to all this discourse? In what way do you think that helps to legitimize the struggle, or even to push the struggle, and even to inspire other people?

C.S.: What I hope with this is to inspire people, mainly to fight for justice, you know? If your community is being destroyed, you should fight for it, whether you are a woman, whether you are young, whether you are any kind of minority. Actually, it was said that we are the minority, but we are not the minority, we are the majority. Black people are the majority, women are the majority. The cabo-
clo people - because where I come from the brown people are the caboclo people - the caboclo people are the majority, so we have to advocate for ourselves, we have to speak out and occupy these spaces that were historically refused to us and we shouldn't remain silent. We can't let our heads drop! We won't let the violence that we and our ancestors suffered be forgotten, and we have to use this as a tool to fight for justice.

V.P.A.: What are your expectations? What kind of repercussion do you expect from your participation in the COP? That is, on returning afterwards to your community.

C.S.: It's what I said, I'll repeat it, in our real life, nothing that was said here will have an immediate positive effect, nothing... These are discourses that, honestly, are already gone with the wind, I don't know where. I tell you that because my reality is a harsh reality, it's a tough reality. And, everything that was said here, everything that I heard on television, because there was no dialogue here, there was no dialogue here, you know? And that bunch in a suit and tie didn't listen at all to what the defenders who were here had to say. And, we were in the streets, we were in those parallel meetings, and those people who were there behind closed doors, where we couldn’t get in, you know? Because they had huge security guards that wouldn't let anyone come through those doors. Wherever the Heads of State were, we couldn’t even see those people. So honestly, in our real life, things will remain as they are. These speeches that were made here are not going to have a positive impact.

V.P.A.: So you believe that your coming here to attend the COP won’t have any kind of consequences, either positive or negative?

C.S.: I am totally hopeless about this COP. We can talk in a year's time, when the next COP is coming up, what positive things might happen? I will tell you, and it will be the same thing I am telling you now - no hope that it will positively change our lives. Is this a place where we should stop going? No, we should go because that's where these negotiations take place, and if we simply don’t participate, it reverberates in our lives in a negative way. The UN needs to change this style of COP. I think this is a huge elephant that we can’t reach. It’s there, it’s beautiful, but we have no real voice in the spaces where the decisions take place. Do you know what was negotiated there? Because, I don’t know! Three days, two or three days of the COP, they made a big announcement, I don’t know how many rich countries, of God knows how many millions, I don’t know how many resources for indigenous peoples. Do you know how many indigenous peoples there are who are suffering and being affected all over the world? These rich people are going to send this money to these States. Do you have any hope that this money will reach the communities?

L.B.: No.

C.S.: That’s exactly the same feeling we have. And this was just a public negotiation about this, but there were several other negotiations. Do you know who was at the negotiating table? Agribusiness, big mining companies... Were there any peoples and communities together in these negotiations? That’s the reason why I’m telling you, total hopelessness. I am speaking here and in a year’s time you will ask me again: “Clau, what positive things happened here at the last COP to reduce violence, to...”. Because one thing is certain: it’s no use talking about climate change and environmental protection without talking about the indigenous peoples...about the people, about the violated bodies. The violated bodies are the result of such crime against the environment. There is no point in putting things in separate boxes, because they are not separate. Violence against the environment first violates people. It’s the herd! When the herd arrives, the gunmen have gone before, the bullets have been fired, the tractor has gone, the pasture has been cleared. So, violence has to be seen as a whole, and not just one aspect or another.
V.P.A.: For environmental and human rights defenders, what do you think next year’s elections will mean and what risk does it pose to you?

C.S.: The proceedings for next year’s elections have already started. And it has started in a very violent way mainly for us. And it represents many things, including our well-being, our lives. If with Bolsonaro’s first election it was already this, all this madness against us, imagine if he wins again. But, on the other hand, we understand that, for example, if someone else wins, it won’t have a positive response overnight either. Justice is really very slow. And the Bolsonaro government staying in power means death and destruction. And, another person winning, we have several ranges of scenarios. For example, if Lula wins, we already know that we will at least have an opening for dialogue, something that didn’t happen in the Dilma government and will happen much less in the Bolsonaro’s. So, at least we have this hope. I would say that in the worst case scenario we’ll fight at least for a government which engages in dialogue, which at least talks to the people.

L.B.: At least, human rights are on the agenda, aren’t they?

C.S.: Indeed! Because it’s no use saying that the previous leftist governments were in favour of the environment, because they weren’t. Belo Monte is an evidence of that.

L.B.: They weren’t. With all the pain in the world we have to say that they really weren’t.

C.S.: All the pain in the world. I am a leftist and I know. I am not someone from the centre, I am not from the right, I am from the left! And I know that the left-wing governments need to be much better than they have been. Because it’s no use putting human rights, environment protection on their agendas and approving Belo Monte, approving the anti-terror law, which even today is used against us. It’s no use. I have serious criticisms, but between Bolsonaro and Lula, I definitely prefer Lula, there is no comparison.

V.P.A.: How was this pandemic period for you, in terms of vulnerability issues? Do you think your vulnerability has increased? Have you been more exposed? In short, because there were various restrictions, the State refrained from mediating in various conflicts, or do you think that nothing has changed?

C.S.: Things changed for the worse, didn’t they? The vulnerability of being both infected and murdered and nothing happening has only made things worse. For example, the attacks on communities increased. From that you can imagine the level of vulnerability that these people had. On the one hand, contamination, the failing State, and on the other hand, the militia organisations that are much stronger, because they have their own resources to keep themselves in their cars and the gunmen operating inside their comfortable homes. So, the level of vulnerability was very great. These people that manage to keep themselves protected while the gunmen are active, much more empowered than the farmers that had to stay locked up inside their homes, the people were even more isolated, without support from the State and with the gunmen invading their territories. Panic, there was panic. There was no protection from the pandemic, nor was there social isolation, because we had to fight all the time to bring aid into the community, to some vulnerable communities.

There was no protection from the pandemic, and I don’t know if you understand what I mean by protection. To be protected is to stay quiet, sheltered. Because we had to keep fighting the same way and now with even more sluggishness from the State. Everything is online. Some communities don’t even have mobile phones, they have no signal at all. How can everything be ‘online’ in an isolated
community? There are some communities that have no contact with the outside world, unless they move around, you know? So it was very tense time! The vulnerability was at an absurd level.

**V.P.A.** Is there a direct fight, for example, against the big companies, the manufacturers of pesticides and also their emissaries?

**C.S.** Absolutely. These projects from the State, these projects that are supported and that are not State projects, but that are supported by the State with these major organisations. I don’t know if you remember that I mentioned if you are aware of what happened in my state, in Pará? In Barcarena, which is this big [mining] company.

But there are a lot of things there. Those communities have been reporting poison contamination there for a long time and nothing ever happens, so the big companies don’t surprise me, they are direct allies of the State! They have support from the State, they have the backing of the state to go on throwing poison into the communities and absolutely nothing happens! Accidents with chemicals happen, like the one happening now, and nobody even knows what it is. Nothing will happen like in the Mariana’s dam disaster, like with the hydroelectric dams that are installed in the communities and nothing happens, so these companies are great allies of the State. And they are as dangerous as the farmers who have gunmen at their service, as the miners who attack the communities. So they are just as dangerous, but they have more money to cover it all very well, and all of it covered with the help of the State. That’s exactly that.

**L.B.** That’s it. Claudelice, thank you so much! I was already an admirer of yours and now I admire you even more.

**C.S.** And put it there for the world to know, for the world to listen, for the people to read about what is happening and become aware and take our side, to come to our side.

The more people on our side, touched by this cause, the better it is for us.

Better for us to make the violence happening become more visible. That’s what I say: understand that after I began coming here [to Europe], the first time was in 2017 – I was talking to my friend yesterday - people here, who are not there, they need to know, right? And they will only know if we talk, because they have no idea what it’s like to be on your land and a farmer says he’s the owner and evicts you. And you can’t stand right, because you can’t have your reason acknowledged, and you dying for that and someone saying that you deserved to die. No one should have to go through this.
Claudelice Dos Santos, is a human rights defender who holds a bachelor’s degree in law and who is the coordinator of the “Instituto Zé Claudio e Maria” - an organization for human and environment rights. She became a well-recognised human rights defender through her struggle for justice following the killing of her brother José Claudio Ribeiro dos Santos and his wife, Maria do Espírito Santo, in 2011. Claudelice had fought alongside her brother and sister-in-law for the right to access to land and denounced human rights violations resulting from land grabbing, logging, and crimes against the environment. She was subjected to several threats due to her human rights activities. Claudelice is one of the nominees for the 2019 Sakharov Prize for Freedom of Thought, organised by the European Parliament.

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Larissa Bombardi, is an Associate Professor at Department of Geography – University of São Paulo – Brazil, currently living in Brussels. She is a specialist on the subject of pesticides use for the last 12 years, with dozens of lectures, several published articles and more than 100 interviews given on the matter, in national (Brazil) and international means of communication. She is the author of the atlases: “A Geography of Agrotoxins Use in Brazil and its Relations to the European Union”, launched in 2019 in its English edition in Europe (Scotland and Germany) and “Geography of Asymmetries: molecular colonialism and poisoning Circle in Trade Relations Between Mercosur and European Union”, launched in 2021 at European Parliament. She is also a member of the National Forum to Combat the Impacts of Pesticides (Brazil) and Board Member of the international organization “Justice Pesticide”.

Non-thematic
Abstract:
This article analyses the increasingly influential role of tech companies in designing and deploying smart surveillance in private vehicles. Using the case of Tesla, a company that makes optimistic promises and has a hopeful vision for more sustainable electric cars by decreasing the ecological footprint, the article will discuss the problematic aspects of artificial intelligence, big data and algorithms for total surveillance by private companies. In particular, light will be shed on the issue of discourses on sustainable and smart vehicles that dim the light on the problematic aspects of luxury surveillance. As will be made clear, Tesla’s green and lean – aspirational – ambitions through different technological and surveillance advancements revive old forms of control and introduce a new set of power/knowledge relations. Beyond the question of privacy and personal data harvesting, this article discusses the wider social and political consequences of smart car luxury surveillance by private companies such as Tesla.
Introduction

“Tesla update activates the in-car camera for driver monitoring” is the headline of a recent article on AutoBlog’s website (2021). With optimistic promises and a hopeful vision surrounding the discourse on these smart vehicles, it can be easy to lose track of how the embedded smart surveillance in automobiles – powered by big data, artificial intelligence (AI) and algorithms – not only expands the possibilities for current control but also introduces a new set of (problematic) power/knowledge relations. Although Tesla has received much praise for its electric cars, it was also awarded the 2020 German Big Brother award for the collection and storage of sensor data in and around their cars.1 In this article, we analyze the increasingly influential role of tech companies in designing and deploying smart surveillance in private vehicles. In particular, we focus on tech pioneer Tesla and its big data and AI-driven autonomous vehicles that analyze and influence the behavior of its driving customers.

To understand this set of “luxury surveillance” (Gilliard & Golombia, 2021) and (soft) power relations, we first deliver the context of the current practice of surveilling consumers. Although consumer surveillance has been approached in numerous ways, from a “modular” to a “political economic perspective” (Pridmore, 2012), little research has been carried out on the way private vehicles have become “fortified” into tools of total surveillance. To conceptualize this historical development, we will look at the continuum ranging from the military tank to the private vehicle to analyze how private cars have become militarized in recent decades. We then focus on the way tech company Tesla is building and advertising digitally secured and controlled vehicles, including cars such as the Model Y and the Cybertruck, which Musk called a “futuristic battle tank.” Beyond the question of privacy and personal data harvesting, we analyze in the conclusion the wider social and political consequences of smart car luxury surveillance by private companies: How does this form of power work? What type of power are we discussing? And who benefits from it? In other words, how do we make sense of Tesla’s ambivalence resulting from its “lean and green” approach to building a more environmentally friendly world and a brighter future by creating sustainable car mobility (Tesla, 2021a) while using cutting-edge privacy penetrating surveillance technologies that reveal Tesla’s other ambitions (Cooke, 2021)? To address these questions, our conceptual–theoretical lens will first be provided to develop an understanding of luxury surveillance and its consumption by today’s aspirational class.

Conceptualizing luxury surveillance of the aspirational class in the digital consumption society

Corporate surveillance

The enforcement of security using surveillance technologies was once a primarily vertical affair in which the state enjoyed a monopoly. However, an increasing number of parties other than the police have become active and deploy all types of surveillance technologies, from WhatsApp groups patrolling the streets of their neighborhoods to private security at airports using biometric technologies to monitor and identify passengers (Bayley & Shearing, 1996; Johnston & Shearing, 2003; Marx, 2016; Schuilenburg, 2015). In this new framework, the emergence of surveillance technologies takes place “above” (transnational actors), “below” (in the community), and otherwise “beyond” the state (corporate actors; cf. Loader, 2000).

One of the most persistent visions of a safe and secure society by corporate actors concerns the notion of a “smart home.” The use of interactive technologies to make homes smarter has become a global narrative that promises to improve resource efficiency and decision making, increase leisure

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1 See: https://bigbrotherawards.de/2020/mobilitaet-tesla (Visiting date: accessed March 10, 2022).
time, and help residents to feel safe (Maalsen & Sadowski, 2019; Sadowski et al., 2021). Some argue surveillance technology has made smart homeowners become self-managing prisoners in their own privately owned panopticon where our household objects invisibly monitor us, turning us into household-monitored objects (cf. Edenius, 2006; Gilchrist, 2017; Jonsson, 2006). The unobtrusive surveillance relies on ubiquitous computing that is purposefully designed to make computing and other smart surveillance technology vanish into the background while advancing mobility (Lyytinen & Yoo, 2002; Weiser, 1991).

Research on how private life is entangled with the rise of smart surveillance is rapidly increasing (Garfunkel, 2021; Kitchin 2014; Perzanowski & Schultz, 2016; Rosenblat et al., 2014). For example, the (digital) workplace is becoming saturated with private surveillance solutions and technologies, making it easier to manage workers (Buckey, 2019, 29). Researchers problematize such surveillance as it may have “removed autonomy, discretion, and prestige from workers and allotted it to a managing elite,” assuming “there isn’t a point of mutual consent amongst all parties involved,” while “the boundaries of what is possible stretch uncomfortably into the blurry terrain of what is permissible and what is considered a violation” (Rosenblat et al., 2014, 2, 15). Much like in the (digital) workplace, in the domain of (large) property ownership, corporate surveillance manifests itself in real estate. In Israel, private owners of high-rise luxury condominiums are seduced to integrate high-tech surveillance equipment into their buildings to make renting them more appealing (Garfunkel, 2021). In addition, (online) consumption and consumer autonomy, discretion, and prestige also appear to be affected by corporate actors that aim to control their (software-enabled) goods (Perzanowski & Schultz, 2016). This happens physically, as concrete “[e]veryday objects are being replaced or supplemented by information enabling a ‘digital economy’ structured around interconnected devices and data [that] holds immense promise” (Perzanowski & Schultz, 2016, 191). However, such promising interconnectedness creates a “power to redefine or even eliminate the notion of personal property” and that “puts us all at risk of exploitation,” as we increasingly tend to lose control over our lives by entrusting them “to a handful of private companies” (Perzanowski & Schultz, 2016, 192).

This means that nearly every aspect of life in which technology has entered the domestic space has seen the introduction of a smart alternative, from smart lighting systems and smart thermostats to smart locks and smart doorbell cameras. In addition, the implementation of smart technologies is presented as a solution to all kind of “catastrophic events” (Pali & Schuilenburg, 2020; Sadowski & Bendor, 2018, 2020) that we face now and will face in personal environments, from the office and hotel rooms to our houses and cars.

The aspirational class

The fact that people are willing to pay for smart surveillance technologies leads to a new cultural class with its own self-sustaining social stratification; this has been referred to as the emergence of an aspirational class (Currid-Halkett, 2017; Deka, 2021). The members of the aspirational class are consumers whose decision making establishes norms that appear as inclusive, green, and, thus, admirable, but in doing so, they have a far more malicious impact on society than previous elites have had (Currid-Halkett, 2017, 185). At the same time, they remain comfortably numb and incapable of trying to “imagine (let alone solve) the pervasive problems of their poorer fellow citizens” (Currid-Halkett, 2017, 189). Such consumer aspirationalism keeps people “wilfully ignorant that many of these decisions, veiled in morality, are practical and realistic outcomes of socioeconomic position” (Currid-Halkett, 2017, 196).

Making it luxe to have an organic, sustainable and fair-trade lifestyle is a growing priority for the aspirational class, and the technological surveillance of it is called “luxury surveillance”, for which
“[p]eople pay for and whose tracking, monitoring, and quantification features are understood by
the user as benefits whose they are likely to celebrate” (Gilliard & Golombia, 2021). It accommodates the
surveillance creep (Lyon, 2003) because its dataveillance introduces “seemingly benign, useful and
convenient technological artefacts” with perverse effects (Coulthard & Keller, 2010, 3). Such luxury
surveillance “acts like a perfectly automated and optimised maternal ecosystem [that] is confron-
ted by the reality of households as imperfectly chaotic and haphazard social spaces” (Sadowski et
al., 2021, 12). This ecosystem makes luxury surveillance and the development and marketing of
technology enabling it “a story of capital and profit” (Sadowski et al., 2021, 12). It brings forward
certain technologies proving to be the “best” from the point of view of the producer [but] not neces-
sarily ‘best’ from the point of view of the consumer [...] not because one [technology] was technically
better than the other, and not even because consumers preferred one machine (in the abstract)
over the other” but because these are very “very large, very powerful, very aggressive, and very
resourceful companies,” and their competitors are not (Cowan, 1983, 143–144).

The rise of tech-moguls in the information economy
Corporate actors, in particular 21st century tech companies, have great interest in the development
of luxury surveillance and the governance of and by software-enabled smart products through
software licensing and intellectual property law, leading to and further sustaining a wide range of
problematic, sometimes discriminatory, treatment of its customers as well as by its customers (cf.
Perzanoski & Schultz, 2016; Tusikov, 2019a; Van Dijck, 2014). Tusikov (2019b) speaks of “tech-
no-regulation,” a type of design-based regulation in which the employment of technology shapes
the behavior of consumers. Previously known as “titans of wealth” (Fridson, 1999), such as the
Buffets and Rockefellers, the list of titans today includes some of the richest and most influential
people who have ever lived on this planet. The “titans of wealth 2.0” make their profits from soft-
ware development and other technological digital solutions (Moran, 2020; Park, 2020). They are
known as “easy-accessible pioneers” that aim to technologically improve our lives while making
their billions by their invisible but omnipresent infiltration into everyday activities (Murtola, 2018;
Solomon, 2011).

This has led to the rise of platform or surveillance capitalism that is run by a few powerful digital
platforms that have become almost entirely reliant on big data and AI, ranging from Airbnb and
Deliveroo to Uber (Srnicek, 2017; Zuboff, 2019). Merely focusing on solving problems with digital
solutions vis-a-vis digital solutionism has led to a strong demand if not hunger for applications such
as Facebook, Instagram, or Google Maps, which offer us freedom and joy as well as problem-solving
capacity to deal with our social life and its multifaceted challenges (Magalhães & Couldry, 2021).
Accordingly, if you possess a strong sense of algorithmic knowledge and its applicable use in eve-
veryday life and you manage to monetize it, you can relatively quickly become a billionaire and a po-
werful actor on the world stage.

Being a tech billionaire means, among other things, that you act as a philanthropist on that same
world stage by giving extremely large donations to charity which rather seems to sustain a perverse
type of philanthrocapitalism that “might exacerbate the same social and economic inequalities that
philanthropists purport to remedy” (Eikenberry & Mirabella, 2018, 44). The portrayal of yourself
and your company as aiming for a better world through smart technology and philanthropy is in-
carnated, at best, by Elon Reeve Musk and his companies Tesla Inc. and SpaceX (Moskowitz, 2012;
Vance, 2015). Particularly interesting and relevant for this article is how Tesla is using luxury sur-
veillance to build, market, and hive data from militarized vehicles and their drivers. A clear example
is the all-electric, battery powered, armored Cybertruck, which Musk called a “futuristic battle tank
– something that looks like it could come out of Blade Runner.”

See: https://auto.hindustantimes.com/auto/cars/elon-musk-calls-cybertruck-a-futuristic
battle-tank-has-a-plan-if-it-flops-41596511158518.html (accessed March 10, 2022)
military metaphors that are used (“battle tank”) and the way Tesla vehicles have become fortified into tools of total surveillance, a few words on the evolution of such private car fortification is required as seen from the historical perspective of vehicle militarization; that is, how have cars turned into “driving castles” with smart surveillance and networked security systems which increasingly rely on state-of-the-art “thinking” algorithms and big data to support decision making and to predict “risky” patterns or situations on the road? In a bid to answer this question, it is instructive to consider the surveillance continuum from the military tank to police cars.

**From the military tank to the police car: a surveillance continuum**

From a historical perspective on cars, little research has been employed on the way private vehicles have become “militarized.” An exhaustive catalogue of the surveillance technology that has turned vehicles into “driving panopticons” is beyond the scope of this article, but a starting point for a better understanding of the nexus between surveillance and vehicles is the military tank. Virilio (1994, 41) writes that the tank was the first “fortification on wheels. With its tens of tons, the tank could be identified as an iron casemate.” Apart from its ability to be an offensive weapon, the original design of the tank functioned as defensive architecture, combining the “inventions of high-strength steel and the internal combustion engine, all in service of overcoming barbed wire, trenches, and machine guns” (Mills & Mills, 2014, 6). Currently, military tanks are equipped with a range of technological innovations, with surveillance applications in support of infantry house-to-house clearing operations. According to Wilson (2012, 273), “military vehicles are equipped with night vision and video facilities that facilitate combat being monitored in real time and for the remote guidance of munitions.” The US tank M1A2 Abrams, for example, allows the crew to scan the urban battlefield through thermal viewers, to acquire targets, and to move with the help of an inter-vehicular information system (Wright, 2001, 409).

Although the tank realized its true potential in the Second World War, the concept of an “automotive fort” (Virilio, 2006, 78) still impacts “social consciousness, art, political discourse and issues of morality and peace-making” (Liebenberg, 2015). Numerous authors have indicated the foundational importance of the surveillance technologies of the military tank on the way policing is now employed in public space (e.g., Dandeker, 2006; Graham, 2011). In order to win urban wars, police cars are equipped with a plethora of electronic and computerized devices for crime control and prevention, from cameras mounted on or in a police vehicle (e.g., license plate recognition) to a rugged in-vehicle network video recorder (NVR) system targeted for surveillance, recording, and video analytics. Ericson and Haggerty (1997) were the earliest scholars to argue that the activity of policing was moving away from order maintenance. Instead, policing is now focused on risk management in line with the imperatives of the “risk society” (Beck, 1992) and associated insurance discourses (Feeley & Simon, 1992). This was manifested in police patrol cars, which became “mobile offices and technological laboratories, wired with voice radios, cellular telephones, computer-assisted dispatch terminals, laptop computers, radar, video cameras, remote microphones, breathalyser equipment, fax machines, printers, and vehicle locators” (Ericson & Haggerty, 1997, 135).

The use of a battery of sophisticated sources of surveillance technologies in patrol cars is presented in neutral terms since they promise to bring better decisions more quickly and more insights in complex urban realities through informative and seamless interfaces. In recent literature, however, critical scholars have argued that these surveillance technologies are anything but morally neutral and are rather normative and political and that their use in urban practices has important legal, political, and social implications (ACLU, 2014). An interesting illustration is the transfer of surplus armored vehicles from the US military to the US police as part of police crowd control, particularly against political mobilization in communities of color, such as during the protests in Ferguson af-
On the Tesla website, Musk presents “The Mission of Tesla” (Tesla, 2021d):

Our goal when we created Tesla a decade ago was the same as it is today: to accelerate the advent of sustainable transport by bringing compelling mass market electric cars to market as soon as possible. [...] In order to get to that end goal, big leaps in technology are required, which naturally invites a high level of scrutiny. That is fair, as new technology should be held to a higher standard than what has come before. However, there should also be some reasonable limit to how high such a standard should be, and we believe that this has been vastly exceeded in recent media coverage.

According to the car industrial sector, Tesla has managed to make the electric car a desirable vehicle and has thus made environmental awareness a stylish and consumable ideal (Macri, 2018). The cars’ performance has been described as “outstanding” or “electrifying,” and it comes at a high price; for example, the Tesla Model S is priced between $100,000 and $150,000 (AutoExpress, 2020). Tesla is considered to be far ahead of its competitors in the advancement of the connectivity of a car, with more older car brands having a hard time keeping up (Weiss et al., 2020). In particular, Tesla is seen as avant-garde (PR Newswire, 2014; Sakamoto 2014) in respect to developments in the last decade on what is interchangeably referred to as “the connected car experience” or “car connectivity” developments. In 2020, Tesla won an award for pioneering the advancement of futuristic technology features built into their cars, living up to their promise “that the car of the future will be autonomous, connected, electric and shared” (EVANNEX, 2020).

Kick-started by General Motors, Tesla wants to champion making today’s and the future’s vehicles as “connected” as possible (Auto Connected Car, 2014), striving to be victorious in the merger of the platform economy and car industry by wirelessly advancing the exchange of information with the vehicle manufacturer, third-party service providers, users, infrastructure operators and other vehicles (A. Schmidt et al., 2021; Teece, 2018). In this way, Tesla desires to set the standard for increased comfort and convenience for customers while portraying itself as achieving sustainability goals and establishing road safety by reducing fuel consumption and facilitating traffic management and parking (A. Schmidt et al., 2021). Also, Tesla presents itself as the main market pioneer and dominator by aiming to fully implement the first three of the four new technological car paradigms: (1) electric vehicles, (2) autonomous vehicles, (3) connected cars, and (4) transportation-as-a-service (TaaS; Teece, 2018).

The Tesla vehicle fleet comprises a few on-sale models and other types, each of which have a num-
number of different versions: Model S, Model 3, Model X, Model Y, and the Cybertruck (Tillman, 2021). These models are generally considered as too unavailable for the wider public and are therefore considered elite; only the predominantly upper(-middle) class can afford Tesla cars (Taffel, 2018). Hence, driving Tesla’s electric cars appears to be an elitist activity, which is one of the major critiques of the company (Crothers, 2015; Kester et al., 2020; Sovacool et al., 2019). Despite Musk’s claim of openness to critique in a realistic manner, if (technical) scrutiny is given by another party or the company senses it is being affected by defamation, there is a risk that Tesla might sue (cf. Lambert, 2021). This occurred with the TV program Top Gear when a complaint of libel was made against the TV makers after one of the presenters, Jeremy Clarkson, gave a “typically provocative review of the Tesla Roadster car” (Halliday, 2013). Thus, Tesla may present itself to be provocative, controversial, and open to feedback, yet when the company’s name and reputation is provoked, the company goes on the offensive. Moreover, while Tesla wants to be open to critique, reflective and rather controversial in its actions, there are other issues about Tesla’s businesses in relation to driver’s physical safety and safeguarding of a driver’s privacy.

1. **Being unsafe, visible death, and destruction**

Two categories of inherent dangers in Tesla cars have surfaced over the last few years related to the way it is building and advertising digitally secured and controlled vehicles: (a) lack of safety, visible death, and destruction; and (b) hidden privacy-related threats, including invisible detectability, docility and data-collection. Regarding Tesla cars' visible lethality and injury, there are several instances that have become increasingly problematic. Ranging from "bugs in the system" that pushed Tesla to recall 29,193 of the cars they exported to China "due to technical issues that impose safety risks" (Gasgoo, 2020) to a Dutch cab company called Bios-Groep that took Tesla to court and demanded 1.3 million euros in damages because of approximately 70 Tesla cabs at Amsterdam’s Schiphol Airport with on-going technical defects and poor service (Electrive, 2020). While Tesla is interested in delivering a sustainable and safe car connectivity experience, it appears to encounter to a certain extent challenges in delivering safe cars (Canellas & Haga, 2020; B. Schmidt, 2020. Research has indicated that the quietness of hybrid and electric cars in especially busy metropolitan areas causes risks to pedestrians or cyclists who are overwhelmed by noise coming from non-hybrid and non-electric cars (Stelling-Kończak et al., 2015).

It is especially Tesla owners who are part of “the big white middle class” with a high household income that reside in those noisy urban areas (cf. Fortuna, 2019; Nygaard, 2019; Stillerman, 2020). Despite their aspirationalist consumer drift to become more environmentally friendly (Currid-Halkett, 2017), they pose new risks by driving Tesla cars silently and softly with negative outcomes. These contradictory effects stand in stark contrast to Tesla’s appearance of being greener and cosmopolitan, as is further reflected in its aspirations to produce cobalt-free batteries for their electric vehicles because cobalt is mined under conditions that often violate human rights (Crawford, 2021; Ribeiro & Tang, 2020). However, cobalt forms the very safety element in the battery, and by reducing it, the life cycle of the battery would be reduced (Chen, 2018). This means that cobalt-free batteries sound very welcome if they can reduce human rights violations in the Democratic Republic of Congo where cobalt is primarily mined; their practical effect, however, involves several risks for Tesla’s electric car owners.

The most lethal aspirations comprise consumer deception through Tesla’s autopilot ambitions (Beene, 2018; Hess, 2020). The website [www.teslaeaths.com](http://www.teslaeaths.com) registers every known Tesla-related deadly accident. From 2013 until the time of this writing, the website states that 240 people passed away in a Tesla-related accident, of which the most were in the US, followed by Germany and then China. The year 2021 had the highest rate so far with 56 Tesla-related deaths. Of the 240 Tesla-related deaths since 2013, 23 of them were claimed to have happened because of Tesla’s autopilot...
function, and 11 deaths have been verified as such according to the website. The most recent Tesla autopilot-related death involved a complete stop, or “phantom braking” of a Tesla Model 3 on an interstate highway, which caused a three-car crash and killed the driver (Levin, 2022). The Norwegian Road Traffic Information Office shows that Tesla cars crash twice as often as regular cars (Honningsvåg, 2019). The Highway Loss Data Institute (HLDI) discovered that Tesla cars have two to four times more non-crash fires than the average car, with damages up to seven times higher (HLDI, 2018). A comparison between Tesla’s autopilot fatality rate with the general driver fatality rate as calculated by the Insurance Institute for Highway Safety (IIHS) indicates that a Tesla is three times more dangerous than the average passenger vehicle (Staver, 2021). The concern over the advertising by Tesla of its autopilot function as safer than non-autopilot driving is growing because researchers are calling for more driver monitoring (Templeton, 2020).

Musk argued on Twitter that the autopilot mode cannot be blamed for fatal crashes (BBC, 2021). Tesla’s autopilot is presented as safe, but as a disclaimer, Tesla also states that the driver still “is both literally and figuratively in the driver’s seat, and is responsible for the safe operation of the car even when self-piloting technologies are operating” and a driver’s “inattention can be fatal” (McAfee & Brynjolfsson, 2017, 67). The argument often given from autopilot car manufacturers is that a driver’s overconfidence "in the abilities of the self-driving system after seeing it operate effectively in many previous instances can lead to paying less and less attention to the road” (McAfee & Brynjolfsson, 2017, 67). This means it is the driver’s responsibility, not Tesla’s. However, this has been considered as consumer deception with very lethal consequences (Levine and Simpson, 2018; Torchinsky, 2018). The Centre for Auto Safety and Consumer Watchdog, two consumer advocacy groups, put in a request to the US Federal Trade Commission in 2018 “to investigate Tesla for ‘deceptive advertising and marketing practices and representations’ about Tesla’s Autopilot semi-autonomous driving system” (Torchinsky, 2018). The request states that deaths and injuries are an example of Tesla’s deceptive marketing to consumers, which makes consumers believe the autopilot function is safer than it actually is; combined "with Elon Musk’s public statements […] it [is] reasonable for Tesla owners to believe, and act on that belief, that a Tesla with Autopilot is an autonomous vehicle capable of ‘self-driving’” (Levine and Simpson, 2018, 1).

Exposure to such critics is a risk for Tesla. Therefore, the company seems to make many efforts to minimize such exposure, or at least relativize (its own accountability for) incidents. For example, the National Transportation Safety Board (NTSB) discovered that a Tesla driver who crashed his vehicle into a fire truck in January 2018, was eating and drinking coffee while using the autopilot function. Tesla had its own investigation claim that the driver was on his phone, which was subsequently denied by the driver (Tangermann, 2019). In regard to manufacturing glitches, battery longevity problems, and other types of safety issues, there have been several investigations by governments that have always been counter-investigated by Tesla itself (e.g., Shepardson, 2020). The question then arises as to when and to what extent Tesla will be as concerned with the damages done to its drivers as it is with damages done to itself.

2. **Invisible detectability, docility, and data collection**

Promising safety and security, Tesla designs its cars and its car connectivity experience with pervasive techniques of control and surveillance (Ahmad & Khan, 2019; Cooke, 2021; Feldstein, 2019). Having embraced a concept of luxury surveillance, Tesla develops vehicles in relation to their electric energy source and drivers, with the help as well of AI and big data. This means that Tesla does not consider a vehicle in isolation but in relation to its ecological footprint (Ahmad & Khan, 2019, 18). Tesla persistently integrates highly intrusive smart surveillance technologies into its autopilot cars through AI and machine learning (Ingle & Phute, 2016). By using IoT technology, that is, an Internet of Things (IoT)-powered mobile surveillance, Tesla turns its cars with their built-in cameras
into moving AI-powered driving surveillance forts that can structurally spot, track, and store license plates and faces, all to make Tesla car owners aware of utilitarian forms of danger such as thieves and vandals (Feldstein, 2019, 23–24).

The outward luxury surveillance is complemented by built-in driver attention monitors, which is an inward surveillance safety system of a vehicle that assesses the driver’s alertness, and it warns drivers if they need to hit the brakes (Smith et al., 2008). The inward luxury surveillance is enabled by infrared sensors that monitor a driver’s attentiveness through facial recognition. If attention steers away from the road (inward monitoring) and the car detects an outside dangerous situation (outward surveillance), the driver is warned by flashing lights, warning sounds, and other techniques, and if the driver remains inactive, an autonomous emergency brake will be utilized by the vehicle (Dong et al., 2010; Tusikov, 2019b). This has (been explained as having) prevented Tesla car driving customers from causing accidents, for example, when they were detected to have been looking down on a phone too often while driving (Cantu, 2021). The inward monitoring system also includes the possibility to detect the specific size of passengers, for example, to customize the airbag. It can also detect small movements, such as of a normally breathing baby in the backseat who has been left behind (Bolca, 2019; Hijink, 2021).

What both the inward and outward luxury surveillance produce is a very “large amount of data created by its fleet of vehicles and the Autopilot sensor suite on those vehicles” (Lambert, 2018, online source; Ahmad & Khan, 2019, 18). That fleet has integrated a “kind of universal ‘hive mind’ which share[s] data about the roadside objects they pass” that “helps the company build over time an understanding of which objects are permanent (they’re the ones passed in the same spot by many different cars) and thus very unlikely to run out into the middle of the road” (McAfee & Brynjolfsson, 2017, 79).

The in-car camera and their tracking capacity have raised several concerns about privacy (Barry, 2021). The models 3 and Y “are equipped with a Cabin Camera that is located above the rear-view mirror and turned off by default,” which can record a short video clip to be “shared with Tesla following a safety event such as a collision or an advanced emergency braking (AEB) event” (Tesla, 2021b). In addition, the steering wheel feedback and capacitive touch sensors are used to capture whether a driver is indeed paying attention or not. For example, this is done to determine whether to disable certain features if drivers have their hands off the wheel for too long (Lambert, 2017). It is said that the sensory equipment and the driver-facing camera are installed to protect the driver and that it supports Tesla’s development of “safety features and software enhancements” (Lambert, 2017, online source). This means that the “footage recorded from these cameras after the fact are a part of [Tesla’s] research into self-driving technology” (Barry, 2021). Despite the fact that Tesla’s website states such footage is not checked against a driver’s 17-digit Vehicle Identification Number (VIN) or other information that can identify a driver (Tesla, 2021c), it is always possible “that insurance companies, police, regulators, and other parties in accidents will be able to obtain that data,” according to John Davissson of the Electronic Privacy Information Center (EPIC; Barry, 2021). Based on the European Union’s General Data Protection Regulation (EU GDPR), the European Data Protection Board (EDPB) has argued that the GDPR’s rules on processing personal data in the context of connected vehicles and mobility-related applications, there should be a delete button installed in the dashboards of such driver data-capturing cars (EDPB, 2020). This has to do with the fact that almost all the information gathered is sensitive private data; the driver as a consumer ought to know what data is being collected and for what purposes and should always be able to delete it at any given moment (EDPB, 2020). Tesla has stated it welcomes those EDPB guidelines but has responded with questions and unasked for recommendations (Tesla, 2020):
[W]e already provide vehicle owners with a mechanism to factory reset their settings and preferences directly from the vehicle’s interface at any time. The EDPB [guidelines document], however, prescribes a specific method for reaching this objective in stating that “[...] a profile management system should be implemented inside the vehicle in order to store the preferences of known drivers and help them to change easily their privacy settings anytime” (emphasis added). The method for reaching this objective should not be limited to implementation inside the vehicle’s interface alone, which does not allow for continued innovation of connected vehicles in this area (idem. 5 – emphasis added by authors).

Tesla then moves onto their recommendations to the EDPB and suggests that the EDPB Guidelines, in particular paragraph 88 on the rights of the data subject, would become clearer if the following were stated: “To facilitate settings modifications, a profile management system should be implemented inside the vehicle [to be easily accessible by the user] in order to store the preferences of known drivers and help them to change easily their privacy settings anytime” (EDPB, 2020, 6). It would also be beneficial, Tesla argues, if it is the driver’s own responsibility to make their passengers aware of how the individual driver’s privacy preferences are set (EDPB, 2020, 7). This suggests that if drivers forget to mention the way in which the privacy preferences are set, their passengers would unknowingly let their data double be created through the in-car detection technology. That would also mean that Tesla can still use such data for “safety development purposes” but cannot be held responsible if a passenger would bring the company to trial.

Actually, Tesla itself can use and has used such data not only for their safety research but also for their benefit in legal cases in which Tesla has blamed drivers after a crash for being inattentive while using the autopilot. Data, such as footage, has been used to prove in court that a driver was distracted (Barry, 2021). This raises several legal and ethical concerns about the terms or agreements under which the software installed by Tesla is used (cf. Perzanowski & Schultz, 2016). Are cameras on board installed merely to advance driver safety, as Tesla asserts, or are they there as well to establish the company’s plausible disclaimability? Van de Weijer raises awareness about not being too naive as a Tesla driver:

Such a car simply knows everything about you, what you’re doing, where you work, where your mistress or mister lives. [...] The new Tesla has eight camera’s, they see everything. Theoretically spoken, with access to one percent of the cars, you can already map the whole world real-time (in: Naafs & Wijnen, 2020).

In short, a Tesla car gives rise to a digitized and globalized lightness of being (Bauman, 1999), of being environmentally friendly while having the ability to be environmentally anywhere, at any time – both virtually and physically. At the same time, the universal hive mind makes it possible to control the drivers by turning them into data-gathering and data-doubling tools, as Bauman and Lyon (2013) have observed regarding liquid surveillance in general. Potentially on a global scale and more swiftly than ever before, a Tesla car may appear to set its drivers free, but what it really does is use its drivers while “including ‘free choice’ in the[ir] marketing strategy, or more precisely, rendering servitude voluntary and making submission be lived through as an advance in freedom and testimony to the chooser’s autonomy” (Bauman & Lyon, 2013, 115). And if something goes (lethally) wrong, Tesla’s initial reaction is to defend itself instead of its drivers. Altogether, a narrative of visible lethality, invisible data-docility and distant captivity surrounds Tesla, which requires further empirical scientific studies into Tesla’s intentions and its unintended consequences and harm.
The panopticar? A conclusion on power, luxury surveillance, and the aspirational class

The private car has been, like other modes of production, subject to constant changes over time, both in terms of markets and technological improvements. This means that the car narrates something about current society, culture, and identity to the extent that a buyer projects its (social class and related) ambitions onto a car (Packer, 2006; Timmer, 1998). According to Sørensen and Sørgaard (1994), the car driver’s experiences have symbolic, cognitive, and practical aspects integrated into a style of driving and an identity. This has also been observed in regard to the ownership of sustainable electric cars (Axsen et al., 2018; Ingeborngrud & Ryghaug, 2017). However, what meaning is given and what sociological insights into such meaning reveal remain scarce in surveillance and policing studies.

For many people, just like their home, one’s car is one’s castle: a free and private environment that is increasingly turned into an electronically fortified personal space. This space has become a luxury item because it is, among other things, drenched in expensive smart surveillance technologies. In analyzing the increasingly influential role of tech companies in designing and deploying smart surveillance in private vehicles, we have advanced the notions of “luxury surveillance” and “militarization” as two ways to understand how vehicles are now increasingly turned into driving panopticars, using smart surveillance to support decision making and to predict risky patterns or situations on the road. A fitting example is the way Tesla’s data-driven business model is revolutionizing autonomous cars, using luxury surveillance to document the actions by all active subjects within their vehicles. In wanting to deliver safety and security, drivers are continuously watched and assessed. Through in-car monitoring systems, Tesla collects location data and the car’s personal settings. As has been shown, the tech company also tracks the speed, mileage, and where and when the driver charges the battery. It knows exactly when the autopilot is engaged and whether the driver has his or her hands on the wheel.

As luxury surveillance takes on a dominant role in private cars, it becomes increasingly important to understand how this form of surveillance reshapes power/knowledge relations from disciplining and normalization to the prediction and optimization of the behavior of drivers of the cars. Playing on the term “algopticon” (Jamil, 2019) to refer to the way the panopticon’s architecture of power is reproduced in the era of surveillance capitalism, we stress that it is important to realize that luxury surveillance expands and underpins already existing sovereign and disciplinary power mechanisms. The example of Tesla’s autonomous cars makes this clear. It can be argued that in surveillance capitalism, (tech-)billionaire companies such as Tesla are the new holders or the expression of classic sovereign power, clearly reflected in how Tesla uses the data from their in-car monitoring systems for their benefit in cases in which Tesla drivers were inattentive while using the autopilot. This means that Tesla cars can be theoretically considered as soft power incarnated into raw hard power, and we may even speak of “algorithmic violence” (Bellanova et al., 2021; Safransky, 2020), in this case “corporate algorithmic violence,” that can be committed by a corporate actor and inflicted upon drivers through their car’s connectivity but also upon “suspicious persons” outside of the car. Finally, despite wanting to present itself as a progressive and humanitarian company striving towards a smarter, greener, and less noisy connected car experience, this article has shown such admirable business strategies of Tesla come at a dear price, both in terms of physical hazard and of privacy-violating technologies. The more the aspirational consumers want to drive such cars, the more the slithering power of Tesla and other similar companies grows, including their harmful effects.
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