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## De-essentializing Appalachia: Transformative Socio-Legal Change Requires Unmasking Regional Myths

Nicholas F. Stump

*West Virginia University College of Law*, [nicholas.stump@mail.wvu.edu](mailto:nicholas.stump@mail.wvu.edu)

Anne Marie Lofaso

*West Virginia University College of Law*, [anne.lofaso@mail.wvu.edu](mailto:anne.lofaso@mail.wvu.edu)

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**DE-ESSENTIALIZING APPALACHIA: TRANSFORMATIVE  
SOCIO-LEGAL CHANGE REQUIRES UNMASKING  
REGIONAL MYTHS**

*Nicholas F. Stump\** and *Anne Marie Lofaso\*\**

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I. INTRODUCTION

Appalachia has, for more than a century, been beset by an insidious, reductive, and exceedingly detrimental collective myth. This overarching Appalachian myth conceptualizes Appalachia as an isolated region that is both demographically homogenized and culturally backwards.<sup>1</sup> Consequently, Appalachia has been essentialized as an “other America” that is not just *different* from but also *lesser* than the broader United States. Moreover, by “othering”

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\* Faculty Member of George R. Farmer, Jr. Law Library, West Virginia University College of Law.

\*\* Arthur B. Hodges Professor of Law, West Virginia University College of Law. The authors would like to thank law review students Jaden Rhea, Ron Walters, Morgan Villers, Zach Warder, and Rebecca Trump for their exceptional assistance on this article. Professor Lofaso would like to thank the Hodges Foundation for its financial support in writing this article.

<sup>1</sup> Ronald D. Eller, *Foreword* to BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES, at ix (Dwight B. Billings et al. eds., 2013).

Appalachian citizens and reifying Appalachia as a natural-resource-sacrifice zone, the Appalachian myth has facilitated a century-long fossil-fuel regional hegemony, which has wrought extensive social, political, economic, and environmental devastation.<sup>2</sup>

The Appalachian myth has also obscured the need for transformative socio-legal change in the region, or change extending beyond the law, *per se*.<sup>3</sup> Such transformative change is required, however, as it targets those structural forces operating above or behind the law—namely, the fossil-fuel hegemony—which nevertheless function *as* law in systematically subordinating the Appalachian region.<sup>4</sup> Deconstructing Appalachia’s collective myth, then, constitutes a vital, nascent step in pursuing systemic reformations beyond this exploitative socio-legal status quo.<sup>5</sup>

This Article proceeds in three parts. Part II traces the historical genesis of the collective Appalachian myth, which transpired during Appalachia’s period of rapid industrialization. Part II also discusses how outside capital interests (and local Appalachian elites) operationalized the myth to facilitate the region’s subordination during this nascent industrialization period and thereafter. Part III identifies and subsequently deconstructs contemporary manifestations of the Appalachian myth, in the context of cultural and demographic diversity; energy, environment, and jobs; a grassroots activist tradition; and Appalachia’s intersections with the broader U.S. and the world. Part III also details how the contemporary Appalachian myth has stymied the pursuit of genuine, transformative socio-legal change in the region. Part IV outlines broad recommendations for achieving such transformative change, which involves pursuing “systemic reformations” in Appalachia extending beyond incremental law reform. Part IV posits that such reformations should be grounded in local-centered, grassroots approaches that are both steeped in critical intersectionality (i.e., along the lines of class, gender, race, and other marginalized groups) and linked with broader regional, national, and global sites of reform.

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<sup>2</sup> Ronald L. Lewis, *Beyond Isolation and Homogeneity: Diversity and the History of Appalachia*, in *BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES* 21, 22 (Dwight B. Billings et al. eds., 2013).

<sup>3</sup> *Id.*

<sup>4</sup> Michael M’Gonigle & Louise Takeda, *The Liberal Limits of Environmental Law: A Green Legal Critique*, 30 *PACE ENVTL. L. REV.* 1005, 1110 (2013).

<sup>5</sup> For additional work exploring systemic reformations in Appalachia, see Nicholas F. Stump, *Following New Lights: Critical Legal Research Strategies as a Spark for Law Reform in Appalachia*, 23 *AM. U. J. GENDER SOC. POL’Y & L.* 573, 655–57 (2015).

## II. HISTORICAL GENESIS AND REIFICATION OF THE APPALACHIAN MYTH

A. *Foundations of Myth (1880s–1920s)*

The collective myth of Appalachia—that of the “other America” and a “land that time forgot”—entered the national consciousness more than a century ago.<sup>6</sup> Most Appalachian studies commentators trace the origins of this myth to popular writings of the 19th century. As historian Ronald L. Lewis has noted, Appalachia was “[b]orn in the fertile minds of late-nineteenth-century local color writers” including John Fox, Jr. and Will Wallace Harney—the latter of whom authored the influential travelogue, *A Strange Land and a Peculiar People*.<sup>7</sup> These works, which also focused on the “physical and cultural isolation” of Appalachia, would only come to be replicated and reified by subsequent authors in future decades.<sup>8</sup>

Such nascent Appalachian literature had an additional, more insidious effect: to facilitate the subordination of the Appalachian citizenry and the corresponding industrial exploitation of the region’s abundant natural resources.<sup>9</sup> Period writers such as Fox were, in fact, often directly and indirectly involved in the development of central Appalachia’s coal industry.<sup>10</sup> Fox and others formulated the Appalachian myth, at least partially, in service of industry; Appalachia “was a willful creation and not merely the product of literary imagination.”<sup>11</sup>

By the late 19th century, this myth had already contributed to the pervasive and unjust expansion of industrial power in Appalachia. Absentee corporations, as supported by a minority of captured local Appalachian elites, had succeeded in acquiring vast tracts of Appalachian land.<sup>12</sup> Millions of acres of land and extensive mineral and timber rights were consequently transferred from Appalachian residents to outside capital interests.<sup>13</sup>

<sup>6</sup> The seminal exploration of the “myth of Appalachia” is typically traced to HENRY D. SHAPIRO, *APPALACHIA ON OUR MIND: THE SOUTHERN MOUNTAINS AND MOUNTAINEERS IN THE AMERICAN CONSCIOUSNESS*, 1870–1920, at 263 (1978).

<sup>7</sup> Lewis, *supra* note 2, at 21 (citing Will Wallace Harney, *A Strange Land and a Peculiar People*, 12 LIPPINCOTT’S MAG. POPULAR LITERATURE SCI. 430 (1873), <http://www.gutenberg.org/files/13964/13964-h/13964-h.htm#strange>).

<sup>8</sup> *Id.*

<sup>9</sup> See Lewis, *supra* note 2, at 23.

<sup>10</sup> *Id.* at 29.

<sup>11</sup> *Id.* at 22.

<sup>12</sup> RICHARD B. DRAKE, *A HISTORY OF APPALACHIA* 139 (2001); RONALD D. ELLER, *MINERS, MILLHANDS, AND MOUNTAINEERS: INDUSTRIALIZATION OF THE APPALACHIAN SOUTH, 1880–1930*, at 44 (1982).

<sup>13</sup> DRAKE, *supra* note 12, at 139; ELLER, *supra* note 12, at 56.

This phenomenon created a deeply problematic corporate absentee ownership pattern in Appalachia that persists to this day.<sup>14</sup> Prior to this period of rapid industrialization, much of the Appalachian citizenry lived on small farms and engaged in a typically self-sufficient yeomen lifestyle.<sup>15</sup> From the 1880s onwards, outside capital interests effectuated the rapid industrialization of Appalachia, achieved through railway development, followed immediately by explosive growth of the coal and timber industries.<sup>16</sup> This rapid industrialization radically and permanently altered Appalachian society and culture, in addition to causing extensive, long-term environmental degradation in the region.<sup>17</sup>

Most notably in terms of social and cultural disruptions, corporations established the so-called “company town” model throughout the region.<sup>18</sup> Under this model, industrial extraction companies, and coal mine operators in particular,<sup>19</sup> provided crude housing around coal seams for their employees.<sup>20</sup> Much of the Appalachian citizenry, in addition to U.S. Southerners (many of whom were African-American) and European immigrants, migrated to these towns in search of better work and material conditions.<sup>21</sup> Coal operators actively enlisted such miners, often engaging in false and misleading recruitment practices.<sup>22</sup> In fact, “[m]iners frequently came to think of themselves as virtual vassals” because they worked for the company “in unsafe mines for low wages,

<sup>14</sup> The classic report written on absentee land ownership was published in 1983. APPALACHIAN LAND OWNERSHIP TASK FORCE, WHO OWNS APPALACHIA?: LANDOWNERSHIP AND ITS IMPACT (1983). A follow-up study in 2013 produced similar findings. W. VA. CTR. ON BUDGET & POLICY, WHO OWNS WEST VIRGINIA? 7 (2013), <https://d3n8a8pro7vhmx.cloudfront.net/wvcbp/pages/468/attachments/original/1511177697/land-study-paper-final3.pdf?1511177697>.

<sup>15</sup> DRAKE, *supra* note 12, at 144.

<sup>16</sup> *Id.* at 141.

<sup>17</sup> *See, e.g., id.* at 144–46.

<sup>18</sup> *Id.* at 147.

<sup>19</sup> There also were timber company towns that were smaller in scale and less permanent. *See* Richard Straw, *Appalachian History*, in A HANDBOOK TO APPALACHIA: AN INTRODUCTION TO THE REGION 13 (Grace Toney Edwards et al. eds., 2006).

<sup>20</sup> DRAKE, *supra* note 12, at 147. *Compare* Keokee Consol. Coke Co. v. Taylor, 234 U.S. 224 (1914) (upholding a law barring mining and manufacturing companies from issuing scrip), Knoxville Iron Co. v. Harbison, 183 U.S. 13 (1901) (upholding a Tennessee law barring firms from paying employees in scrip), and Dayton Coal & Iron Co. v. Barton, 183 U.S. 23 (1901) (same as applied to a foreign corporation), with State v. Goodwill, 10 S.E. 285 (W. Va. 1889) (holding unconstitutional a state law prohibiting mining and manufacturing companies from issuing scrip because the law discriminated against a class of persons).

<sup>21</sup> DRAKE, *supra* note 12, at 146. The Supreme Court even occasionally upheld as constitutional legislative protection of coal miners. *See, e.g.,* McLean v. Arkansas, 211 U.S. 539, 549–51 (1909).

<sup>22</sup> DRAKE, *supra* note 12, at 147.

rent[ed] a company-owned house, and [were] paid in scrip,” which was a form of closed corporate currency.<sup>23</sup>

Through social mechanisms such as the company town model, absentee corporations were remarkably effective in extracting natural resources from the region (and converting those resources into vast amounts of wealth), while simultaneously providing scant, long-term material benefit to Appalachian workers and their dependents.<sup>24</sup>

Given this structural exploitation of the region’s people and natural resources, Appalachia’s subsequent “failure to develop” throughout the 20th century was not due to the deficient or even “deviant” cultural characteristics that the collective “myth of Appalachia” would have us believe.<sup>25</sup> Rather, Appalachia’s persistent issues are directly traceable to the exploitative structural paradigm first implemented during the historic period of rapid industrialization.

### *B. Further Reification of the Myth*

In later decades, perhaps the prime example of the myth’s continued potency was the ill-fated 1960s War on Poverty. This program was designed to alleviate impoverishment in the nation, and in Appalachia specifically, and, thus, to draw Appalachia toward the post-War economic growth enjoyed by the greater U.S.—that is, to bring Appalachia into the liberal capitalist mainstream.<sup>26</sup> The War on Poverty had its intellectual genesis in a series of mid-century, largely social-sciences-based studies culminating in a 1962 Ford Foundation report, which in an overarching sense posited that Appalachia’s ills could be traced to social, cultural, educational, and infrastructure deficiencies.<sup>27</sup> Broad recommendations emanating from such work revolved around remedying Appalachia’s supposed deficiencies through human capital- and infrastructure development-based programs.<sup>28</sup> Also during this era, Michael Harrington’s influential work, *The Other America: Poverty in the United States*, was published.<sup>29</sup> Harrington characterized Appalachia as one such prominent, underdeveloped “other America”—a characterization that further reified the Appalachian myth and quickly became embedded in the nation’s popular consciousness.<sup>30</sup>

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<sup>23</sup> *Id.* at 148.

<sup>24</sup> *Id.* at 147–48.

<sup>25</sup> RONALD D. ELLER, *UNEVEN GROUND: APPALACHIA SINCE 1945*, at 93 (2008).

<sup>26</sup> *Id.* at 90–93.

<sup>27</sup> DRAKE, *supra* note 12, at 172.

<sup>28</sup> ELLER, *supra* note 25, at 93.

<sup>29</sup> MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* 42–43 (1962).

<sup>30</sup> *Id.*

It was Lyndon B. Johnson's administration that largely designed and implemented the War on Poverty as part of the Great Society initiative.<sup>31</sup> Central War-on-Poverty legislation included the Economic Opportunity Act of 1964 ("EOA") in addition to the 1965 act that established the Appalachian Regional Commission ("ARC").<sup>32</sup> The two acts were initially designed to work in tandem: the EOA would enhance human capital in the region (e.g., education and workforce training) while ARC initially implemented "hardware programs" relating to infrastructure development (e.g., highways, health and education facilitates, etc.).<sup>33</sup>

The War on Poverty, however, ultimately constituted a "miscarriage of development strategies" in Appalachia.<sup>34</sup> As noted historian Ronald D. Eller details,

Although none of the major crafters of the War on Poverty were from the region or had any extensive knowledge of it, popular images of Appalachia rooted deep in the nation's consciousness predisposed Great Society policy makers to identify Appalachia as "deviant" and thus as a prime target in the antipoverty campaign.<sup>35</sup>

To be sure, the War on Poverty was well-intentioned on the part of national policymakers; nevertheless, its roots in the Appalachian myth constituted a central factor in its inevitable failure. Few War-on-Poverty architects "associated poverty with systemic inequalities in political or economic structures" or advocated for any variety of systemic "political re-structuring."<sup>36</sup> This lack of foresight (and requisite socio-legal scope) ultimately produced mere incremental changes that failed to challenge the Appalachian exploitative status quo.<sup>37</sup> By the 1970s, the War on Poverty ended in Appalachia.<sup>38</sup> Instead Appalachia transitioned from welfare state liberalism to the neoliberal

<sup>31</sup> DRAKE, *supra* note 12, at 174–75; ELLER, *supra* note 25, at 93.

<sup>32</sup> DRAKE, *supra* note 12, at 174–77.

<sup>33</sup> *Id.* at 175. The authors object to the use of the phrase "human capital," as it connotes the employer's instrumental use of workers' labor, thereby alienating workers from both the fruits and intrinsic value of that labor. We use the term here precisely because the programs' architects intended those instrumental connotations.

<sup>34</sup> *Id.* at 265. For other sources chronicling the ultimate failures of liberal development programs in Appalachia, see generally DWIGHT B. BILLINGS & KATHLEEN M. BLEE, *THE ROAD TO POVERTY: THE MAKING OF WEALTH AND HARDSHIP IN APPALACHIA* (2000); PAUL SALSTROM, *APPALACHIA'S PATH TO DEPENDENCY: RETHINKING A REGION'S ECONOMIC HISTORY, 1730–1940* (1994).

<sup>35</sup> ELLER, *supra* note 25, at 93.

<sup>36</sup> *Id.* at 63.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 126.

paradigm.<sup>39</sup> Given the unintentional but deleterious results of the War on Poverty, the “natural resource curse” constitutes a useful, social-sciences-based explanatory model in understanding Appalachia’s complex structural subordination. According to the resource curse, many regions rich in natural resources derive scant material benefit from those resources.<sup>40</sup> This produces a complex web of “social, political, and economic problems.”<sup>41</sup> For Appalachia, the coal industry has naturally been the prime negative actor in effectuating the region’s resource curse, which has resulted in not only pervasive ecological destruction, but also economic and cultural marginalization, as the fossil-fuel hegemony has resulted in a coal-centered mono-economy becoming endemic to the region.<sup>42</sup> As a consequence of such subordinating structural conditions, the Appalachian citizenry has continuously suffered from the vicissitudes of a non-diversified, boom-and-bust economy—thus remaining (as shown below) one of the most impoverished regions in the nation.<sup>43</sup>

### III. DECONSTRUCTING THE CONTEMPORARY APPALACHIAN MYTH

#### A. *Cultural and Demographic Diversity*

A singularly influential dimension of the Appalachian myth relates to the region’s racial- and ethnic-related demographics, both historic and contemporary. The core of this myth relates to the supposed “white Scots-Irish” heritage of the region—what sociologist Wilma Dunaway refers to as the “ethnic homogeneity thesis.”<sup>44</sup> However, empirical research demonstrates that Appalachia always has been characterized by fluctuating levels of diversity.<sup>45</sup>

<sup>39</sup> See BRYAN T. MCNEIL, *COMBATING MOUNTAINTOP REMOVAL: NEW DIRECTIONS IN THE FIGHT AGAINST BIG COAL* 8–10 (2011). This transition is discussed below. See *infra* Section III.D; see also David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS., no. 4, 2014, at 1, 19; Melissa Murray, *Black Marriage, White People, Red Herrings*, 111 MICH. L. REV. 977, 997 (2013).

<sup>40</sup> Mark D. Partridge et al., *Natural Resources Curse and Poverty in Appalachian America*, 95 AM. J. AGRIC. ECON. 449 (2013), <https://academic.oup.com/ajae/article/95/2/449/70971>.

<sup>41</sup> JOYCE M. BARRY, *STANDING OUR GROUND: WOMEN, ENVIRONMENTAL JUSTICE, AND THE FIGHT TO END MOUNTAINTOP REMOVAL* 28 (2012).

<sup>42</sup> Anne Marie Lofaso, *What We Owe Our Coal Miners*, 5 HARV. L. & POL’Y REV. 87 (2011); see also SHANNON ELIZABETH BELL, *FIGHTING KING COAL: THE CHALLENGES TO MICROMOBILIZATION IN CENTRAL APPALACHIA* 18 (2016).

<sup>43</sup> BELL, *supra* note 42, at 18–19; ELLER, *supra* note 25, at 212.

<sup>44</sup> Wilma A. Dunaway, *The Legacy of Social Darwinism in Appalachian Scholarship*, SCHOLAR, [http://scholar.lib.vt.edu/faculty\\_archives/appalachian\\_women/ethnicit.htm](http://scholar.lib.vt.edu/faculty_archives/appalachian_women/ethnicit.htm) (last visited Mar. 27, 2018).

<sup>45</sup> William Schumann, *Introduction: Place and Place-Making in Appalachia*, in *APPALACHIA REVISITED: NEW PERSPECTIVES ON PLACE, TRADITION, AND PROGRESS* 1, 4–9 (William Schumann & Rebecca Adkins Fletcher eds., 2016).



First and foremost, Appalachian people of color and indigenous communities have often been rendered invisible by the false narrative of Appalachia-as-Scots-Irish-whites.<sup>46</sup> Additionally, this Scots-Irish myth facilitates the perpetuation of complex forms of race-, gender- and class-based subordination—as so-called “Appalachian whites” are coded in a complex and insidious manner in the U.S.<sup>47</sup>

As a threshold matter, the cultural homogenization of Appalachia-as-Scots-Irish-whites is problematic due to the (at least) 8,000-year presence of indigenous peoples in the Appalachian region.<sup>48</sup> At the time of the Historic era, diverse indigenous peoples in Appalachia included the following: the Cherokee in Southern Appalachia, Algonquin peoples in North Central Appalachia (e.g., the Delaware and Shawnee), and peoples of the Iroquois Confederacy in Northern Appalachia.<sup>49</sup> With the coming of the Euro-conquest, these populations would become much reduced.<sup>50</sup> Nevertheless, Native American populations persist in Appalachia, thus contributing to the region’s present-day diversity.

Although the Spanish were the first Europeans to “discover” Appalachia in the 1500s, comprehensive Euro-colonization of Appalachia commenced in the post-Revolutionary War period.<sup>51</sup> Many trace the Scots-Irish myth to this early wave of colonial settlers; however, contemporary research indicates that a range of diverse peoples colonized Appalachia during this period, including Germans, English, Quakers, and French Huguenots.<sup>52</sup> So too were those of African descent, through the historical crime of slavery, transported to Appalachia at this time (and thereafter).<sup>53</sup> In short, empirical research demonstrates that “eighteenth-century Appalachia was a fusion of a variety of European ethnic groups and other groups that reflected African and indigenous descent.”<sup>54</sup>

<sup>46</sup> Elizabeth Catte, *Resisting Myths of Whiteness in Appalachia*, 100 DAYS IN APPALACHIA (Mar. 15, 2017), <http://www.100daysinappalachia.com/2017/03/15/elizabeth-catte-resisting-myths-whiteness-appalachia/>.

<sup>47</sup> Elizabeth Catte, *There Is No Neutral There: Appalachia as a Mythic “Trump Country,”* MEDIUM (Oct. 17, 2016), <https://medium.com/@elizabethcatte/there-is-no-neutral-there-appalachia-as-a-mythic-trump-country-ee6ed7f300dc>; see also *supra* Section II.A and accompanying text.

<sup>48</sup> See DRAKE, *supra* note 12, at 4–5.

<sup>49</sup> *Id.* at 8–9.

<sup>50</sup> *Id.* at 13.

<sup>51</sup> *Id.* at 25, 61.

<sup>52</sup> *Id.* at 37–38.

<sup>53</sup> WILMA A. DUNAWAY, *THE FIRST AMERICAN FRONTIER: TRANSITION TO CAPITALISM IN SOUTHERN APPALACHIA, 1700–1860*, at 111 (1996).

<sup>54</sup> Elizabeth Catte, *The Mythical Whiteness of Trump Country*, BOSTON REV. (Nov. 7, 2017), <http://bostonreview.net/race-politics/elizabeth-catte-mythical-whiteness-trump-country> (citing to Wilma Dunaway’s research and publications).

At the end of the 19th century the region again experienced a dramatic influx of diverse groups due to coal-industry labor-recruitment practices.<sup>55</sup> Coal was, by this time, extraordinarily well-poised for both U.S. and global energy market dominance, as coal had transitioned to the dominant fuel source for the Industrial Revolution.<sup>56</sup> As a result, there was nearly limitless market demand for coal, and the resource would remain essentially uncontested in the energy marketplace until the mid-20th century.<sup>57</sup>

Appalachian coal interests, however, required human labor beyond the largely “native” white population that worked the earliest regional mines.<sup>58</sup> Period pick-and-shovel mining was exceedingly dependent upon human labor, which is why the quasi-feudal company-town model was a crucial labor-channeling and disciplining device.<sup>59</sup> To secure this labor, coal interests actively recruited workers from outside the region. Many of these migrants included, first, African-American Southerners and, second, migrants representing nearly all the nations of Europe but of Southern (e.g., Italy) and Eastern Europe especially.<sup>60</sup> Simply put, period mining populations were certainly heterogeneous.<sup>61</sup>

Turn-of-the-century Appalachia therefore was characterized by much racial and ethnic diversity. However, the advent of industrial capitalism also brought with it overt and insidious forms of racial-, gender-, class-, and nativist-based subordination. For instance, African-American coal miners were explicitly limited to the most arduous mining positions (e.g., coal-loading) and had scant opportunity for advancement.<sup>62</sup> So too was housing segregation implemented in company towns, which targeted both African Americans and recent European immigrants.<sup>63</sup> A strict gendered division of labor was also in effect in period Appalachia, wherein women were typically limited to work in the (largely unpaid) private sphere.<sup>64</sup> Lastly, the company-town model produced and perpetuated profound class subordination in Appalachia, which intersected

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<sup>55</sup> See ELLER, *supra* note 12, at 46.

<sup>56</sup> DRAKE, *supra* note 12, at 131–32.

<sup>57</sup> ELLER, *supra* note 12, at 153; see also *Energy Sources Have Changed Throughout the History of the United States*, U.S. ENERGY INFO. ADMIN. (July 3, 2013), <https://www.eia.gov/todayinenergy/detail.php?id=11951>.

<sup>58</sup> ELLER, *supra* note 12, at 166–68.

<sup>59</sup> *Id.* at 193.

<sup>60</sup> *Id.* at 165.

<sup>61</sup> DRAKE, *supra* note 12, at 143.

<sup>62</sup> ELLER, *supra* note 12, at 170–71.

<sup>63</sup> DRAKE, *supra* note 12, at 146.

<sup>64</sup> Virginia Rinaldo Seitz, *Class, Gender, and Resistance in the Appalachian Coalfields*, in *COMMUNITY ACTIVISM AND FEMINIST POLITICS: ORGANIZING ACROSS RACE, CLASS, AND GENDER* 213, 217 (Nancy A. Naples ed., 1998).

multidimensionally with such race- and gender-based coalfield discrimination.”<sup>65</sup>

Therefore, Appalachia, throughout the historical periods of the Euro-settler conquest and rapid industrialization, was marked by a diversity that the myth of homogenized Appalachia-as-Scots-Irish-whites rarely acknowledges. However, as part and parcel of deconstructing this myth, it must simultaneously be recognized that such diversity implicated the interlocking systems of subordination that were (and continue to be) endemic to the U.S. at large—including a white, patriarchal, classist, xenophobic, etc. hegemony.

One insidious dimension of the “white Appalachian” myth relates to the region’s supposed “racial innocence”<sup>66</sup>—i.e., the contention that Appalachia is separate from (and therefore not implicated in) systemic white supremacy, as the region supposedly lacks historical or contemporary diversity. Anthropologist Allen Batteu refers to this toxic phenomenon as “Holy Appalachia.”<sup>67</sup> Without a doubt, the Holy Appalachia narrative is wholly false. As the subordination of Appalachian Native Americans, the segregated coal camps, and later Jim Crow as operationalized in Appalachia<sup>68</sup> have demonstrated, overt and structural racism have been endemic to Appalachia at least since the Euro-conquest. And, of course, racism persists—in both Appalachia and the U.S. as a whole—today.

As the cycles of economic boom-and-bust became entrenched during 1920s Appalachia, an out-migration of many Appalachians commenced, including large minority and immigrant populations.<sup>69</sup> However, the populations that did remain—in addition to other groups, such as Native Americans and those non-majoritarian groups who would migrate to Appalachia in subsequent decades—would contribute to the vital, present-day Appalachian racial and cultural heterogeneity.

Currently, over 25 million people live in Appalachia’s 420 counties.<sup>70</sup> Minorities constitute 17.5% of the Appalachian population as compared to the U.S. average of 33.7%.<sup>71</sup> Appalachia’s median age of 40.5 years is higher than the 37.6 U.S. average,<sup>72</sup> and the percentage of adults over the age of 65 (16.3%)

<sup>65</sup> ELLER, *supra* note 12, at 194.

<sup>66</sup> Catte, *supra* note 47.

<sup>67</sup> ALLEN W. BATTEAU, *THE INVENTION OF APPALACHIA* 78 (1990); *see also* Catte, *supra* note 46.

<sup>68</sup> DRAKE, *supra* note 12, at 186.

<sup>69</sup> ELLER, *supra* note 12, at 197.

<sup>70</sup> *The Appalachian Region*, APPALACHIAN REGIONAL COMMISSION, [https://www.arc.gov/appalachian\\_region/TheAppalachianRegion.asp](https://www.arc.gov/appalachian_region/TheAppalachianRegion.asp) (last visited Mar. 27, 2018).

<sup>71</sup> Kevin Pollard & Linda A. Jacobsen, *The Appalachian Region: A Data Overview from the 2011–2015 American Community Survey*, APPALACHIAN REGIONAL COMMISSION (Mar. 2017), [https://www.arc.gov/research/researchreportdetails.asp?REPORT\\_ID=132](https://www.arc.gov/research/researchreportdetails.asp?REPORT_ID=132).

<sup>72</sup> *Id.*

is also higher than the national average of 14.1%.<sup>73</sup> In financial terms, “Appalachia’s household income is 80% of the U.S. average” (\$60,525 as compared to \$75,558), and 17.1% of Appalachians are below the poverty line compared to the 15.5% U.S. average.<sup>74</sup> Furthermore, “[f]orty-two percent of the Region’s population is rural, compared with 20 percent of the national population.”<sup>75</sup> It is therefore clear that, in key respects, there are significant demographic variations between Appalachia and the U.S. at large.

Crucially, however, the project of de-essentializing Appalachia—of unmasking regional myths regarding, among other things, cultural and demographic diversity—does *not* involve demonstrating a precise statistical parity with national averages. Rather, the aim, in the first place, is in illuminating the fact that much diversity *exists* in the region and to highlight and celebrate this diversity. A fundamental problem then with the myth of Appalachia-as-Scots-Irish-whites is that it, in public historian Elizabeth Catte’s words, “excludes people of color from our shared regional heritage.”<sup>76</sup>

The project of de-essentializing Appalachia, therefore, involves a rich and collective unpacking of Appalachia’s historical and contemporary culture.<sup>77</sup> For instance, William Schumann discusses the fact that both Appalachian diversity and the culturally significant fluctuation of Appalachian demographics are typically underreported in popular portrayals. Schumann utilizes recent immigration patterns in southern Appalachia as an important example: “Latina/o in-migration into southern Appalachia is responsible for nearly half of all the region’s population growth since 1990, which contrasts with greater levels of white out-migration and lower cultural diversity in the North.”<sup>78</sup> Such demographic patterns are rarely discussed in popular portrayals of Appalachia. However, such demographic patterns are vitally impactful on Appalachian culture and, as such, ought to be comprehensively identified.

An additional example of contemporary (yet underreported) Appalachian diversity pertains to transgender identification. A recent study indicates that West Virginia—the only state whose boundaries are wholly included in the ARC-designated Appalachian region—has the highest estimated per capita rate of teenagers who identify as transgender.<sup>79</sup> Thus, similarly to the

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *The Appalachian Region*, *supra* note 70.

<sup>76</sup> Catte, *supra* note 46.

<sup>77</sup> Elizabeth Catte has made vital contributions to this discourse in her new book, *What You Are Getting Wrong About Appalachia*. See generally ELIZABETH CATTE, WHAT YOU ARE GETTING WRONG ABOUT APPALACHIA (2018).

<sup>78</sup> Schumann, *supra* note 45, at 8.

<sup>79</sup> JODY L. HERMAN ET AL., WILLIAMS INST., AGE OF INDIVIDUALS WHO IDENTIFY AS TRANSGENDER IN THE UNITED STATES 5 (2017), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>; see also *UCLA Study: West Virginia Has Highest Teen*

in-migration example, portrayals of Appalachia should account for such niche cultural trends, which, to date, have been too often rendered invisible.

Additional, multifaceted social ills emanate from the Appalachia-as-Scots-Irish-whites myth; these issues primarily involve elite commentators utilizing the Appalachian myth to cloak nationwide structural subordination. The 2016 U.S. presidential election constitutes a useful entry-point into this phenomenon. During the election and thereafter, national media outlets developed a problematic fixation on Appalachia as homogenized “Trump country.”<sup>80</sup> As Catte writes, “[w]e need to examine why journalists from elite and prestige publications are invested in presenting Appalachians . . . as representative of all Trump supporters.”<sup>81</sup> Catte adds that, “[h]istorically, cultural elites . . . have used flawed representations of Appalachia” to both “enhance the cultural difference between progressive white individuals and those thought to be “yesterday’s people” and to “absolve cultural elites from the responsibility of thinking critically about race and racism.”<sup>82</sup> Such is how the myth of Appalachia was deployed during and after the presidential election. Rather than examining how structural racism, sexism, and xenophobia—endemic to the entire U.S., including coastal elite regions—and hegemonic capital interests (i.e., corporations and the 1%) and neoliberalism at large contributed to Trump’s victory, Appalachia instead often served *in its entirety* as a convenient socio-cultural scapegoat.

For instance, by fixating on Appalachians as paradigmatic Trump voters, elite commentators failed to account for the fact that millions of Trump voters—the majority of whom were not working class<sup>83</sup>—were from *outside* areas traditionally conceived as Appalachia. For instance, 37% of New York (or 2.6 million citizens) voted for Trump;<sup>84</sup> Trump also carried 49% of the crucial state

*Transgender Rate in Nation*, APPALACHIAN MAG. (Mar. 27, 2018), <http://appalachianmagazine.com/2017/02/24/ucla-study-west-virginia-has-highest-teen-transgender-rate-in-nation/>.

<sup>80</sup> See, e.g., Roger Cohen, *We Need ‘Somebody Spectacular’: Views From Trump Country*, N.Y. TIMES (Sept. 9, 2016), [https://www.nytimes.com/2016/09/11/opinion/sunday/we-need-somebody-spectacular-views-from-trump-country.html?\\_r=0](https://www.nytimes.com/2016/09/11/opinion/sunday/we-need-somebody-spectacular-views-from-trump-country.html?_r=0); Larissa MacFarquhar, *In the Heart of Trump Country*, NEW YORKER (Oct. 10, 2016), <https://www.newyorker.com/magazine/2016/10/10/in-the-heart-of-trump-country>; John Saward, *Welcome to Trump County, U.S.A.*, VANITY FAIR (Feb. 24, 2016, 8:00 AM), <https://www.vanityfair.com/news/2016/02/donald-trump-supporters-west-virginia>.

<sup>81</sup> Catte, *supra* note 47.

<sup>82</sup> *Id.*

<sup>83</sup> See Nicholas Carnes & Noam Lupu, *It’s Time To Bust the Myth: Most Trump Voters Were Not Working Class*, WASH. POST (June 5, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/05/its-time-to-bust-the-myth-most-trump-voters-were-not-working-class/?utm\\_term=.be47231084dc](https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/05/its-time-to-bust-the-myth-most-trump-voters-were-not-working-class/?utm_term=.be47231084dc).

<sup>84</sup> See *2016 Presidential Election Results*, POLITICO (Dec. 13, 2016, 1:57 PM), <https://www.politico.com/mapdata-2016/2016-election/results/map/president/>. Parts of New York are, in fact, located in the northernmost boundaries of the ARC-designated Appalachian map;

of Florida (or 4.6 million votes).<sup>85</sup> By contrast, in West Virginia—which concededly supported Trump by the highest percentage in the nation—Trump received only 489,371 votes.<sup>86</sup>

Following the election, prestige commentators continued to fixate on Appalachia as mythic “Trump Country.”<sup>87</sup> As Frank Rich wrote in the *New York Magazine* article “No Sympathy for the Hillbilly,” “hold the empathy and hold on to the anger,” and “maybe . . . they’ll keep voting against their own interests until the industrial poisons left unregulated by their favored politicians finish them off altogether.”<sup>88</sup> Such problematic representations only further reify the Appalachian myth. Simultaneously, the prestige media fixation on Appalachia postpones the difficult—but vital—conversation on structural subordination in the broader U.S. That is, the nation as a whole *must* collectively examine the profound (and intersecting) class, race, and gender issues that exist throughout the U.S.

### *B. Energy, Environment and Jobs*

The myth of Appalachia is intrinsically interwoven with the severe, long-term environmental damage that has wrought the region. The coal industry has historically constituted the prime negative actor in Appalachia’s prolonged environmental (and intersecting social, political, and economic) crisis.<sup>89</sup> However, the natural gas industry has increasingly dominated the energy marketplace, and has thus emerged as a major source of both contemporary and future-projected negative environmental impacts in Appalachia.<sup>90</sup> So too is Appalachia beset by additional industrial-related environmental issues,

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nevertheless, New York is not typically associated with Appalachia per se. *Map of the Appalachian Region*, APPALACHIAN REGIONAL COMMISSION, [https://www.arc.gov/appalachian\\_region/MapofAppalachia.asp](https://www.arc.gov/appalachian_region/MapofAppalachia.asp) (last visited Mar. 27, 2018). And Trump carried Suffolk County, Long Island, which is not part of Appalachia. See *2016 Presidential Election Results*, *supra*.

<sup>85</sup> See *2016 Presidential Election Results*, *supra* note 84.

<sup>86</sup> *West Virginia Results*, N.Y. TIMES (Aug. 1, 2017, 11:22 AM), <https://www.nytimes.com/elections/results/west-virginia>.

<sup>87</sup> Note that Catte has explored the “Trump Country” phenomenon at length and is the foremost contemporary commentator on this subject. See CATTE, *supra* note 77, at 22–35.

<sup>88</sup> Frank Rich, *No Sympathy for the Hillbilly*, N.Y. MAG. (Mar. 27, 2017, 9:00 PM), <http://nymag.com/daily/intelligencer/2017/03/frank-rich-no-sympathy-for-the-hillbilly.html>.

<sup>89</sup> See generally Patrick C. McGinley, *From Pick and Shovel to Mountaintop Removal: Environmental Injustice in the Appalachian Coalfields*, 34 ENVTL. L. 21 (2004).

<sup>90</sup> See generally Janet Currie et al., *Hydraulic Fracturing and Infant Health: New Evidence from Pennsylvania*, 3 SCI. ADVANCES 1 (2017); Philip L. Staddon & Michael H. Depledge, *Implications of Unconventional Gas Extraction on Climate Change: A Global Perspective*, in HUMAN AND ENVIRONMENTAL IMPACT OF FRACKING: HOW FRACTURING SHALE FOR GAS AFFECTS US AND OUR WORLD 81, 86–87 (2016).

stemming from such sources as an under-regulated chemical industry and a declining industrial infrastructure.<sup>91</sup>

Following Appalachia's era of rapid industrialization, coal mining-produced environmental destruction accelerated largely due to a dramatic increase in mid-twentieth-century mechanization-intensive surface mining in Appalachia.<sup>92</sup> The rise of surface mining was closely linked with Appalachian labor issues, as coal operators adopted mechanization and thus shed workers.<sup>93</sup>

The mid-century transition towards mechanization-intensive mining also had disastrous effects on the Appalachian environment. Mid-century mechanization-intensive mining—particularly in the surface mining context—introduced massive machines (e.g., diesel-powered shovels) and had large geographic demands.<sup>94</sup> Consequently, “[s]trip mining damaged all the Appalachian coalfield states” through extensive environmental degradation.<sup>95</sup>

The transition to mechanization-intensive surface mining reached new heights with the rise of mountaintop removal mining (“MTR”) in the early 1990s.<sup>96</sup> MTR—which is still in force as an extraction method—is an environmentally destructive mining practice. Operators utilize explosives to remove up to 1,000 feet of mountaintops, revealing coal seams beneath.<sup>97</sup> Thereafter, excavation equipment deposits the blasted debris (generally termed “spoil”) into adjacent mountain valleys.<sup>98</sup> The environmental damage caused by MTR is both extraordinary in scope and tragically irreversible. To date, over 500 mountains and 2,000 miles of ecologically crucial headwater streams have been destroyed by the practice.<sup>99</sup>

In addition to environmental damage, MTR has also caused extensive public health harms in Appalachia. Negative health impacts linked to MTR

<sup>91</sup> Nicholas F. Stump, *Is a Healthy Environment a Human Right? Testing the Idea in Appalachia*, CONVERSATION (July 13, 2017, 10:44 PM), <https://theconversation.com/is-a-healthy-environment-a-human-right-testing-the-idea-in-appalachia-80372>.

<sup>92</sup> CHAD MONTRIE, *TO SAVE THE LAND AND PEOPLE: A HISTORY OF OPPOSITION TO SURFACE COAL MINING IN APPALACHIA* 20–24 (2003).

<sup>93</sup> DRAKE, *supra* note 12, at 201–02.

<sup>94</sup> MONTRIE, *supra* note 92, at 20–24.

<sup>95</sup> Mary Beth Bingman, *Stopping the Bulldozers: What Difference Did It Make?*, in *FIGHTING BACK IN APPALACHIA: TRADITIONS OF RESISTANCE AND CHANGE* 21 (Stephen L. Fisher ed., 1993).

<sup>96</sup> John McQuaid, *The Razing of Appalachia: Mountaintop Removal Revisited*, YALEENVIRONMENT360 (May 12, 2009), [http://e360.yale.edu/features/the\\_razing\\_of\\_appalachia\\_mountaintop\\_removal\\_revisited](http://e360.yale.edu/features/the_razing_of_appalachia_mountaintop_removal_revisited).

<sup>97</sup> Mark Baller & Leor Joseph Pantilat, Comment, *Defenders of Appalachia: The Campaign to Eliminate Mountaintop Removal Coal Mining and the Role of Public Justice*, 37 ENVTL. L. 629, 631 (2007).

<sup>98</sup> McGinley, *supra* note 89, at 57.

<sup>99</sup> RICHARD MARTIN, *COAL WARS: THE FUTURE OF ENERGY AND THE FATE OF THE PLANET* 82 (1st ed. 2015).

include birth defects, cardiovascular disease, pulmonary disease, and lung cancer.<sup>100</sup> These negative impacts are likely caused by both air and water pollution, especially relating to heavy metals like selenium.<sup>101</sup> These health harms implicate environmental justice issues, as low-income communities and women, among other groups, have been disproportionately impacted by MTR.<sup>102</sup>

For decades, the myth of Appalachia has been largely responsible for how MTR has persisted, with remarkably scant public or institutional-elite outcry. MTR's endurance notwithstanding these remarkable negatives leaves some commentators to believe that the U.S. only permits MTR because it is centralized in an "other America,"<sup>103</sup> or a "deviant"<sup>104</sup> region that is less deserving of moral and legal consideration. As women's studies scholar Joyce M. Barry has written, this phenomenon is best characterized as Appalachia constituting a "'sacrifice zone' of cultural and environmental degradation."<sup>105</sup> Appalachia-as-sacrifice-zone is indeed the logical end-result of a century's worth of reification of the Appalachian myth. As Barry details, "[w]hen populations are viewed as outside of mainstream American culture, culturally backward, or too connected to nature, it becomes difficult to garner support from outside the region."<sup>106</sup> Therefore, "[c]asting Appalachian people as uncivilized" facilitates the justification for the "destruction caused by mountaintop removal coal mining [and] mak[es] it difficult to garner robust outside support to stop it."<sup>107</sup>

While the coal industry has historically constituted the central negative actor in Appalachia—and, correspondingly, the longstanding beneficiary of the Appalachian myth—additional exploitative industries are at work in the region. One example is the chemical manufacturing industry, which has long been

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<sup>100</sup> See generally Melissa M. Ahern et al., *The Association Between Mountaintop Mining and Birth Defects Among Live Births in Central Appalachia, 1996–2003*, 111 ENVTL. RES. 838 (2011), [http://www.crmw.net/files/Ahern\\_et\\_al\\_MTR\\_and\\_birth\\_defects\\_2011.pdf](http://www.crmw.net/files/Ahern_et_al_MTR_and_birth_defects_2011.pdf); Keith J. Zullig & Michael Hendryx, *Health-Related Quality of Life Among Central Appalachian Residents in Mountaintop Mining Counties*, 101 AM. J. PUB. HEALTH 848 (2011).

<sup>101</sup> See generally David C. Holzman, *Mountaintop Removal Mining: Digging into Community Health Concerns*, 119 ENVTL. HEALTH PERSP. 476, 509 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3226519/pdf/ehp.119-a476.pdf>.

<sup>102</sup> See generally BARRY, *supra* note 41; Paul B. Stretesky & Michael J. Lynch, *Coal Strip Mining, Mountaintop Removal, and the Distribution of Environmental Violations Across the United States, 2002–2008*, 36 LANDSCAPE RES., no. 2, 209 (2011).

<sup>103</sup> See HARRINGTON, *supra* note 29.

<sup>104</sup> See BARRY, *supra* note 41, at 97.

<sup>105</sup> *Id.* at 98.

<sup>106</sup> *Id.* at 99.

<sup>107</sup> *Id.*



endemic to such regions as the Kanawha River Valley—and which has, in fact, been associated with dire race-related environmental justice issues.<sup>108</sup>

A second example is the natural gas industry, as several Appalachian states (e.g., Pennsylvania and West Virginia) are located in the Marcellus shale gas region.<sup>109</sup> For the prior decade, the gas industry has experienced a remarkable boom, thereby making massive inroads into the energy marketplace.<sup>110</sup> (In stark contrast, the coal industry has faced a historic decline in the past decade—which is directly linked to rapid market influx of low-priced natural gas.)<sup>111</sup>

But natural gas—as a fossil fuel—has, like coal, created dire environmental impacts in Appalachia and has continued to contribute to the perpetuation of a fossil-fuel-driven Appalachian mono-economy. The natural gas boom has also stymied the development of a truly robust renewable energy sector (e.g., wind and solar) in states such as West Virginia. This problem has been exacerbated by the recent construction of long-term natural gas infrastructure, such as gas-fired power plants and the pending Mountain Valley and Atlantic Coast pipelines.<sup>112</sup> The natural gas industry also produces public health-related harms.<sup>113</sup> Thus, development of Marcellus shale gas is poised to wreak substantial environmental- and public health-related destruction in Appalachia and, through climate change, the world at large.<sup>114</sup>

<sup>108</sup> ROBERT D. BULLARD, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* 51–53 (3d ed. 2008). Note that the chemical industry is also undergoing a natural gas related “renaissance” in parts of Appalachia. See Tsvetana Paraskova, *U.S. Shale Just Triggered a Chemical Industry Renaissance*, OIL PRICE (July 3, 2017), <https://oilprice.com/Energy/Natural-Gas/US-Shale-Just-Triggered-A-Chemical-Industry-Renaissance.html>.

<sup>109</sup> TOM WILBER, *UNDER THE SURFACE: FRACKING, FORTUNES, AND THE FATE OF THE MARCELLUS SHALE 2* (1st ed. 2012).

<sup>110</sup> Bill Powers, *The Popping of the Shale Gas Bubble*, FORBES (Sept. 3, 2014, 10:00 AM), <https://www.forbes.com/sites/billpowers/2014/09/03/the-popping-of-the-shale-gas-bubble/#1b10aea6707b>.

<sup>111</sup> Ken Ward Jr., *DOE Report: Gas Boom ‘Biggest Contributor’ to Coal Decline*, CHARLESTON GAZETTE-MAIL (Aug. 24, 2017), [https://www.wvgazette.com/news/special\\_reports/doe-report-gas-boom-biggest-contributor-to-coal-decline/article\\_1adface9-c503-5ae1-92fc-80d8ad97721d.html](https://www.wvgazette.com/news/special_reports/doe-report-gas-boom-biggest-contributor-to-coal-decline/article_1adface9-c503-5ae1-92fc-80d8ad97721d.html).

<sup>112</sup> See *Groups Challenge Mountain Valley and Atlantic Coast Pipelines*, APPALACHIAN MOUNTAIN ADVOCs. (Nov. 14, 2017), <http://www.appalmd.org/2017/11/14/groups-challenge-mountain-valley-and-atlantic-coast-pipelines/>.

<sup>113</sup> See generally Currie et al., *supra* note 90; Yelena Ogneva-Himmelberger & Liyao Huang, *Spatial Distribution of Unconventional Gas Wells and Human Populations in the Marcellus Shale in the United States: Vulnerability Analysis*, 60 APPLIED GEOGRAPHY 165 (2015), <http://www.ejnet.org/ej/frackingthepoor.pdf>.

<sup>114</sup> *Natural Gas and Climate Change*, APPALACHIAN MOUNTAIN ADVOCs., <http://www.appalmd.org/natural-gas-and-climate-change/> (last visited Mar. 27, 2018).

### C. *Grassroots Activism Tradition*

The myth of Appalachia has also veiled a long and impactful tradition of progressive grassroots activism at the local, state, and regional levels. Notably, “Appalachian places are often mixtures of political conservatism and progressive activism.”<sup>115</sup> However, through the myth of Appalachia, this rich tradition of resistance is rarely—if ever—acknowledged in either the historical or contemporary contexts. Historically, Appalachia was, in fact, the site of many of the nation’s most significant (and violent) labor uprisings. As a seminal example, a series of “mining wars” were fought over nascent unionization in Appalachia; these wars culminated in the now-famous Battle of Blair Mountain, which occurred in West Virginia in 1921.<sup>116</sup> In subsequent decades, intensive labor conflict persisted in Appalachia until the neoliberal turn in U.S. policy decimated Appalachian labor in the late 20th century.<sup>117</sup>

Aside from its labor history, Appalachia also has a rich tradition of environmental-focused grassroots activism, typically involving coal-centered resistance practices. An early wave of Appalachian grassroots activism arose in the 1960s in response to surface mining’s multitudinous ravages.<sup>118</sup> This activism intensified when ordinary Appalachian citizens lost property (and homes) to the geographically demanding practice—and when these citizens realized that existing law (i.e., both property and tort doctrines) offered no effective recourse.<sup>119</sup>

The Appalachian resistance that erupted during this period involved both formalized grassroots groups—the progeny of which still exist today—and more spontaneous citizen actions. Period grassroots organizations included the Appalachian Group to Save the Land and People (“AGSLP”), Save Our Cumberland Mountains (“SOCM”), the Citizens Coal Council, and the Appalachian Coalition; such organizations generally aimed to ban surface mining altogether.<sup>120</sup> More spontaneous forms of resistance also occurred during this era, including, perhaps most notably, dramatic civil disobedience practices. A prominent instance includes the direct action performed by Kentucky resident

<sup>115</sup> Schumann, *supra* note 45.

<sup>116</sup> WILLIAM C. BLIZZARD, WHEN MINERS MARCH 291 (Wess Harris ed., 2010).

<sup>117</sup> Stephen L. Fisher & Barbara Ellen Smith, *Introduction: Placing Appalachia*, in TRANSFORMING PLACES: LESSONS FROM APPALACHIA 4 (Stephen L. Fisher & Barbara Ellen Smith eds., 2012).

<sup>118</sup> MONTRIE, *supra* note 92, at 75–80; Bingman, *supra* note 95, at 20–24.

<sup>119</sup> See generally ROBERT TODD PERDUE & CHRISTOPHER MCCARTY, *Unearthing a Network of Resistance: Law and the Anti-Strip Mining Movement in Central Appalachia*, in 66 STUDIES IN LAW, POLICY, AND SOCIETY 40 (Austin Sarat ed., 2015).

<sup>120</sup> *Id.* at 40–41.

Ollie Combs who, along with her children, “stood in front of bulldozers to stop their operations” near her home.<sup>121</sup>

Appalachian activism of the 1960s and 1970s eventually contributed to the enactment of tangible environmental law reform: namely, the Surface Mining Control and Reclamation Act of 1977 (“SMCRA”),<sup>122</sup> which was the first federal legislation that comprehensively regulated the mining industry.<sup>123</sup> SMCRA produced only marginal gains in the region—President Jimmy Carter himself characterized SMCRA as a “watered down” act.<sup>124</sup> Nevertheless, that Appalachian resistance helped catalyze change demonstrates the potential potency of grassroots-centered reform approaches in Appalachia.<sup>125</sup>

From the 1990s onward, MTR-focused Appalachian activism (in addition to, in more recent years, anti-natural gas activism) has been exceedingly prominent in the region.<sup>126</sup> Robust grassroots organizations—both older groups and newer (i.e., the latter being direct descendants of the pioneering AGSLP, SOCM, etc.)—have been active, including Kentuckians for the Commonwealth (“KFTC”), the Ohio Valley Environmental Coalition (“OVEC”), the Highlander Research and Education Center, and the Appalachian Alliance.<sup>127</sup> Such groups have engaged in diverse resistance practices, including continued law reform efforts; a major tactical development has involved a newfound emphasis on federal litigation.<sup>128</sup> Notable victories have been achieved through this legal dimension. One prominent example includes *Southern Appalachian Mountain Stewards v. A & G Coal Corp.*,<sup>129</sup> wherein the Fourth Circuit held that a mining operator violated the Clean Water Act in the context of pollutant discharges.<sup>130</sup>

Appalachia, therefore, has a long, storied, and impactful tradition of grassroots activism, which has generated tangible reform in the region. However, the myth of Appalachia has largely obscured this tradition, in focusing on a homogenized, conservative Appalachia that is wholly unconcerned with progressive politics.

<sup>121</sup> BARRY, *supra* note 41, at 68.

<sup>122</sup> 30 U.S.C. §§ 1201–1328 (2012).

<sup>123</sup> PERDUE & MCCARTY, *supra* note 119, at 41–43.

<sup>124</sup> *Id.* at 42.

<sup>125</sup> McGinley, *supra* note 89, at 54.

<sup>126</sup> PERDUE & MCCARTY, *supra* note 119, at 41–42.

<sup>127</sup> *Id.* at 46.

<sup>128</sup> *Id.* at 54.

<sup>129</sup> 758 F.3d 560, 569 (2014).

<sup>130</sup> *See id.*

*D. Interconnections with U.S. and World*

The final myth discussed here involves Appalachia's perceived isolation from the broader nation and world. This myth's core relates to the proposition that Appalachia—as “a land that time forgot”—is essentially a backwards, insular region.<sup>131</sup> However, Appalachia, from its inception, has had robust out-linkages that extended worldwide.<sup>132</sup>

From the outset of the Euro-conquest of Appalachia, the region was entwined economically and culturally with global capitalism. Sociology professor Wilma Dunaway has chronicled this phenomenon, noting that soon after Europeans penetrated Appalachia, it rapidly emerged as “a peripheral region of an emergent world capitalist system.”<sup>133</sup> By the time of the full-fledged Euro-colonization, Appalachia was, in fact, “born capitalist” through settlers who supplemented yeoman farming with market-based activities.<sup>134</sup> Thereafter, Appalachia would continuously be incorporated “into the capitalist world system” through “nearly 150 years of societal, politico-economic, and cultural change.”<sup>135</sup>

As discussed above, Appalachia's late 19th-century period of rapid industrialization constituted a watershed moment in the region's historical trajectory: from that point onwards, Appalachia would become “a peripheral zone that is situated in modern times within the geographical boundaries of one of the core countries of the world [capitalist] system.”<sup>136</sup> Accordingly, Appalachia would become—and remain—a marginalized natural resource sacrifice zone, thus being beset by countless forms of interlocking structural subordination.<sup>137</sup> Appalachia would, in turn, fuel the U.S. Industrial Revolution, both World Wars, and the rapid, fossil-fuel-driven economic growth that occurred throughout the 20th century and beyond.<sup>138</sup> In return, Appalachia would receive comprehensive environmental, economic, and cultural devastation—and the attendant national scorn that the myth of Appalachia engenders.

Appalachia, long a *singularly* important contributor to the U.S. fossil-fuel-driven economic growth, is thus intrinsically and inextricably interlinked with the broader U.S. and global economies. This has hardly been to

<sup>131</sup> See Eller, *supra* note 1, at ix.

<sup>132</sup> See DUNAWAY, *supra* note 53, at 34.

<sup>133</sup> Ronald L. Lewis, *Beyond Isolation and Homogeneity: Diversity and the History of Appalachia*, in BACK TALK FROM APPALACHIA: CONFRONTING STEREOTYPES 23 (Dwight B. Billings et al. eds., 2013) (summarizing Dunaway's core argument).

<sup>134</sup> DUNAWAY, *supra* note 53, at 16 (emphasis omitted).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 17.

<sup>137</sup> See BARRY, *supra* note 41, at 150.

<sup>138</sup> Geoffrey L. Buckley, *History of Coal Mining in Appalachia*, in CONCISE ENCYCLOPEDIA OF HISTORY OF ENERGY 18 (Cutler J. Cleveland ed., 2009).

Appalachia's benefit, however, as the "sacrifice zone" and "resource curse" explanatory models illuminate.<sup>139</sup> Moreover, at the global scale, a related tragedy of these fossil-fuel-based interlinkages emanates from Appalachian coal's role in the sustained ecological crisis of the Anthropocene.<sup>140</sup> Coal-fired power plants have constituted important factors in global climate change via carbon-based greenhouse gas emissions.<sup>141</sup> Thus, the comprehensive tragedy of Appalachia has produced severe environmental impacts that extend well beyond Appalachia's borders.

The myth of Appalachia has also veiled the often-problematic reality that the region, especially since the mid-century point, has made rapid strides in further integrating with liberal capitalism's status quo. Social, cultural, and economic strides were facilitated by platforms like the War on Poverty and the ARC—through their programmatic focus on infrastructure development and human capital-building.<sup>142</sup> As Eller details in *Uneven Ground: Appalachia Since 1945*, "[s]ince World War II . . . Appalachia has undergone dramatic change[s]" through such development modes as retail superstores, health care services, and physical infrastructure like superhighways.<sup>143</sup> In this manner, Appalachia has certainly become more integrated into the late liberal capitalist mainstream.

For contemporary Appalachia, the region's problematic interconnections with the broader U.S. and world are perhaps best understood through an analysis of the neoliberalism paradigm. Indeed, the overarching turn towards neoliberalism in U.S. law, policy, and culture has operated in tandem with the Appalachian myth to exacerbate the exploitative status quo in the region.<sup>144</sup> Despite its critical failures, the War on Poverty was part and parcel of the Keynesian-liberal welfare model; in fact, the War on Poverty has been described as the "high point in the realization of the welfare state in the United States."<sup>145</sup> As such, the War on Poverty was a humane, well-intentioned reformist approach (even if critically flawed due to its inherent incrementalist scope).<sup>146</sup>

Neoliberalism, on the other hand, constitutes a direct repudiation of welfare liberalism. Neoliberalism is best characterized as a quasi-revival of classical liberalism, through its focus on government deregulation, market-based solutions, and its insidious promotion of large capital interests at the expense of

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<sup>139</sup> See discussion *infra* Sections I.B, II.B.

<sup>140</sup> See Joseph Stromberg, *The Age of Humans: Living in the Anthropocene*, SMITHSONIAN MAG. (Jan. 2013), <http://www.smithsonianmag.com/science-nature/what-is-the-anthropocene-and-are-we-in-it-164801414/#TGtrUL8VuzKRp3oH.99>.

<sup>141</sup> See BARRY, *supra* note 41, at 127.

<sup>142</sup> ELLER, *supra* note 25, at 2.

<sup>143</sup> *Id.* at 4–5.

<sup>144</sup> See, e.g., MCNEIL, *supra* note 39, at 10.

<sup>145</sup> DRAKE, *supra* note 12, at 179.

<sup>146</sup> ELLER, *supra* note 25, at 5–7.

the greater citizenry.<sup>147</sup> Neoliberal globalization has also involved further market liberalization worldwide, facilitating free trade and the rapid movement of capital.<sup>148</sup>

Since the 1980s, neoliberalism—as interwoven with the Appalachian myth—has wrought disastrous outcomes in Appalachia.<sup>149</sup> Neoliberalism has broadly worked to “unravel organizational solidarities, visionary alternatives to injustice, and progressive social policies.”<sup>150</sup> In Appalachia specifically, this has been demonstrated by the decimation of labor forces (e.g., the United Mine Workers of America), by the comprehensive deregulation (and enhanced market-orientation) of environmental law and policy, and by the deterioration (and at times, outright dismantling) of the public programs and social safety net programs upon which many Appalachians depend.<sup>151</sup> Moreover, the myth of Appalachia has veiled many of these ill effects, as the region was perceived as “culturally backwards” and “underdeveloped” to begin with.<sup>152</sup> The myth has additionally served to misidentify Appalachians citizens themselves as the root cause for neoliberalism’s ill effects (and to even *morally justify* those ill effects).<sup>153</sup> This is because a “deviant” population prone to “laziness, violence, poverty, and addiction” would,<sup>154</sup> of course, cultivate sub-optimal social, cultural, and civic institutions—and would thus ultimately deserve<sup>155</sup> the poor material conditions, low educational attainment, widespread public health problems, etc., that neoliberalism has engendered.<sup>156</sup>

Contrary to the Appalachian myth, then, Appalachia has long been linked with the broader world. Such entwinements, however, are exceedingly complex, and thus a considered unpacking of such phenomena is required.

<sup>147</sup> See Grewal & Purdy, *supra* note 39, at 10–12.

<sup>148</sup> HENRY J. RUTZ & EROL M. BALKAN, REPRODUCING CLASS: EDUCATION, NEOLIBERALISM, AND THE RISE OF THE NEW MIDDLE CLASS IN ISTANBUL 18 (2013).

<sup>149</sup> See, e.g., McNEIL, *supra* note 39, at 10; Schumann, *supra* note 45, at 5.

<sup>150</sup> Fisher & Smith, *supra* note 117, at 5.

<sup>151</sup> See generally Schumann, *supra* note 45, at 5–9. For a broader critique of neoliberalism in the labor context, see generally Anne Marie Lofaso, *Workers’ Rights as Natural Human Rights*, 71 U. MIAMI L. REV. 565 (2017) and Anne Marie Lofaso, *Toward a Foundational Theory of Workers’ Rights: The Autonomous Dignified Worker*, 76 UMKC L. REV. 1 (2007).

<sup>152</sup> ELLER, *supra* note 25, at ix.

<sup>153</sup> See Schumann, *supra* note 45, at 7–8.

<sup>154</sup> Catte, *supra* note 46.

<sup>155</sup> This concept is known as the deserving and undeserving poor, a distinction made by the Old Poor Laws in post-Reformation England. See, e.g., Poor Relief Act of 1601, 43 Eliz I ch. 2. These laws codified the sentiment that only certain poor individuals are worthy of our charity—those falling on hard times through no fault of their own. See *id.* All other poor individuals are poor because they are idle, lazy, and refusing to work. See *id.*

<sup>156</sup> Schumann, *supra* note 45, at 6.

#### IV. BEYOND THE MYTH: TRANSFORMATIVE SOCIO-LEGAL CHANGE IN APPALACHIA

##### A. *Systemic Reformations Beyond Law Reform*

Transformative change in Appalachia must first involve a critical-theory-informed approach that extends beyond mere incremental law reform. Environmental Law Professor Michael M’Gonigle and research scholar Louise Takeda summarize such a critical approach in arguing that systemic reform requires not just “another set of ‘legal reforms’ for social justice,” but rather “potentially foundational ‘constitutive re-formations’” that “address the underlying logics of dominating systems [and] underlying system dynamics.”<sup>157</sup>

In contrast to an incrementalist approach, transformative change is fundamentally concerned with re-forming underlying (and often more insidious) structural forces—i.e., the “*constitutive* social systems and dynamics that exist *as law* even though they exist above or behind the ‘legal law’ as it has been narrowly conceived.”<sup>158</sup> The focus then is on a “new, critical, and theoretically-informed landscape beyond intra-systemic ‘reform’ and toward larger ‘re-forms.’”<sup>159</sup> Based on this critical approach, “law” is conceptualized not only as black letter law—but also as those underlying structural forces (i.e., social, cultural, economic, etc.) that have law-like functions under late liberalism. And systemic reformations entail collectively *transforming* these structural forces towards a more egalitarian, just, and earth-sustaining paradigm.

At first blush, such a “turning away from reform” might appear paradoxical from the vantage point of those pursuing progressive socio-legal change;<sup>160</sup> however, the core flaw in an explicitly incrementalist law reform approach is that “[u]nder a vigorous neoliberalism,” those “reforms [that] are permitted increasingly only reinforce the contradictions that pervade their implementation.”<sup>161</sup> Accordingly, once incremental change is formalized, through enhanced rights protections, for example, not only is that change often neutralized (or outright perverted) via bad-faith implementation, but also the very act of legal formalization often *obscures* that failure. This is because once law reform is “achieved” on a specific issue, that issue then typically fades from public consciousness—whether or not that reform was substantively impactful.<sup>162</sup> Thus, intra-systemic law reform too often results, rather

<sup>157</sup> M’Gonigle & Takeda, *supra* note 4, at 1064 n.243.

<sup>158</sup> *Id.* at 1110.

<sup>159</sup> *Id.* at 1113.

<sup>160</sup> *Id.* at 1111.

<sup>161</sup> *Id.*

<sup>162</sup> Geoffrey W.G. Leane, *Environmental Law’s Liberal Roots: Not a Green Paradigm*, in GREEN PARADIGMS AND THE LAW 13 (Nicole Rogers ed., 1998) (stating that “[t]he substantive inequities of social reality are not addressed by the merely formal equalities” of liberal law).

paradoxically, in a legal regime that appears *more* just, but it actually produces a substantive social reality that is *less* just due to ineffective operationalization.

SMCRA constitutes a prime example of the failure of intra-systemic law reform approaches in Appalachia—and the corresponding need for true transformative change. As discussed above, SMCRA did, in the short-term, mitigate some mining-produced negative environmental impacts,<sup>163</sup> but during the legislative process, coal operators secured a regulatory loophole in SMCRA that directly contributed to the rise of mountaintop removal.<sup>164</sup> In this manner, inadequately designed—and perversely implemented—*intra-systemic* law reform only served, in the end, to *accelerate* and *intensify* the ecological destruction of Appalachia through MTR. Thus, what Appalachian “reforms [were] permitted” only reinforced the region’s exploitative status quo.<sup>165</sup>

In stark contrast to failed, *intra-systemic* law reform (as exemplified by SCMRA), transformative reformations in Appalachia should extend beyond the law *per se* in targeting the “*constitutive* social systems and dynamics that exist *as law* even though they exist above or behind the ‘legal law.’”<sup>166</sup> Fundamentally for Appalachia, this should involve transcending the fossil-fuel hegemony in its entirety, including not just the industry itself, but also, by necessity, its complex intertwinements with Appalachia’s social, cultural, political, and economic institutions; those structural forces have long operated in tandem to perpetuate the exploitation of the region.<sup>167</sup> It is these complex “social systems that . . . exist *as law*” in Appalachia—and thus it is these structural forces, first and foremost, that ought to be targeted for transformative change.<sup>168</sup>

### B. *Grassroots-Centered Modes of Systemic Reformations*

Notably, the process of achieving such transformative change is of equal, if not greater, importance than its overarching substance. In seeking a “new set of . . . processes, alliances, and strategies,”<sup>169</sup> transformative change should be pursued, first, through radically democratic means.<sup>170</sup> That is, a bottom up,

<sup>163</sup> McGinley, *supra* note 89, at 54.

<sup>164</sup> PERDUE & MCCARTY, *supra* note 119, at 41–42.

<sup>165</sup> M’Gonigle & Takeda, *supra* note 4, at 1111.

<sup>166</sup> *Id.* at 1110.

<sup>167</sup> ELLER, *supra* note 25, at 63.

<sup>168</sup> Note that a comprehensive treatment on the substantive details of such transformative Appalachian socio-legal change is beyond the scope of this Article. This subject will be covered in further detail in Nicholas Stump’s forthcoming book with the West Virginia University Press, tentatively entitled APPALACHIA RECONSTRUCTED: LAW, THE ENVIRONMENT, AND SYSTEMIC REGIONAL REFORM.

<sup>169</sup> M’Gonigle & Takeda, *supra* note 4, at 1065 n.243.

<sup>170</sup> Duncan Bell, *To Act Otherwise: Agonistic Republicanism and Global Citizenship*, in ON GLOBAL CITIZENSHIP: JAMES TULLY IN DIALOGUE 185–87 (Bert van den Brink et al. eds., 2014).



grassroots approach to systemic reformations should be cultivated in Appalachia. This grassroots approach not only maximizes *substantive effectiveness*—as Appalachians themselves are best-equipped to effectuate regional change (which, by necessity, will vary by sub-region, community, locality, etc.)<sup>171</sup>—but also is procedurally *just*, because from a participatory-democratic standpoint, self-determination is of paramount importance when pursuing socio-legal change.<sup>172</sup> That Appalachia already boasts a long tradition of progressive activism, through the important work of labor unions, AGSLP, SOCM, KFTC, and OVEC, among others, further demonstrates the efficacy of a grassroots-centered approach in Appalachia.<sup>173</sup>

Transformative change in Appalachia should also be steeped in critical intersectionality. That is, in pursuing modes of systemic regional reformations, the concept of identifying and addressing “compound oppressions” is paramount.<sup>174</sup> Because late liberalism creates a “dynamic of oppression [that] is similar (though not identical or interchangeable) among oppressed peoples,”<sup>175</sup> and because this dynamic also drives environmental exploitation, transformative change should thus involve “a multi-layered analysis . . . in the context of many kinds of discrimination [including environmental exploitation].”<sup>176</sup> Such an approach, popularized by ecofeminism and other theoretical schools, “simultaneously us[es] the common goals of saving nature and ending oppression” to effectuate transformative change.<sup>177</sup>

Many Appalachian grassroots organizations have already cultivated an explicitly intersectional approach: “The region can boast of a long history of inclusive progressive politics, such as the Highlander Education and Research Center in New Market, Tennessee, Kentuckians for the Commonwealth, and several environmental movements organized around overcoming racial, class, and gender barriers to participation.”<sup>178</sup> Thus, such pre-existing grassroots

<sup>171</sup> Betsy Taylor et al., *Economic Transition in Central Appalachia: Knowledge/Power Mapping for Bottom-Up Policy*, 36 PRACTICING ANTHROPOLOGY, no. 4, 2014, at 13–14.

<sup>172</sup> ELLER, *supra* note 25, at 171–72; *see also* Anne Marie Lofaso, *In Defense of Public-Sector Unions*, 28 HOFSTRA LAB. & EMP. L.J. 301 (2011).

<sup>173</sup> PERDUE & MCCARTY, *supra* note 119, at 40, 45–46. The recent and remarkable teachers’ strike in West Virginia—which received international attention—aptly demonstrates the continued potency of grassroots movements in Appalachia. *See* Sarah Jones, *The West Virginia Teachers’ Strike Takes Aim at Coal and Gas*, NEW REPUBLIC (Mar. 27, 2018), <https://newrepublic.com/article/147266/west-virginia-teachers-strike-takes-aim-coal-gas>.

<sup>174</sup> Robert R. M. Verchick, *In a Greener Voice: Feminist Theory and Environmental Justice*, 19 HARV. WOMEN’S L.J. 23, 58 (1996).

<sup>175</sup> Ellen O’Loughlin, *Questioning Sour Grapes: Ecofeminism and the United Farm Workers Grape Boycott*, in ECOFEMINISM: WOMEN, ANIMALS, NATURE 148 (Greta Gaard ed., 2010).

<sup>176</sup> Verchick, *supra* note 174, at 58.

<sup>177</sup> *Id.* at 60.

<sup>178</sup> *See* Schumann, *supra* note 45, at 8.

organizations can serve as important exemplars in seeking an expansion of intersectionality-steeped systemic reform approaches.

As a final point, Appalachian transformative reform *must* be linked with broader regional, national, and international work. As the deconstruction of the Appalachian myth illustrates, Appalachia is not—and never has been—isolated from outside forces.<sup>179</sup> The coming of globalized neoliberalism, in particular, demonstrates that Appalachia’s issues are, more than ever, vitally interlinked with the greater world.<sup>180</sup> Therefore, while a local-centered, grassroots approach should be adopted, these efforts must simultaneously be interwoven with broader sites of reform. As Stephen L. Fisher writes in the seminal *Fighting Back in Appalachia: Traditions of Resistance and Change*: “Linking local fights to national and global struggles is a difficult and slow process, but it is the only approach that has a chance of bringing about fundamental change in Appalachia.”<sup>181</sup>

## V. CONCLUSION

For more than a century, the myth of Appalachia has facilitated the insidious subordination of the Appalachian citizenry and the profound exploitation of the region’s natural resources. The preliminary project of this Article has been to join in the collective effort of identifying and disrupting the predominant, hegemonic Appalachian myths—and to examine precisely how law and policies have operationalized such myths to effectuate the long-term subordination of the Appalachian region. Unfortunately, the Appalachian myth characterizes the region as merely lagging behind mainstream U.S., ultimately obscuring the need for transformative change by suggesting that incremental law reform alone will solve the region’s ills. However, systemic reformations are required in the region—beyond the endemic fossil-fuel hegemony—and such reform approaches should be steeped in grassroots action (of a radical democratic nature) and critical intersectionality. Such reform approaches also should be linked with comparable struggles at broader regional, national, and international levels. The project of de-essentializing Appalachia and of searching for ideal modes of transformative change is a massive one, and thus much additional work—of an inter- and multi-disciplinary nature, and which is highly dependent upon a diverse, multi-vocal methodology—is required for achieving a just and fundamentally earth-sustaining future in Appalachia.

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<sup>179</sup> See DUNAWAY, *supra* note 53, at 34; see also Schumann, *supra* note 45, at 5.

<sup>180</sup> See Schumann, *supra* note 45, at 5.

<sup>181</sup> Stephen L. Fisher, *Introduction* to *FIGHTING BACK IN APPALACHIA: TRADITIONS OF RESISTANCE AND CHANGE* 12 (Stephen L. Fisher ed., 1993).

