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in Canada, by Susan C. Boyd, Dorothy E. Chunn and Robert
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Book Review: Toxic Criminology Environment, Law and the State in Canada, by
Susan C. Boyd, Dorothy E. Chunn and Robert Menzies (eds)

TOXIC CRIMINOLOGY: ENVIRONMENT, LAW AND THE STATE IN CANADA EDITED BY SUSAN C. BOYD, DOROTHY E. CHUNN & ROBERT MENZIES (HALIFAX: FERNWOOD PUBLISHING, 2002) 127 pages.¹

BY KRISTI ROSS²

Because of an historical reluctance to examine global corporate and state crime and to analyse underlying patterns of environmental destruction and human rights violations, criminologists have contributed little to informed public discussion and debate about the potentially terminal impact of environmental harms on the planet. Such discussion is urgently needed now to mobilize populations for struggles against “environmental suicide.”³

A dramatic beginning for a book that is essentially a call-to-arms for critical criminologists, social justice activists, lawyers, and academics interested in environmental issues and their interplay with class, race, gender, and power. As a call-to-arms, this book addresses the need for inter-disciplinary work in the field of environmental crime and provides a starting point for new discourses to emerge. Appropriately, this edited collection of essays is drawn from a wide range of disciplines: law, policy

¹⁸ Eric Reguly, “End the board games: Air Canada needs new directors” *The Globe and Mail* (26 April 2003) (WL).

¹ [*Toxic Criminology*].

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³ Dorothy E. Chunn, Susan C. Boyd & Robert Menzies, “We all live in Bhopal: Criminology Discovers Environmental Crime” in *Toxic Criminology*, *supra* note 1, 7 at 8.

studies, and the work of activists, politicians, and legal practitioners who probe environmental harm, wrongdoing, and resistance from a variety of theoretical angles. The editors note that they consider *Toxic Criminology* to be “a contribution to the growing field of writing about social and environmental justice that seeks to challenge and stretch the boundaries of criminology.”⁴ Corky Evans, one of the book’s contributors, succinctly comments, “[T]his book is about the environmental effects of power abuse.”⁵

In the book’s introduction, the editors lay-out the framework of the compilation and articulate the path they hope critical criminology and environmental law will follow in the future. The objectives of this book place it firmly within the socio-legal tradition: it builds upon the foundation established by environmental justice activists, such as Lois Gibbs, who led a successful campaign to relocate the residents of Love Canal suffering from industrial toxic contamination;⁶ the work of political scientists;⁷ and legal scholars.⁸

The book is organized to take the reader from more general

⁴ *Ibid.* at 20.

⁵ “Capital, Environment and the Legacy of the Left” in *Toxic Criminology*, supra note 1, 59 at 61.

⁶ See for example Lois Marie Gibbs, “Foreword” in Richard Hofrichter, ed., *Toxic Struggles: The Theory and Practice of Environmental Justice* (Philadelphia: New Society Publishers, 1993) ix; Lois Marie Gibbs & The Citizen’s Clearinghouse for Hazardous Waste, *Dying from Dioxin: A Citizen’s Guide to Reclaiming Our Health and Rebuilding Democracy* (Boston: South End Press, 1995); Lois Gibbs, *Love Canal: The Story Continues ...*, rev. ed. (Gabriola Island: New Society Publishers, 1998).

⁷ See for example Robert Paehlke, “Environmentalism in One Country: Canadian Environmental Policy in an Era of Globalization” (2000) 28 *Policy Studies Journal* 160; Robert Paehlke, “Environmental Harm and Corporate Crime” in Frank Pearce & Laureen Snider, eds., *Corporate Crime: Contemporary Debates* (Toronto: University of Toronto Press, 1995) 305; Robert Paehlke & Douglas Torgerson, *Managing Leviathan: Environmental Politics and the Administrative State*, (Peterborough: Broadview Press, 1990); Frank Fischer, *Citizens, Experts and the Environment: The Politics of Local Knowledge* (Durham: Duke University Press, 2000); John Dryzek, *The Politics of the Earth: Environmental Discourses* (New York: Oxford University Press, 1997); Richard Hofrichter, ed., *Reclaiming the Environmental Debate: the Politics of Health in a Toxic Culture* (Cambridge, Mass.: MIT Press, 2000).

⁸ See for example Bruce H. Wildsmith, “Of Herbicides and Humankind: Palmer’s Common Law Lessons” (1986) 24 *Osgoode Hall L.J.* 161; Paul Stanton Kibel, *The Earth On Trial: Environmental Law on the International Stage* (New York: Routledge, 1999); William A. Shutkin, “Realizing the Promise of the New Environmental Law” (1999) 33:3 *New Eng. L. Rev.* 691; Benjamin J. Richardson, “Environmental Law in Postcolonial Societies: Straddling the Local - Global Institutional Spectrum” (2000) 11:1 *Colo. J. Int’l Envtl. L. & Pol’y* 1; John Borrows, “Living between Water and Rocks: First Nations, Environmental Planning and Democracy” (1997) 47:4 *U.T.L.J.* 417; Elaine L. Hughes & David Iyalomhe, “Substantive Environmental Rights in Canada” (1998-1999) 30 *Ottawa L. Rev.* 229.

theoretical concepts to specific examples of environmental and social justice problems. The first three chapters take a political economy perspective on environmental issues, law, and criminology. Chapter four focuses on the resistance of First Nations communities to imposed methods of natural resource management. The final two chapters are case studies of two environmental disasters: the Walkerton water contamination tragedy and the poisoned soil of the Sydney Tar Ponds in Cape Breton. Both of these case studies pull together many of the themes and issues presented in rest of the book.

The first chapter by Melody Hessing, entitled "Economic Globalization and Canadian Environmental Restructuring: The Mill(ennium)-End Sale,"⁹ looks at how the trend towards globalization, economic restructuring, corporatism, resource exploitation, and the privatization of resources has affected the ecological integrity of natural environments in Canada and around the world. According to Hessing:

Canada's integration in the global economy has been accompanied by accelerating environmental costs, which have been largely unrecognized and which may be irreparable In globalization, Canada risks the further homogenization of not only its cultural, but also its biophysical landscape, to pulp plantations, fish farms and energy reservoirs.¹⁰

New solutions are desperately needed to remedy this problem. For Hessing, these include recognizing our unique natural legacy and its close connection to our collective economic well-being as an impetus to "preserve still-wild spaces," while concomitantly diversifying our economies to move beyond resource extraction to more ecologically benign industries.

Ted Schrecker's piece, titled "Place, Class and the Privatized Environment," links environmental degradation to the rise of neo-liberal capitalism and its attendant trend toward environmental deregulation.¹¹ According to Schrecker, the environment and socio-economic power are inextricably intertwined. As he puts it, "[p]lace matters. It is one hard, inescapable, physical element of the position from which each of us experiences the environment—a position also defined by other material variables such as class, race and gender."¹² Further, it is Schrecker's view that the relationships among place, class, and environment will become stronger and more significant in the future.

In this chapter, Schrecker maps out two scenarios for the future of

⁹ In *Toxic Criminology*, *supra* note 1, 25.

¹⁰ *Ibid.* at 42.

¹¹ In *Toxic Criminology*, *supra* note 1, 45 at 49.

¹² *Ibid.* at 49.

environmental policy. The first is the consumer choice model that views the environment as a matter of consumer preference, rather than of citizen engagement, where the preferred policy approach is tax cuts and deregulation to enable individual households to make their own tradeoffs between environmental quality and other amenities. In other words, the environment one gets is the environment one can afford. This model is contrasted with the social investment scenario where public policy is directed towards investment in human capital to encourage an individualistic and competitive society of responsible risk takers. In Schrecker's view, these two scenarios paint a "chilling preview of the environmental future" where both approaches "converge on a policy of selective abandonment in which the vulnerabilities associated with class and place magnify one another."¹³

Corkey Evans, a former Cabinet Minister in British Columbia's NDP government, is the author of "Capital, Environment and the Legacy of the Left."¹⁴ He writes about how the environmental movement has failed because of its inability to take advantage of "an opportunity for global organizing," instead focusing its energy on making its organizers' "personal space serene" by following an agenda toward "sustainability in one culture, one province, one community."¹⁵ He notes that while "the environmental movement and the Left, in general, have been unable or unwilling to develop a post-GATT, post-FTA, post-globalism analysis or coalition, capital has been able to use the microchip to link its interests around the world."¹⁶ Hence, the solution to the environmental crisis lies in coalition building between those in the environmental movement, the Left, and those engaged with class politics. According to Evans, it "is the only rational response to power as it is presently arrayed against us."¹⁷

In "Aboriginal Resistance to the Abuse of their Cultural Resources: The struggle for Trees and Water,"¹⁸ Stuart Rush, who was lead counsel in *Delgamuukw v. The Queen*,¹⁹ focuses on the legal struggle over forest and water resources in British Columbia and Alberta and the effect of government policy on Aboriginal treaty rights. Rush goes through the long

¹³ *Ibid.* at 56.

¹⁴ *Supra* note 5.

¹⁵ *Ibid.* at 61-62.

¹⁶ *Ibid.* at 63.

¹⁷ *Ibid.* at 65.

¹⁸ In *Toxic Criminology*, *supra* note 1, 67.

¹⁹ [1997] 3 S.C.R. 1010 [*Delgamuukw*].

history of jurisprudence regarding the right of First Nations to use forest resources in B.C., culminating with an analysis of the *Delgamuukw* case and post-*Delgamuukw* case law. His inquiry focuses on the landscape between law and politics:

Aboriginal nations can blame the courts for exercising their discretion in favour of economic enterprise, or they can point to rigid tests in injunction law But ultimately the responsibility lies at the feet of the province which made the initial decision to grant a permit to allow logging and clear cutting without accommodating or meaningfully consulting about Aboriginal title.²⁰

In both the resources analyzed, Rush comes to the same conclusion: the provinces persist in their position that they have no duty to consult, accommodate, or negotiate until aboriginal title is proven in court. This places Aboriginal Nations in the difficult position of pursuing litigation over title because of the government's refusal to engage in a political process, while this is the very sort of litigation that the Supreme Court of Canada hoped to discourage in *Delgamuukw*. Rush describes effectively the abuses of power by governments that have led to this conundrum and the concomitant reliance on legal action when political strategies may be more effective. His analysis adds to the law and politics literature, as it points to the necessity of using the judicial system when governments refuse to protect rights through the political process.²¹

Environmental activist and Executive Director of the Sierra Club of Canada, Elizabeth May, wrote "Frederick Street Revisited"²² about the Sydney Tar Ponds, Canada's most highly contaminated toxic waste site, and the health impairments and political struggle of the residents who live nearby. This chapter is notable as it adds to the limited Canadian literature on the environmental justice movement.²³ The state sponsored crime described

²⁰ *Supra* note 18 at 75.

²¹ See for example Michael Mandel, *The Charter of Rights and the Legalization of Politics in Canada*. (Toronto: Thompson Educational, 1994); F.L. Morton & Rainer Knopff, *The Charter Revolution and the Court Party* (Peterborough: Broadview Press, 2000); Greene et al., *Final Appeal: Decision-Making in Canadian Courts of Appeal* (Toronto: J. Lorimer, 1998); Christopher Tollefson, "Public Participation and Judicial Review" in Elaine Lois Hughes, Alastair R. Lucas & William A. Tilleman eds., *Environmental Law and Policy*, 2nd ed. (Toronto: Emond Montgomery Publications, 1998) 235.

²² In *Toxic Criminology*, *supra* note 1, 87.

²³ See also the book co-authored by Elizabeth May on the same subject: Maude Barlow & Elizabeth May, *Frederick Street: Life and Death on Canada's Love Canal*, (Toronto: Harper Collins, 2000). American literature on the environmental justice movement is quite extensive; see for example: Richard Hofrichter, ed., *Toxic Struggles: The Theory and Practice of Environmental Justice* (Philadelphia: New Society Publisher, 1993); Eddie J. Girdner & Jack Smith, *Killing Me Softly: Toxic Waste, Corporate*

by May is chilling: when the government took over the production and mining of coal in Cape Breton, the pollution levels sky-rocketed and the government refused to install pollution controls, protect workers, or pay workers compensation claims. Indeed, at the height of operations, over 330 tonnes of toxic waste were dumped every day.²⁴ It is this toxic legacy that the residents of Sydney are still dealing with today. May describes the community activism that is occurring in an attempt to force the provincial and federal governments to clean-up the toxic waste dumped by their predecessors.

Included in her discussion is her own activism—May went on a hunger strike to demand that children living near the Tar Ponds be moved to a safe and uncontaminated location. In spite of the myriad of health impairments reported by area residents and the press coverage garnered by May, little has changed. May comments: “[t]he tragedy—or farce—of government inaction drags on. Crimes at the hands of government agencies and Crown Corporations go unpunished How can wealthy, successful and civilized Canada allow this nightmare to continue?”²⁵ This question is equally applicable to each of the examples of government abuse of power and environmental crime discussed throughout this collection.

Randy Christensen, a lawyer with the Sierra Legal Defence Fund in Vancouver, is the author of the book’s last chapter entitled, “Canada’s Drinking Problem: Walkerton, Water Contamination and Public Policy.”²⁶ Christensen recounts the political, legal, and economic factors that led to the contamination of the water supply of Walkerton, Ontario, and resulted in the illness of 2,000 residents and the death of 7 people in May 2000. Christensen notes that, “like a complex mosaic, Walkerton lends itself to different interpretations.”²⁷ Christensen discusses the deregulation and the

Profit, and the Struggle for Environmental Justice, (New York: Monthly Review Press, 2002); Clifford Rechtschaffen & Eileen Gauna, *Environmental Justice: Law, Policy, and Regulation* (Durham: Carolina Academic Press, 2002); Laura Westra & Bill E. Lawson, eds., *Faces of Environmental Racism: Confronting Issues of Global Justice* (Lanham: Rowman & Littlefield, 2001); R.J. Lazarus, “Pursuing ‘Environmental Justice’: The Distributional Effects of Environmental Protection” (1993) 87 N. W. U.L. Rev. 787; William A. Shutkin & Charles P. Lord, “Environmental Law, Environmental Justice, and Democracy” (1993-1994) 96 W. Va. L. Rev. 1117. Canadian academic commentary is much more limited; however, some notable works in the area are: Richard D. Lindgren, *Ontario’s Environmental Bill of Rights: Enhancing Access to Environmental Justice* (Toronto: Canadian Environmental Law Association, 1992); Thomas H. Fletcher, *From Love Canal to Environmental Justice: the Politics of Hazardous Waste on the Canada-U.S. Border* (Peterborough: Broadview Press, 2003).

²⁴ *Supra* note 22 at 90.

²⁵ *Ibid.* at 96.

²⁶ In *Toxic Criminology*, *supra* note 1, 97.

²⁷ *Ibid.* at 111.

downloading of the water monitoring activities in the Province of Ontario in depth. In Christensen's opinion, Walkerton stands as a warning against compromising the government's ability to monitor public health and environmental issues. He argues that what we should learn from the tragedy is how we can improve the system to protect public health and that we must force future governments to take responsibility for their policy choices.

The book is not long, it totals only 111 pages—however, its form serves its function. This collection of essays was not intended to be a treatise on environmental law or criminology but rather to spark interest and encourage debate in the “new” field of toxic criminology. The editors have achieved this admirably by amassing a series of timely essays from contributors with different stories to tell the reader about the many faces of toxic criminology. Each essay identifies problems which involve environmental harm and abuse of power, and many contributors offer strategies to address these problems. However, all of the chapters identify the need for further inter-disciplinary research and activism to rectify the power imbalances at the root of environmental degradation and toxic crime. It was the editor's hope to “throw up a challenge for Canadian criminologists to intensify their engagement over the coming years with the pervasive phenomenon of environmental crime.”²⁸ This book makes an articulate rallying cry for a new kind of scholarship, it is my hope that other academics take up this challenge.

²⁸ *Supra* note 3 at 23.