

**SEARCHING WEST VIRGINIA FOR A DEMOCRATIC RESPONSE TO
MOUNTAINTOP REMOVAL**

By Robert R. Darrow

Thesis submitted to the faculty of the Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

in

Political Science

Timothy W. Luke, Chair

Chad D. Lavin

Joseph C. Pitt

May 5, 2010

Blacksburg, Virginia

Keywords: Mountaintop Removal, West Virginia, Surface Coal Mining, Pragmatism,
Ideology and Democratic Theory

SEARCHING WEST VIRGINIA FOR A DEMOCRATIC RESPONSE TO MOUNTAINTOP REMOVAL

By Robert R. Darrow

ABSTRACT

Mountaintop removal is an aggressive form of strip mining practiced almost exclusively in Central Appalachia, and since 1977 has been regulated by state and federal laws. Beginning in the late 1990s, considerable controversy erupted in coal mining states like West Virginia, Kentucky and Tennessee over the adverse social and environmental impacts of the practice. The analysis of mountaintop removal presented here is restricted to its effects in West Virginia during roughly the last decade. Relying on theories of democratic practice developed by pragmatic philosophers like John Dewey and G.H. Mead, this work studies the standard practices of state and federal regulatory agencies and elected officials in an effort to determine what, if any, social goods they work to defend. Pragmatic theories of democracy suggest that a government can be considered representative only when it acts on behalf of the public good.

Chapter 1 of this thesis introduces the reader to the practice of mountaintop removal mining in West Virginia. Chapter 2 lays the theoretical groundwork for determining an individual's or institution's values through an analysis of its habitual actions. In chapter 3, I examine the consequences of mountaintop removal for the state of West Virginia, its citizens, and the coal interests that operate within its borders. Chapter 4 is dedicated to an analysis of regulatory responses to the conflicting interests of the various groups affected by the practice. Finally, in Chapter 5, some conclusions are drawn about the extent to which the regulation of mountaintop removal in West Virginia can be considered democratic.

ACKNOWLEDGEMENTS

I owe a debt of gratitude to Tim Luke, Chad Lavin and Joe Pitt of the Virginia Tech political science and philosophy departments. This work could not have been completed without their encouragement, their wise counsel, and their remarkable patience. They have my admiration and my sincere thanks.

Karen Nicholson was extremely helpful in managing this project. I am also grateful to Skip Fuhrman of the Science and Technology Studies program for his support in my pursuit of a political science degree. I need to thank Anna for the hot meals and the cold medicine as I drove myself into the ground completing these pages. Jen Barton and Sam Cook were of great assistance in steering my inquiries. I appreciate their help plugging me in to the activist and scholarly communities. My ability to stay up-to-date on mountaintop removal developments owes much to the tireless work of Ken Ward of the Charleston Gazette, who daily keeps the public informed about the issue, and has done so for more than a decade. My thanks to Kathy Cosco and Tom Wood of the West Virginia Department of Environmental Protection, the entire staff of Coal River Mountain Watch, and members of Climate Ground Zero, all of whom helped me obtain valuable insights into the West Virginia regulatory apparatus. I could have found no better guide to West Virginia politics than Ken Hechler. His memories and wisdom are truly a rich resource, and his lifetime of service to the state and the nation are an inspiration to me.

Lastly, I want to acknowledge my appreciation of Larry Gibson, Judy Bonds and Joe Lovett, both for their help with this project, and for their examples. Whether wrong or right in their cause, they are true citizens of democracy. Henry David Thoreau, Martin Luther King, and John F. Kennedy would admire their courage. To any American who may be reading these words, remember, this country is yours.

TABLE OF CONTENTS

ABSTRACT	ii.
ACKNOWLEDGEMENTS	iii.
1. ANOTHER BATTLE OVER MINING IN THE MOUNTAIN STATE	1
The Disappearing Appalachians	5
West Virginia's Colonial Heritage	11
2. LOCATING VALUES IN SOCIAL ACTION	16
Social Selves and Values	21
The Effects of Power	36
Prospects for Social Change	39
3. THE SOCIAL CONSEQUENCES OF MOUNTAINTOP REMOVAL	45
American Electric Power	48
Yes, Coal	54
Life in the Valley	68
4. THE REGULATORY RESPONSE	76
Carving Up the Regulatory Terrain	78
The DEP Goes to Work	84
Friends of Coal	94
5. A STRUGGLE FOR DEMOCRACY IN THE MOUNTAIN STATE	109
BIBLIOGRAPHY	123

1. ANOTHER BATTLE OVER MINING IN THE MOUNTAIN STATE

West Virginians love their mountains. The undulating network of hilltops and hollows characteristic of central Appalachia is the state's greatest asset, giving its land a rugged natural beauty and its people a distinctive charm. Shielded from the outside world, the close-knit rural communities that have sprung up in pockets between the snaking ridgelines guard their heritage with a fierce pride. But, as many commentators have observed, West Virginia's mountainous terrain has also been its curse, producing social isolation, economic stagnation, and coal. West Virginia history can be read as a series of ongoing struggles for control of the state's rich natural resources — coal foremost among them — punctuated by dramatic, unpredictable and even violent episodes. While a privileged few have reaped the benefits, the average citizen has often found himself on the losing end of these conflicts.

Ken Hechler has witnessed many of those ups and downs during his more than six-decade-long career navigating a political culture as twisted and treacherous as the narrow country roads that wind through the mountains. Hechler is a West Virginia political institution, having served nine consecutive terms in the U.S. Congress and later four four-year terms as West Virginia Secretary of State, ending in 2001. In retirement he has reinvented himself as an environmental activist, campaigning against an aggressive form of strip mining known as mountaintop removal.

At 95, Hechler is slow-moving and hard of hearing, but still as sharp and active as ever. The sun was shining and the trees were in bloom when I met him on the grounds of the West Virginia state capitol complex, nestled along the banks of the Kanawha River in downtown Charleston, in early April. Hechler's mood was almost jubilant, having just received a phone call

from a reporter who informed him that the Environmental Protection Agency was handing down new guidelines which would put the squeeze on mountaintop removal operations.

“This is a major victory for the environmentalists,” he told me. “It was more than I had been expecting.”¹

Things were indeed looking up for the opponents of mountaintop mining. Ken Ward, Jr., a reporter for the Charleston Gazette who has been following the controversy over mountaintop removal since the mid-1990s, was hard at work adding a flurry of posts to his popular blog, *Coal Tattoo*, calling the EPA statement a “bombshell” and a “rigorous mandate” to coal operators and state regulators.²

Ward was busy again just a few days later, but this time the headlines had turned tragic. Right after shift change on the afternoon of April 5th, a massive explosion rocked an underground mine in Montcoal. By the time all of the missing miners were accounted for, the death toll had reached 29, making it the worst mining disaster in the United States since the early 1970s. The Upper Big Branch mine, where the explosion occurred, is owned by Massey Energy, a Richmond, Virginia-based conglomerate that is West Virginia’s second-largest coal producer and a key player in mountaintop removal. Massey has become notorious in southern West Virginia for its poor safety and environmental records and its harsh treatment of workers. The company was now under fire again as it came to light that Upper Big Branch had been written-up for 600 violations of mine safety laws in just the last 18 months, including 50 citations for extreme negligence. The mine had even been cited for dangerous buildup of combustible gases

¹ Ken Hechler in discussion with the author, April 1, 2010.

² Ken Ward, Jr., “Breaking news (NOT an April Fool’s joke): EPA actually does take ‘unprecedented steps’ to reduce damage from mountaintop removal coal mining,” *Coal Tattoo*, 1 April 2010, <http://blogs.wvgazette.com/coaltattoo/2010/04/01/breaking-news-not-an-april-fools-joke-epa-actually-does-take-unprecedented-steps-to-reduce-damage-from-mountaintop-removal-coal-mining>.

like methane, which likely caused the explosion.³ Cries for investigations into the disaster and tougher mine regulations began pouring out of the national news media, which was encamped just a few miles down the road at Marsh Fork Elementary School.

There's not much to distinguish Montcoal from other tiny coal towns — if they can be called towns at all — that line Route 3 in the Coal River valley. Not much is there at all, except for simple homes with front porches that hug the shoulder of the highway. A preparation plant on the grounds of the Performance Coal Company — the Massey subsidiary that runs the complex which includes Upper Big Branch mine — is the tallest structure around, but it's hardly one of a kind in these parts. Montcoal was the name of name of the mine complex before Massey purchased it from Peabody Coal in 1994, shut it down long enough to bust the union, and then rechristened the site Performance.

Only from the air can you get a sense of why Route 3 bustles with semi-trucks pulling open-top trailers, and why at shift change in the mines the highway fills with pickups racing south toward Beckley in a daily ritual that locals have dubbed the “Massey 500.” The Coal River valley sits at the heart of the Appalachian coal fields, and some of the most significant surface and underground mining in the state goes on here. From satellite images you can see the mountaintop mine sites surrounding Route 3 up and down the valley. They look like grayish cancers in an otherwise green and hilly landscape. The largest sites stretch for miles, and one of the biggest in the valley is just west of the highway in Montcoal.

Local residents were devastated, but not particularly surprised, by the Upper Big Branch explosion.⁴ They have long worried that something terrible would happen at one of the Massey

³ Tim Huber, “W. Va. Mine Owner Accused of Putting Safety Second,” *The Associated Press*, 6 April 2010, http://license.icopyright.net/user/viewContent.act?tag=3.5721%3Ficx_id=D9ETUQSO0

⁴ Ken Ward, Jr., “That’s what you get when you live in this area,” *Coal Tattoo*, 6 April 2010, <http://blogs.wvgazette.com/coaltattoo/2010/04/06/thats-what-you-get-when-you-live-in-this-area/#more-3071>

mines in the area. They were just concerned it would occur at Marsh Fork Elementary, which sits underneath an impoundment pond containing hundreds of millions of gallons of toxic coal slurry, and with the capacity to hold almost 3 billion gallons.⁵ Massey owns the impoundment and a coal storage silo located a little more than 200 feet from the school building. Kids at the school have a propensity to claim chronic sickness, and a 2008 documentary film on mining in West Virginia reported that 53 out of 60 families who send children to the school have reported health problems.⁶ Breathing coal dust can result in all sorts of serious medical conditions, but the larger worry is that the impoundment on the hillside could break, which occasionally does happen. In just the last decade there have been major spills in Tennessee and Kentucky, one at a Massey impoundment. In 1972, 125 people were killed in a slurry spill at Buffalo Creek, West Virginia. The official plan at Marsh Fork Elementary in the event of a breach is to have the school's principal sound the alarm using a bullhorn, at which point the children will have about two minutes to outrun a wall of sludge 15 feet high moving maybe 60 miles an hour, and nowhere in particular to run to.⁷ What no one says out loud is that if the pond were ever to break, it's unlikely anyone at the school would survive. Activists have been lobbying state and local officials to move the school for years. The effort finally gained some traction in March when \$1 million was pledged toward construction of a new school — by Massey Energy.⁸

Irony and tragedy are regular bedfellows in West Virginia. Coal mining has always been a dirty and dangerous business. Coal is both the state's economic lifeblood, and a constant source of exploitation and environmental degradation. Large out-of-state interests like Massey are

⁵ Michael Shanyerson, *Coal River* (New York: Farrar, Straus and Giroux, 2008), pg. 57

⁶ *Burning the Future: Coal in America*, DVD, dir. David Novack (2008, Firefly Pix).

⁷ David W. Orr, "Not Just an Appalachian Problem;" *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009); pgs. 157-158

⁸ Ken Ward, Jr., "Massey Pledges \$1 million for Marsh Fork school," *Coal Tattoo*, 23 March 2010, <http://blogs.wvgazette.com/coaltattoo/2010/03/23/massey-pledges-1-million-for-marsh-fork-school/>

regularly demonized for their perceived callous behavior toward the state's citizens, but they are also loved by the mining families whose paychecks they write and the politicians whose campaigns they fund. West Virginia's regulatory agencies and elected officials have tried to strike a balance between the outcries of concerned citizens and the profits of companies that provide jobs, fill the tax coffers and — as billboards around the state proclaim — “keep the lights on.” This is not simply an open-and-shut case of greedy coal barons bullying uneducated and impoverished hillbillies. There is an element of truth to such caricatures, but West Virginia politics are far too complicated to be reduced to platitudes.

This thesis will focus on the response of state and federal officials to growing controversy in the past decade over the practice known as mountaintop removal mining. This method of coal mining is almost exclusive to Appalachia, and has been expanding significantly since the 1980s and 1990s. An enormous and tangled regulatory apparatus has sprung up to oversee surface mines.

The Disappearing Appalachians

Bill Raney, president of the West Virginia Coal Association, has been quoted as referring to a picture of a mountaintop mine he keeps in his office as “pretty,”⁹ but it's an ugly practice by just about any other standard of beauty. Entire mountaintops are literally blown away, streams and valleys are buried, and forests disappear, leaving gaping wounds in the countryside. A 2003 environmental impact assessment by the EPA estimated that mountaintop removal had stripped more than 380,000 acres of land in Appalachia between 1985 and 2001, burying or polluting 1,200 miles of streams in the process.¹⁰ Environmental groups suggest these statistics correspond to 500 or more leveled mountain peaks. But such figures become out-of-date quickly. According

⁹ Shnayerson 2008, pg. 63

¹⁰ Shnayerson 2008, pgs. 7-8

to the EPA, a land area the size of Delaware will have been razed by the time mountaintop mining exhausts the supply of easily recoverable reserves.¹¹

The process was imported from the open pit mines of the American West in the 1970s, and has been adopted mostly by large corporations because of the huge capital investment required. The companies love it because it's incredibly efficient. Up to 98 percent of the coal at a site can be recovered, compared to around 70 percent at a traditional underground mine.¹² It's faster, cheaper and safer for the miners — though still not safe — and only a skeleton crew of at most a few dozen workers is needed to man an operation.

Mountaintop removal (from now on MTR) occurs on Appalachian peaks hundreds of millions of years old, home to some of the most ancient and diverse hardwood forest ecosystems in the world, and rising 1,000 feet or more above the surrounding hollows. The first thing a company does when beginning a new MTR mine is clear cut the forest and rip the tree trunks from the ground. Sometimes the timber is sold, but often it's all just dumped over the edge into the valley below. This activity will pretty much get rid of the wildlife. The next thing the workers do is scrape off all the topsoil and push that into the valley, too. Once they get down to the bedrock, the company packs it full of dynamite and blasts away layers of the mountain — called overburden — to expose the coal seams underneath. Every day about three million pounds of explosives are detonated on West Virginia mountains,¹³ making the amount of explosive force released in a ten-day period roughly equivalent to that of the atomic bomb dropped on Hiroshima. The blasts can send rock flying miles from the site, though most of it stays put on the mountain. That is where the crucial piece of technology comes into play: twenty-story high

¹¹ Shnayerson 2008, pg. 8

¹² Shirley Stewart Burns, *Bringing Down the Mountains: The Impact of Mountaintop Removal on Southern West Virginia Communities* (Morgantown: West Virginia University Press, 2007), pg. 56

¹³ Orr 2009, pg. 159

steam shovels that can scoop up 50 tons of debris in a single pass collect the rock and empty it into dump trucks so enormous they make SUVs look like playthings.¹⁴ The shovels, called draglines, cost \$25 million or more and can take years to assemble.¹⁵

Watching a working mountaintop mine from a distance, it looks like a handful of dump trucks playing in a sandbox. If you didn't know better, you might not even realize that it's a very big sandbox and they're very big dump trucks. The trucks spend most of the day inching around the site, slowly backing up to the edge of a cliff and dropping the overburden into what is known as a valley fill. The result is exactly what it sounds like — the valley gets filled in, burying anything on the surface, including the mountain streams that form the headwaters of many West Virginia rivers.

The coal companies claim this method allows them to get at coal seams that are too thin to recover using traditional underground techniques.¹⁶ By the time all of the coal has been loaded into transport vehicles and sent speeding off to electric power and steel plants around the Eastern United States, or onto barges for eventual export to India and China, the mountain peak may have fallen 600-1,000 vertical feet, and the valleys below may have been filled for miles.

The law requires that the company restore the mountain to its “approximate original contour” when finished mining, as well as replace the topsoil and plant new trees. Of course, most of these requirements are hardly ever fulfilled, and it doesn't take a geologist to know that it's impossible to stack 1,000 feet of loose rock back onto the top a mountain after it's been blasted off and shoveled into the valley. Environmental lawyer Joe Lovett says that most of the time, efforts to follow the reclamation laws don't even pass the laugh test.¹⁷ At a typical

¹⁴ Shnayerson 2009, pg. 63

¹⁵ Burns 2007, pg. 8

¹⁶ Burns 2007, pg. 71

¹⁷ Joe Lovett, from discussion with the author, March 2010

reclaimed site the company might have thrown a little grass seed down, but the result looks like prairie after a fire, a far cry from the lush hardwood forests native to West Virginia. Sometimes a reclaimed site will become home to a new development, such as a prison or an industrial facility, but these instances are the exception rather than the rule.¹⁸ The unstable valley fills usually don't make good ground for laying foundations. More about the peripheral and long-term effects of MTR will be said in chapter three.

The social and environmental impacts of MTR have created a storm of protest that has been growing steadily since at least the late 1990s, when Joe Lovett brought and eventually won a landmark suit against the West Virginia Department of Environmental Protection for failing to live up to its regulatory responsibilities. Local anti-MTR movements have sprung up in the Coal River valley, led by Coal River Mountain Watch in Whitesville. Mostly college-aged environmentalists from a group called Climate Ground Zero have set up near Montcoal in Rock Creek. Numerous other well-organized citizen's groups such as the Ohio Valley Environmental Coalition and Kentuckians for the Commonwealth have taken up the cause across West Virginia, Kentucky and Tennessee. Appalachian Voices, based in Boone, North Carolina, has led an effective advertising campaign from its web site, pushing "I Love Mountains" bumper stickers and partnering with Google Earth to produce maps of mountaintop sites. These efforts and others like them have drawn national and international attention to mountaintop mining.

My research here primarily examines how the West Virginia and federal governments have dealt with increasing pressure to end mountaintop removal on the one hand, and the ever-present pressure from economically and politically powerful coal interests on the other. My explicit topic will be the debate over mountaintop removal, but the following chapters will also

¹⁸ Burns 2007, pg. 126

be interested in questions of power and inequality, the cultures of government institutions, the effectiveness of grassroots movements, and the prospects for democracy in this country.

Pragmatist thinkers like John Dewey have suggested that a truly democratic state is one in which public officials are charged with, and actually work to, protect the interests of the public at-large. In chapter two of this work, I will describe a theoretical framework for analyzing democratic practice that relies on insights from these pragmatist philosophers. The benefit of adopting a pragmatic approach to studying democracy is that it gives us an empirical method for evaluating political action. Pragmatists make a philosophically sophisticated argument that an individual's or organization's core beliefs and values are manifested in its habitual actions. So regardless of what Massey Energy or Coal River Mountain Watch or the West Virginia DEP says it values, we can determine what its true priorities are by watching what it does. Values are of crucial importance, because as we will see later on, I define them as beliefs about the broader social good. Federal law allows for the destruction of mountains provided it is done for a "higher and better use."¹⁹ Whether the strip mining methods used in Appalachia meet this standard depends entirely on what is considered higher and better, that is, on how our government leaders conceive of the good.

One of the goals of this project is to describe what government agencies and actors value, as revealed by their actions, but a summary statement of my findings will have to wait for the concluding chapter. If we are living in a democracy of the kind imagined by the pragmatists, the actions of government should at least attempt to reflect the values of society as a whole. It is entirely possible that the pragmatic vision of democracy is overly idealistic, so in chapter two I also consider an alternative theoretical framework that views the activities of the state more

¹⁹ John Hennen, "Empire Building, One Chunk of Coal at a Time." *Coal Country: Rising Up Against Mountaintop Removal Mining*; edited by Shirley Stewart Burns, Mari-Lynn Evans and Silas House (San Francisco, Sierra Club Books, 2009); pg. 74.

suspiciously as the attempts of powerful factions to exercise control over the public and its attitudes.

With the theoretical ground laid, I proceed in chapter three to an examination of the public or publics affected by mountaintop removal mining. Given our country's reliance on coal for electric power generation, most Americans have some indirect stake in coal mining. But for the vast majority of us, the only relationship we have to mining is through our electric bill, and that relationship is mediated by numerous institutions and policies that have made burning coal an essential, if hidden, aspect of our everyday lives. Most of us do not know and do not much care where our electricity comes from, as long as the price per kilowatt hour doesn't go through the roof. Thus we are only minimally invested in coal extraction practices. While mountaintop removal as an environmental issue has garnered national and even international attention, the most significant effects of the practice remain localized to those people who live in mining communities, those who are employed by MTR operations, and those who sell or buy coal from mountaintop mines. These directly-affected groups are discussed in some detail, with an eye toward determining the interests and values of each group. The environmental consequences of MTR are certainly dramatic, but are only relevant to our discussion here to the extent that some subset of the public can be identified which values environmental conservation, and acts on that value. We will see that such a public does appear to have formed in opposition to MTR, and we will consider how environmentalism as a value fares in competition with other economic and social values.

In chapter four I turn my attention to the state apparatus that supervises mountaintop removal. Here I provide a detailed description of the laws that have been established to limit the negative effects of MTR without discouraging domestic coal production, though we will see that

the laws on the books provide a lot of wiggle room for both coal companies and the agencies tasked with policing them. My main task in this chapter is to evaluate the structured enforcement practices of regulatory agencies, and the institutional cultures that shape the interactions of those agencies with each other and with their handlers in the executive offices of state and federal government. From this analysis I offer an assessment of the values reflected in the day-to-day functioning of the regulatory system. The courts have played an important role in mediating disputes over mountaintop removal, but I largely avoid discussion of the role of the judiciary, partly as a practical constraint on the scope of this project, and partly because it is not the explicit responsibility of the courts to craft regulatory policy. In principle, judges should only be reviewing the legality of the actions of other state officials, not setting policy themselves, though the reality may be much more complicated than that.

I also attempt to restrict my analysis of MTR regulation to the events of the last 10-15 years, but occasionally I will find it necessary to refer to older developments that continue to have an influence on present circumstances. In truth, some of the sources of the conflict over mountaintop removal predate even West Virginia statehood, and can be traced back to early exploration and settlement of the region by Europeans.

West Virginia's colonial heritage

As Appalachian historian John Williams has written, history has a way of repeating itself in West Virginia.²⁰ The state has had to endure the misfortune of being what Williams refers to as a “colonial economy” and what more contemporary commentators have called a “national sacrifice zone.”²¹ Raw resources leave the state without anything of equal value finding its way back. Despite its rich natural endowment, West Virginia has always been and continues to be one

²⁰ John Williams, *West Virginia: A History* (New York: W.W. Norton, 1984), pg. 205

²¹ Williams 1984, pg. 148

of the poorest states in the nation. Its status as a resource colony within the continental United States is no new development. Some of the first Europeans to survey what is now West Virginia were not settlers but land speculators, George Washington among them. Having been granted rights to claim large tracts as payment for military service, Washington led expeditions to the region looking for fertile farmland he could later sell at a profit. Other speculators were interested in acquiring timber from the area's virgin hardwood forests.²²

Later, when coal was discovered, large out-of-state firms snatched up as much of the land and mineral rights as they could acquire in coal-rich areas. During the late nineteenth century, agents of these companies wandered backwoods areas convincing residents to sell the land or mineral rights to their family plots for a small cash payment or a sewing machine.²³ Almost any native West Virginian can tell a story about ancestors who were cheated out of their land for a dollar or two. The broadform deeds these early settlers signed allowed the companies purchasing the mineral rights to extract those resources by any means necessary, even if that meant causing damage on the surface.²⁴

By the turn of the twentieth century, the majority of the state's privately-held land was controlled by absentee owners.²⁵ According to more recent figures, absentee ownership is still widespread.²⁶ Today, coal producers will typically either purchase land directly or lease the mineral rights from large landholding companies. This pattern of land ownership is significant

²² Williams 1984, pgs. 5-10

²³ Williams 1984, pgs. 106-107

²⁴ Williams 1984, pg. 109

²⁵ Williams 1984, pg. 129

²⁶ Reliable studies of recent land ownership patterns are difficult to find, although one of the best I have been able to locate is by Tom Miller, a reporter for the Huntington Herald-Advertiser and Herald-Dispatch, who reviewed 1974 property tax records for West Virginia and found that two-thirds or more of privately-owned land in the state was controlled by absentee landlords. Other sources estimate the incidence of absentee ownership as high as 80-90 percent in some coal-producing counties. Miller's entire article has been reprinted as "Absentees Dominate Land Ownership" in *West Virginia: Documents in the History of a Rural Industrial State*, edited by Ronald Lewis and John Hennen (Kendall Hunt Publishing, 1991).

since it prevents local communities from having a say in land uses, and gives landowners less of a stake in the consequences of their activities for those communities. It also ensures that much of the profits from mining operations will be funneled out of state.

Coal mining in West Virginia has traditionally been more a way of life than simply a profession. By 1900, 80 percent of miners and their families lived in company towns.²⁷ Living conditions in these towns were highly variable, but all had the common effect of putting miners completely at the mercy of the companies. Working conditions underground during the late-nineteenth and early-twentieth centuries were criminal by today's standards. Attempts by the miners to unionize were violently put down. Hostilities between miners and their employers became so heated that they occasionally escalated into open rebellion, and on at least one occasion the National Guard had to be sent in to restore order.²⁸

The miners eventually won their union, the United Mine Workers of America. The union succeeded in negotiating some reforms, particularly in the early decades, but in West Virginia improvements in hours and pay tended to lag behind other states. By the 1960s, UMWA leadership had been thoroughly co-opted by the big coal companies. Massey's brash CEO, Don Blankenship, made his reputation as a young manager when he broke some of the last major union strikes in the 1980s. Since then, the influence of the union has declined precipitously, and today it is common practice for many mines to hire only non-union workers. That is certainly the practice at Massey, where only 4 percent of employees belong to the union.²⁹

The company towns have disappeared, but mining still exerts an enormous influence on life in some parts of the West Virginia, where you either go to work in the mines or you leave the

²⁷ Williams 1984, pg. 139

²⁸ The incident, known in West Virginia lore as the Battle of Blair Mountain, has been recounted by numerous sources. See Williams 1984, pg. 147, for one retelling.

²⁹ Burns 2007, pg. 27

state. The technical term for the phenomenon observed in many southern West Virginia counties is a mono-economy. In other words, the only jobs to be had are in the coal business.³⁰ Politicians mistakenly assumed that when they welcomed in coal interests, manufacturing would follow. Former Governor William MacCorkle proclaimed the relationship between resource extraction and manufacturing to be an “axiom of political economy.”³¹ The hoped-for boom in industry never panned out. Many West Virginians have stated that they became miners not because they particularly wanted to, but because they had no other options and they needed to work. In a popular phrase, miners are said to “dance with the devil” each time they report to work.

Historically, West Virginia public officials lacked either the skill or the desire to confront the powerful coal interests. West Virginia has had more than its share of political corruption, there is no doubt. Ballot-stuffing, vote-buying, bribery, political violence, cronyism and illicit dealings of all sorts are well documented here.³² But King Coal projects a more subtle sort of influence in West Virginia politics, affecting the psyche of the state. Williams suggests that, whatever their reasons, at many times in the past officials in positions to alter West Virginia’s social and economic conditions didn’t have the courage to push for changes, or simply preferred things as they were:

In the final analysis, the worst features of West Virginia’s colonial economy endured because men ... who were content with their roles and their profits as middlemen for the absentee owners of the state’s natural wealth, prevailed over those who ... sought to impose a degree of local control over local resources ... West Virginia thus remained the way it was because the most powerful West Virginians like it that way.³³

Government began to pay a little more attention to the plight of miners beginning in the 1960s, as working conditions gradually improved. Ken Hechler was instrumental in crafting the Coal Health and Safety Act of 1969 that created today’s Mine Safety and Health Administration.

³⁰ Some people suggest the industry has intentionally held out competing development.

³¹ Williams 1984, pg. 149

³² See Williams 1984, pg. 170

³³ Williams 1984, pgs. 155, 157

When strip mining took off in the 1970s, Hechler worked on legislation that would become the Surface Mining Control and Reclamation Act, or SMCRA, though the first version that passed Congress was vetoed by President Ford. According to Hechler, Ford had been pressured by coal interests who pleaded that the legislation would ruin them. “That was an exaggeration that Ford accepted,” Hechler said.³⁴

Hechler would not support the water-downed bill that Congress considered next, and which was eventually signed into law by President Carter in 1977, because he did not think it would be effective in curtailing the worst practices of the coal industry. We will see whether Hechler’s concern was justified as events have played out over the last 30 years.

Since he had been an early proponent of mining reform, Hechler received an invitation to the signing ceremony for SMCRA on a sunny day in the Rose Garden. Environmental groups had also been invited, and Hechler remembers they were all quite displeased with him for his opposition to SMCRA. Carter hugged Louise Dunlap of Friends of the Earth in front of the television cameras, and in Hechler’s paraphrase said “this is not the best bill that could have been passed, but it is the most acceptable bill.”³⁵

When Hechler got his moment with the president, the congressman had a simple message for him:

“This bill is not going to work unless it is strictly enforced,” Hechler said.

Carter replied that he knew some good people in the newly created Office of Surface Mining, and he would relay the message. And that was all.

³⁴ Ken Hechler in discussion with the author, April 1, 2010.

³⁵ Ken Hechler in discussion with the author, April 1, 2010.

2. LOCATING VALUES IN SOCIAL ACTION

The question of how to best organize society has occupied philosophers for millennia, and countless variations on an answer have been proposed. Almost 2,500 years ago, Plato wrestled with this very problem, and the solution he detailed in *The Republic* has been as influential a meditation on the topic as any in the history of Western thought. But it will become clear through the course of our discussion here that Plato's description of the ideal society must be flawed, since it is based on a conception of the good as an ultimate reality, a timeless form, which can be discovered only through philosophical introspection.

I will argue in this chapter that there is no such good out there to be found. Rather, our ideas about the good are a moving target, born out of social action and always subject to revision. I will advocate a method for the analysis of society based on philosophical pragmatism, which provides the most compelling account of how our concepts of truth, reality, and the good society arise.

I will not attempt Plato's project of providing an exhaustive description of what the ideal state would look like, although I think the pragmatic tradition offers some interesting suggestions to that effect, and the method I will apply here should be applicable to a generalized analysis of social practices. I do try to outline some minimum requirements of good government, drawing on a theory of the state advanced by the pragmatist John Dewey in his book *The Public and Its Problems*. Americans supposedly live in a representative democracy, and we should be able to make some assertions now about what it would really mean for our government to act in a representative fashion.

Dewey sees the need for a state arising out of the fact that individuals have a marked tendency to socialize and enter into private agreements with each other.

When we act — either individually or collectively — in a social environment, some of our choices will have consequences for individuals or groups beyond those who were parties to the decision. For this reason, most, if not all, societies find it necessary to set limits on the sorts of activities deemed permissible in order to control indirect or unforeseeable consequences, especially if those consequences are potentially harmful to the interests of some or most members of society. Enforcing these limits is the role of the state, which Dewey defines as “the organization of the public effected through officials for the protection of the interests shared by its members.”¹ The public consists of all those who are affected, either directly or indirectly, by the consequences of a particular activity or activities. State officials are individuals charged with looking after the public interest. A state can be called representative to the extent its officials effectively fulfill their duties to care for the public good.² I hope I am safe in the assumption that a representative state is better than an unrepresentative one. Dewey took this point for granted as well.³ He also suggests that an additional measure of the goodness of the state is its ability to relieve individuals from struggling to defend their rights. If state officials are doing their jobs, citizens should be at least partly protected from encroachments on their interests.⁴

On the definition of the public given above, it is possible for numerous publics to exist within the state. The presence of multiple overlapping publics greatly complicates the sort of analysis I am attempting here, since democratic officials are responsible to all of these publics simultaneously, though it may not be possible for them to attend to the concerns of each public equally. Out of necessity, my study is limited to the particular public constituted around the practice of mountaintop removal. In the following chapter, I identify the various interested

¹ John Dewey, *The Public and Its Problems* (Denver: Alan Swallow, 1927), pg. 33.

² Dewey 1927, pg. 76

³ See his discussion of criteria for determining the goodness of the state in Dewey 1927, pg. 33

⁴ Dewey 1927, pg. 72

groups who compose this public. The central task of chapter four will be to determine if the actions government officials have taken to regulate MTR can be considered representative of the public interest. My final chapter will include some remarks on how effectively state regulation operates as an advocate for the broader public, thus taking the pressure off of individuals to be their own advocates.

My project as a whole could be framed as an attempt to evaluate the statement, “Mountaintop removal mining represents the best available use of undeveloped land in Central Appalachia.” This is clearly the position of coal companies engaged in MTR in rural West Virginia and other parts of the Eastern United States. It is also a position implicitly endorsed by American lawmakers and regulators. For as long as the practice is allowed to continue, they must at least assent to the proposition that MTR is an acceptable method of extracting coal, which is only an attenuated form of the previous statement.

Both statements are already loaded with particular ideas about the good. In the course of this chapter, I will endeavor to show that there can be no neutral position from which to make normative judgments. All such judgments are necessarily contingent in nature, infused with the particular values of particular peoples at particular periods in history (it is furthermore the case that even descriptive statements cannot be value-neutral, although a thorough argument for that claim will not be undertaken here). The assertion that MTR is a good or acceptable practice reflects certain values, certain ends. We must ask: What interests are served by the practice of mountaintop removal mining? And, whose values align with those ends? This project aims to provide answers to those questions.

In the service of that goal, I will endeavor here to sketch a method for determining the values of a social group based on the sorts of practices in which members of that group are

routinely engaged. In later chapters, I apply this method to an analysis of the values of the parties who have a direct stake in MTR, and the government agencies that mediate between these interested groups. Pragmatist philosophers have argued that the function of a belief is to suggest certain consequences, to form habits of action. The meaning of a proposition, they claim, can be nothing more than the consequences for society it produces. If this is, indeed, the case, then we need not rely on an analysis of the pronouncements of corporate PR machines or well-intentioned legal provisions to decide what the proponents of MTR value. All we need to do is identify the consequences of practicing MTR, since the practice can mean nothing more, in actuality, than those consequences. On this view, to say that MTR is a good or acceptable practice is simply to say that the consequences of MTR fulfill your ends.

The pragmatic account of social action, then, provides us with a highly useful tool for revealing the values perpetuated in specific forms of social organization. I will show momentarily that it is not primarily ideas that determine the social order, but actions — habits, rituals, practices. The practice of MTR affects the shape of our social environment in myriad ways. In the broadest sense, the practice influences attitudes about coal companies, about rural Appalachia, about the federal government, and about the use/exploitation of our natural resources, to name just a few. At a structural level, the practice is codified in law and regulatory procedures, and in the standard operations of the energy industry. The most profound effects can be found at the local level, where MTR projects have dramatically altered everyday life in rural communities. This list provides just a smattering of ways in which the practice shapes us as a public. My earlier question returns in force: Is the society produced by this practice better than the alternatives? Better in what ways? Better for whom? Are the values articulated in this practice values we, as a society, wish to uphold?

Notice that there are actually two different sorts of questions being raised here. The first sort asks what the existing social values are. The second sort wonders what those values should be. The normative question arises naturally from the descriptive one. I will not expend much energy trying to address the normative question here, for the time being I only wish to call attention to it. In my concluding chapter, I argue that a political order which embodies democratic values in practice has the best chance of being accepted as legitimate by the broader American public, though I make my case more on practical grounds than from any normative principles. I do not claim that a society committed to democratic practice is necessarily the best society, only that it may be the most palatable to contemporary Americans. Cultural theorist Raymond Williams has suggested that the Western world is in the midst of a long democratic revolution, which he characterizes as an orientation toward fulfilling “the general needs of all the people in the society.”⁵ Whether or not our society is actually evolving toward a fuller expression of democratic values is, I think, a matter to be settled empirically.

The question of what sort of political organization our society should endorse raises another concern. If we find that the manner in which society *is* presently ordered is not in line with the way we think it *should be*, how do we go about affecting social change? This question is probably the most important of those we have raised thus far. It is also the most difficult, the question which has frustrated critical philosophers for centuries. The pragmatists’ response to this concern is too vague to qualify as a program for action, but they do have some general ideas about how change is possible which, when considered along with insights from other twentieth-century thinkers, may give us some notion of where to start.

⁵ Raymond Williams, *The Long Revolution* (London: Chatto & Windus, 1961), pg. 113. See also pages 121-122 and 347-355.

In order to approach the questions I have put forward over the last few pages, I will first have to outline some of the fundamental components of the pragmatic understanding of society and social action. As stated above, I find this perspective a compelling account of human social experience and an effective tool for identifying social values, though it is not without its shortcomings, as we shall see below. In an effort to take these problems with the pragmatic theory into account, I will introduce an alternative theory of social organization that comes from contemporary French critical philosophy. An evaluation of the relative merits of these perspectives will be attempted in later chapters.

Social selves and values

There exists within the philosophical tradition a powerful drive to acquire universally-valid, immutable truth. Knowledge has often been equated with the possession of such truths. Mere human experience, unfortunately, is a tangled mess of sensations, appetites, intentions, memories, and so on. Perception is error-prone and in a constant state of flux. It becomes the task of the philosopher, then, to sort through this web of experience in an effort to find the eternal principles, the meaning hidden beneath and within it all.

This conception of human understanding as a quest to uncover the secrets of nature is founded on a metaphysical assumption about the relationship between the individual consciousness and the external world. The subjective inquirer is considered to have its own unique existence, separate from the world he or she encounters in the act of perceiving. That we are “in here” somewhere and the world is “out there” somewhere creates the demand for knowledge that can bridge the gap.

We have already seen above that Plato accepted this distinction between the confused realm of appearances and the transcendent realm of the Real. This metaphysical dualism received

its modern incarnation in the philosophy of René Descartes. Descartes assumed that the essence of human consciousness was in thought, and drove a wedge between the workings of the mind and the world of physical objects. For Descartes, it was possible to obtain certainty about the true nature of this physical world, but only through rational consideration and with the help of a beneficent God.

Descartes' specific approach to determining truth has been dismissed, but his larger aim of securing true knowledge and his metaphysical dualism have had a lasting impact, and motivate many of the persistent problems in philosophical discourse. His assumption of the primacy of individual consciousness was left unquestioned for centuries. That began to change with the arrival on the scene of thinkers like Charles Sanders Peirce, William James and George Herbert Mead around the turn of the twentieth century. These men were some of the founders of the philosophical school we know today as American pragmatism. As we will see in a moment, pragmatist thinkers retain some of the goals of Enlightenment thought, such as the pursuit of universally-valid meanings, but from a very different point of view. Pragmatists accuse Cartesian philosophy of getting us stuck inside of our own heads. The key move of pragmatic thought has been to rethink the relationship between subjective consciousness and the objective social world, and in doing so to reject the essentialisms that have haunted the Western tradition.

Peirce, the father of American pragmatism, criticized the Cartesian notion that any of our beliefs about what is true could attain the status of absolute certainty. Any conclusions we draw through reasoning are necessarily fallible since we can only reason from the evidence of our experience, and that sample will always remain incomplete. Future events or new discoveries may crop up to contradict our conclusions — and frequently do. Furthermore, *a priori* assumptions cannot serve as grounds for certainty because there is no way to justify them, and

the historical record shows that what has been taken to be innately true by one generation has often been rejected outright by later generations. Absolute “exactitude, certitude, and universality” are unattainable; human knowledge is contingent on social and historical circumstances.⁶

Peirce was one of the first philosophers to recognize the importance of language and develop a theory of semiotics. Human beings cannot conceive of anything, Peirce argues, without employing signs. Thus all thought occurs within a sign system, within a language.⁷ The claim that language is necessary for thinking has achieved widespread acceptance in the twentieth century. In analytic philosophy, it has been asserted by the likes of Ludwig Wittgenstein and Wilfrid Sellars. In Cultural Studies, Raymond Williams and Stuart Hall both take this point as foundational. It is also a basic tenet of many systems in contemporary Continental philosophy, as will be discussed in the next section.

The recognition that all thought is embedded in language has dramatic consequences. Perhaps most significantly, it means that the Cartesian assumption of the existence of the mind prior to any experience must be incorrect. Descartes says that the essence of human consciousness is thought. But we now know that we cannot think, and therefore cannot have consciousness, prior to the acquisition of language. The development of sign systems is itself a social activity. So the notion of an essential subjective mind must be abandoned. Our experience of subjectivity, it seems, is a social product.

In George Herbert Mead’s social theory, this development of the self is addressed from an anthropological perspective. Mead begins with the assertion that all human beings have basic

⁶ Peirce, “The Scientific Attitude and Fallibilism,” *Philosophical Writings of Peirce*, Ed. Justus Buchler (New York: Dover Publications, 1955), pgs. 56-57.

⁷ Peirce, “Some Consequences of Four Incapacities,” *Philosophical Writings of Peirce*, Ed. Justus Buchler, (New York: Dover Publications, 1955), pg. 249.

needs and social impulses, such as the impulse to reproduce and care for offspring.⁸ These social impulses need not be innate, but could instead be formed through experiences of social cooperation providing an advantage in the satisfaction of certain needs. Communication through signs developed in primitive cultures in order to facilitate this cooperation.⁹ Individuals in the act of communication have the capacity to anticipate how others will respond to their gestures, what Mead calls “taking the role of the other.” It is in taking the role of the other that the interpretation of meaning, and thus the production of consciousness, originates.¹⁰

This account provides us with some important insights about the meaning of concepts in language. Meaning is not derived from the relationship between the sign and some object in the world. Rather, meanings are a social creation, established through communication. Propositions do not refer to things “out there” in reality, but to the conceptual apparatus constructed by the sign system. Understanding even the simplest ideas, for example, “the ball is red,” requires a host of socially-agreed upon concepts like “redness,” and rules about the proper use of articles and verbs. All knowledge, all meaning, is historically contingent. We have no privileged access to a view of the world free from the prejudices of human perspectives. That rules out the Cartesian notion that our knowledge can speak directly about reality.

If our beliefs do not mean something about the nature of reality, what is their purpose?

To this question, pragmatic philosophers suggest a highly original answer. According to Peirce:

The whole function of thought is to produce habits of action ... what a thing means is simply what habits it involves. Now, the identity of a habit depends on how it might lead us to act, not merely under such circumstances as are likely to arise, but under such as might possibly occur, no matter how unlikely they may be.¹¹

⁸ Filipe Carreira Da Silva, *G.H. Mead: A Critical Introduction* (Cambridge: Polity Press, 2007), pg. 33

⁹ We see a similar account of the establishment of social cooperation in response to unmet needs in Marx and Engels' *The German Ideology*. Marx, however, emphasizes that socialization and the resultant division of labor creates social inequalities, an emphasis we do not see in the thought of the pragmatists.

¹⁰ Da Silva 2007, pg. 34

¹¹ Peirce, “How to Make Our Ideas Clear,” *Philosophical Writings of Peirce*, Ed. Justus Buchler (New York: Dover Publications, 1955), pg. 30.

Belief, then, is tied directly to habitual social action, and, as William James might put it, the meaning of a particular belief is nothing more than the consequences of holding that belief. Of course, we all possess many latent beliefs, and I am not always acting on every belief I may claim to hold. The force of the pragmatic argument about the nature of human knowledge is that, if the right circumstances were to arise in which a belief of mine was put to the test, holding that belief would induce some particular reaction from me. If my supposed belief did not color my response, it would be meaningless to say I believed it. According to James, for example, the actual existence of God is inconsequential. The sole significance of believing or not believing in God is that it inclines us to act in certain ways. According to John Dewey, such predispositions have a decisive influence in organizing our actions because:

All distinctively human action has to be learned, and the very heart, blood and sinews of learning is creation of habitudes. Habits bind us to orderly and established ways of action because they generate ease, skill and interest in things to which we have grown used and because they instigate fear to walk in different ways...¹²

This manner of thinking about belief leads pragmatist philosophers to a radical reconceptualization of truth. Traditionally, a proposition was taken to be true if it described some actual state of the world. This is the sense in which Plato and Descartes understood truth. For pragmatists, the mark of truth is successful action. Notice that this definition requires that the conditions of success be specified, so whether or not an action is deemed a success will depend on the ends sought. This does not mean that truth is subjective or relative to individual experience.¹³ In fact, there is plenty in our above discussion to suggest that judgments of successful action must be objective, or, to be more precise, at least intersubjective. For

¹² Dewey 1927, pg. 160

¹³ Some scholars have interpreted the theory of truth William James expounds in *Pragmatism* as allowing for a relativistic interpretation. On these grounds, Joseph C. Pitt argues that James should not be considered a pragmatist at all. On my reading, James' pragmatism is essentially Peircean, and the relativistic statements made by James in his discussion of truth have more to do with poor articulation than his actual feelings on the subject.

pragmatists, meaning only solidifies in communication between individuals, and the ability of those individuals to make use of the same signs with the same effects. Meanings are social in nature, and therefore cannot be established without the assent of the broader social group. A success in one individual's eyes might not qualify as a success in the eyes of another. This difficulty suggests that there must exist some prior agreement about the desired ends before truth-values can be assigned to particular propositions. These considerations are consistent with Peirce's definition of truth as "the opinion which is fated to be ultimately agreed to by all who investigate."¹⁴ That opinion represents an ideal end point for Peirce, and there is no hint in his writing that he thinks such a point in human history will ever be reached. Truth claims are always provisional. They appear closer to this ideal of truth the more widespread the agreement that they result in successful action. They lose their truth-value if they fall into disfavor with the community.

There are many beliefs about the nature of experience that are so widely agreed upon within and among societies that they are rarely, if ever, questioned. "Gravity causes objects to fall toward the earth," "the shortest distance between two points in Euclidean space is a straight line," "fire will burn skin," and "murder is wrong" are all examples of such beliefs. They have survived and been passed on from generation to generation because they have been verified in experience time and again and have proven useful in serving a wide variety of ends. Peirce and James refer to highly successful propositions as "common sense" beliefs — with emphasis on the "common," in that they are communally endorsed by the vast majority of the members of society.

Common sense or customary beliefs form the foundation of social order and social control. They reflect a society's most basic values and orientations to the world. Typically, these

¹⁴ Peirce, "How to Make Our Ideas Clear," pg. 38

common sense beliefs are so thoroughly socialized through education, communication and other forms of social conditioning that individuals are not even consciously aware of all the beliefs they take for granted. In the next two chapters, we will see how the belief that “Coal is King” has been embedded in West Virginia culture so deeply that it is rarely questioned.

We can think of social institutions as common sense beliefs articulated in practices that have been formalized over time. Michael Parenti, a contemporary political theorist with a pragmatic orientation, defines institutions as “the mobilization of individuals into roles and statuses dedicated to the performance of a collective endeavor over durable periods of time.”¹⁵ This durability of institutions helps reproduce and reinforce the common sense beliefs on which they are built. “The dominant institutions in the social system,” Parenti writes, “lend the legitimacy of substance and practice to the established norms which in turn teach adherence to the ongoing social system.”¹⁶

James warns that our failure to recognize the historical nature and inherent fallibility of common sense notions is potentially dangerous.¹⁷ In contemporary American society, it is pretty much taken for granted that increased consumption and increased corporate profits benefit society as a whole. In later chapters, we will investigate whether this common sense belief is having adverse social consequences.

We now know enough about how pragmatists conceive of the individual, society and belief to say something about what values are and where they come from. But before we proceed to that discussion, let’s pause briefly to summarize what has been established so far. I’ve outlined five major insights of pragmatic philosophy: 1) All human knowledge is fallible and subject to revision in light of new evidence from experience. 2) The individual consciousness is a

¹⁵ Michael Parenti, *Power and the Powerless* (New York: St. Martin’s Press, 1978), pg. 115

¹⁶ Parenti 1978, pg. 126

¹⁷ William James, *Pragmatism*, Ed. Bruce Kuklick (Indianapolis: Hackett Publishing, 1981 [1907]), pg. 87

product of its social environment. 3) The meaning of any proposition consists of nothing more than its expected consequences. Beliefs function as rules for action. 4) Beliefs are considered true in that they lead to successful action. The community is the arbiter of truth, and as such all truth claims must be considered provisional. 5) The structure of society reflects our taken-for-granted beliefs.

In my opening remarks of this chapter, I attributed much significance to values, and suggested that we could learn what a society values by examining its practices. This claim makes some sense in light of the pragmatic contention that the purpose of belief is to produce habits of action. But what do beliefs have to do with values? Is a value a sort of belief? In a word, yes. At the risk of oversimplifying, I would like to propose that a value is a belief about the good. In a way, this definition passes the buck, because it leaves us to determine what is meant by the good.

I assume that it will be uncontroversial to say that all individuals and groups possess their own needs and desires. They also have interests. Interests can be defined as those courses of action that would lead to the fulfillment of a need or desire. Of course, it is often difficult in practice to determine if an action is in an individual's long-term interest, since we don't always know what all of the consequences of that action will be. It is also possible that an individual's perceived interests may not match his or her actual interests. These difficulties in determining interests could be construed as reasons to reject theories of democratic action that depend on rational interest calculations in favor of a values-oriented approach.

If a value is anything of significance, it must be something more than interests or preferences. German sociologist and pragmatist Hans Joas suggests that "values evaluate our preferences." I might desire a sexual relationship with my neighbor's wife. If it can be arranged in a way that no one will ever find out about our secret tryst, it may even be in my long-term

interest to pursue this relationship. But I still want to suggest that to act on my desire would not be good. As Joas writes:

We are all familiar with the discrepancy between ‘values’ and ‘preferences,’ not only in the sense of a difference between short-term and long-term goals, but in the deeper sense that we do not experience some of our desires as good or, conversely, that we do not succeed in making something we evaluate as good a vital desire in our lives.

Joas can only explain this discrepancy between our values and desires if values represent a judgment of the goodness or badness of our preferences according to some external standard. “In the dimension of values,” he says, “we take up a position towards ourselves.”¹⁸

We have already stated that experience provides us with no immutable principles of the good and the right. The only external standard by which the individual can evaluate his own ends, then, is that of the broader social conception of the good. We do have the ability to reflect on the manner in which others would interpret our actions through what Mead calls “taking the role of the generalized other.” When we look beyond personal or in-group preferences and act in a manner that we believe conforms to the interests of the public at-large, we are operating in the realm of values. Against theories that take the actions of individuals to be exclusively egoistic or rationally self-interested, I claim that manifest evidence can be found of human beings, at least occasionally, acting on beliefs about the greater good.

Interestingly, we can locate explicit references to this notion of a generalized social good in the Surface Mining Control and Reclamation Act of 1977, which regulates mountaintop removal mining. The act’s opening section expresses concern that surface mining activities often create disturbances which “burden and adversely affect ...the public welfare” in a variety of ways such as “destroying or diminishing the utility of land,” “destroying fish and wildlife habitats,” “impairing natural beauty,” endangering “the health or safety of the public” and

¹⁸ Hans Joas, *The Genesis of Values* (Chicago: The University of Chicago Press, 2000), pg. 16.

“degrading the quality of life in local communities.” The primary stated purpose of the law is to “protect society and the environment” from these negative effects. A further goal is to ensure the supply of coal “essential to the Nation’s ... economic and social well-being.”¹⁹ These considerations, I contend, are statements of values. They no doubt entail consequences for the specific interests of numerous groups and individuals. But concerns to protect the environment, public health and, yes, the supply of coal are singled out here only because they are taken to be consistent with the welfare and well-being of the nation as a whole. Such attention to the overall public good is precisely what I mean by a value judgment. It is not especially surprising that we should find these kinds appeals being made in public law. Our government does profess to represent the interests of all its citizens. Of course, it is one thing to be able to express such values in writing. It is something else entirely to embody them in practice. But that is a topic for later in this work.

We are now in a position to gather the various strands of the argument discussed thus far, and to begin to see the importance of all this value talk. At the outset, I proposed that the state should be considered representative when, and only when, it acts in the general public interest. Understanding values as an orientation toward the general social standards of right action, it becomes clear that what we really need to learn about the state is the sorts of things it values. Fortunately for our investigation, we can determine what the state values through an evaluation of its regular practices. If the state’s values are consistent with the values articulated by the public, we can be satisfied that our government is representative. If an examination of state practices reveals otherwise, then our democracy is in trouble.

¹⁹ *Surface Mining Control and Reclamation Act of 1977*, Public Law 95-87, 95th Congress (3 August 1977), sections 101 and 102.

Of course, the state acts only through its officials, and therein lies the difficulty for representative government. Officials are individuals who possess private interests in addition to their public responsibilities, and this dual role can lead to conflict. The challenge of representative government is to ensure that officials act only, or at least primarily, in the public interest, and not on their private interests. But the powers of public office present numerous temptations and opportunities to subvert the public good in favor of selfish ends. I am not speaking exclusively of willful corruption. Many everyday pressures of the job exert a more insidious sort of influence in favor of private interests. Dewey includes on this list “the ease of routine, the difficulty of ascertaining public needs, the intensity of the glare which attends the seat of the mighty, [and] the desire for immediate results.”²⁰ It is a fairly lame list of pressures by modern standards. Today we might also have to mention the need to finance expensive election campaigns, the familiarity of regular interactions with industry representatives, and a follow-the-regs mentality that doesn’t do the public at-large much good if the regs are all slanted in favor of private interests. It becomes important for the possibility of democracy to know under what conditions or practices officials could be encouraged to work in the public good.

This line of inquiry leads us to wonder about the mysterious public good and how it is ever to be discovered. Who or what determines the values of society as a whole? I think it’s been made clear that the source of conceptions of the good is unlikely to be some eternal form or otherwise timeless principle. Values must arise in some social context. We can look to Mead for one potential answer: If the original purpose of human social organization was to provide for needs that required social cooperation, it is possible to conceive of the social good as that which allows for enhanced cooperation and social cohesion in pursuit of the satisfaction of individual needs.

²⁰ Dewey 1927, pg. 81

As pragmatists, we might also say that it is the community at large which must settle questions of the good, just as it settles matters of truth. On this view, the ends of society as a whole are those ends to which the entire social group would presumably assent. The public good, then, is something akin to a Kantian categorical imperative, an end ideally amenable to universal acceptance and application.

Before affirming this explanation of the origin of values, we need to consider some alternative possibilities. It may be the case that any perceived discrepancy between our desires and values is simply an illusion, and there exists no standard by which to judge our actions beyond our individual interests. But if such a view were to be accepted, we would have to first explain away all the empirical evidence for the existence of social standards approaching universality. According to Joas, “Fundamental norms of fairness, for example, can be discovered by children by merely focusing on the internal need for the regulation of co-operation; such norms, all the way up to the reflective formulation of the ‘golden rule,’ seem to be known in all cultures.”²¹

Another alternative is that social conceptions of the good are invented by the strong in the service of their own ends and to control the weak — or, on Nietzsche’s view, they are invented by the weak to control the strong. There are at least two objections to this explanation. The first is that in such a society, normative concerns lose all significance. “There is no question of false and true, of real and seeming, but only of stronger and weaker,” writes Dewey. “The question of which one *should* be stronger is as meaningless as it would be in a cock-fight.”²²

A second, related, objection is that while a dictatorship of the powerful may succeed in maintaining social order, that order would run the risk of being perceived as illegitimate by the

²¹ Joas 2000, pg. 174

²² John Dewey, *Experience and Nature* (New York: Dover, 1958), pg. 425.

broader public. One could imagine a society held captive by a perfect false consciousness, in which individuals are unaware that their beliefs lead them to act in ways contrary to their interests. But it is unlikely such a system of beliefs could maintain a widespread and stable legitimacy. If the ends of society are seen as being in conflict with the ends of the individual, acting on the social “good” will not produce social cohesion, but will instead lead to social discord. Individuals who are left out by the existing order will be motivated to undermine and replace that order with one more conducive to their needs. The point here is that if members of the public are expected to freely consent to the continuation of particular patterns of social action, they have to experience those practices as being good, which may be difficult to accomplish if the practices in question produce consequences that are, in actuality, counter to their interests.

Peirce’s thought is decidedly the least political of any of the pragmatists we’ve mentioned here, but he offers the clearest statement of the alternatives to public deliberation in the determination of the true (and, by extension, the good). He describes three methods of settling belief, and the shortcomings of each. The first he calls tenacity, steadfastly holding to a belief regardless of what evidence may appear against it, refusing to call the belief into doubt. This is the method of the most dogmatic believers, those people who will not relinquish their belief at any costs. Peirce expresses a certain admiration (though this may be sarcasm) for such people who dare to defy reason, although the costs of holding such views are, ultimately, often significant. The second method of fixing belief is that of authority. It is the method of the schools and of the state, the method of coercion and oppression. Anyone who dares to question the accepted knowledge is punished for doing so. While Peirce thinks that this manner of forcing belief will be ever-present, it must always also be imperfect, since there will always be people

who dare to question authority. The final method is that of the appeal to the *a priori*, the method of the philosophers. Peirce rightly recognizes that in the final analysis, this method is really no different than the appeal to authority, since what is considered a natural intuition changes with the fashion of the day.²³

Peirce ultimately advocates the experimental method as the most effective means of establishing the good and the true. A society's beliefs can only progress toward these ideals by putting those beliefs to the test, and then either accepting, rejecting or revising them depending on the observed consequences. This advocacy of the scientific method of inquiry is typical of pragmatist philosophers. If it is an accurate assessment of the manner in which social values are, or should be, decided, then we can expect that the agreed-upon ends of social action will always be subject to change. Joas writes that:

In light of the consequences of action, every conception of the good and the right will come under the pressure of revision ... In retrospect — having become wiser after the event — we can discover more about the actual appropriateness of our action, but even then a definitive and certain judgment eludes us, because the future will yield further consequences of action and points of view, which again jeopardize our appraisal.²⁴

The appeal of this method of deciding the good, then, is not its ability to settle disputes for all time, but its promise of a gradual improvement in society's necessarily flawed conceptions of the good, and its willingness to integrate new voices and new experiences.

There is a natural affinity between the pragmatic method of settling belief and deliberative democracy, and a strong endorsement of radical democratic principles can be found in the writings of pragmatist philosophers. Like Peirce, Dewey is a proponent of the experimental method, and he links it to his theory of democracy, suggesting that sound public policymaking must be informed by systematic inquiry.²⁵ This may not be one of the most

²³ Peirce, "The Fixation of Belief," pgs. 12-18

²⁴ Joas 2000, pg. 171

²⁵ Dewey 1927, pg. 179

compelling aspects of the pragmatic vision of democracy — Dewey himself admits that government by experts boils down to little more than oligarchy.²⁶ The more crucial point for him is the necessity of maintaining an informed and engaged public.

Dewey is not convinced we will encounter truly democratic publics in our present society, rather, democracy is something we should strive for, even if it can never be perfected in practice. Free association of individuals will not, on its own, yield democracy. What is needed, Dewey thinks, is the formation of community. A community exists where collective action is motivated by shared beliefs about the good and “the realization of the good is such as to effect an energetic desire and effort to sustain it.”²⁷ Agreement about basic values, then, is a prerequisite for democratic practice.

How such agreement could be achieved in any but an ideal world will have to be a topic for later in this work. We will have to be content for now to simply establish that there exist a number of obstacles to the realization of democratic practice. The already-mentioned need for knowledge-driven deliberation is another potential sticking point. Mead and Dewey argue that “informed debates within a cognitively competent and civically engaged citizenry” are essential to successful democratic practice.²⁸ This requirement of informed debate presents a number of problems for democracy. In contemporary American society, there exist real doubts about whether the citizenry can be considered either civically engaged or cognitively competent. Mead writes that social consensus is possible “as long as the complexities of human society do not exceed those of the central nervous system.”²⁹ In the regulation of mountaintop removal mining, it is apparent that a number of layers of complexities create challenges for democratic exchange,

²⁶ Dewey 1927, pg. 208

²⁷ Dewey 1927, pgs. 148-149

²⁸ Da Silva 2007, pg. 64

²⁹ George Herbert Mead, *Selected Writings*, Ed. Andrew J. Reck (Indianapolis: Bobbs-Merrill, 1964), pg. 292.

including a complicated regulatory apparatus that is difficult for the average citizen to disentangle and even more difficult for citizens to interact with fruitfully. These layers of complexity will be carefully described in coming chapters.

One major shortcoming of the pragmatic approach to democracy is that it tends to be overly idealistic, and fails to give a sufficient consideration to the practical constraints on democratic action. Pragmatists exhibit some confidence in the ability of rational deliberation and consensus-making to affect social change. A reader of their writings detects little pessimism about the consequences of existing deficiencies in the organization of the public. The most serious challenge to democratic practice, and the least considered by pragmatists, is disparities in power among members of the public. Peirce noted that coercive authority will probably always be a part of society, but that is literally all he has to say on the topic. Dewey is at least aware that power exhibits a keen influence over public affairs in the absence of strong democratic practices,³⁰ but he has no detailed account of how power operates in society. We must consider the possibility that the democracy of the pragmatists is a dream, and in practice relations of power play a much more prominent role in shaping social action. Since the pragmatist toolkit lacks the resources for a proper analysis of power, I will have to turn to other sources for help.

The effects of power

The biggest difficulty for the pragmatic account of democratic action is that it assumes all conflicts of interest can be resolved through rational deliberation, and that these deliberations occur on a level playing field. The persistence of conflicts can only be chalked up to the as-yet incomplete project of perfecting the social order. Little is known about why that project remains incomplete. Inequalities of access and influence have not been sufficiently considered. What the

³⁰ Dewey 1927, pg. 182

pragmatic theory of social order lacks is an account of power. If representative democracy is an ideal, then I am likely to uncover some instances of less-than-perfect democratic practice in my analysis of mountaintop removal. I will need some way to interpret the forces preventing mining regulation from being practiced in a fully democratic manner. It is to an analysis of power, then, that we will turn our attention now. To develop an appreciation for the role of power in producing social order, I will rely on insights from French critical philosophy — a tradition which in the last century has been much concerned with the analysis of power. Our discussion here will be drawn, specifically, from the writings of Louis Althusser.³¹

On the pragmatic account of democracy, power is invested in the community at large, which operates democratically in pursuit of the overall social good. The Marxist critical tradition, to which Althusser belongs, flatly rejects this portrayal of how power operates in modern societies, and instead sees power as manifested in the struggle between social classes. According to this school of thought, the ruling classes possess hegemonic power, which they use to organize society in the manner most conducive to their own particular class interests.

While it provides an alternative theory of the functioning of power, this critical tradition largely agrees with the major tenets of the pragmatic approach to the self, society and belief. Like most twentieth-century French theorists, Althusser accepts the reliance of thought on sign systems, the conception of the individual as a product of her social environment, and the historical contingency of human knowledge, though he tends to trace the development of these

³¹ Louis Althusser, “Ideology and Ideological State Apparatuses,” *Contemporary Critical Theory*, Ed. Dan Latimer (San Diego: Harcourt, Brace, Jovanovich, 1989), pgs. 60-102. Another prominent twentieth-century French philosopher, Michel Foucault, explains the effects of power in a fashion strikingly similar to Althusser, although the two use different terminology. Foucault’s conception of power as amorphous and decentralized is slightly more sophisticated than Althusser’s focus on state power. Though Foucault would prickle at the comparison, his techniques of disciplining power have basically the same properties as Althusser’s ideological state apparatuses. For a detailed account of the Foucauldian approach to power, see his “Two Lectures” in *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*; Ed. Colin Gordon; Trans. Colin Gordon, Leo Marshall, John Mepham and Kate Soper (New York: Pantheon Books, 1980); pgs. 78-108.

concepts through the work of Ferdinand de Saussure and Jacques Lacan rather than through Peirce and Mead.

Althusser's project in his famous essay "Ideology and Ideological State Apparatuses" is to understand how the relations of production are reproduced. That is, he wants to know how the bourgeois social structure is maintained week after week, year after year, generation after generation. What are the mechanisms that sustain it? He identifies two types of structures that work to reinforce the state — conceived of broadly as the rule of the bourgeois in all aspects of society — the Repressive State Apparatus (RSA) and the Ideological State Apparatuses (ISAs). The RSA is the traditionally recognized venue for the exercise of state power. It includes the military and police and acts through overt repression and violence. The ISAs, on the other hand, are dispersed throughout society in both the public and private spheres (the distinction between public and private, Althusser says, is nothing more than a bourgeois creation). Included among the ISAs are all manner of institutions, such as organized religion, the family, the legal system, the political system and, most significantly for Althusser, the education system. The coercive authority of the RSA paves the way for the functioning of the ISAs, which are ultimately the primary structures upholding the bourgeois state. The job of the ISAs is to reproduce the relations of production by perpetuating the ruling ideology. Althusser defines ideology as "the system of ideas and representations which dominate the mind of a man or a social group" and conceal from us our actual place and function in the social order.³² His concept of ideology is developed through his reading of Lacan, but it bears a strong resemblance to the pragmatic notion of "common sense" beliefs that ground the structures of social control.

In fact, I would contend that the Althusserian approach to power is completely compatible with a pragmatic reading of social action. Michael Parenti, who is something of a

³² Althusser 1989, pg. 84

pragmatist, has developed a theory of power that combines a focus on the consequences of action with an awareness of the influence of powerful social institutions. According to Parenti, patterns of social behavior are at least partly shaped by society's "organizational structures and institutions, its long standing beliefs and shibboleths, and the imperatives of its economy."³³ To assume that the existing social order is the product of a freely-established consensus "is to assume there has been no indoctrination, no socialization to conservative values, no limitation of the agenda, no predetermination of interest choice," in effect, no manipulation by powerful interests.³⁴

Neither Parenti nor Althusser sees the transmission of the ruling ideology as an entirely determining force, choking out all competing ideas. The ruling class cannot easily "lay down the law" in the ISAs because, according to Althusser, "the resistance of the exploited classes is able to find means and occasions to express itself there."³⁵

Yet, in spite of allowing some glimmer of hope for the huddled masses, the tone of both authors is somewhat pessimistic about the transformative power of oppositional discourses. Parenti recommends a few avenues for confronting the established order; Althusser has precious little to say about how citizens can harness power for social change. Parenti and Althusser agree that power is exercised in modern societies first and foremost by the ruling classes for the purposes of domination.

Prospects for social change

We've seen in the preceding pages that there is nothing fixed or necessary about our beliefs, and the social structures we build around those beliefs. It is not as if there is some eternal

³³ Parenti 1978, pg. 13

³⁴ Parenti 1978, pg. 16

³⁵ Althusser 1989, pg. 76

order of the true and the good with which our beliefs/actions must be brought into agreement. Rather, we give shape to what is considered true and good through social action, the consequences of which form the content of our beliefs. The most fundamental and significant form of human action is our capacity for intersubjective communication. Without dialogue, no meanings, no ideas about the true nature of the universe or the proper ends of social practice would be possible.

These arguments, first proposed as a cohesive system of thought by the American pragmatists around the turn of the twentieth century, have gained widespread acceptance in philosophical discourse. Conceiving of social experience in this way allows us to reject Cartesian essentialisms. Any theory that claims the social order is the inevitable outcome of certain tendencies inherent in human nature can be rejected as false. There is no room in the world for human nature or inevitability as any thing other than socialized beliefs — historical, contingent, changeable beliefs. We should therefore reject as overly inflexible most of the classical theories of social organization, which assume that society is structured in such and such a way because human beings are naturally selfish, or naturally corruptible, or naturally altruistic, or naturally rational. Any of these theories may prove useful in connection with certain ends, but none can be said to be inherently true. Truth, we have found, can only be determined in relation to the ends sought, to what we decide would count as a good result. We must, then, keep an eye on the ends of social action.

The critical philosophy originating in twentieth-century Europe has applied these lessons to its interest in existing inequalities of power and concluded that modern societies are perfecting the methods of social control through the production of ideology, or taken-for-granted beliefs about the nature of individuals and their roles in the social organization. Adherents of this view

argue that current social practices are working to perpetuate class divisions and promote a narrow set of capitalist values. They are pessimistic about the ability of those who aspire to different conceptions of the good to enact social reform.

The pragmatist philosophers of the early twentieth century were more naively optimistic about the possibilities for social change. From their point of view, social ends can only be legitimated by the approval of the community at large. They believed that these ends could be negotiated through rational, democratic deliberation. While this may be the right model, it is an idealization, and we have discussed some of the problems with democratic deliberation in practice.

Going forward, my analysis will seek to determine which of these models best describes the social practices surrounding MTR. The complexities of social reality are unlikely to fit nicely under a single theory, and we will probably be able to identify conditions conforming to the predictions of both the pragmatic and critical theories exhibited in the regulation of MTR.

At first glance, it appears that the critical philosophy of power may offer a more realistic assessment of the challenges to democratic practice. But the pragmatists have one more trick up their sleeves. They recognize that the influence of historically dominant beliefs and institutions in producing conformity of social opinion and action is undeniable, given that the individual consciousness is a product of its social environment. We are, however, still individuals, and have our own subjective notions of self. We have unique personal experiences and react to those experiences in unique ways. Pragmatists, then, assert that the controlling influence of our formative experiences is tempered by the existence of individual creativity. As John Dewey writes:

Even in cultures most committed to reproduction, there is always occurring some creative production, through specific variations, that is, through individuals. Thus, while negatively

individuality means something to be subdued, positively it denotes the source of change in institutions and customs.³⁶

I'll repeat: Creativity is the source of change in institutions and customs. Mead attributes radical social changes to the rare genius like Jesus or Socrates who is distinguished by the "uniqueness and originality of his response to a given social situation or problem or project." Yet, he softens this statement by saying that we can all contribute to social change "to the degree that we make the community in which we live different."³⁷

The importance of creativity has been echoed in the writings of many notable contemporary social theorists, including Raymond Williams, who believes that human beings are essentially creative creatures, and stresses "creative response to practical difficulties" as a central process of "personal and social growth."³⁸

So we can all play reformers as long as we act out the values we hold dear in resistance to the dominant social practices. These dominant practices may exert a hegemonic force, but that does not preclude the development of alternative ideologies and counter values. Althusser would grant as much, as we saw above. Pockets of resistance to mainstream values will no doubt be found in any sufficiently complex society, and marginalized individuals and groups can attempt to reshape their social environment through creative action. But there is no guarantee that such efforts will have the desired impacts. A new question must be asked: What are the most effective forms of resistance to entrenched social institutions and practices? We know that there are many individuals living in Appalachia who believe that their values are in conflict with MTR practices. How should those individuals go about working to reform the practice? An activist hoping to end MTR could stop paying his electricity bill. Such action would clearly constitute a refusal to

³⁶ Dewey 1958, pg. 212

³⁷ Mead, *Mind, Self and Society*, quoted in Da Silva 2007, pg. 52

³⁸ Williams 1961, pgs. 94, 100

assent to the dominant practice, and would therefore provoke a crisis of legitimation. That crisis, however, would be so miniscule compared to the overall inertia of the practice that it would be unlikely to have much effect. Speaking out in print or on film or organizing an anti-MTR campaign may produce better results, because the more individuals who get involved and change their actions, the more that crisis of legitimation grows, and the greater the likelihood the critical mass needed to overthrow the current practice will be achieved.

Pragmatist thinkers would largely agree with this assessment of the means of resistance. Dewey argues that the production of a more democratic society depends on the communication of ideas and the undertaking of communal projects, particularly at the local level.³⁹ Remember how critical he considered an informed and engaged public to be to successful democratic practice. Parenti also suggests that numbers can be powerful when mobilized into political action. He notes that the most successful challenges to power in recent history have been direct public actions such as strikes and demonstrations, although they have won only incremental reforms, and have not upset the prevailing balance of power.⁴⁰

We live, of course, in a nominally democratic society, and the legal arbiter of conflicting values and interests is supposed to be the state. Ideally, any necessary reforms to MTR practices would occur at the level of changes to regulatory codes and practices.

If the optimistic view of democracy endorsed by the pragmatists is correct, creative democratic change should slowly improve the ability of social practices to serve the interests of all. To what extent is this evolution occurring with regard to MTR? Have regulatory and legal changes to mining practices been an improvement over past standards? Or do we instead see the

³⁹ Dewey 1927, pgs. 216-219

⁴⁰ Parenti 1978, pgs. 207-208

increasing dominance of particular values and interests that are shared by privileged actors, but not by the community at large?

Even if the current practice does not constitute an improvement in terms of addressing the broader social good, it may still be possible to explain away its institution as a bad iteration, a failed democratic experiment. But if this were the case, we should see evidence of mounting social pressure to revise the practice. If the pragmatists are right about the democratic negotiation of the social good, as a particular value (say, environmental conservation) grows in social purchase, we should witness resulting revisions to existing practices in order to bring them in line with the new value. As I detail in the next chapter, a well-organized and growing citizens' movement has arisen in opposition to MTR. A determination of the extent to which state officials are revising their practices in an effort to pacify this disaffected constituency will be the essential measure of whether MTR regulation can be called democratic.

It is possible that the state is simply not responsive to social pressure; this would be an interesting finding for our investigation, if a disheartening one. It would certainly confirm the worst fears of the critical philosophers. I have argued that the pragmatic and critical traditions understand the social order on roughly the same terms, the differences between the two perspectives is a matter of emphasis. The critical philosophers have emphasized the ability of social practices and the values they embody to reinforce class hierarchies. Pragmatists, on the other hand, emphasize the potential for creative social progress. Which emphasis offers a more accurate depiction of West Virginia's political culture is an empirical question, and we turn to it next.

3. THE SOCIAL CONSEQUENCES OF MOUNTAINTOP REMOVAL

Larry Gibson's family has lived on Kayford Mountain since the 18th century.

When Larry was growing up here in the early 1950s, Kayford was a bustling coal town of 500 homes and around 4,000 people. The town had a movie theater and a soda fountain, and the valley buzzed with the activity of 25,000 miners. Everybody belonged to the union.

Larry's extended family built their cottages at a low point on the mountain, with peaks rising around them. They grew corn and other vegetables, and made cow butter, which they sold to the company store down in the hollow. A small mine dug into the side of the mountain supplied the coal they used to heat their homes. They were poor, but Larry didn't mind one bit. He spent his childhood exploring the surrounding hills, hunting and trapping and prospecting for wild berries.

Things are a lot different now. Like many old southern West Virginia coal towns, Kayford today is populated mainly by ghosts. By an unofficial census, there's only one remaining resident — Larry. You might not even notice the school and the post office, ruins slowly melting into the forest, if Larry didn't point them along the four-wheel-drive-required road up to the Gibson family compound. A whole lot of mining still goes on in this valley; the coal companies probably move more tonnage now than they ever did in Kayford's heyday, but they employ fewer and fewer miners in the process.

The compound, often called Camp Kayford, consists of about a dozen small cottages and shacks, and a good-sized pavilion for when Larry hosts gatherings in the summertime. A cemetery where hundreds of Larry's ancestors were buried is nearby. No one's entirely sure where their bones rest now.

Sometimes family and friends will come to stay at the camp, which seems to have migrated over time, and now rests at the top of the mountain. Actually, the cottages haven't moved at all; the neighboring peaks have simply disappeared. A hilltop that used to rise 600 feet above the property has been reduced to a pile of rubble 400 feet below.

Gibson started hearing blasts around Kayford Mountain in 1987. Arch Coal out of St. Louis, the number two coal company in the nation, would soon begin MTR operations in earnest. At more than 12,000 acres, Arch's Samples mine has become one of the largest, highest-producing and most notorious mountaintop mines in West Virginia.¹ Coal company representatives said the Gibson family land was worth one million dollars an acre to them, and they offered \$140,000 for the entire plot. Larry told them he would never sell. He was able to save 50 acres around the family compound by having it designated a public park. He watched as everything else around him literally disintegrated into dust. Many of those ancestors in the family cemetery have no doubt been swallowed by the mine tunnels snaking under the mountain.

Larry will be the first to admit he's stubborn as hell, and as surface mining began to lay waste to his old stomping grounds, he became an unlikely leader of the movement to stop MTR. Though he's short in stature and speaks in a thick accent, Gibson has become larger than life in the activist community; his face has appeared in films, in magazines, in newsprint, on national television and on the covers of books. Kayford Mountain has become a pilgrimage site for those who want to see the effects of MTR firsthand. From the edge of the property, there is a birds-eye view of the devastation for miles around. It is not uncommon for visitors, or for Larry, to be reduced to tears by the sight. More than 1,000 people made the trek to Kayford in the last year

¹ Arch recently sold the Samples mine to Patriot Coal, another St. Louis-based conglomerate. Patriot planned to shut down the mine in 2009, but as of March 2010 work was still being done in the area. See Ken Ward, Jr., "Samples Update: High-profile MTR mine shutting down," *Coal Tattoo*, 1 April 2010, <http://blogs.wvgazette.com/coalatattoo/2009/08/03/samples-update-high-profile-mtr-mine-shutting-down>.

alone, including Hollywood actors and country music stars. Even West Virginia Governor Joe Manchin III and former DEP Secretary Stephanie Timmermeyer have signed Gibson's guestbook.

Speaking out against MTR has not made Larry popular with everyone. He keeps a running tally of the acts of violence that have been committed against him, and by the time I came to Kayford for a visit this past March, he was up to 136. His dogs have been shot. Activists rallying at the compound have endured profanity-laced threats. The bullet holes in Larry's old trailer testify to the late-night visits he sometimes receives from ticked-off miners on alcohol-infused joyrides. Larry has been known to shoot back. From what I could gather, he carries more than one loaded pistol with him when he travels. Coal trucks — sometimes 500 of them a day — make up most of the traffic coming into and out of Kayford, and the drivers all recognize Larry's white truck, covered with anti-MTR bumper stickers. Larry has been run off the road before — on one occasion getting pinned behind the wheel and racking up \$3,000 worth of damage to his pickup — so he monitors the coal trucks' radio frequency in an effort to stay out of their way.²

Like any large-scale industrial activity, mountaintop removal has its costs and its benefits, its winners and its losers. The aim of this chapter is to map out, as thoroughly as possible, who has what at stake in continuing the practice. At Kayford Mountain, the terms of the debate have been cast into sharp relief. Larry Gibson will lead visitors up an incline and past a row of "No Trespassing" signs to a ledge where they can peer out at the overgrown earth-moving machines and exposed coal seams that are the most remarkable features of the giant sand pit below. On one side of those "No Trespassing" signs, I realized, are people like Larry. Hidden in

² The above description of Kayford was compiled from the author's observations and discussion with Larry Gibson, March 2010, as well as from several other published accounts, especially Larry Gibson's "This Land Will Never Be For Sale;" *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009); pgs. 181-187.

the hollows surrounding the mine site are peaceful little homes, homes where the walls shake when a charge goes off, where wells have dried up, where an errant piece of flyrock will sometimes land in the front yard. On the other side of the fence are mine operators who labor long hours shoveling dirt, rock and coal — as many as nineteen workers during a full shift.³ On the afternoon I was there, I counted five pickup trucks parked at the mine site. The coal trucks rumbling down Cabin Creek Road carry away product that could be destined for anywhere from a power plant in Virginia to a seaport in Asia. Eventually, what comes out of the ground in Kayford ends up flowing from electric sockets in homes all over the world, maybe yours, maybe mine. The other unseen actors are the coal executives, who sit in air-conditioned offices in Richmond or St. Louis and count the profits from each ton those trucks haul away.

American electric power

In some sense, we all profit from coal. The dirty fuel that powered the industrial revolution still heats and lights many American homes today. The smokestacks have simply been moved farther out of sight. Some of the highest quality coal, called anthracite, is sold to steel mills. But most seams in West Virginia contain bituminous coal, a grade below anthracite, which is used primarily for electric power generation. Somewhere between 40-50 percent of American electricity is supplied by coal-fired power plants.⁴ In West Virginia, 99 percent of electric power comes from coal.⁵ Some authors claim the state and the country as a whole are addicted to the rock. In 2008, U.S. coal production was off the charts at more than one billion tons mined that

³ Larry Gibson in conversation with the author, Kayford, West Virginia, March 2010

⁴ Coal industry estimates tend to be on the high end; environmentalists typically quote lower estimates.

⁵ West Virginia Coal Association, *Coal Facts 2009* (Charleston, West Virginia: West Virginia Coal Association, 2009), available at <http://www.wvcoal.com/docs/Coal Facts 2009.pdf>.

year.⁶ About twenty pounds of the stuff have to be burned each day to satisfy the electricity needs of a single typical American.⁷

One of the reasons coal production has surged in recent decades is because it's so plentiful. America has been called the "Saudi Arabia of coal," since about a quarter of the world's recoverable reserves lie within our borders.⁸ Some of the most significant coal beds developed in Appalachia around 400 million years ago during the Carboniferous period, when the region was covered with swamps that supported a variety of plant life. Coal, like petroleum, is a fossil fuel, and its origins can be traced back to the dead plant matter that began piling up in these prehistoric swamps. As a result of changing climate conditions, the swamps were periodically flooded by encroaching seas, preserving this organic matter from decay. As the topography underwent a series of violent upheavals that created Appalachia's mountain ranges, the peaty material was buried and compressed over millions of years, squeezing out impurities and leaving behind solid rock made of mostly carbon. A higher carbon content equals higher quality, hotter and cleaner-burning coal.⁹ West Virginia coal is generally of high quality; its sulfur content is low so it burns efficiently.

After slumping in the 1950s, the market for West Virginia coal rebounded, thanks largely to the passage of the Clean Air Act, which set limits on the pollutants industrial operations were allowed to emit. West Virginia coal became attractive to the owners of older, dirtier power plants, since its lower sulfur content meant it could be burned without having to install expensive pollutant scrubbers in the smokestacks. Today, West Virginia is the nation's second-leading

⁶ West Virginia Coal Association 2009, pg. 7

⁷ Jeff Goodell, *Big Coal: The Dirty Secret Behind America's Energy Future* (New York: Mariner Books, 2007), pg. xiii.

⁸ Goodell 2007, pgs. xvi, 3

⁹ Goodell 2007, pgs. 8-9

producer of coal, shipping more than 157 million tons in 2008.¹⁰ About three times that amount was recovered the same year in Wyoming, where sparse population, level terrain, and 80-foot-thick coal seams have made mining huge volumes child's play.¹¹

Surface mining became increasingly popular throughout the 1980s and 1990s in Appalachia. The practice may have peaked in the first half of the new millennium, but it remains widespread in West Virginia today at numerous large mines. Forty percent of the state's mining is done on the surface. Mountaintop removal is the most routinely practiced form, making up 70 percent of all strip mining activity in the state.¹² Many of the highwall and contour surface mines are sub-permits at large MTR sites. All of the major companies — Arch Coal, Massey Energy, CONSOL Energy — are heavily invested in MTR, and extract millions of tons each year by the method.

But the party may be nearly over. The best estimates suggest that if mining persists at current levels, the readily accessible supply would be exhausted in between 20 and 30 years.¹³ Most of West Virginia's political actors think MTR is winding down. According to a recent white paper by Downstream Strategies, "coal production in Central Appalachia is on the decline, and this decline will likely continue in the coming decades." The report's authors project coal production in the region will decline by 46 percent in the next ten years, and another 58 percent by 2035.¹⁴

Coal has been a major player in American energy production in recent decades not just because it is in good supply, but also because it is cheap. Coal-fired electricity costs the average

¹⁰ West Virginia Coal Association 2009, pg. 7

¹¹ The average Appalachian coal seam, by comparison, is about six feet thick. See Goodell 2007, pg. 35.

¹² West Virginia Coal Association 2009, pg. 8. See also Rory McIlmoil and Evan Hansen, "The decline of Central Appalachian coal and the need for economic diversification," Downstream Strategies (Morgantown, West Virginia: Downstream Strategies), 2010, pg. 30.

¹³ Penny Loeb, *Moving Mountains: How One Woman and Her Community Won Justice from Big Coal* (Lexington: The University Press of Kentucky, 2007), pg. 218.

¹⁴ Rory and Hansen 2010, pg. 1

consumer something on the order of 10 cents per kilowatt hour — not a bad deal. Of course, some of the true costs of coal have been externalized, and are borne mostly by the taxpayer. One coal-friendly study suggests the industry is a major benefactor of the public purse, contributing \$676.2 million to the tax coffers in 2008, when property, severance, worker’s compensation, corporate income, special reclamation, coal road fund, personal income and sales taxes are all summed.¹⁵ But this, admittedly significant, contribution does not guarantee the industry provides a net economic gain for the state. The aforementioned study completely forgets to calculate state expenditures directly on the coal industry. A new study by Kentucky’s Mountain Association for Community Economic Development finds that when state tax dollar expenditures are calculated in the same way as tax revenues from coal — accounting for spending such as the budgets of various regulatory agencies, maintenance of coal roads, expenditures on reclamation, and the cost of state services for coal industry employees — the state of Kentucky lost \$115 million dollars on coal in fiscal year 2006.¹⁶ So the industry benefited from a huge subsidy. No parallel study has been completed for West Virginia, but the state’s Department of Highways did estimate that damage done to 3,600 miles of roads by hauling coal would cost \$6.5 billion to repair. Hauling permits generate only as much as \$1 million a year in income for the state.¹⁷

So although most of us depend on coal everyday, that dependence is perpetuated by institutionalized state support that keeps the price of coal affordable. Without these substantial subsidies, coal may face competition from other sources of electricity, such as renewables. “Coal keeps the lights on because our government chooses to have coal keep the lights on,” said Coal

¹⁵ West Virginia University Bureau of Business and Economic Research and Marshall University Center for Business and Economic Research, “The West Virginia Coal Economy 2008” (Morgantown, West Virginia, 2010), pg. 7.

¹⁶ Melissa Fry Konty and Jason Bailey, “The Impact of Coal on the Kentucky State Budget: Current Impacts and Future Prospects” (Berea, Kentucky: Mountain Association for Community Economic Development, 2009), pg. 1.

¹⁷ Burns 2007, pg. 73

River Mountain Watch volunteer William Levendis. “Any other form of energy could keep the lights on, if government policy dictated that it should.”¹⁸

Members of Coal River Mountain Watch have joined Rory McIlmoil and Lorelei Scarbro in lobbying to build a 164-turbine wind farm on Coal River Mountain, which has been slated for mountaintop removal. They argue the farm would pay \$1.74 million in property taxes to Raleigh County each year in perpetuity, while coal severance taxes only generate \$36,000 for the county annually, and the coal supply will last for less than 20 years.¹⁹ But since the land is owned by coal interests who have their eyes on much bigger dollar signs in the short term, the group’s pleas have largely fallen on deaf ears.

We have seen that while many of us enjoy the benefits of cheap electricity from coal, some of the real costs of that electricity may be disguised and ultimately passed along to the taxpayers. This is also true of some of the other risks of burning coal, which are diffuse and not widely taken into account, though they may potentially affect large segments of the country’s population. Coal-fired power plants are a leading producer of carbon dioxide emissions that contribute to global warming — chipping in 40 percent of the nation’s total. They are also top polluters of toxic chemicals such as sulfur dioxide, mercury, and numerous other heavy metals. Nitrogen oxide emissions from coal plants are the main source of smog.²⁰ All of these pollutants have been linked to serious health problems. About 24,000 deaths each year, including nearly 3,000 cases of lung cancer, can be attributed to pollution from American power plants.²¹ While

¹⁸ William Levendis, Coal River Mountain Watch, in conversation with the author, Whitesville, West Virginia, March 7, 2010.

¹⁹ Jeff Biggers, “Blowing Away King Coal,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, Eds (San Francisco, Sierra Club Books, 2009), pg. 142. How the figure of \$36,000 was arrived at, I cannot say. The industry reports contributing more than \$2 million in severance taxes to Raleigh County in 2008.

²⁰ Goodell 2007, pgs. 122-123

²¹ “Dirty Air, Dirty Power: Mortality and Health Damage Due to Air Pollution from Power Plants,” *Clean Air Task Force* (Boston: June 2004), <http://www.catf.us/publications/view/24>

pollution poses broad societal risks, the byproducts of burning coal disproportionately affect people living in communities near a plant or waste dump.

Ultimately, most of us do not give a whole lot of thought to the costs and benefits of powering our country with coal. We feign ignorance of the consequences of air and water pollution for our health, because the causal chains can't be observed directly. We don't have any special allegiance to coal, and might not even notice if our electric company switched to another fuel source. Michael Parenti has argued that the vast majority of us will be unlikely to pursue the sorts of diffuse interests we might have in the methods of electricity generation practiced in our country, because "even though all of us may have a common interest in a collective benefit like preservation of the environment, we have no individual interest in paying the cost."²² Mobilizing the public around an issue is notoriously difficult when the benefits of action are widely distributed, hard to quantify, and might only be realized at some unknown point in the future. The blunt fact of the matter is that most of us simply do not care enough about the effects of burning coal and mountaintop removal to disrupt our daily lives and do something that might upset the status quo.

The most significant effects of coal mining — and specifically MTR — remain concentrated locally on the industry and residents of West Virginia. I am presently searching for the public relevant to the practice of MTR. All consumers of coal products would have to be included on a complete list of affected parties. But the majority of us are only minimally interested actors. Nothing about our actions suggests that we believe anything strongly about coal production one way or the other. Those who interact directly with the Appalachian coal industry have much more clearly articulated interests on the issue than those of us whose only relationship to coal is through our electric bill. These directly-affected parties reveal their

²² Parenti 1978, pg. 19

interests and values through their patterns of action with respect to MTR (perhaps the inaction of the rest of us shows something about our values, too). The public on which I must focus my analysis here is composed of the individuals and groups who have a direct stake in the controversy over MTR. The conceptions of the public good they express determine the boundaries of potential responses to the practice, and they are the only ones actively engaged in democratic debate on the issue.

Although there is no strict dichotomy, this public is largely split between those who are in favor of MTR and those opposed to it. The former group includes coal industry executives and their employees, many of whom are West Virginians. The latter group is composed of environmentalists and local residents, some of whom have had their lives turned upside down by mining in their communities. I must now undertake a discussion of the senses in which the practice of MTR can be considered a good. Along the way, I will attempt to determine the goods each of these social groups aims at, as suggested by their actions. With these tasks completed, I will be able to make a summary statement of whose values and interests are advanced by MTR, and whose conflict with the practice.

Yes, Coal

The proponents of coal mining offer numerous reasons why the practice is a general good for the citizens of West Virginia. One argument frequently advanced is that coal production is essential to the state's economy. Industry estimates state that West Virginia coal mining pays \$1.5 billion in annual wages and has a net economic impact of around \$6 billion on the state.²³ The significance of these statistics should not be underplayed. Coal extraction, preparation and

²³ West Virginia Coal Association 2009, pg. 6. Also, WVU Bureau of Business and Economic Research 2010, pg. 6. Jeff Goodell claims that the West Virginia Coal Association has been known to inflate these estimates, see Goodell 2007, pg. 15.

transportation combined make up one of the state's most important industries. But that is not the same thing as saying that coal mining is an essential industry. Unbiased numbers from the U.S. Department of Commerce show that the \$3.5 billion that coal added to West Virginia's 2004 GDP comprised only seven percent of the state's total output. And coal severance taxes make up less than seven percent of the state's general tax revenues.²⁴ What's more, the portion of those severance taxes returned to county and municipal governments is unevenly distributed, with most being funneled to the state's population centers. As a result, many of the areas most affected by coal mining receive little to no economic benefit from the practice. Sylvester, a small Boone County town of about 200 people, has been one of the communities most adversely affected by MTR in recent years. Of the more than \$5 million in severance taxes received by the county in 2008, Sylvester saw only \$874.93.²⁵

The suggestion that MTR needs to be continued to ensure the state's economic well-being is even more dubious. The United States could easily do without the practice — only about 5 percent of the nation's coal comes from mountaintop mines.²⁶ In West Virginia the share of coal production from MTR is more significant, at a little under 30 percent. Although new restrictions on MTR or the outright abolition of the technique would no doubt affect West Virginia's total coal output, it's unclear how significant the economic impacts would be. Alternate methods of recovering coal could make up for a decline in MTR, and Massey CEO Don Blankenship has been quoted saying that in such an event, the company would “go to more

²⁴ Shannon Elizabeth Bell, “Coal is All West Virginia's Got,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 110.

²⁵ West Virginia Coal Association 2009, pg. 16

²⁶ Rob Goodwin, Coal River Mountain Watch, in conversation with the author, Whitesville, West Virginia, March 7, 2010.

deep mines.”²⁷ Of course, given what we’ve already said about the health of the state’s coal reserves, mining production will probably decline with or without tougher regulations on MTR.

Mountaintop removal does eliminate large areas of steep terrain, leveling tens of thousands of acres throughout West Virginia. In a state where flat land for economic development is at a premium, this consequence of MTR is often pitched as attractive to commercial investment. The government, industrial and recreational facilities that have been built on reclaimed mine sites are a favorite talking point of coal lobbyists. While development of any kind still only occurs on a small minority of reclaimed sites, the list of projects is growing more respectable. Early developments included a federal prison, a mall, a small rural airport and a golf course without trees. More recently, industrial parks, an FBI building, a hospital, recreational facilities and even a high school have been built on old surface mines, which is how the industry always refers to MTR sites.²⁸

This perspective on MTR has a real upside, but it fails to make much of an argument for continuing the practice. As activist organizer Judy Bonds has observed, only four percent of former mines have been developed, and West Virginia has enough flat land for 4,000 years at the present rate of development.²⁹ And not everyone is convinced that loosely-compacted valley fills make particularly good ground for building.

Probably the favorite defense of MTR employed by the industry and its supporters is that mining provides much-needed jobs to West Virginia citizens. Poverty is the norm in southern West Virginia; economist Michael Hicks has called economic conditions in the area “a human

²⁷ Rory and Hansen 2010, pgs. 31-32

²⁸ West Virginia Coal Association 2009, pg. 42

²⁹ Judy Bonds, Coal River Mountain Watch, in discussion with the author, Whitesville, West Virginia, March 7, 2010.

tragedy of epic proportions.”³⁰ Good jobs are sorely needed, and coal jobs tend to pay well. The average salary for a coal miner in West Virginia was \$60,000 in 2008, and miners can make as much as \$90,000 a year with overtime.³¹ Whenever restrictions are threatened on MTR operations, coal companies trot out the trusty jobs argument. Threatening layoffs produces the intended effect of whipping miners into a frenzy, which in turn ratchets up the pressure on elected officials who are judged by their ability to grow employment, or at least preserve existing jobs. The jobs argument may be politically effective, but its logic is precarious, particularly in the case of MTR, which has been described as “mechanized job loss.”³²

The exact number of jobs provided by the coal industry can be difficult to pin down, because different sources quote different numbers. It is clear, however, that the trend in the coal industry for the last four decades has been to eliminate jobs rather than grow them. The number of West Virginia coal miners peaked in the late 1940s at around 125,000. In the next decade, coal employment fell off a cliff, before stabilizing in 1970 at about 45,000 miners. Mechanization and consolidation of the industry were the chief culprits behind this drop.³³ It is worth noting that no method of mining is more automated and concentrated in the hands of a few large firms than MTR.

In recent decades, the number of coal jobs continued to decline steadily until reaching a low point in 2003, when there were only about 15,000 miners left in the state.³⁴ Southern West Virginia took the brunt of those layoffs, with mining employment shrinking 66 percent.³⁵ The industry has experienced a slight upturn in the latter half of this decade. The most recent

³⁰ Goodell 2007, pg. 28

³¹ West Virginia Coal Association 2009, pg. 6

³² Bryan McNeil, “Union Legacy and Green Networking,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 49.

³³ Williams 1984, pg. 180. Also, Burns 2007, pg. 13

³⁴ Burns 2007, pg. 13

³⁵ Burns 2007, pg. 67

numbers reported by West Virginia's coal lobby claim the industry employs more than 46,000 people in the state. A little more than 20,000 of them work directly in mining, including 6,000 surface miners.³⁶ What the remaining 25,000 workers do isn't entirely spelled out, though subcontractors, administrative and management personnel, preparation plant employees, coal haulers and other forms of indirect employment generated by the presence of the coal industry may be included in that number. Industry cheerleaders will also take credit for jobs at grocery stores, gas stations and fast food restaurants that they claim wouldn't exist without the patronage of coal miners. The most optimistic reports suggest the industry's net economic impact on the state may create as many as 63,000 jobs.³⁷

But coal employees only account for five percent of the civilian labor force in West Virginia, and the industry isn't even the state's largest employer. The healthcare, hospitality and retail industries all employ more people than coal, as do the business and professional service industries and all levels of government.³⁸ Such figures, however, fail to capture the true state of the job market in the southern coal fields, where drawing a miner's salary is one of the few available ways to support a family.

What jobs there are in mining don't always go to locals. Companies like Massey have expanded the reach of their recruitment efforts, and today it's not uncommon for West Virginia miners to live hours from where they work, if they live in the state at all. Some workers commute from as far as Virginia and North Carolina. Others will sleep at a local motel between shifts, and only drive home on the weekends. These out-of-town and out-of-state employees understandably have less of a stake in the communities where they work.

³⁶ West Virginia Coal Association 2009, pg. 6

³⁷ WVU Bureau of Business and Economic Research 2010, pg. 7

³⁸ Bell 2009, pg. 110

“If you hire a few local people, then you’ve hired enough, because most of the local people here are all related in one way or another,” says Judy Bonds, co-director of Coal River Mountain Watch. “You hire one person, you shut up 50.”³⁹

Whether or not the coal industry intentionally manipulates public opinion through its hiring practices, they clearly want to manipulate their workers. It’s hard to make the case that companies like Massey have much concern for the jobs of West Virginians when miners are routinely treated like disposable labor power. Business tends to be cyclical, and employment goes down with the price of coal. When mines close, hundreds of workers are laid off. That’s just business as usual. Some will be hired again when new mines open elsewhere. When the mine is moving coal, crews work non-stop. Time is big money, so companies will run around the clock in two or three shifts. It’s not uncommon for men to go for 12-14 hour shifts, seven days a week. Judy Bonds told me that this past Christmas, workers at a Massey mine in the Coal River valley had been promised a week’s vacation for the holiday after a grueling month. But the company sent a letter home and asked their employees to consider coming in at full pay plus vacation pay to help move a new contract. The letter ended by hinting that being a team player would go a long way to maintaining a worker’s job security.⁴⁰ In this industry, people who step out of line have a tendency to end up unemployed.

Massey — which Larry Gibson calls the “junkyard dog” of coal mining in the state — has a reputation for being particularly brutal. The company has a history of laying off miners when they near retirement, and of signing rookies to contracts that indenture the new hire to them for three years, at the penalty of having to pay the company for unworked hours in the

³⁹ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

⁴⁰ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

event of an early termination of the contract.⁴¹ Maiming the union placed many workers at the mercy of their employers. Almost no one in surface mining pays dues to the UMWA. This is not an accidental result. It is the regular practice of some coal companies at some mines to discourage union membership by either refusing to hire union workers, pressuring employees to vote against the union, or slowly forcing their union employees out. According to Michael Shnayerson, this is exactly what Massey did at its Upper Big Branch surface mine in 1990s:

One by one at Upper Big Branch, the union men were eased out, either from injuries sustained from the longer shifts and harder working conditions, or on pretexts. The closer they were to retirement—and retirement benefits—the likelier it seemed that they would lose their jobs. Around Massey, the word was that “Mr. B,” as Don liked to be called, wanted to see the average age of Massey’s workers go down to 25. There was a saying at Upper Big Branch: “A man is like a tool. If it’s bent or broke, get rid of it, and get you a new one.”⁴²

Although coal companies may not always show a lot of concern for their workers as individuals, those people who are hired by the industry tend to openly defend it. Coal workers have been as vocal in their support of MTR as environmental groups have been in decrying it, and the pro-coal segment of the population frequently turns out in greater numbers. This loyalty is in the direct interest of miners and their families, since coal pays the bills. It may not be in an individual’s long-term interest to mine coal for a living, since doing so could have negative effects on his health, on the general well-being of his community, even on his family. Any of the above would be a heavy price to pay for a job. But we have already seen that there are several reasons why people might do things that are not in their long-term interest. Coal miners typically don’t mind working long hours; they complain when the overtime dries up, since they often have many people depending on their paychecks. “They want their kids and grandkids to have all that Massey money can buy,” says Coal River Mountain Watch staffer Vernon Haltom.⁴³

⁴¹ Larry Gibson in discussion with the author, Kayford, West Virginia, March 2010.

⁴² Michael Shnayerson, “The Truth About Don Blankenship,” *Vanity Fair*, April 15, 2010.

⁴³ Vernon Haltom in conversation with the author, Whitesville, West Virginia, May 7, 2010.

Judy Bonds puts the appeal of coal mining in more materialistic terms: “It’s about a new truck every year; it’s about a new car for your wife every year, a tanning bed for your wife, jewelry, and plastic toys for your kids, and a four-wheeler,” she says. “That’s what it’s all about.”⁴⁴

A variety of other factors may impede the ability of miners to act in their long-term interests. Those interests may be hard to determine (though in coal mining the risks are well-known). They might be sacrificed to more immediate interests. It’s certainly difficult to act out of concern for what may happen 30 years from now when you need to put food on the table, and you have very few, if any, other options.

The mono-economy has had a devastating effect on the psyche of West Virginia. People will tell you matter-of-factly that Coal is King here. Bonds likens the relationship of the state’s citizens with coal to battered wife syndrome.⁴⁵ Others refer to it as a “coal tattoo,” a term for coal fragments that get stuck in a miner’s skin and leave a mark like ink. This phenomenon sounds similar to the results Louis Althusser expected from the ideological state apparatuses. The state’s residents are inundated with positive messages about coal — you can’t miss the big “Yes, Coal” billboards down Interstate 77. The industry has spent more than \$35 million on advertisements promoting clean coal.⁴⁶ Massey hands out toys to poor children at Christmas, and in the past has taken workers and their families to amusement parks and country music concerts. The industry has even infiltrated Althusser’s favorite ISA — the education system — sponsoring coal science fairs, recruiting at schools, and providing free educational materials that teach the “many benefits

⁴⁴ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

⁴⁵ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

⁴⁶ Jeff Goodell, “Burying Our Future,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 128.

the coal industry provides in daily lives.”⁴⁷ If the ISA model fits this situation, it suggests that the interests of the powerful align with the interests of the coal industry. Yet despite the generally favorable attitudes toward coal produced by all the persuasion, a 2004 poll of 500 likely West Virginia voters, conducted on behalf of the Appalachian Center for the Economy & the Environment, found that 56 percent of respondents opposed MTR.⁴⁸

At this point, we can explicitly ask what the interests of the coal industry might be. Large corporations and their principal actors are an important constituency in the public constituted by MTR. They are the group that most clearly supports the practice, making legal arguments that it represents the “highest and best use” of West Virginia wilderness. If MTR is a good, what does that tell us about this group’s values? I’ve already discussed some reasons for thinking that coal companies might not be all that interested in providing a stable living for their employees. Their practices would be different if producing jobs for West Virginians was a high priority.

The health and safety of workers must also be low on the priority list, if industry standards are any indicator. Even though companies claim to put safety first every chance they get, their records are generally deplorable. The Mine Safety and Health Administration writes thousands of violations each year, and companies fight many of those violations tooth and nail, which of late has been crippling the ability of regulators to do their jobs, a topic which will be addressed in chapter four. The occupational hazards miners encounter everyday are numerous and significant. A 2001 report by the Boston-based Clean Air Task Force states that the potential risks of mining include:

... inhalation of dust containing crystalline silica during highwall drilling and mining which can lead to black lung disease; exposure to mercury through inhalation of vapors or mercury-containing dust; inhalation of toxic fumes and gases and exposure to ultraviolet and infrared radiation at welding operations;

⁴⁷ Bell 2009, pg. 109.

⁴⁸ “Poll Results,” Appalachian Center for the Economy & the Environment, http://www.appalachian-center.org/poll_results/index.html.

noise-induced hearing loss as a result of prolonged exposure to processing and mining equipment; as well as heat stroke and exhaustion.⁴⁹

Nowhere on that list does it mention potentially being maimed or killed. Industry supporters often cite the relative safety of MTR compared to underground mining as one of the advantages of the practice. They are right, surface mining is statistically safer than going underground. But that doesn't mean the cumulative effects of surface mining won't be detrimental to a worker's long-term health, and workplace accidents certainly do occur. Since 2001, four workers have been killed at the Samples mine near Larry Gibson's place, including one fatality as recently as last summer. The gruesome manner in which these men died sounds cartoonish when described on paper — one was crushed by a falling tree, another was rolled over by his enormous earthmoving truck after forgetting to set the parking brake, another was stepped on by the lumbering dragline.⁵⁰ Despite the company's claims to the contrary, Massey has the worst safety record in Appalachia. During the decade ending in 2005, there were 21 deaths and more than 3,700 injuries at Massey mines in West Virginia. CONSOL Energy, which mines slightly more coal than Massey in the state, had 14 deaths and almost 1,800 injuries.⁵¹ These numbers are astounding when we consider that there were only about 15,000 miners in the state during this time period. That Massey has the highest toll is not particularly surprising, given the mentality of the company's chief. In an infamous 2005 memo, Blankenship instructed mine managers that "if any of you have been asked by your group presidents, your supervisors, engineers, or anyone else to do anything other than run coal (i.e. build overcasts, do construction jobs, or whatever) you need to ignore them and run coal." It wasn't long after the release of that memo that a fire in

⁴⁹ Martha Keating, "Cradle to Grave: The Environmental Impacts from Coal." *Clean Air Task Force* (Boston, June 2001).

⁵⁰ Ken Ward, Jr., "Worker killed at Samples mountaintop removal mine," *Coal Tattoo*, July 28, 2009, <http://blogs.wvgazette.com/coaltattoo/2009/07/28/worker-killed-at-samples-mountaintop-removal-mine>.

⁵¹ Shnayerson 2008, pg. 157

Massey's Aracoma mine killed two workers.⁵² An investigation into the incident found that Massey had shown "reckless disregard" for the safety of employees at the mine, which led to the issuance of the largest fine in MSHA history and the filing of criminal charges against the Massey subsidiary that ran the mine.⁵³

If protecting workers is low-priority, then protecting the environment falls even lower on the totem pole. The environmental degradation that results from MTR will be discussed in more detail in the next section. Simply engaging in a practice with such significant consequences for the environment says something about an organization's priorities. There's really no way to build a valley fill in an environmentally-friendly manner. Even the most conscientious surface mines create major disturbances in the local biotic community. There are steps mine operators can and sometimes do take to minimize environmental effects, but industry performance on that front has been spotty at best. Until recently, standard reclamation practices at large MTR mines included little more than throwing down some grass seed.⁵⁴ Today more emphasis is placed on reforestation, thanks in part to the work of Virginia Tech emeritus professor James Burger.⁵⁵ Waste from coal preparation is still placed in unlined retainment ponds, where it can seep into the groundwater. There are also serious questions about the structural integrity of some of these earthen dams. From 2000-2003 alone, nineteen coal slurry spills were documented in West Virginia. More than 169 million gallons of slurry have been inadvertently released in the state since the 1972 Buffalo Creek disaster.⁵⁶ Little pressure is put on coal companies to clean up their act. Massey paid a measly \$5,600 fine for the Martin County, Kentucky spill that destroyed 100

⁵² Shnayerson 2010

⁵³ Shnayerson 2010 and Shnayerson 2008, pg. 264

⁵⁴ Margaret Palmer et al., "Mountaintop Mining Consequences," *Science* 327 (January 8, 2010): 148.

⁵⁵ Burger has published numerous articles on reforestation of mined sites. See, for example, J.A. Burger et al., "Field assessment of mine soil quality for establishing hardwoods in the Appalachians," *Reclamation with a Purpose*, R. Barnhisel and M. Collins, eds. (19th Annual Meeting, American Society of Mining and Reclamation, Lexington, Kentucky, 2002), pgs. 226-240.

⁵⁶ Burns 2007, pgs. 135-136.

miles of streams and contaminated the water supply of 27,000 people.⁵⁷ The West Virginia Department of Environmental Protection has labeled Massey a “chronic violator,” and in 2005 reached a \$1.5 million settlement with the company that wiped 1,900 unresolved water pollution and waste management violations off the books.⁵⁸ West Virginia’s Surface Mine Board, the body that handles complaints about the state’s regulatory actions (or inaction), once “declared that Massey had the worst pattern of corporate behavior it had seen in thirty-five years of hearing cases.”⁵⁹ In past years, the DEP has written up Massey for an average of 700 violations annually, compared to an average of 120 violations for competitor Arch Coal.⁶⁰

Based on this evidence and more that will be considered below, making the case that coal companies consider environmental quality an important public good looks like a difficult undertaking. The best practices of the industry only attempt to repair environmental damage that has already occurred. If companies cannot be said to value the environment, worker safety, or West Virginia jobs, then what is important to them? If Don Blankenship is to be believed, no other concern trumps running coal, and the industry runs a heck of a lot of it in West Virginia.

In 2008, CONSOL Energy just inched out Massey Energy as the state’s largest producer, moving 32 million tons of coal compared to Massey’s 30 million tons. In 2009, the average price of Central Appalachian coal fluctuated around \$50-\$70 per short ton.⁶¹ CONSOL is the nation’s fifth largest coal company, also right ahead of Massey. No other company in West Virginia even approaches the tonnage extracted by these two giants, though other major players in MTR include Arch Coal (2nd nationally), Patriot Coal (7th nationally) and Alpha Natural Resources (3rd

⁵⁷ Jack Spadaro, “The Problem in Appalachia,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pgs. 88-89.

⁵⁸ Shnayerson 2008, pg. 193

⁵⁹ Shnayerson 2008, pg. 171

⁶⁰ Shnayerson 2008, pg. 34

⁶¹ “Coal News and Markets Archive,” U.S. Energy Information Administration.
<http://www.eia.doe.gov/coal/page/coalnews/coalmar.html>

nationally).⁶² All of these companies are massive conglomerates — a necessity in capital-intensive MTR mining — and none is headquartered in West Virginia. The direct responsibility for individual mines is delegated to subsidiaries, which the parent companies believe protects them from being held liable for goings-on at the mines, and also helps with thwarting the union.⁶³ In 2008, Massey operated 19 subsidiaries in Appalachia, worth a total of \$2.6 billion.⁶⁴ Of all the goods that may result from MTR, none has motivated the practice more than profit. The large corporations engaged in mountaintop mining are able to take advantage of the efficiencies and economies of scale made possible by MTR to generate huge windfalls. Since recovering coal from MTR costs millions of dollars, these companies take on substantial financial risk when they apply for a permit. If permits are stopped or slowed, then they stand to lose a lot of money on their investments. Companies have a strong incentive to run coal continuously, since lost hours are regarded as lost profit. When activists scaled a dragline at Massey's Twilight mine in 2009, shutting it down for more than three hours, the company estimated the protest cost them \$300,000.⁶⁵ However, their bottom line did not appear to suffer appreciably. According to the Associated Press, Massey posted net profits of more than \$100 million in 2009. Don Blankenship personally earned just under \$20 million — a fairly average year for him.⁶⁶ These numbers are no aberration for the industry; in fact, they're thoroughly unexceptional. Massey consistently underperforms its rivals. In the first quarter of 2006, Massey only scraped out a \$5.6 million profit, while Arch made \$60.7 million and CONSOL made

⁶² West Virginia Coal Association 2009, pgs. 7, 10

⁶³ Shnayerson 2008, pg. 32

⁶⁴ Biggers 2009, pg. 140

⁶⁵ Ken Ward, Jr., "Massey going after mountaintop removal protesters," *Coal Tattoo*, September 30, 2009, <http://blogs.wvgazette.com/coalattoo/2009/09/30/massey-going-after-mountaintop-removal-protesters/>

⁶⁶ "Massey chief's total pay falls 12 percent," *The Associated Press*, April 17, 2010, retrieved from <http://wvgazette.com/News/201004170318>.

\$124.4 million in the same time period.⁶⁷ Regardless of which conglomerate leads the way, all of these firms are getting fabulously wealthy. In the experience of a handful of large corporations, the primary consequence of MTR is that it delivers trainloads of money to their gates.

One indicator of how highly these companies value making money is that they usually clean up their operations if a particular environmental or safety problem is threatening their profit margins, at least to the degree and for a long enough period of time that the threat disappears. We will see in the next chapter that state regulators have tools at their disposal for hitting companies in the pocketbook if they don't follow the law. If the cost of noncompliance becomes greater than the cost of compliance, companies tend to fall into line.

The one notable exception to this rule might be Don Blankenship. The outspoken Massey CEO is peerless in Appalachia — no other coal executive makes headlines with the regularity Don does. Some of Blankenship's past actions suggest that he may value political power, having things his way, and score settling even more highly than he values his company's profits. Massey's corporate behavior under Blankenship has shown a pattern of stubborn disregard for the law, and a desire to manipulate the political system to serve its own ends.⁶⁸ "There's a reason why they call it King Coal," says Judy Bonds, "It's because [Blankenship] thinks he's king, and he thinks Appalachia is his own little fiefdom, and we're his peons."⁶⁹

If we exclude the occasions on which questionable management decisions led Massey to stumble — the company lost at least \$60 million over three years at the beginning of the decade, while the boss still brought home his usual millions⁷⁰ — then we can conclude that of the various

⁶⁷ Shnayerson 2008, pg. 265

⁶⁸ Anecdotes that paint Blankenship's actions as power-hungry or downright criminal abound in the literature and among southern West Virginians. See Shnayerson 2008 for numerous examples.

⁶⁹ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

⁷⁰ Goodell 2007, pg. 22

potential goods I have discussed in the preceding pages, the only good West Virginia's coal industry has consistently pursued is the production of profit.

Life in the Valley

No group feels the effects of mountaintop removal more acutely than the people who live near a mine site. Mine workers and managers certainly have a significant stake in the practice. Their paychecks depend on it. But the job doesn't typically follow them home. Residents of the Coal River Valley, and other heavily-mined regions of Central Appalachia, have to sleep each night with the knowledge that their homes and everything they hold dear could be washed away as a result of MTR. Going to work in the mines could be a life-or-death proposition. Then again, so could living underneath a slurry impoundment, or, in some West Virginia communities, simply drinking the water that comes out of the tap.

How many people are we talking about here? The brunt of the impact of MTR has been borne by small towns and individuals, like Larry Gibson, who live off the beaten path. But there are a lot of these small towns and isolated homesteads in coal country. According to Coal River Mountain Watch staff, every hollow in southern West Virginia has been affected in some way by MTR.⁷¹ As the activist community likes to say, we all live downstream, meaning that the consequences of MTR are not localized to those people within earshot of the blasting. Boone and Raleigh counties, two of the top coal-producing counties in the state, have a combined population of more than 100,000 people.⁷² Toxic pollution caused by MTR poses a potential risk to each and every one of those individuals.

⁷¹ From author's discussion with staff members at Coal River Mountain Watch, Whitesville, West Virginia, May 7, 2010.

⁷² U.S. Census Bureau

A scientific consensus is emerging that MTR has severe negative impacts on biodiversity, environmental quality and human health. A growing number of university researchers are studying the effects of the practice, and publishing some disturbing findings. A multi-author report on these effects caused a stir when it appeared in *Science* this January, landing lead author Margaret Palmer from the University of Maryland a guest spot on *The Colbert Report*. The study concluded that a “preponderance of scientific evidence” suggests the consequences of MTR are “pervasive and irreversible” and “mitigation cannot compensate for losses.”⁷³

West Virginia University’s Michael Hendryx — another of the contributors to the recent *Science* piece — has been researching the impacts of mining on the health of West Virginians for years, relying mainly on statistical analyses of health and environmental quality data. In one of his better-known studies, Hendryx compared the per capita death rates in Appalachian coal-mining counties to what’s typical in other parts of the country and calculated that the presence of coal mining can be held responsible for a little under 11,000 deaths in the region each year.⁷⁴ The long-term health consequences of being around coal are significant. More than 1,500 former miners die from black lung disease annually.⁷⁵ A doctor in Mingo county — in the heart of the coal fields — began to notice elevated incidences of dementia, kidney stones, thyroid and digestive tract problems, as well as a jump in cancer rates among her patients and the surrounding community, though she lacks data to back up her observations, and she could only speculate about the cause.⁷⁶ When you talk to locals in some parts of southern West Virginia, you will hear the same story — relatives and neighbors with cancer, people needing similar types of operations, and so on. All sorts of ailments get reported.

⁷³ Palmer et al., pg. 149

⁷⁴ Michael Hendryx, “The Children of Twilight,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 147.

⁷⁵ Goodell 2007, pg. 51

⁷⁶ Goodell 2007, pg. 41

Much of the illness is attributed to poor water quality. Michael Hendryx's most recent paper, in collaboration with Virginia Tech ecologist Nathaniel Hitt, crunches government data on West Virginia counties and finds a statistical link between the health of streams and cancer rates in a region.⁷⁷ Ben Stout, a biologist from Wheeling Jesuit University, took water samples in Mingo County and found the area's streams polluted with heavy metals — including arsenic and lead — at as much as five times the federal limit for drinking water.⁷⁸

“The price of having cleaner air from burning coal is dumping waste product in these valley fills in the Appalachians and turning one of the world's best freshwater supplies into crap,” Stout told one filmmaker.⁷⁹ Several documentaries have introduced viewers to West Virginians whose tap water runs brown or black, or whose water filters have to be switched out every few days. In some of the worst cases, the coal companies have paid to run public water to communities, or provided big water storage tanks and regular refills. Other locals aren't so lucky. The smart ones buy their water at the store. Boone county resident Marie Gunnoe, a leader in the anti-MTR movement, spends at least \$250 a month on clean water for her family.⁸⁰

Gunnoe, who lives adjacent to both a stream and an MTR mine, has seen the worst of another water problem brought on by the practice — flooding. Her property has flooded seven times in the last decade, washing away about five acres of her land. The coal company once told her the floods were an “act of God.” That's one of the industry's favorite explanations. They said the same thing after the Buffalo Creek disaster, and after the Martin County slurry spill.⁸¹

Flooding has become a huge problem in the southern part of the state. Sometimes children will

⁷⁷ Michael Hendryx and Nathaniel Hitt, “Ecological Integrity of Streams Related to Human Cancer Mortality Rates,” *EcoHealth*, published online April 2, 2010.

⁷⁸ Goodell 2007, pg. 41

⁷⁹ See, for example, *Burning the Future: Coal in America*, 2008

⁸⁰ Maria Gunnoe, “My Life is on the Line,” *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 219.

⁸¹ Gunnoe 2009, pgs. 218, 224

sleep fully-clothed when it rains. Two people were killed and 3,500 homes lost in a 2001 flood. There have been fatalities on other occasions as well. Coal companies plead that MTR mines are not the source of this flooding, but scientists disagree. Deforestation, removal of topsoil and changes to the topography at mine sites increases storm runoff, and therefore contributes to flooding.⁸² In a 2006 class-action lawsuit brought against coal and timber companies, a jury found in favor of flood victims deciding that the actions of the companies “did increase water runoff” which “did cause the streams below them to overflow.”⁸³

One of the biggest complaints about MTR, and the grounds on which environmentalists have brought and won several lawsuits, is that the valley fills created when spoil is dumped over the side of a mountain almost invariably pollute nearby streams. These small mountain creeks may look insignificant, but they are home to flies and other invertebrates that are critical to the food supply downriver. Burying them under valley fills can have consequences for aquatic life throughout the entire watershed. High quality trout streams have also been lost. This stream pollution is in pretty clear violation of SMCRA and the Clean Water Act. A handful of state and federal judges have come to that conclusion.⁸⁴

In general, biodiversity suffers near MTR sites. Native bird species, such as hawks and songbirds are being replaced as forests are transformed into grasslands. Deforestation has been a boon to small rodents, wild turkey and white-tailed deer (the coal industry is rather proud of these accomplishments).⁸⁵ But habitat loss is hurting populations of native black bear and wild boar. Salamander populations have also suffered.⁸⁶ These nonhuman victims of MTR clearly

⁸² Palmer et al. 2010, pg. 148

⁸³ Burns 2007, pg. 116

⁸⁴ Joe Lovett won a landmark case in *Bragg v. Robertson*, when federal judge Charles Haden ruled valley fills were illegal. The decision was later overturned on appeal. See pages 105-109 for more about the lawsuit and its impacts. Loeb 2007 also provides a detailed account of the case.

⁸⁵ West Virginia Coal Association 2009, pg. 41

⁸⁶For a detailed account of threats to biodiversity posed by MTR, see Burns 2007, pgs. 130-134.

can't speak up for their own interests, and we cannot count them as members of the public. This raises the question of who, if anyone, will defend the native flora and fauna that are being wiped out. Large game like bear certainly have a sentimental value to many West Virginians. But the people who have most consistently stood up on behalf of wildlife are usually labeled environmentalists. It has been members of the public, and not government or industry, who have been the loudest advocates of protecting biodiversity.

Changing landscapes in southern West Virginia are taking a toll on traditional mountain culture. Locals who are used to hunting and gathering wild fruits and vegetables in the surrounding forest are losing part of their heritage. Many residents cannot walk the hollows behind their homes anymore, they are on company land now, and have been fenced in. Trespassers are warned to keep out. The breathtaking mountain views and the cool forest swimming holes that people like Maria Gunnoe remember from their childhoods are disappearing, and a way of life is disappearing with them. We can safely assume that many coalfield residents are sorry to see it go.

The total human costs of MTR are numerous and hard to quantify. Somewhere on a country highway, an overloaded and speeding coal truck causes a fatal accident. Somewhere else a family's breadwinner is crippled on the job. An entire community disappears when a new MTR mine opens and the company buys out all the residents. A powerful blast cracks a ceiling or a foundation, or drops the water table, drying up a homeowner's well. Hundreds of family cemeteries have been destroyed. It should be quite clear by now that the practice of MTR puts at risk interests and values of many people, particularly people living in southern West Virginia.

In the last ten years, a large citizens' movement has become increasingly active in lobbying for greater protections for these affected parties. The coal industry calls these people

“radical extremists.”⁸⁷ Members of the movement have made their own the interests of those most negatively impacted by MTR. Of course, many of the leaders of the movement are precisely those aggrieved persons — Larry Gibson, Maria Gunnoe and Judy Bonds are all examples of locals who started speaking out after MTR came to their neighborhoods. Though these individuals may have started protesting for selfish reasons, it seems unlikely those are the same reasons they remain involved. Larry Gibson is way past fighting for Kayford. “It’s not about this mine or any other mine,” he said. “It’s about the destruction of my state.”⁸⁸

The movement has had its upsides for Gibson, Gunnoe and Bonds. They are all now professional activists, and have gained fame and recognition for their efforts. They may enjoy either the attention or the sense of purpose their work provides. But there are drawbacks to being the face of the anti-MTR movement, for sure. None of them is exactly getting rich, and their activism costs them a lot. All have been the victims of violent aggression by pro-coal factions. Judy Bonds was once slapped in the face at a rally. Maria Gunnoe’s dogs have been shot, her children have been harassed, and her truck has been vandalized.⁸⁹ She sometimes tucks an antique pistol into her belt when she walks near the mine site by her home.⁹⁰ Bonds keeps one shotgun behind her front door and another in her bedroom.⁹¹

“By threatening Bo [Webb] and Judy, or Vernon [Haltom], and do it loudly ... then you set an example of these people and the other neighbors are too afraid,” said Bonds, when asked why more people don’t speak out against MTR. “Judy Bonds is getting the shit kicked out of her. Do you want the shit kicked out of you too?”⁹²

⁸⁷ Bill Raney, “The State of Coal,” in West Virginia Coal Association 2009, pg. 5.

⁸⁸ Larry Gibson in conversation with the author, Kayford, West Virginia.

⁸⁹ Gunnoe 2009, pgs. 220-221

⁹⁰ Goodell 2007, pg. 46

⁹¹ Judy Bonds, from email correspondence with the author, May 2010.

⁹² Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

The types of actions Judy Bonds and Larry Gibson take almost every day in combating MTR don't appear to be rationally egoistic. They would be best characterized as working in defense of the environmental, public health and social justice concerns threatened by MTR. Coal companies and their supporters, we have seen, have other priorities. In a representative democracy, public officials would endeavor to address the interests of all their constituents to the best of their ability. They may not be successful in satisfying everyone, but we should be able to find evidence that officials are considering any legitimate concerns that have been brought to their attention. It will be the task of the next chapter to evaluate how representative our government has been in its oversight of MTR.

If nothing else has been accomplished thus far, we should at least finally have a sense of what the pro-coal lobby means when it says mountaintop removal constitutes a "higher and better use" of the land. Leveling ridges clearly does not make southern West Virginia a better place to live — the small communities near the largest mines have either shrunk or completely vanished, and for many of those who chose to stay, life has become a nightmare. The practice has eliminated more jobs than it has created. Reclaimed mine sites do not provide good wildlife habitat for most native species, and may not be ideal for commercial development. Much of the air, land, and freshwater supply has been fouled with pollutants. The only sense in which MTR can be said to have improved the land is that it has temporarily improved its profitability for a few rich, mostly out-of-state, corporations. MTR is not especially good for miners, nor is it good for those who live near a mine site. The impacts of the practice on local plant and animal life are clearly negative. All of these adverse consequences are accepted because coal keeps the lights on and the profits rolling in.

On top of Kayford Mountain, Larry Gibson doesn't even have electricity. Mountaintop removal has made his life decidedly uncomfortable. He doesn't put up with the harassment and the property damage and the constant flow of visitors to Kayford because there are any great benefits to him personally. Something else keeps him going. When I asked Larry what motivates him year after year, he told me it was simple: He was right. If you give up your convictions, he asked me, what do you have left?⁹³

That is not an uncommon answer in the activist community. Judy Bonds responded similarly to the question of motivation: "Because it's the right thing to do," she said. "Because I'm thinking about not only me, but you, and your child, and their children, and their children. Because we have to protect the water and the air and the places that give us life."⁹⁴

⁹³ Larry Gibson in conversation with the author, Kayford, West Virginia.

⁹⁴ Judy Bonds in conversation with the author, Whitesville, West Virginia, May 7, 2010.

4. THE REGULATORY RESPONSE

If only Al Gore had won West Virginia, things might have been different. So much attention has been paid to the roles the U.S. Supreme Court and Florida election officials played in deciding the 2000 presidential election, but what happened in the Mountain State may have been equally significant. Gore's loss spelled a decade of defeat for the anti-MTR movement. The business-friendly Bush administration handed Big Coal one concession after another. But the tide may have begun to change with the election of Barack Obama in 2008.

Drawing on its pro-union roots, West Virginia has traditionally been a blue state. As the Clinton years wound down, coal interests began to panic at the prospect of an avowed environmentalist occupying the White House next. The industry came out in a big way in support of George W. Bush, contributing \$3.8 million nationally from 1999-2000, most of it to Republican campaigns — four times what they had given during the previous presidential race. West Virginia's airwaves were blanketed with attack ads, arguing Gore was anti-coal and anti-guns. The smear campaign paid off, and Bush carried West Virginia in November. Had Gore won the state's five electoral votes, the results from Florida wouldn't have made a lick of difference.

Once in office, Bush did not forget his friends. During a campaign stop in Charleston, the future president had been met at the airport by representatives from the West Virginia Coal Association and the UMWA. They told Bush that activist judges were endangering the coal industry, and asked him to “simplify” the permitting process for MTR mines. Bush told them that, if elected, he would see what he could do.

As it turned out, there was a lot he could do. Bush appointed coal industry lobbyists to key positions at regulatory agencies, blocked the signing of the Kyoto Protocol, and loosened

restrictions on mining and power plants, all within his first few months in office. At the same time, Vice President Dick Cheney was crafting the administration's energy policy in closed-door negotiations with industry bosses. Throughout Bush's tenure, coal interests never had trouble getting the ear of either the president or the vice-president.¹

Joe Lovett, who has been litigating against MTR since the late 1990s, complained to me about the environmental lobby's lack of access to Bush administration officials. He couldn't recall his team having a single meeting with an agency or representative of the federal government during the Bush years, though he was sure industry representatives were a regular presence in Washington. At least now that Obama is president, Lovett said, the environmentalists get the same access as industry.²

Access may turn out to be more important than any other single factor in shaping government policy toward mountaintop removal. We will see in the coming pages how the choices of a handful of key political actors have guided the regulatory response to MTR. Who these people are and who is in a position to sway their thinking makes all the difference in the world. What's more, the institutional momentum of agencies tasked with policing MTR is to a large extent produced by officials' regular patterns of interactions with the public and with their superiors — by who they see on a daily basis and who they take their orders from. All the attention I've given to the president may seem a bit odd, considering that MTR operations are by law and in practice overseen first and foremost at the state level. But by the end of this chapter, we should have a better sense of what Harry Truman meant when he said the buck stops with the man behind the desk in the Oval Office.

¹ The above paragraphs are adapted from an account of the 2000 presidential race in Shnayerson 2008, pgs. 118-119.

² Joe Lovett, in discussion with the author, Lewisburg, West Virginia, March 2010.

Carving up the regulatory terrain

Strip mining became a prevalent means of extracting coal and other minerals in the 1960s, but the visible destruction it left behind produced an almost immediate backlash. Opposition to strip mining piggybacked off the burgeoning environmental movement, and by the early 1970s West Virginia state legislators had introduced a bill to abolish the practice. Ken Hechler sponsored similar legislation in the U.S. Congress.³ The coal industry had enough muscle to defeat the abolition bills, but couldn't arrest the growing consensus that some restrictions needed to be placed on stripping. Various proposals were batted around throughout the decade, until the practice was finally regulated in 1977 when Congress passed the Surface Mining Control and Reclamation Act. During House debate over the final version of the bill, Wyoming Representative Tino Roncalio, a coal industry sympathizer, introduced a fateful amendment allowing for "mining operations which create a plateau with no highwalls remaining." John M. Slack from West Virginia argued that this method, then in use at several "model" mines in his home state, caused "minimum damage to the environment," produced much-needed flat land, and therefore should be widely adopted.⁴ Congress bought the pitch, and the amendment made it into the final bill. The method of mining under discussion was, of course, mountaintop removal.

Section 515c of SMCRA explicitly allows for mountaintop mining, but only if the topography can be restored to its "approximate original contour," or if a post-mining land use

³ Ken Hechler, "How Congress Enabled Mountaintop Removal," *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 68.

⁴ Hechler 2009, pg. 65

that justifies ignoring this requirement is planned and specified in the permit.⁵ I have already mentioned that restoring the dome of a decapitated mountain can be difficult, so in the past almost all MTR mines have had to seek a variance on this requirement. The West Virginia Department of Environmental Protection (DEP) has come up with some interesting ways to measure approximate original contour over the years, including guesstimating using a closed fist to represent a mountain peak.⁶ But, generally, mining companies would simply propose creating “fish and wildlife habitat” at the reclaimed site, which they felt justified a variance, though SMCRA never mentions this as an acceptable postmining use. DEP officials usually signed off on it anyway.⁷ Nevermind that when companies said they intend to create fish and wildlife habitat, they often assumed they could get the job done by spreading some grass seed, maybe planting a few shrubs. As I will discuss later in this chapter, the DEP in recent years has developed a more sophisticated method of getting around the approximate original contour problem.

The passage of SMCRA had a number of other significant consequences, such as establishing the federal Office of Surface Mining Reclamation and Enforcement (OSM) in the Interior Department. The law stipulates that final authority to oversee all strip mining activities rests with this executive branch bureaucracy, but at the same time it devolves responsibility for direct regulation to the states. States exercise primacy under SMCRA, as long their enforcement programs are sanctioned by OSM. Tennessee lost that authority after activist groups successfully

⁵ *Surface Mining Control and Reclamation Act of 1977*, Public Law 95-87, 95th Congress (3 August 1977), Section 515(c).

⁶ Shnayerson 2008, pg. 109

⁷ Shnayerson 2008, pgs. 102-103

argued that the state's regulation was ineffective.⁸ Environmentalists have since tried to make similar cases in several other states, but they have yet to convince OSM.

In West Virginia, as in other states which administer their own enforcement programs, the state regulator issues a permit for each new mining project, and the conditions of that permit must be at least as strict as those specified under federal law. Applying for a permit can be a daunting task. For the layperson, just trying to make sense of everything contained in a permit application poses an equally difficult challenge. A complete application can span dozens of bound volumes. Operators are required to submit detailed plans for every stage of the mining process, including how blasting will be conducted, how spoil will be handled, how runoff will be controlled, how water quality will be maintained, and how the site will be reclaimed once mining is completed. The applicant must also provide a detailed assessment of environmental conditions at the site prior to mining, and the likely impacts of mining on local plants, animals and streams. The company must divulge information about its legal and financial status, as well as its history of compliance (or noncompliance) with the law at other mines. Finally, insurance and bonding must be obtained.⁹ The bond is meant to pay for reclamation in the event the permit is revoked or the company goes belly-up, though the notion that the bond is enough to cover all reclamation costs is a nice fiction. The entire permitting process for a large new mine can take years and cost companies millions of dollars in lawyer's fees and the like, particularly if there is resistance to the permit.

The Office of Surface Mining has the right to review and even block state-issued permits, but they do not exercise that authority often. According to Ken Hechler, OSM was a promising unit in the early years under Carter, but as coal industry influence began to penetrate the office a

⁸ Mark Squillace, *The Strip Mining Handbook* (Red Lodge Clearinghouse, 2009), Chapter 3, <http://sites.google.com/site/stripmininghandbook/a-brief-review-of-smcra>

⁹ Squillace 2009, Chapter 3 and Appendix B

number of people either left or were made to leave.¹⁰ Attempts by OSM staff to enforce a strict interpretation and implementation of SMCRA were undermined when Ronald Reagan eased federal restrictions on mining practices, appointed business-friendly officials and cut OSM's enforcement budget.¹¹ The OSM has been a fairly weak regulator ever since. A 2001 court ruling found that the agency's application of its duties had been "derelict and dilatory in the extreme" for at least the last decade.¹² The agency remains underfunded, Joe Lovett thinks, and has been entirely compromised by coal interests. George W. Bush staffed OSM with industry sympathizers during his tenure, and not a lot has changed there to date.¹³ Environmental groups have expressed concerns about newly-appointed OSM Director Joe Pizarchik. The former chief of Pennsylvania's Bureau of Mining and Reclamation has been criticized as being too soft on industry, particularly on the issue of coal ash disposal, and during confirmation hearings last year he told senators he didn't know enough about MTR to answer questions on the topic.¹⁴

OSM and the West Virginia DEP are only two nodes in a complicated regulatory network. In order to operate an MTR mine, coal companies need two additional permits under sections 402 and 404 of the Clean Water Act. The section 402 permit concerns the National Pollutant Discharge Elimination System (NPDES), which establishes standards for monitoring mine site runoff discharged into local streams. The West Virginia DEP handles NPDES permits, though they are supposed to be reviewed by the Environmental Protection Agency (EPA). Section 404 of the Clean Water Act deals with the dumping of fill materials into the waters of the

¹⁰ Ken Hechler, in discussion with the author, Charleston, West Virginia, April 1, 2010.

¹¹ Charles Davis, "Preemptive Federalism or Regulatory Dismantling? The Bush Administration's Implementation of the Federal Coal Mining Reclamation Program," *Politics & Policy* 36, no. 3 (2008), pgs. 406-407.

¹² Burns 2007, pg. 112

¹³ Joe Lovett, from discussion with the author, Lewisburg, West Virginia, March 2010.

¹⁴ Ken Ward, Jr., "Obama OSM(RE) nominee punts on mountaintop removal," *Coal Tattoo*, August 9, 2009, <http://blogs.wvgazette.com/coaltattoo/2009/08/06/obama-osmre-nominee-punts-on-mountaintop-removal>. See also, Ken Ward, Jr., "On eve of OSM(RE) hearing, citizens oppose Pizarchik," *Coal Tattoo*, September 14, 2009, <http://blogs.wvgazette.com/coaltattoo/2009/09/14/on-eve-of-osmre-hearing-citizens-oppose-pizarchik>.

United States, and thus falls under the jurisdiction of U.S. Army Corps of Engineers. MTR operations must be permitted by the Army Corps in order to bury streams under valley fills. Whether or not overburden and mine waste constitute “fill material” has been a major point of contention in debates over MTR, as I will discuss later in this chapter. The Corps, for its part, has never shown much hesitation in approving section 404 permits. According to Joe Lovett, the Corps lacks the expertise and the staff to adequately scrutinize permits, and, frankly, would rather be working on other projects.¹⁵ As investigative reporter Michael Shnayerson has written:

Army Corps engineers liked building bridges and dams. They liked to reroute water in the Everglades, then route it back again. That was manly work for Army engineers. Looking at plans for yet another mountaintop-mining site in Appalachia was a bore.¹⁶

Faced with an increasing volume of MTR permits, the Army Corps chose to essentially rubber stamp them and move them along. For years, they permitted MTR mines under a special “Nationwide 21” status, designed to fast-track permits judged to have a “minimal adverse” impact on the environment. By issuing permits under Nationwide 21 rather than following the standard process, the Corps could skip requirements for public hearings and detailed environmental studies of the sites. Mining companies are “reluctant to undertake” these “expensive and time-consuming activities,” according to Colorado State political scientist Charles Davis.¹⁷

How anyone could consider MTR to have only minimal environmental impacts is a mystery. The Corps reasoned that they only needed to look at effects on the aquatic environment, and that damage to streams buried by valley fills could be mitigated by building new streams afterwards. A recent report published in *Science* questions this logic, concluding that streams are “fundamentally altered” by such mitigation efforts, and that there is a dearth of scientific

¹⁵ Joe Lovett, from discussion with the author, Lewisburg, West Virginia, March 2010.

¹⁶ Shnayerson 2008, pg. 14

¹⁷ Davis 2008, pg. 405

evidence showing stream creation can be effective. Army Corps officials have even testified, the report observes, “that they do not know of a successful stream creation project” at an MTR site.¹⁸ After Lovett challenged the practice in court, the Corps has stopped issuing permits under Nationwide 21 in West Virginia and Kentucky. Now, Lovett says, they simply rubber stamp the standard permits.

Of all the agencies tasked with overseeing MTR operations, probably none has been more proactive in challenging standard industry practices than the EPA. But that’s not saying a whole lot. Historically, the EPA has largely kept out of the way of state regulators, except in a few high-profile cases. According to Lovett, many conscientious EPA officials were “sent to Siberia” during the Bush administration, and the agency routinely deferred to Bush’s powerful Interior Department.¹⁹ As part of the settlement to a 1998 lawsuit brought against state and federal regulators, the EPA and four other agencies undertook a detailed study of the environmental impact of MTR in Central Appalachia. A draft of the study was finally released in 2003, and after 85,000 public comments the final report was issued in 2005.²⁰ Though the study found MTR had significant impacts — almost seven percent of the 12-million-acre study area could be affected by the practice — it recommended no real policy changes, other than increased coordination and cooperation among regulatory agencies.²¹

More recently, the EPA has stepped out of the shadows and begun to push for more aggressive enforcement of water quality standards. In 2007, the agency sued Massey Energy for “an extensive history of violating the Clean Water Act.” The EPA charged that by Massey’s own count, the company had violated effluent limits on 4,100 separate occasions over a six-year

¹⁸ Palmer et al. 2010, pg. 149

¹⁹ Joe Lovett, from discussion with the author, Lewisburg, West Virginia, March 2010.

²⁰ Shnayerson 2008, pg. 124

²¹ U.S. Environmental Protection Agency, EPA Region 3, *Mountaintop Mining/Valley Fills in Appalachia: Final Programmatic Environmental Impact Statement*, October 2005, <http://www.epa.gov/Region3/mtntop>.

period.²² Massey settled the suit in 2008, agreeing to tougher monitoring and paying a record \$20 million fine. At the time, EPA lawyers predicted that Massey's "level of violations is going to go significantly down."²³ But the company apparently didn't get the message. In the following year, Massey actually racked up violations at a higher rate, exceeding Clean Water Act limits a total of 971 times. The EPA took no further action against the company, but in early 2010 environmental groups announced they would sue, claiming that if regulators could not hold Massey accountable, they would do it for them in the courts.²⁴

The DEP goes to work

The number of agencies involved in regulating MTR occasionally leads to jurisdictional overlap and confusion about who has what powers. The Obama EPA has taken the lead in ratcheting up pressure on MTR operations, as I will detail at the end of this chapter, but that level of involvement is something of an anomaly. Traditionally, federal regulators have left most of the heavy lifting to the states. In West Virginia, mine operators' primary contacts are with staff from the Department of Environmental Protection's Division of Mining and Reclamation. A seven-member Surface Mine Board is appointed by the governor to hear complaints about DEP actions from both citizens and the coal industry. The board is supposed to represent a wide cross-section of interests, but current Governor Joe Manchin III has stacked it with coal industry lobbyists and employees.²⁵ Although the Surface Mine Board has ruled against the coal industry in the past, citizens' groups have learned not to expect much support from it.

²² Shnayerson 2008, pgs. 288-289

²³ Ken Ward, Jr., "Fines to force change, feds say," *The Charleston Gazette*, January 18, 2008, <http://www.wvgazette.com/News/MiningtheMountains/201001110199>

²⁴ Ken Ward, Jr., "Despite EPA deal, Massey water violations more frequent," *Coal Tattoo*, January 11, 2010, <http://blogs.wvgazette.com/coalattoo/2010/01/11/despite-epa-deal-massey-water-violations-more-frequent>.

²⁵ Ken Ward, Jr., "Manchin puts former coal lobbyist in 'public interest' post," *Coal Tattoo*, September 1, 2009, <http://blogs.wvgazette.com/coalattoo/2009/09/01/manchin-puts-former-coal-lobbyist-in-public-interest-post>.

Anti-MTR activists don't have a lot of faith in the DEP, either. Larry Gibson refers to the agency as the "Department of Environmental Pollution," and says he doesn't even bother complaining to the DEP anymore, not having received a positive result in the last twenty years.²⁶ From the perspective of the environmentalists, West Virginia's system for policing mines is nonfunctioning, and the DEP is completely subservient to the interests of the coal industry. But DEP staffers paint a very different picture. Hearing them describe their own regulatory practices, you might be convinced that the West Virginia DEP is the most thorough and conscientious organization a citizen could ask for. That was the image of the agency that emerged when a clean-cut and neatly-uniformed inspector named Tom Wood walked me through the nuts and bolts of his job at the DEP's regional office in Oak Hill, West Virginia. Wood has been an inspector for fifteen years, and is by all appearances a stand-up guy. "It's nonsense to me," Wood said of accusations that the DEP is in the pocket of Big Coal. "I have a job to do, and I go out and do my job in a professional way."²⁷

DEP inspectors are the foot soldiers of MTR regulation, constantly keeping tabs on surface mines from both the air and the ground. They are involved in every phase of a mine's life, from permitting to reclamation and bond release. Five to six inspectors are assigned to a particular geographic area under a common supervisor.²⁸ The supervisor chooses one inspector to handle each new permit that comes across his desk, basing her decision on where the permit is located and each inspector's existing workload. According to Wood, an inspector usually sticks with a permit throughout its entire life, though DEP records indicate it is not uncommon for multiple inspectors to be attached to a single permit, which may be evidence of turnover in the

²⁶ Larry Gibson, from discussion with the author, Kayford, West Virginia, March 2010.

²⁷ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

²⁸ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

agency.²⁹ Outsiders have long been concerned that high turnover rates and numerous vacancies have left DEP staff stretched too thin. In 2008, there were 90 open positions at the agency.³⁰ When members of Coal River Mountain Watch asked DEP Secretary Randy Huffman why those openings weren't being filled, he told them the agency was trying, but because coal companies pay better, turnover rates were high. Young inspectors would be with the department long enough to get their training, but would leave when offered higher-paying jobs in industry.³¹ Wood said he has not seen much of this phenomenon at the Oak Hill office, where he was aware of only one current job opening, though greater turnover may occur at other branches.³² Wood also said he feels comfortable with his workload, which currently consists of 24 permits, including three large MTR mines. He also oversees several inactive surface mines, an equal number of underground mines, and some small permits for coal loadouts and haul roads.³³

When a coal company submits a permit application for a new MTR mine, that application is reviewed by a team of DEP staffers, including the inspector to whom the permit will be assigned, an engineer, a geologist, a biologist and a technical analyst. The entire team will visit the site of the proposed mine for a pre-inspection. Next, they review the permit application page-by-page to ensure that all requirements have been met, and compile a "Facts & Findings" report addressing issues such as the feasibility of the proposed project, the company's past history of

²⁹ The names of inspectors assigned to individual permits can be retrieved using the DEP's online Mining Permit Search database, <http://www.dep.wv.gov/insidedep/Pages/miningpermitsearch.aspx>.

³⁰ Lorelei Scarbro, "To Harness the Wind," *Coal Country: Rising Up Against Mountaintop Removal Mining*; Shirley Stewart Burns, Mari-Lynn Evans and Silas House, eds. (San Francisco: Sierra Club Books, 2009), pg. 260.

³¹ From author's discussion with staff at Coal River Mountain Watch, Whitesville, West Virginia, March 7, 2010.

³² Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

³³ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

violations, and the presence of any high-quality natural resources near the proposed site that may be in need of protection.³⁴

Before blasting commences at an MTR mine, any nearby structures, such as houses or barns, are mapped and receive a pre-blast survey to establish a record of their condition in the event the owner complains of damage. Wood says such complaints are rare. He receives about a half dozen calls from residents each year — only some related to property damage — and he hasn't written a violation for off-site damage in quite some time.³⁵ Of course, reviewing blasting plans and dealing with damage claims is now primarily the responsibility of the Office of Explosives and Blasting, spun off from the Division of Mining and Reclamation in 1999, which may explain why Wood gets so few calls from angry residents.

Most of Wood's time is devoted to routine inspections of the permits assigned to him. He typically spends one day each week in the office and three in the field, paying visits to mine sites. His area of responsibility includes portions of Boone, Fayette, and Raleigh counties — three of the largest coal-producing counties in the state. By law, inspectors are required to perform a full inspection of each permit once a quarter. During these inspections, all requirements stipulated in the permit are checked to ensure that the mine is in compliance. If the company is found to be out of compliance with any aspect of the permit, a violation is supposed to be issued. Between full inspections, Wood usually returns to active mines 2-3 times for partial reviews. He will also frequently pass through one permitted area on the way to another, and says he always keeps an eye out for coal dust, muddy water, and anything else out of the ordinary. MTR mines are by far the most difficult to inspect, since they often sprawl over large land areas

³⁴ Tom Wood, West Virginia Department of Environmental Protection, from email correspondence and in conversation with the author, Oak Hill, West Virginia, April 2010.

³⁵ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

and have significant environmental impacts. Water testing alone is a time-consuming task at these sites, and a full inspection at an MTR mine can take an entire day to complete. Permits for underground mines, haul roads and loadouts tend to be less demanding.³⁶

Inspectors have the authority to visit a permit whenever they please, and operators are not notified ahead of time. The company usually does know when an inspector is on the premises, though, since he has to pass through a security checkpoint when entering the site. Inspectors are typically left alone to conduct their business, although occasionally a company representative will ride along on a site visit. Wood usually likes to check-in with mine managers after completing an inspection, and he described his working relationship with those managers as friendly.³⁷

Most of the time, Wood finds everything in compliance at the sites he visits. He called the MTR mines he inspects “very responsible operations” (they’re run by a subsidiary of Alpha Natural Resources) and said he does not expect to write violations for normal activities. He only writes one or two violations each year at a typical site, and most occur after extreme weather.

The inspector determines the appropriate category for each violation — from “blasting procedures” or “sediment control” to the catch-all designations “method of operations” and “permit conditions.” Violations are also rated on criteria of seriousness, negligence and the operator’s good faith. How a violation is labeled and rated is left largely up to the discretion of the inspector. According to Wood, inspectors commonly assign a low negligence rating for first-time offenses, and ratchet up the negligence rating if the problem reoccurs. Wood said he generally assigns ratings he thinks will stick when he, company representatives, and a DEP

³⁶ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

³⁷ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

penalty assessment officer meet to discuss the violation.³⁸ Higher seriousness and negligence ratings result in larger fines. Dollars are deducted from fines based on the “good faith” rating — which evaluates the remedial measures taken by the operator to address the violation. Typical fines are no more than a few thousand dollars, which Wood admitted isn’t much of a deterrent to companies that make millions of dollars every day.³⁹ Mine operators are more worried about other enforcement actions which can be triggered as violations pile up. If, during the course of a year, a mine receives multiple violations in the same category with a high level of seriousness or negligence, a “show cause” order is issued, at which point a hearing is scheduled and the company must provide reasons why its permit shouldn’t be revoked. Mines in show-cause are often forced to make serious concessions in order to keep their permits. Environmental groups who keep a close eye on DEP practices are suspicious that the category under which a violation is assessed will sometimes be changed to prevent a mine from falling into show-cause.⁴⁰ Pleading down the negligence and seriousness ratings would have the same effect. Wood said that while the companies he works with hardly ever contest violations outright, they will contest the ratings.⁴¹

Mine operators will almost always take the necessary steps to correct a violation rather than risk losing their permit. Wood could not think of single large MTR mine in the state that has had its permit revoked over a pattern of violations.⁴² When a violation is written, inspectors specify a date by which remediation measures should be taken. If the company fails to respond to

³⁸ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

³⁹ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

⁴⁰ From author’s discussion with staff at Coal River Mountain Watch, Whitesville, West Virginia, March 7, 2010.

⁴¹ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

⁴² Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

the violation in the allotted time, the inspector can issue a cessation order, which will temporarily shut down all or part of a mine and will cost the company \$750 per day until the problem is fixed. If the cause of the cessation order has not been addressed after 30 days, the mine automatically goes into show-cause. But this tool is rarely used. During the Clinton administration, an average of seven cessation orders were issued each year in West Virginia. That figure dropped to one per year during George W. Bush's presidency.⁴³

The declining use of harsher enforcement mechanisms does not necessarily imply that new mining techniques improved compliance with the law once Bush took office. The more likely explanation is that while coal industry practices have not changed appreciably, regulatory agencies have modified their enforcement standards. The West Virginia DEP's handling of approximate original contour requirements over the last decade provides a nice illustration of just this sort of regulatory shift. SMCRA stipulates that MTR sites must be reclaimed in such a way that the resulting topography "closely resembles the general surface configuration of the land prior to mining."⁴⁴ As has already been discussed, returning a leveled mountaintop to its approximate original contour (AOC) is an extremely difficult proposition, and the questionable methods DEP officials used to determine AOC have been a source of embarrassment for the agency in the past. The problem was resolved when, in 1999, the DEP released new guidelines for calculating AOC. Joe Lovett will tell you that rather than forcing coal companies to seek variances for the AOC requirement, the DEP will nowadays just say that a site has been returned

⁴³ Davis 2008, pg. 408

⁴⁴ West Virginia Department of Environmental Protection, Division of Mining and Reclamation, "Section 29: AOC and Excess Spoil Disposal, AOC/Excess Spoil Guidelines," *Permitting Handbook*, 1999, pg. 4, [http://www.dep.wv.gov/dmr/handbooks/Documents/Permitting Handbook/sect29.pdf](http://www.dep.wv.gov/dmr/handbooks/Documents/Permitting%20Handbook/sect29.pdf).

to AOC, even if a casual observer would conclude that the area looks nothing like it did before mining began.⁴⁵ His assessment may not be far off the mark.

According to Tom Wood, mine operators are required to “show a balance” between the amount of spoil material they return to the mined-out mountaintop and the amount they dump into valley fills. The amount of spoil replaced and regraded is called “backfill.” Section 29 of the DEP’s permitting handbook details precisely how this balance is to be calculated. The guidance document argues that reclaimed MTR sites “must meet not only AOC standards, but satisfy numerous other requirements including stability, access, and environmental provisions ... that influence the determination of AOC.”⁴⁶ In layman’s terms, the DEP’s reasoning works something like this: Ideally, all of the spoil material would be backfilled to achieve AOC once the coal seams are removed from an MTR mine. But the need for stable backfills limits the amount of loose rock that can be piled up. Reclaimed mines must also maintain structures like access roads and sediment control ponds. These features clearly can’t be buried under spoil, so they also limit the amount that can be backfilled. The volume of spoil displaced by these necessities, the DEP believes, can be subtracted from the amount required to be backfilled when determining AOC. The new formula for calculating AOC states that

$$\text{AOC} = \text{OC} - (\text{SR} + \text{DR} + \text{SCR} + \text{AR} + \text{MBR})^{47}$$

where “OC” represents the original contour of the area before mining, and each of the variables in parentheses represents a volume of spoil that cannot be backfilled for one reason or another. Collectively, these volumes are referred to as the amount of “excess spoil.” Excess spoil that cannot be placed on the backfill may instead be moved to an “excess spoil disposal area,” a nice

⁴⁵ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

⁴⁶ West Virginia DEP 1999, pg. 1

⁴⁷ West Virginia Department of Environmental Protection, Division of Mining and Reclamation, “Section 29: AOC and Excess Spoil Disposal, Final AOC Guidance Document,” *Permitting Handbook*, 2004, pg. 10, [http://www.dep.wv.gov/dmr/handbooks/Documents/Permitting Handbook/sect29.pdf](http://www.dep.wv.gov/dmr/handbooks/Documents/Permitting%20Handbook/sect29.pdf).

euphemism for a valley fill. No concrete rules for calculating volumes of displaced spoil are given in the guidelines. Presumably, it is left to the permit applicant to estimate these volumes. One would think enough concessions had been made to mine operators, but the guidelines are also sprinkled with a number of conditions under which deviations from the AOC formula are allowed. For example, it is deemed “not practical to fully restore” the last open pit where coal is actively mined at a site, so companies can skip backfilling that area without obtaining a variance as long as they aim at “downsizing the active pit as mining draws to a close.”⁴⁸

The DEP has succeeded in creating a complicated mathematical tool which describes what coal companies had already been doing, and then labels any activity conforming to that formula AOC. The mine operator must backfill as much of the spoil as practicable, and the remainder can be placed in valley fills. No need to obtain a variance. Make no mistake — reclaimed MTR sites today look much the same as they ever have. But the DEP now has a quasi-scientific tool at its disposal which allows the agency to claim that AOC has, indeed, been achieved.

Manipulating enforcement guidelines and redefining key terms like AOC have become the favored tactics of public officials who want to ensure that regulatory practices align with their policy goals. The language of SMCRA may seem to call for a particular approach to regulation, but officials can and sometimes do take the law to be implying something entirely different. “Language isn’t rules on rails,” Joe Lovett told me, quoting a famous philosopher. “It’s much stickier than that.”⁴⁹ The intent of the law can be a difficult thing to pin down, and meanings are always open to interpretation.

⁴⁸ West Virginia DEP 2004, pg. 24

⁴⁹ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

I have no reason to believe that Tom Wood carries out his responsibilities in anything other than a forthright and professional manner. Surely not everyone at the DEP is as conscientious as Wood claims to be — journalists, researchers and local residents have documented numerous instances of suspicious or downright illegal behavior on the part of DEP officials, some of which I will describe in the following section. But we don't need to postulate willful negligence or corruption in order to make the case that the existing regulatory apparatus has been largely ineffective at curtailing the worst practices of the coal industry. Regulation hasn't fundamentally changed the way MTR mines operate because the rules of the game haven't been designed to do so. Enforcement actions may be an annoyance to coal companies, but they rarely pose a serious threat to the bottom line. Violations will be written and fines will be assessed, but companies seem to treat these penalties as a cost of doing business. They appear to provide little incentive for the industry to change its practices.

That MTR results in significant environmental and social harms wherever it is practiced is an unavoidable fact. Valley fills will inevitably degrade the quality of streams. Toxic pollutants will inevitably find their way into the drinking water of nearby communities. Surface mining regulations have been designed to pay lip service to such problems without significantly interfering with the activities that produced them. The West Virginia DEP is not about to shut down large MTR mines. Companies that have a history of flagrant disregard for environmental standards will not be locked out. The political and economic fallout from such a decision would be too great. The sorts of enforcement actions that might shake up the industry are systematically avoided. Then, when a mine explodes or a slurry impoundment bursts, an incensed public asks where the inspectors have been. The answer is that the inspectors have always been there, and they were probably doing their jobs. The difficulty is that nothing that was expected of them

would have prevented the disaster from occurring. For decades, officials at the highest levels of government have believed that coal production is essential to West Virginia's and the nation's well-being. The mechanisms enacted to police the industry continue to be constrained by this fundamental assumption. Protecting the environment and ensuring the safety of miners are considered noble and even necessary endeavors, so long as the coal keeps coming out of the ground by the millions of tons.

Friends of Coal

If coal interests are satisfied with the existing regulatory situation, they're not letting on. Bill Raney, president of the West Virginia Coal Association, has complained in years past that companies have to "grapple with no fewer than 105 agencies" before they are allowed to dig even a small mine.⁵⁰ Whenever new regulations are considered, coal operators fight them tooth and nail, imploring elected officials that the changes, if implemented, would ruin the industry. In a recent column, Raney characterized the coal industry as being "faced with a fight for survival," under attack from an activist new administration in Washington that was "threatening the very future of our people and our state."⁵¹ This sort of fearmongering may be more of a political maneuver than the expression of a legitimate worry — such tactics have, after all, worked for the industry in the past.

Environmental groups have a decidedly different take on the bloated regulatory apparatus. From their point of view, industry doesn't have a lot to complain about. "If all the agencies went away tomorrow, nothing would change," says Joe Lovett. "The regulatory agencies have so twisted and warped the law that it's unrecognizable."⁵²

⁵⁰ Shnayerson 2008, pg. 72

⁵¹ Raney 2009, pg. 5

⁵² Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

While Lovett's extreme words, like Raney's, are designed to get a reaction, I've suggested above that this perspective on MTR regulation in the Appalachian coal fields may not be far from the reality. Enforcement practices, while presumably aimed at minimizing the environmental and human costs of MTR, tend to rank these interests behind the desire for uninterrupted coal production. Despite having to navigate a mazelike permitting process and carry out expensive environmental monitoring and remediation, coal companies almost always profit from MTR. The same cannot be said of the people who live beneath a valley fill. In the following pages, I will provide evidence to bolster the claim that public officials exhibit a bias in favor of coal interests. But a larger question remains to be answered as well: If any regulatory bias does exist, where does it originate and how is it perpetuated? Answering this question will be essential to evaluating the prospects for change.

Our investigation of any potential bias the regulatory apparatus should start at the bottom with those foot soldiers of enforcement — the inspectors. Southern West Virginia coal towns are full of stories about baffling encounters with representatives of the DEP. When boulders the size of chairs landed in Larry Gibson's family cemetery, obliterating headstones, inspectors accused him of having loaded the giant rocks into his truck and deposited them at the scene.⁵³ Gibson's health makes him unable to even mow the cemetery, let alone heave boulders around like they were bowling balls. On another occasion, Gibson complained to the DEP after the well at the family compound went dry. An inspector made the trip to Kayford and concluded the culprit was a dynamite blast that had dropped the water table. Two days later, after consulting with his superiors, the inspector changed his mind, telling Larry that they couldn't say for certain what had caused the well to dry up. Larry replied that the well had been a reliable source of water for

⁵³ Larry Gibson, from discussion with the author, Kayford, West Virginia, March 2010.

200 years before blasting commenced nearby. Maybe, the inspector suggested, the water supply had simply run out after all that time.⁵⁴

Shirley Stewart Burns has documented similarly inconsistent DEP judgments regarding a coal preparation plant perched above the small town of Sylvester. In 1999, Sylvester residents filed complaints after the plant run by the Elk Run Coal Company, a Massey subsidiary, blanketed the town with coal dust:

A DEP inspector noted in his report that Elk Run was not running the coal-dust sprayers on the stockpiles of coal, and that the coal dust was evident throughout the community. In spite of this report, no citations were issued to Elk Run. According to the inspector, his superior told him not issue citations, stating that the coal company could not be cited unless the inspector himself had actually seen the dust coming from the plant. The superior denied these claims and said she merely needed some kind of proof, such as videotape or “eyewitness accounts from mine inspectors.” This diverted from the agency’s previous practice of relying on the inspector’s professional opinion.⁵⁵

Numerous sources will claim that the DEP has had long-standing issues with inspectors who are unwilling to write violations for fear of crossing their superiors. Judy Bonds suggested that many DEP inspectors are nearing retirement, and simply don’t want to rock the boat.⁵⁶ For his part, Tom Wood says he has never felt pressured to ignore violations — just the opposite. “I’m afraid that I’ve missed something,” he said of oversight from his immediate boss. “I’m not saying that [the aforementioned pressuring by superiors] doesn’t happen, but not in my experience.”⁵⁷

Matthew Crum witnessed firsthand the phenomenon of inspectors reluctant to enforce the law when he took over the mining and reclamation division in 2001. During his first week on the job, the new mining chief traveled to the site of a coal waste spill that was in the process of fouling a local stream. The situation clearly called for immediate enforcement action, and Crum inquired if the inspector at the site planned to write a cessation order, which would shut down the

⁵⁴ Larry Gibson, from discussion with the author, Kayford, West Virginia, March 2010.

⁵⁵ Burns 2007, 109

⁵⁶ Judy Bonds, in discussion with the author, Whitesville, West Virginia, March 7, 2010.

⁵⁷ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

operation until the pollution was controlled. “What’s going to happen to me if I do?” the inspector asked. “Am I going to have a job next week?”⁵⁸

Crum gained a reputation for his dedication to reining in coal company abuses, making him an anomaly among recent DEP bosses. Not surprisingly, he didn’t last long at the job. Stephanie Timmermeyer was sworn in as the new DEP Secretary in the summer of 2003, and within months Crum was chased out. When a reporter asked Timmermeyer why Crum had been fired, she replied that his had been “a will and pleasure appointment ... I don’t have to have any reasons.”⁵⁹

According to Michael Parenti, Crum suffered an entirely predictable fate. In institutions where top-down authority is exercised, “individuals who stray too far from the score, who create too much cacophony, eventually find themselves without pay or position.”⁶⁰ That’s what happened to Jack Spadaro, a federal mine safety administrator who refused to sign off on reports absolving the MSHA of blame for the 2000 Martin County, Kentucky slurry spill. Spadaro was nearly fired for speaking out against the watered-down investigation, but public outcry saved his job.⁶¹ Instead, he was demoted. Four years later he agreed to a retirement package and was hustled out the door.⁶²

One reason for the insufficient attention given to public concerns in the existing regulatory culture is the relative paucity of officials who have had the courage to stand up to powerful coal interests. Another reason is the lack of transparency in the regulatory process. Members of the public have had to fight for a seat at the table time and again, and some regulatory practices systematically exclude them. According to Larry Gibson, the West Virginia

⁵⁸ The entire exchange between Crum and the inspector is captured in Shnayerson 2008, pgs. 52-53.

⁵⁹ Shnayerson 2008, pg. 55

⁶⁰ Parenti 1978, pg. 130

⁶¹ Spadaro 2009, pg. 88

⁶² Burns 2007, pg. 97

DEP has grown more covert in its actions as activist groups have grown more watchful.⁶³ Today it is almost impossible for the average citizen to get information out of the DEP without first filing a Freedom of Information Act request. According to Coal River Mountain Watch volunteers who regularly petition the DEP for documents, the agency's record-keeping system is a disorganized "landfill of information," and most people get nowhere unless they first establish personal relationships with the DEP staffers who serve as gatekeepers.⁶⁴ The inconvenience of obtaining records discourages many citizens from trying, and the highly-technical nature of regulatory documents ensures that individuals who do attempt to decipher them will face a steep learning curve. Sometimes, regulatory agencies intentionally withhold relevant information from the public. The DEP and Army Corps of Engineers have a history of issuing mining permits in secret in an effort to thwart legal challenges from environmental groups.⁶⁵ In some instances, this practice of secret permitting has been in direct violation of court settlements requiring disclosure of all new permits.

While there are plenty of examples of regulators making a conscious effort to keep pesky citizens out of the loop, most violations of the public trust have been less blatant. As I have argued above, enforcement actions often fail to mitigate the negative consequences of mining because regulatory standards have been written in such a way that they pose no serious challenge to the status quo, or because the institutional limitations of regulatory agencies unwittingly work in the favor of coal interests. The recent fatal explosion at Massey's Upper Big Branch mine brought to light a good example of this latter sort of problem. Congress actually toughened mine safety regulations in 2006, but coal companies are allowed to appeal safety violations to the federal Mine Safety and Health Review Commission, in much the same way they can contest

⁶³ Larry Gibson, from discussion with the author, Kayford, West Virginia, March 2010.

⁶⁴ From author's discussion with staff at Coal River Mountain Watch, Whitesville, West Virginia, March 7, 2010.

⁶⁵ See Shnayerson 2008, pgs. 237, 258 and 282.

environmental violations issued by the West Virginia DEP. About 30 percent of safety violations are contested, and Massey challenges violations with a greater frequency than any other company. Stepped-up regulatory oversight has created a backlog of more than 16,000 cases before the review commission. Stricter enforcement mechanisms are triggered if a company shows a pattern of violations over a 24-month period, but at present the average case takes 27 months for the commission to resolve.⁶⁶ So by challenging violations, mine operators are able to get off the hook for stiffer penalties.

In this instance, coal interests have managed to game the system through no fault of the MSHA, although procedures for reviewing violations could certainly be altered to address the problem. Other lapses in mine safety regulation are harder to explain away. Before the 1972 Buffalo Creek disaster, regulators ignored repeated warnings that the impoundment responsible for the flood was not up to code, and was likely to fail.⁶⁷ Residents of the Coal River Valley worry that the same sort of regulatory neglect is occurring today with the slurry impoundment above Marsh Fork Elementary School. Reports on the impoundment obtained by an environmental group in 2001 revealed that an MSHA inspector had raised concerns about an improperly-constructed section of the dam wall, writing that it was “reasonably likely an accident would occur if the condition continued to exist.” Those remarks had been deleted when a reporter received heavily-edited copies of the same documents four years later.⁶⁸

We have seen that attempts to police MTR have been at best only partially successful, and that regulatory structures and practices often favor the interests of mine operators at the expense of concerns about safety, environmental conservation, and social justice. How the coal

⁶⁶ Kimberly Kindy, Steven Mufson and Ed O’Keefe; “Mines avoid crackdowns by fighting citations;” *The Washington Post*; April 10, 2010.

⁶⁷ Williams 1984, pg. 197

⁶⁸ Shnayerson 2008, pg. 169

industry has been able to achieve this result remains an open question. Not many people suspect regulatory officials of bribe-taking or other forms of willful corruption. Familiarity and sympathy bred by close interaction may influence some enforcement practices. Regulators interact with industry representatives on a daily basis, while citizens are typically kept at arm's length. But the industry doesn't need to buddy-up to the DEP or MSHA to ensure a favorable regulatory culture. Controlling the elected officials who write the laws and appoint the heads of the regulatory agencies has proven to be an effective strategy for coal interests to get what they want.

In chapter two, we learned that a serious threat to democracy is the temptation public officials feel to use their power in the pursuit of private ends. One constant pressure on elected leaders is the need to win and retain their offices. As a result, coal interests have been able to influence legislators, governors and even presidents by contributing heavily to their election campaigns. "Money is a very persuasive factor because the cost of campaigns is so outrageous now," says Ken Hechler. For this reason, Hechler favors public financing of campaigns.⁶⁹

In West Virginia, the coal industry contributed more than \$5 million from 1996-2008 to gubernatorial, state Supreme Court and legislative races.⁷⁰ Coal interests donated a total of \$299,312 to West Virginia legislative raises in 2004, compared to a paltry \$1,855 spent by environmental groups.⁷¹ West Virginia Senate President and Lieutenant Governor Earl Ray

⁶⁹ Ken Hechler, in discussion with the author, Charleston, West Virginia, April 1, 2010.

⁷⁰ West Virginia People's Election Reform Coalition, "Studies Link Poor Health to Mining Practices but Little is Being Done: Is Campaign Cash Contributing to the Lack of a Response?" *Citizens for Clean Elections*, 2008, http://www.wvoter-owned.org/reports/health_in_coalfields.pdf

⁷¹ Burns 2007, pg. 85

Tomblin received \$62,000 in contributions from industry over an eight-year span ending in 2004.⁷²

A study completed by the West Virginia People's Election Reform Coalition concluded that all this spending was paying dividends. From 1996-2004, the West Virginia legislature passed at least six bills aiding the industry and blocked at least three bills that would have imposed restrictions on it. State senators who voted in favor of 2003 legislation to increase the weight limits of coal trucks had collectively received almost \$90,000 in coal industry contributions over the last two election cycles. Senators opposing the legislation had received only a little over \$27,000.⁷³

Don Blankenship personally contributed more than \$37,000 to 36 different candidates in 2004. His company chipped in another \$115,000.⁷⁴ One of the Massey CEO's favorite hobbies in recent years has been using his personal fortune to buy seats on West Virginia's Supreme Court of Appeals. In 2004, Blankenship spent \$3.5 million of his own money to assassinate the character of incumbent justice Warren McGraw. Challenger Brett Benjamin successfully unseated McGraw, thanks almost entirely to the smear campaign waged by Blankenship's 527 group.⁷⁵ Blankenship eventually got the vote he needed out of Benjamin in a big breach-of-contract case. In 2005, Blankenship stated that he intended to go after Justice Larry Starcher next, though he yet to follow up on that threat.⁷⁶ He has also been known to chum around with former Justice Spike Maynard, though the friendship hurt the judge in the long run. When

⁷² West Virginia People's Election Reform Coalition, "Analysis of Coal Industry Contributions to State Political Campaigns, 1996-2004," *Citizens for Clean Elections*, 2004, pg. 8, http://www.wvoter-owned.org/reports/perc2004_coall.pdf.

⁷³ West Virginia PERC 2004, pgs. 9-10

⁷⁴ West Virginia PERC 2004, pg. 11

⁷⁵ Goodell 2007, pg. 23

⁷⁶ Burns 2007, pg. 83

photographs of Maynard vacationing with Blankenship in Monaco surfaced in 2008, the resulting scandal cost him his re-election bid.⁷⁷

The industry has other methods besides campaign contributions of influencing elected officials. When the West Virginia legislature is in session, industry spokesman Bill Raney spends most of his time at the Capitol building consulting with lawmakers, helping draft legislation, and pressing the industry's policy agenda. It is safe to say that opponents of coal mining have neither the constant presence nor the access to legislators that the coal lobby enjoys. The industry has also proven extremely effective at mobilizing the electorate. When Jay Rockefeller ran for governor in 1972, strip mining abolition was a major plank in his platform. Rockefeller lost the race, and afterward he visited Ken Hechler in Washington to tell the congressman he was changing his position on strip mining, having been convinced by political consultants that his opposition to the practice had cost him the election. Rockefeller is now one of the state's two U.S. senators, and according to Hechler, has been converted to the belief that Coal is King in West Virginia.⁷⁸

That belief is pervasive among West Virginia politicians. State senator Mike Green, chairman of the powerful Energy, Industry and Mining committee proudly lists his affiliation with industry cheerleading group Friends of Coal in his official Senate biography.⁷⁹ Although longtime West Virginia Senator Robert Byrd has recently been critical of mountaintop removal — in a December 2009 statement he said that most members of Congress oppose the practice — he and the rest of the state's congressional delegation have been reliable votes for the coal

⁷⁷ Ken Ward, Jr., "Maynard wants to stop Washington's 'War on Coal,'" *Coal Tattoo*, February 1, 2010, <http://blogs.wvgazette.com/coaltattoo/2010/02/01/maynard-wants-to-stop-washingtons-war-on-coal/>

⁷⁸ Ken Hechler, in discussion with the author, Charleston, West Virginia, April 1, 2010.

⁷⁹ "Senate Members: Mike Green," *West Virginia Legislature*, <http://www.legis.state.wv.us/senate1/members/senmemview.cfm>

industry.⁸⁰ Even Congressman Nick Rahall, who took over Ken Hechler's old seat and is usually a strong supporter of environmental legislation, will not touch any bill that threatens coal interests. The conventional wisdom among the state's political elite is that elections cannot be won without the support of the industry.

Though the leaders of regulatory agencies are not beholden to coal interests in the same way the state's elected officials are, they are beholden to those officials. "People don't like to be fired, and naturally, they're going to follow the lead of the guy that appoints them," Ken Hechler told me.⁸¹ Joe Lovett agreed with this notion, not blaming DEP Secretary Randy Huffman for the agency's inability to effectively check the actions of the coal industry. The responsibility, Lovett says, rests with Governor Joe Manchin, whose record has been decidedly pro-coal. That Manchin is a staunch defender of coal interests should come as no great surprise — he received over \$1 million in industry contributions from 2000-2008, more than any other politician in the state.⁸² Activists tell stories about the governor's office phoning DEP officials with instructions to drop this or that violation or approve this or that permit, but if these stories have a basis in fact, they're probably not representative of everyday interactions between the two offices. Randy Huffman doesn't have to take his orders directly from Manchin. He certainly knows where the governor's priorities lie. Michael Parenti has argued that the absence of direct intervention from bosses actually implies a high level of obedience by subordinates. "The anticipation of supervisory intervention is usually constant," he writes, "even if the actual intervention is not."⁸³

⁸⁰ Robert C. Byrd, "Opinion Piece: Coal Must Embrace the Future," Posted on the official web site of U.S. Senator Robert C. Byrd, December 3, 2009, http://byrd.senate.gov/speeches/view_article.cfm?ID=563.

⁸¹ Ken Hechler, in discussion with the author, Charleston, West Virginia, April 1, 2010.

⁸² West Virginia PERC 2009. Similar statements can be made about every governor who has preceded Manchin for at least the last few decades. They have all owed the industry in one way or another.

⁸³ Parenti 1978, pgs. 135-137

Lovett has no doubt that if Huffman were ever to fall out of line with the governor's agenda "he'd get fired in ten seconds."⁸⁴

The buck may stop with Joe Manchin in West Virginia politics, but ultimately it is federal executives who exercise the most influence in shaping policy with respect to MTR. The Secretary of the West Virginia DEP serves at the pleasure of the governor, but he also must obey the orders of federal regulators, whose authority supersedes that of state units. I have already discussed at the beginning of the chapter how the coal industry helped sweep George W. Bush into office in 2000. The industry's assistance bought not only the president's gratitude, but direct access to the levers of power.

Throughout Bush's tenure, anti-MTR activists took the fight to regulators, filing one lawsuit after another under the leadership of Joe Lovett. They notched a number of victories in the courts, but their progress was frustrated by Bush administration officials at every turn. Lovett's first and most influential case, *Bragg v. Robertson*, was filed in 1998 against the Army Corps of Engineers and West Virginia DEP, and on behalf of a group of West Virginians who had been directly affected by MTR mining. Lovett and his co-counsel, Jim Hecker from the Washington, D.C.-based Trial Lawyers for Public Justice, alleged that mountaintop removal broke the law in sixteen different ways. Three of those claims were particularly important. First, the National Environmental Policy Act of 1969 stipulated that government agencies must complete an environmental impact study before approving any project that could result in significant environmental harm. No such study had ever been done on an MTR permit. Second, the Clean Water Act stated that streams could only be filled for construction purposes, and the mining waste that buried Appalachian streams under valley fills clearly did not meet this definition of fill material. Finally, SMCRA prohibited any mining activity within 100 feet of a

⁸⁴ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

stream. Valley fills violated this stream buffer zone requirement.⁸⁵ Recognizing that the plaintiffs had a case, the government lawyers agreed to a partial settlement in December 1998. The EPA would conduct a study of the environmental effects of MTR in Appalachia with the assistance of other federal regulatory agencies. In exchange, Lovett agreed not to pursue the complaint about fill material. The charge that MTR violated SMCRA's buffer zone rule remained, and would go to trial at the U.S. district court in Charleston. In October 1999, Judge Charles Haden II ruled that valley fills did violate SMCRA, though that ruling was overturned on appeal in 2001.

Though Lovett had technically lost, he had opened up a legal can of worms. Bush's powerful Interior Department was dispatched to clean up the mess. The newly-appointed Secretary of the Interior was Gale Norton, who in a past life had written a brief arguing that SMCRA was illegal.⁸⁶ Deputy Secretary J. Steven Griles was the department's real pit bull. Working at the Office of Surface Mining under Ronald Reagan, he had endeavored to undermine SMCRA. Jack Spadaro believed that no one in the Reagan administration had done more than Griles to loosen restrictions on MTR.⁸⁷ Griles worked as a coal industry lobbyist during the Clinton years, putting together a client list that included Arch Coal.⁸⁸ Soon after being sworn-in to his post at Interior in the summer of 2001, he told a meeting of the West Virginia Coal Association that "we will fix the federal rules very soon on water and spoil placement."⁸⁹ He was as good as his word.

A few months later, Griles fired off a memo to the agencies working on the environmental study undertaken as part of the *Bragg v. Robertson* settlement. The memo

⁸⁵ Shnayerson 2008, pgs. 102-103

⁸⁶ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

⁸⁷ Shnayerson 2008, pg. 120

⁸⁸ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

⁸⁹ Shnayerson 2008, pg. 120

instructed the agencies to shift the focus of the study toward determining ways to streamline MTR permitting, and away from the environmental consequences of the practice.⁹⁰

The Bush administration, in consultation with coal industry representatives, next set to work addressing the other legal problems created by Lovett's lawsuit. In 2002 the Clean Water Act was revised, broadening the definition of fill material. Under the new definition, just about anything could be considered "fill," including spoil from surface mining. Later, in 2004, the OSM "clarified" the buffer zone rule, making it more of a suggestion than a requirement. Mine operators would be considered in compliance with the rule as long as they tried to avoid disturbing streams "to the extent possible."⁹¹ That same year Griles was removed from office for getting too cozy with his former clients in industry, and he eventually went to prison for lying under oath about his relationship with lobbyist Jack Abramoff.⁹² But the damage had been done. The law, remember, is all about interpretation, and Bush administration officials had successfully interpreted away any impediments to continued MTR mining.

We could fairly say that in the fight over MTR, the first decade of the new millennium belonged to Big Coal, though the growing activist movement began to chip away at the industry's dominance of the political sphere. In recent years, hundreds of activists have turned out for an annual "Week in Washington" to lobby for the Clean Water Protection Act, a bill designed to reverse the Bush administration's changes to the definition of fill material. To date, more than 100 members of Congress have signed on in support of the bill, but not a single West Virginia representative is among them.

No alteration to the political landscape has been more significant for MTR policy than the election of Barack Obama in 2008. The change in administrations immediately rejuvenated the

⁹⁰ Shnayerson 2008, pg. 121

⁹¹ Shnayerson 2008, pg. 125

⁹² Shnayerson 2008, pg. 124

EPA, which stalled 175 MTR permits on Inauguration Day, and as of the beginning of this year had only signed off on about 50 of those permits.⁹³ Dick Cheney, Gale Norton and Steven Griles have been replaced by new Interior Secretary Ken Salazar and EPA Director Lisa Jackson as the major players in crafting MTR policy. Jackson has talked tough on valley fills, in early April issuing new guidelines that will force regulators to consider impacts on the electrical conductivity of streams when reviewing MTR permit applications. Conductivity — the ability of water to carry an electric current — is a good measure of stream pollution. “You’re talking about no or very few valley fills that are going to be able to meet standards like this,” Jackson said of the new guidelines.⁹⁴

Obama railed against strip mining in numerous campaign speeches, and according to Lovett the president has held meetings with Chief of Staff Rahm Emanuel to discuss MTR policy.⁹⁵ Ken Hechler believes that Obama must have directly okayed the recent federal crackdown on MTR. “It’s so fundamental that it must have had the approval of the president,” Hechler said. “He has made a courageous decision.”

It remains unclear exactly what impact the new EPA guidelines will have on MTR permitting. Environmental groups cheered the new rules. Coal industry representatives have yet to comment publicly on the changes. Joe Lovett thought the announcement by Jackson represented a step in the right direction, but he is waiting to see how the EPA will enforce the guidelines, since he doubts the West Virginia DEP will stop issuing permits.⁹⁶

⁹³ David Fahrenthold, “EPA crackdown on mountaintop coal mining criticized as contradictory,” *The Washington Post*, January 28, 2010.

⁹⁴ Ken Ward, Jr., “Breaking news (NOT an April Fool’s joke): EPA actually does take ‘unprecedented steps’ to reduce damage from mountaintop removal coal mining,” *Coal Tattoo*, 1 April 2010, <http://blogs.wvgazette.com/coaltattoo/2010/04/01/breaking-news-not-an-april-fools-joke-epa-actually-does-take-unprecedented-steps-to-reduce-damage-from-mountaintop-removal-coal-mining>.

⁹⁵ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

⁹⁶ Joe Lovett, from a telephone conversation with the author, April 2010.

The new guidelines are supposed to take effect immediately, but as of mid-April, Tom Wood had heard no communication from his superiors about changes to DEP permitting policies. Until he does, Wood said he would carry on with “business as usual.”⁹⁷ Since the DEP does not currently monitor stream conductivity at valley fills, Wood couldn’t say whether MTR operations would be able to meet the standards proposed by the EPA. He did say that in the past he has recorded conductivity levels above the proposed 500 microSiemens per centimeter limit downstream from MTR sites,⁹⁸ which would seem to suggest that at least some valley fills will flunk the new standard.

The coal industry has endured one blow after another in recent months. In addition to the new EPA restrictions on valley fills, the Army Corps of Engineers also announced in April that it will develop its own new rules for reviewing valley fill permits.⁹⁹ The Office of Surface Mining has agreed to rewrite the buffer zone rule yet again.¹⁰⁰ The EPA also appears poised to finally kill a proposed Arch Coal mine that would have been the largest MTR permit in West Virginia history. The mine in question is the very same one Lovett sued to stop in 1998. The permit has been wrangled over in the courts ever since. Blocking the mine would be a major symbolic victory for anti-MTR activists.

Lovett was cautiously optimistic about the direction that regulation was heading when I talked to him in March. After more than a decade of struggle, it looked as if all of his work might be starting to pay off.

⁹⁷ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

⁹⁸ Tom Wood, West Virginia Department of Environmental Protection, in conversation with the author, Oak Hill, West Virginia, April 2010.

⁹⁹ Ken Ward, Jr., “Corps to broaden reviews of valley fill applications,” *The Charleston Gazette*, April 2, 2010, <http://www.wvgazette.com/News/MiningtheMountains/201004020650>

¹⁰⁰ Ken Ward, Jr. “Environmentalists await ‘buffer zone’ rule rewrite,” *The Charleston Gazette*, March 22, 2010, <http://www.wvgazette.com/News/MiningtheMountains/201003220676>.

5. A STRUGGLE FOR DEMOCRACY IN THE MOUNTAIN STATE

Today is the first of May, a Saturday. In the Coal River valley, afternoon temperatures are climbing toward 85 degrees and skies are blue, though rain clouds will be moving in later tonight.

Today Linda Davis is probably still preoccupied with thoughts of her son Timmy and her grandsons Cory and Josh, all of whom died underground just a little less than a month ago. Last weekend, she walked arm-in-arm with a solemn Barack Obama at a memorial service held in Beckley for the miners killed in the Upper Big Branch explosion. Maybe the president reflected for a moment today on that experience, and on what to do about mining practices that exact such a high toll on the lives of West Virginians and their beloved Appalachian mountains. Probably his mind was otherwise occupied. He has another environmental disaster to deal with right now, another painful cost of our nation's addiction to dirty energy.¹

Maybe Don Blankenship woke up today and worried about the FBI's criminal probe into possible managerial negligence at Upper Big Branch, or about the shareholders who recently have been calling for his head, or simply about the price of his company's stock, which continues to slide. Maybe instead he is thinking about a horse race, or a ball game.

Joe Lovett is probably spending the day with his wife and kids. Maybe tonight he will crack open a book, or put on one of his jazz records, if he's not too busy with his latest case. At four ramshackle cottages in Rock Creek, a rabble of college-aged activists attired in dirty jeans and t-shirts is getting ready to prepare dinner. Judy Bonds is probably still smiling, after attending a press conference yesterday in Charleston, during which Governor Joe Manchin

¹ I am referring to the spill at a BP PLC deep-sea oil rig off the coast of Louisiana, which by May 1 had created an oil slick covering almost 4,000 square miles in the Gulf of Mexico, and growing daily.

announced that Marsh Fork Elementary will finally be moving, thanks to a large new donation from a Pennsylvania charitable foundation.

Workers are reporting for their shifts at any of the numerous southern West Virginia mountaintop mines that operate around the clock. A miner will be injured the job today. Another will clock out and make it home safely to feed his family and play with his children. Coal truck drivers are trying their luck around the hairpin turns on Route 3. Dragline operators sit at the controls inside air-conditioned cabins, pushing thousands of tons of rock and dirt. Valley fills are being piled ever higher. All over the state, industry employees are running coal. Just like they do every day.

While I compose this document today, I am listening to the humming fans of two different computers. A cell phone rests on the table beside me. Later, when the sun sets, I will continue my work beneath the glow of incandescent and compact fluorescent lights. Just like I do every night. All of this activity is made possible, I presume, by burning coal.

I picked this day to tell you something about, because in spite of the flurry of recent news, nothing much out of the ordinary is happening at the moment. Today is just like any other day, and no other day will ever be quite like it. Today will have to be enough. I cannot tell you about tomorrow.

We are almost at the end of story here, and the time has come to assess what, if anything, we have learned. I have tried to tell you as much as I possibly could in a few short chapters about the communities affected by mountaintop removal, about the coal companies and miners engaged in the practice, and about the government officials charged with walking a line between the opposing interests of these groups. My account is an incomplete one. I have said little about the struggle's beginnings, and I do not yet know how it will end. Things are changing almost

daily as I write these words, and by the time you read them, the situation could be very different from what I have described. As a history, this work is of limited value. I have recorded some observations that, as best I can judge, appear to be true. But we saw earlier that truth can be a slippery concept.

As a description and analysis of the regulatory apparatus that oversees MTR, this document may be somewhat more useful. I have tried to provide a thorough overview of the various threads that compose the regulatory blanket, where those threads overlap or are intertwined, and where the blanket may have knots in need of untangling, or holes in need of patching. Even if I have succeeded in making a fairly complete outline of the agencies involved, the attention I have given to individual regulators and officials has not been especially balanced. Much more has been said about environmental regulation than health and safety regulation, and I have placed more emphasis on the everyday practices of the West Virginia DEP than those of any of the federal agencies — though I had my reasons for doing so. As the primary point of contact with mine operators, DEP officials are much more directly involved with and invested in MTR than some of these other agencies. I hope my analysis has provided some clarity to a complicated regulatory structure, and yielded at least a few insights into the cultures of these institutions. But most of what I have reported on this topic you could find out for yourself by reading some books, or spending an afternoon with Tom Wood or Joe Lovett.

I also do not see this project as advocating any particular policy on MTR. I will not try to suggest that one side of the debate is right and the other wrong, only that the core constituencies appear to value different things. The utility of any exhortations I could make might be short-lived, anyway. A year from now, mountaintop removal may be old news. It is possible that in a decade coal-fired power could be history, too, either because more economical or more attractive

alternatives have been found, or simply because the reserves have been mined out. Change is coming to the coal industry whether I call for it here or not. Besides, I have no illusions about the capacity of this work to influence policy. If there is anything to the pragmatic theory I sketched earlier, then actions speak louder than words.

I have another, somewhat different notion of what has been accomplished in the preceding pages. Today I have told a story about a public, trying to become a community.

Each of the individuals mentioned above has desires, fears, beliefs, goals, expectations, joys and hurts all their own. Each has interests. There are so many different interests at play here, some of them compatible, some of them in conflict. Collectively these people, and many others like them throughout West Virginia and around the world, make up a public, a public constituted around the practice of mountaintop removal mining.

The question that above all others has motivated our discussion through the preceding chapters is to what extent the governments of West Virginia and the United States can be said to represent this public. If our government is responsive to public demands, then we are living in a functioning democracy, however imperfect. If it is not, then we had better refer to our political system by some other name.

If I am going to sell anything in the coming pages, it will be democracy. But I am only selling it because I suspect it is something that many of you who will read these pages, like me, are willing to buy. In the previous chapters, I have laid out the method and the data we need to assess the health of our democracy. What an individual or an institution values can be determined by its habitual practices, I argued. That is one of the reasons I put so much emphasis on this unremarkable Saturday in May. We each live our values everyday, not chiefly in our noteworthy actions, but in our regular ones. Values are a particular species of belief. They are

beliefs about what is good, not just for you or for me, but for society as a whole. If we act only on our interests, then we have no values.

Values are extremely important for democratic practice. In the most basic sense, democracies are societies in which officials are selected to serve the interests of the public. But on most issues, the public has no single interest. Something that is good for me, or good for a group of like-minded individuals, is in my/their interest. Something we believe to be good for the broader social group, even if it violates the self-interest of some members, we have been calling a value. Democratic public officials, then, are officials who act on their values. When public officials act on interests, they are by definition private interests, and in that case they are acting undemocratically. Now, it is certainly possible that elected leaders may work on the behalf of powerful friends, or for their own personal gain. Yet we have seen that government officials do, at least occasionally, make choices that are not in their immediate self-interest. Matthew Crum's short tenure at the West Virginia DEP is one good example. It is probably safe to assume that public officials who have not been corrupted or coerced believe themselves to be guided by their values. Of course, it would be nice if the bosses and agents of government institutions valued the same things as the public at large. If they do not, then they may only believe themselves to be acting on behalf of the public good. But what does the public value?

In chapter three, we saw that Appalachian coal companies appear to value their profits above all else. It is clear that coal operators do make some minor concessions aimed at ensuring the safety of their workers, lessening impacts on the environment, or spreading goodwill in local communities; but it is equally apparent that these actions are only taken as necessary means to the ultimate end of protecting their profits, and are by-and-large woefully inadequate. There may not be anything wrong in principle with a company putting concern for its profits above other

considerations — publically-traded corporations have a responsibility to their shareholders to do just that. It does not follow, however, that the responsibility to make money absolves corporate entities of any other responsibilities they might have to the public at-large, or prevents them from pursuing other ends besides profit. It could be that MTR mining is so marginally-profitable a business to begin with, that companies engaged in the practice do not have the luxury of pursuing other ends. But regardless of whether it is out of necessity or by choice, we can conclude that the value these companies place on employee safety or environmental conservation or any number of other competing goods is insignificant compared to the value they place on profit.

All this talk about what the industry values may be misguided, though. It is entirely possible, even plausible, that coal companies operate only in pursuit of their immediate interests, or the interests of their top managers. In that case, coal companies would have no values at all. That is a potentially frightening proposition, but a discussion of the causes and consequences of value-free social action cannot be undertaken here. We will have to be content to consider the possibility noted, and press forward. Personally, I think it is more likely that coal barons like Don Blankenship hold at least some vague notion that the self-interested pursuit of profit actually works to promote the greater good, perhaps through the movement of the invisible hand or some other benevolent and mysterious force. This is a perfectly serviceable ethic, and one that has widespread purchase in our culture. By this capitalist standard of value we would have to consider Massey Energy a good company, if not an exemplary one. The company may be guilty of a laundry list of environmental infractions, it may exploit its workers in a variety of appalling ways, it may exhibit blatant disregard for all notions of fair play and contract law, its brash CEO may have a gift for creating negative press — all of which affects potential and actual

profitability — but in a good year Massey still rakes in more than \$100 million. If profit-making is equated with the greater good, then their business has been a great success. On this very limited conception of the good, Massey is a model citizen, if not quite a saint.

While this capitalist ideology may be prevalent in contemporary America, there exist some real challenges to its achieving anything close to universal acceptance. Putting profits first may be good for Massey and for the company's shareholders. It may even be good for you and me. But there are a lot of people living in the Coal River valley who have a difficult time understanding this logic.

Our government appears to have been at least partly captured by individuals who subscribe to free market conceptions of the public good. In Althusserian terms, we could say that such ideas constitute the values of the ruling class. The corresponding ideology pervades West Virginia society, just as Althusser would expect. Coal is King in state politics. The oft-repeated phrase represents just one manner of articulating the prevailing ideology, an ideology that suggests uninterrupted coal production is the best thing for the state of West Virginia and its citizens. The business-friendly Bush administration held similar notions about what was good for the nation, if on a broader scale. Contrary to the popular myth, this ideology does not always yield prosperity, not for everyone. Those who suppose it will need to revisit their Adam Smith. The famed Scotsman advocated free market economics not because he held some naively egoistic moral theory, but because he believed human beings possessed a natural, extra-rational sympathy for one another. In the absence of such sympathy, the self-correcting component of Smith's capitalism can no longer be expected to properly function. A society organized around capitalist values, political theorists have known for more than a century, inevitably produces

marked inequalities and political dissidents. In southern West Virginia, the ranks of the discontented are large and growing each year.

“Some people say Coal is King,” Larry Gibson said to me. “I never did believe in kings.”² He is not the only one refusing to drink the Kool-Aid. The adverse social impacts of MTR mining and the government’s support of the practice has created a vocal citizen’s movement whose ideas about what is good for West Virginia clearly differ from those of the state’s political establishment. The local cells of activism initiated by people like Larry Gibson, Judy Bonds and Joe Lovett have linked up with groups in other states to produce an active national movement in opposition to MTR. That movement has grown considerably in size and momentum — nowadays its representatives are being photographed smiling at the governor’s office, after all. A counter “grassroots” movement has sprung up in response to these “dangerous anti-coal extremists,” as evidenced by the existence of groups like Friends of Coal.³ This loud disagreement in West Virginia does not necessarily suggest that the state’s democracy is in trouble, if anything it is evidence that it has a pulse. We have already seen that democratic theorists like John Dewey and Michael Parenti believe healthy democracy must be sustained by engaged publics, and social movements have particular power. Ken Hechler told me he has faith in American government, so long as it is “of the people, by the people.” “When you can mobilize the people,” he said, “you can overcome some of the broken features of democracy.”⁴

Controversy over the issue has definitely resulted in some movement in policy, especially of late. Most changes, though, are being implemented at the federal level. Anti-MTR activists have long thought that only federal regulators could effectively challenge the practice. West

² Larry Gibson, in conversation with the author, Kayford, West Virginia, March 2010.

³ West Virginia Coal Association 2009, pg. 5. The WVCA proudly proclaims Friends of Coal to be a grassroots movement. The organization would want to say that, since they created the group.

⁴ Ken Hechler, in conversation with the author, Charleston, West Virginia, March 2010.

Virginia politicians have certainly been reluctant to make any shifts in policy that would be damaging to the interests of industry. Finding the money to move Marsh Fork Elementary has been one of Manchin's few interactions with environmentalists not to end in arrests. The state legislature has been very supportive of coal interests, and the state environmental regulator almost never revokes MTR permits. Those permits have been getting held up, I reported in the last chapter, by the EPA since last year. Joe Lovett believes the Obama administration is going to clamp down on MTR. His cause has made some progress in the decade he has been working at it. A goliath mine he fought to stop in the late 1990s may be on its way to a final rejection. Lovett estimated his lawsuits had reduced the size of new MTR mines by about 40 percent, and halted about 10 percent of permits. He was less sure if living conditions were improving at all for southern West Virginia residents.⁵

When I asked Larry Gibson what he thought he had accomplished, he noted that Kayford Mountain is still in existence, and said he thought his most important contribution was inspiring activist organizers like Judy Bonds and Maria Gunnoe, who have both won prestigious national awards for their environmental advocacy. All three can be credited with shifting public attitudes and recasting the terms of the debate over MTR. Their efforts exemplify the sort of creative social action that the pragmatic tradition considers a precursor to social change.

None of the activists I talked to felt their work was anywhere near finished. Joe Lovett probably will not be happy until valley fills are outlawed; Larry Gibson might not settle for anything less than an outright prohibition on coal. According to Lovett, one of the hurdles to overcome is the heavy capitalization of the coal industry in MTR. He believes that if the industry can be pushed underground, it will not return to surface mining.⁶ But progress in that effort is all

⁵ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

⁶ Joe Lovett, in conversation with the author, Lewisburg, West Virginia, March 2010.

too sensitive to the existence of a sympathetic administration in Washington. No activism has yet stopped millions of tons of coal from being mined at MTR sites in West Virginia each year.

I do think we have to conclude, though, that government *has* been responsive to public concern in this case, if only in a limited way. It has been trying to show some semblance of balance in representing the interests of various constituencies. That is not to say it has been doing a particularly bang-up job. Government agencies and elected officials have generally been slow to confront powerful interested groups (and heavy campaign donors), and nervous about upsetting the status quo. As you may recall from our discussion in chapter two, Dewey counts as one measure of good government the ability of public officials to relieve citizens from struggling to defend their rights. The officials charged with regulating MTR appear to be failing on this count, as West Virginia residents fighting perceived coal company abuses have faced an uphill battle, and historically have received little support from state or federal government.

But our country, and to a lesser extent the state of West Virginia, still possesses functioning democratic institutions, even if they do not always run as smoothly as they could. In chapter two, I set up a dichotomy between two theories of governance; one a statement on the ideals of democracy which I called the pragmatic theory, the other a warning about the controlling effects of power which I called the critical theory. As it turns out, we can see elements of both perspectives in government oversight of mountaintop removal. The ideology of large coal interests has to at least some degree influenced the views of government officials, particularly in West Virginia state politics. That same ideology has been preached all over the state, from the billboards to the schools. There do, however, appear to be competing ideologies alive and well in the public discourse about coal mining, and government institutions are making some minimal efforts to represent values held by a variety of groups. Without a doubt our

democracy is imperfect, but that would not have surprised the pragmatists one bit. Dewey did not believe a democracy was something citizens of this country possessed; he thought it was something a country works at becoming.

What efforts, then, should our country make to become more democratic? This question is a particularly difficult one with respect to specific policy recommendations. At best, I can only offer a few speculations for discussion. A more democratic response to MTR may be encouraged if all interested parties were given similar levels of access to policymakers and regulators. This is not currently the case, as citizens do not have as much access to the regulatory process as they ideally might. It may be worthwhile to seek greater separation of regulatory agencies and industry. The back-and-forth movement of individuals between industry and government — while not uncommon in most American regulatory structures — has no doubt influenced the policies of government, particularly at the level of key federal posts like Secretary of the Interior and Director of the EPA. Both the state of West Virginia and the country may be in need of tougher rules on campaign finance, since ultimately it is elected officials like the state governor and the U.S. president who appoint the heads and pull the strings of the regulatory agencies. Of course, there is little I can do here to provide arguments for any of these prescriptions. I have no way of knowing with any certainty if a healthier democracy would result from pursuing any of the policies just mentioned, only a hunch.

I think we can speak with a little more confidence about where democracy might be found — in engaged citizens, certainly, but also in institutional cultures, which is a way of saying in everyday practices more generally. An institution's regular practices will give some insight into its values, and embedding values in institutions may be more important than embedding them in laws. We already know that the interpretation of the law is big business in

our country, and people whose values run counter to the law will always find ways to manipulate its language to serve their own ends. The laws are only as good as the people who enforce them — Ken Hechler told Carter that more than thirty years ago — better to have political institutions that engage in democratic practices than only well-intentioned laws. I said earlier that democratic public officials are those who act in defense of what they believe to be the public good. But that alone might not quite get us where we want to be. To be truly democratic, the values espoused by government officials would have to reflect the public's values.

That brings us to the really tricky part. It is highly unlikely that we will ever be able to determine when our public officials are practicing the proper values. We have no access to a meta-perspective from which to interrogate values. These beliefs about what constitutes the good are meta-ethical judgments to begin with. Whether or not the government represents the public good will depend on what the public deems that good to be. But this condition raises all sorts of problems. Reaching agreement on values is notoriously difficult. People have been fighting and dying over them for millennia. Nevertheless, agreement on values is what we need. Pragmatists like Peirce hold that the public must be the arbiter of truth; and the good is one species of the true. Dewey believes one of the biggest impediments to democracy today is that the public “is amorphous and unarticulated.”⁷ Think back to all those people we met at the beginning of this chapter. What holds them together? They are all somehow connected by their relationship to mountaintop removal. But, as Dewey tells us, “no amount of aggregated collection of itself constitutes a community.”⁸ A community is a group of people who share the same ends, who have compatible conceptions of the goods to be pursued.

⁷ Dewey 1927, pg. 131

⁸ Dewey 1927, pg. 151

Americans have enough difficulty agreeing on compromise policies. How is our nation, and specifically the diverse public affected by MTR, ever to become a community? From a practical perspective, the only values on which we are likely to achieve broad consensus are democratic ones — tired old notions like liberty, equality, fraternity. We all profess such values, anyway. There are no documents we hold more sacrosanct, after all, than those in which we pledge to “establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty” and to protect “certain inalienable rights” of all men. Dewey says that these abstract ideals are only meaningful when linked to practices, and:

In its just connection with communal experience, fraternity is another name for the consciously appreciated goods which accrue from an association we all share, and which give direction to the conduct of each. Liberty is that secure release and fulfillment of personal potentialities which take place only in rich and manifold association with others: the power to be an individualized self making a distinctive contribution and enjoying in its own way the fruits of association. Equality denotes the unhampered share which each individual member of the community has in the consequences of associated action.⁹

The passage is breathtaking, but it may be little more than a nice dream. It is hard to see a full expression of these values in the practices of our public and its officials. Nor is it obvious that the public wants to live by these values, or that we would even know how to begin moving our society into greater agreement with them.

Probably some very fundamental social structures will have to be altered in West Virginia before any flourishing community of democratic practice is likely to be established. The entire “coal tattoo” ideological apparatus needs to be uprooted. Public education would have to be improved. The state’s economy would need to be diversified. Drawing on Althusser’s analysis of the ISAs, we can conclude that while the “coal tattoo” ideology has saturated West Virginia culture with a particular set of values, its purpose in doing so has been to maintain oppressive

⁹ Dewey 1927, pg. 150

social relations. The limitation of coercive structures of power is a preliminary requirement for free democratic dialogue.

If a dialogue on values is to occur, political courage will be an essential catalyst. Remember how Ken Hechler, in the last chapter, praised Obama's courage in standing up to the coal industry. He also said that the president does so at great political risk.¹⁰ Some individuals must volunteer to take such chances. In the struggle to resolve long-standing conflicts, those charged with securing the first ground always find it bitterly contested.

We have come now to the end of this story. No community of individuals affected by MTR has yet been realized, but perhaps one is in sight. Like all stories, this one has been based on certain assumptions, and the critical assumption here is that it is possible for groups of people to freely agree on values, although such agreement cannot be achieved in the absence of a rich, democratic dialogue. If we do not speak up for the goods we wish to preserve, and most loudly in our actions, than we are only voting to maintain the status quo. Larry Gibson told me that coalfield residents approach him often, sometimes in tears, and ask him to tell others their story. "I'm not going to tell your story," he politely declines. "*You* tell your story."¹¹

I wonder what sort of story we are telling in this country about mountaintop removal. I have suggested some practices that might help make it a more democratic story, but they are only ideas. We would be wise, each of us, to first take a hard look at what it is that we value.

¹⁰ Ken Hechler, in conversation with the author, Charleston, West Virginia, March 2010.

¹¹ Larry Gibson, in conversation with the author, Kayford, West Virginia, March 2010.

BIBLIOGRAPHY

Author's note: Probably no book provided me with a more helpful introduction to the controversy over mountaintop removal than Michael Shnayerson's *Coal River. Coal Country: Rising Up Against Mountaintop Removal Mining*, edited by Burns et al., is another invaluable resource. The anthology gives readers an opportunity to meet many of the leading figures in the anti-MTR movement, and hear them tell their stories in their own words. For citizens wishing to learn more about the permitting process and how to get involved in it, the place to start is with Mark Squillace's *The Strip Mining Handbook*, which is freely available to the public online at Red Lodge Clearinghouse. Ken Ward, Jr. keeps everyone current on mining developments in Appalachia with his popular *Coal Tattoo* blog, and his running *Charleston Gazette* series called "Mining the Mountains," both regularly updated on the Gazette's web site. Appalachian Voices runs another active blog, at ilovemountains.org, with the latest news on the activist community.

Althusser, Louis. "Ideology and Ideological State Apparatuses." *Contemporary Critical Theory*. Ed. Dan Latimer. San Diego: Harcourt, Brace, Jovanovich, 1989, 60-102.

Bell, Shannon Elizabeth. "Coal is All West Virginia's Got." In Burns et al., *Coal Country*, 109-116.

Biggers, Jeff. "Blowing Away King Coal." In Burns et al., *Coal Country*, 132-142.

Buchler, Justus, ed. *Philosophical Writings of Peirce*. New York: Dover Publications, 1955.

Burning the Future: Coal in America, DVD. Directed by David Novack. Firefly Pix, 2008.

Burns, Shirley Stewart. *Bringing Down the Mountains: The Impact of Mountaintop Removal on Southern West Virginia Communities*. Morgantown: West Virginia University Press, 2007.

_____. "Bringing Down the Mountains: The Impact of Mountaintop Removal Surface Coal Mining on Southern West Virginia Communities, 1970-2004." Dissertation West Virginia University, 2005.

Burns, Shirley Stewart; Evans, Mari-Lynn; and House, Silas; eds. *Coal Country: Rising Up Against Mountaintop Removal Mining*. San Francisco: Sierra Club Books, 2009.

Byrd, Robert C. "Opinion Piece: Coal Must Embrace the Future." *Official web site of U.S. Senator Robert C. Byrd*. December 3, 2009.
http://byrd.senate.gov/speeches/view_article.cfm?ID=563.

Coal Country. Directed by Phylis Geller. Evening Star Productions, 2009.

"Coal News and Markets Archive." U.S. Energy Information Administration.
<http://www.eia.doe.gov/coal/page/coalnews/coalmar.html>

- Da Silva, Filipe Carreira. *G.H. Mead: A Critical Introduction* Cambridge: Polity Press, 2007.
- Davis, Charles. "Preemptive Federalism or Regulatory Dismantling? The Bush Administration's Implementation of the Federal Coal Mining Reclamation Program." *Politics & Policy* 36, no. 3 (2008): 406-407.
- Dewey, John. *Experience and Nature*. New York: Dover, 1958.
- *The Public and Its Problems*. Denver: Alan Swallow, 1927.
- Foucault, Michel. "Two Lectures." In *Power/Knowledge: Selected Interviews and Other Writings 1972-1977*; Edited by Colin Gordon; Translated by Colin Gordon, Leo Marshall, John Mepham and Kate Soper. New York: Pantheon Books, 1980, 78-108.
- Gibson, Larry. "This Land Will Never Be For Sale." In Burns et al., *Coal Country*, 181-186.
- Goodell, Jeff. *Big Coal: The Dirty Secret Behind America's Energy Future*. New York: Mariner Books, 2007.
- "Burying Our Future." In Burns et al., *Coal Country*, 127-131.
- Gunnoe, Maria. "My Life is on the Line." In Burns et al., *Coal Country*, 218-226.
- Hechler, Ken. "How Congress Enabled Mountaintop Removal," In Burns et al., *Coal Country*, 64-70.
- Hendryx, Michael. "The Children of Twilight." In Burns et al., *Coal Country*, 147-149.
- Hendryx, Michael and Hitt, Nathaniel. "Ecological Integrity of Streams Related to Human Cancer Mortality Rates." *EcoHealth*. Published online April 2, 2010.
- Hennen, John. "Empire Building, One Chunk of Coal at a Time." In Burns et al., *Coal Country*, 71-76.
- Huber, Tim. "W. Va. Mine Owner Accused of Putting Safety Second." *The Associated Press*, April 6, 2010.
- James, William. *Pragmatism*, 1907. Edited by Bruce Kuklick. Indianapolis: Hackett Publishing, 1981.
- Joas, Hans. *The Genesis of Values*. Chicago: The University of Chicago Press, 2000.
- Keating, Martha. "Cradle to Grave: The Environmental Impacts from Coal." *Clean Air Task Force* (Boston, June 2001).

- Kindy, Kimberly; Mufson, Steven; and O'Keefe, Ed. "Mines avoid crackdowns by fighting citations;" *The Washington Post*. April 10, 2010.
- Konty, Melissa Fry and Bailey, Jason. "The Impact of Coal on the Kentucky State Budget: Current Impacts and Future Prospects." Berea, Kentucky: Mountain Association for Community Economic Development, 2009.
- Loeb, Penny. *Moving Mountains: How One Woman and Her Community won Justice from Big Coal*. Lexington: The University Press of Kentucky, 2007.
- McIlmoil, Rory and Hansen, Evan. "The decline of Central Appalachian coal and the need for economic diversification," *Downstream Strategies* (Morgantown, West Virginia: Downstream Strategies), 2010.
- McNeil, Bryan. "Union Legacy and Green Networking," In Burns et al., *Coal Country*, 49-62.
- Mead, George Herbert. *Mind, Self and Society*. Edited by Charles W. Morris. Chicago: The University of Chicago Press, 1934.
- *Selected Writings*. Edited by Andrew J. Reck. Indianapolis: Bobbs-Merrill, 1964.
- Miller, Tom. "Absentees Dominate Land Ownership." In *West Virginia: Documents in the History of a Rural Industrial State*, edited by Ronald Lewis and John Hennen, 316-323. Kendall Hunt Publishing, 1991.
- Mitchell, John G. "When Mountains Move." *National Geographic*. March 2006.
- Orr, David. "Not Just an Appalachian Problem." In Burns et al., *Coal Country*, 153-161.
- Palmer, M.A.; Bernhardt, E.S.; Schlesinger, W.H.; Eshleman, K.N.; E. Foufoula-Georgiou, Hendryx, M.S.; Lemly, A.D.; Likens, G.E.; Loucks, O.L.; Power, M.E.; White, P.S.; Wilcock, P.R. "Mountaintop Mining Consequences," *Science* 327 (January 8, 2010): 148-149.
- Parenti, Michael. *Power and the Powerless*. New York: St. Martin's Press, 1978.
- Peirce, Charles Sanders. "How to Make Our Ideas Clear," In Buchler, *Philosophical Writings of Peirce*, 23-41.
- "Some Consequences of Four Incapacities," In Buchler, *Philosophical Writings of Peirce*, 228-250.
- "The Fixation of Belief," In Buchler, *Philosophical Writings of Peirce*, 5-22.

- “The Scientific Attitude and Fallibilism,” In Buchler, *Philosophical Writings of Peirce*, 42-59.
- “Poll Results.” *Appalachian Center for the Economy & the Environment*.
http://www.appalachian-center.org/poll_results/index.html.
- Scarbro, Lorelei. “To Harness the Wind.” In Burns et al., *Coal Country*, 259-261.
- Sellars, Wilfrid. “Philosophy and the Scientific Image of Man.” *Science, Perception and Reality*. Atascadero, California: Ridgeview Publishing, 1963. Pgs. 1-40.
- “Empiricism and the Philosophy of Mind.” *Science, Perception and Reality*. Atascadero, California: Ridgeview Publishing, 1963. Pgs. 127-196.
- “Senate Members: Mike Green,” *West Virginia Legislature*.
<http://www.legis.state.wv.us/senate1/members/senmemview.cfm>
- Shnayerson, Michael. *Coal River*. New York: Farrar, Straus and Giroux, 2008.
- “The Truth About Don Blankenship.” *Vanity Fair*. April 15, 2010.
<http://www.vanityfair.com/online/daily/2010/04/the-truth-about-don-blankenship.html>.
- Spadaro, Jack. “The Problem in Appalachia.” In Burns et al., *Coal Country*, 89-91.
- Squillace, Mark. *The Strip Mining Handbook*. Red Lodge Clearinghouse, 2009.
<http://sites.google.com/site/stripmininghandbook/a-brief-review-of-smcra>.
- Thornton, Tim. “Mountaintop removal: Moving the mountains -- strip mining by any other name.” *The Roanoke Times*. 2 July 2006.
- U.S. Congress. *Surface Mining Control and Reclamation Act of 1977*. Public Law 95-87, §§ 1234-1328.
- U.S. Environmental Protection Agency, EPA Region 3. *Mountaintop Mining/Valley Fills in Appalachia: Final Programmatic Environmental Impact Statement*. October 2005.
<http://www.epa.gov/Region3/mtntop>.
- Ward, Ken Jr. *Coal Tattoo*. <http://blogs.wvgazette.com/coalattoo>.
- “Mining the Mountains.” *The Charleston Gazette*.
<http://www.wvgazette.com/News/MiningtheMountains>
- West Virginia University Bureau of Business and Economic Research and Marshall University Center for Business and Economic Research. “The West Virginia Coal Economy 2008.” Morgantown, West Virginia, 2010.

West Virginia Coal Association, *Coal Facts 2009*. Charleston, West Virginia: West Virginia Coal Association, 2009. <http://www.wvcoal.com/docs/Coal Facts 2009.pdf>.

West Virginia Department of Environmental Protection, Division of Mining and Reclamation. "Section 29: AOC and Excess Spoil Disposal, AOC/Excess Spoil Guidelines." *Permitting Handbook*. 1999. <http://www.dep.wv.gov/dmr/handbooks/Documents/Permitting Handbook/sect29.pdf>.

West Virginia People's Election Reform Coalition. "Studies Link Poor Health to Mining Practices but Little is Being Done: Is Campaign Cash Contributing to the Lack of a Response?" *Citizens for Clean Elections*. 2008. http://www.wvoter-owned.org/reports/health_in_coalfields.pdf.

_____ "Analysis of Coal Industry Contributions to State Political Campaigns, 1996-2004," *Citizens for Clean Elections*, 2004, pg. 8, http://www.wvoter-owned.org/reports/perc2004_coall.pdf.

Mining Permit Search Database. West Virginia Department of Environmental Protection. <http://www.dep.wv.gov/insidedep/Pages/miningpermitsearch.aspx>.

Williams, John. *West Virginia: A History*. New York: W.W. Norton, 1984.

Williams, Raymond. *The Long Revolution*. London: Chatto & Windus, 1961.