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The EPA and Public Lands as Climate Movement Weapons Force Big Government to Kill Big Carbon

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The climate movement tends to talk about “theories of change” rather than “theories of power.” But if you think about power – who has it, what are its mechanisms, how can it be used – then government looms large. Government is more than one third of the economy, its judicial and regulatory apparatus touches everything, the private sector depends almost entirely on the infrastructure of the public sector, and during times of crisis the state is private industry’s life-support system.

When pondering mechanisms that the climate movement might use to maximize its impact in the short time still available, consider this: the Federal Government could, without any new laws, significantly restrict both the supply of, and demand for, fossil fuels. In other words, if the climate movement is serious about controlling Big Carbon it needs to get serious about Big Government.

Only the state has the power to euthanize the fossil fuel industry. Divestment and marching are good and important tactics; they demonstrate popular power but that power needs to be brought to bear on mechanisms – like government regulation – that can directly control the fossil fuel industry.

The federal government could restrict demand for fossil fuel by making it expensive, and it could do that by implementing legally mandated, strict EPA regulations on greenhouse gas emissions under the Clean Air Act. Polluters would have to pay heavy fines and that would raise the cost of dirty energy. As for supply, the government could start by taking its own fossil fuel reserves off the market.

The time is right to press on both mechanisms, but neither will happen unless green activists demand robust federal action. Good news: that’s starting to happen.

Obama may have even cracked opened a door that the movement can push further. He has said, “We’re not going to be able to burn it all.” And his mildly ambitious though inadequate emissions reduction agreement with China, will be implemented (if at all) through enforcement of existing laws, most importantly, the Clean Air Act as interpreted by the 2007 Supreme Court ruling in *Massachusetts v EPA*. If aggressively applied the Clean Air Act could severely restrict the demand for fossil fuels across the entire energy and transportation sectors.

Less discussed is government control of the fossil fuel reserves beneath public lands. Shockingly – if you consider the climate

science – federally owned coal, oil, and gas reserves account for more than one quarter of all fossil fuel production in the US. (That is down from public property sourcing about a third of all production just prior to the fracking boom on private lands.) Control of these massive reserves lies with the president – he could start pulling public fossil fuel reserves from the market now, without congressional approval.

Mass v EPA

How did the EPA get this climate specific power? The story goes back to 1997 when President Clinton signed the Kyoto protocol, an international agreement to cut greenhouse gas emissions, but the Senate never ratified the treaty, and President Bush subsequently renounced it. In response, Massachusetts, several other states, and various green groups all sued the EPA in 2003. The plaintiffs argued that the federal government was obliged to use the Clean Air Act of 1970 to regulate greenhouse gas emissions.

In 2007 the Supreme Court finally ruled. Yes, the EPA was legally bound to use the Clean Air Act to regulate GHG emissions. At the time it was estimated that the new regulations could achieve a 40 percent reduction of US Carbon emissions over 1990 levels

by 2020. Then came years of deliberate inaction and foot-dragging by two administrations.

Now the Agency is finally starting to promulgate the specific GHG rules required by *Mass v EPA*. The two regulations issued thus far have been politically easy: a federal standard for passenger vehicles, which was largely redundant with already existing state regula-

tions; and restrictions on new coal-fired plants which were not actually going to be built because of a glut of cheap fracked gas.

More importantly, the EPA is currently crafting rules for existing power plants. The Agency took comment all summer and fall and will issue the new rules in June 2015. A number of large green groups mobilized members to comment at EPA hearings, and an impressive 8 million public comments were logged. But, with the exception of a few small and mid-sized groups such as the Center for Biological Diversity, most of the green groups did not demand that these new rules be science-based, i.e. much tighter than those on offer. And the effort has been strangely low profile; there is no robust campaign of popular education, mass mobilization, protest, or direct action aimed at the EPA.

There was very little, if any, mention of the Agency among the signs, chants, and media comments at the otherwise wonderful and massive Peoples Climate March. Alas, many of the youth and high-profile troublemakers in the movement too often write government off as “broken” and deliberately turn away from even trying to understand it. (I realize government is not “sexy” or simple, but to deliberately turn away from it courts disaster.)

Industry, on the other hand, takes government and the EPA very seriously. Their fear of the Agency has been expressed in a fifteen years long crusade against it. The offensive began in 1999 when the American Petroleum Institute, the trade association of Big Carbon, called an anti-EPA war council attended by players from: aluminum, petrochemicals, electric power, aerospace, airlines, the National Association of Manufacturers, and the Chamber of Commerce.

This mob has been fighting the EPA ever since.

As a result, the EPA is feeling much more pressure from industry than it is from the climate movement. This is unfortunate. As shown by the successful defense of USDA organics standards a decade ago, the so-far-successful mobilization to defend net neutrality, and the fight against the as-yet-not approved Keystone XL pipeline, citizen campaigns can positively shape government regulations.

Other EPA rules that the climate movement should get ready to try and shape include those regulating oil refining, the cement industry, paper, chemical, and fertilizer production, air, rail, and shipping.

Government-Owned Fossil Fuels

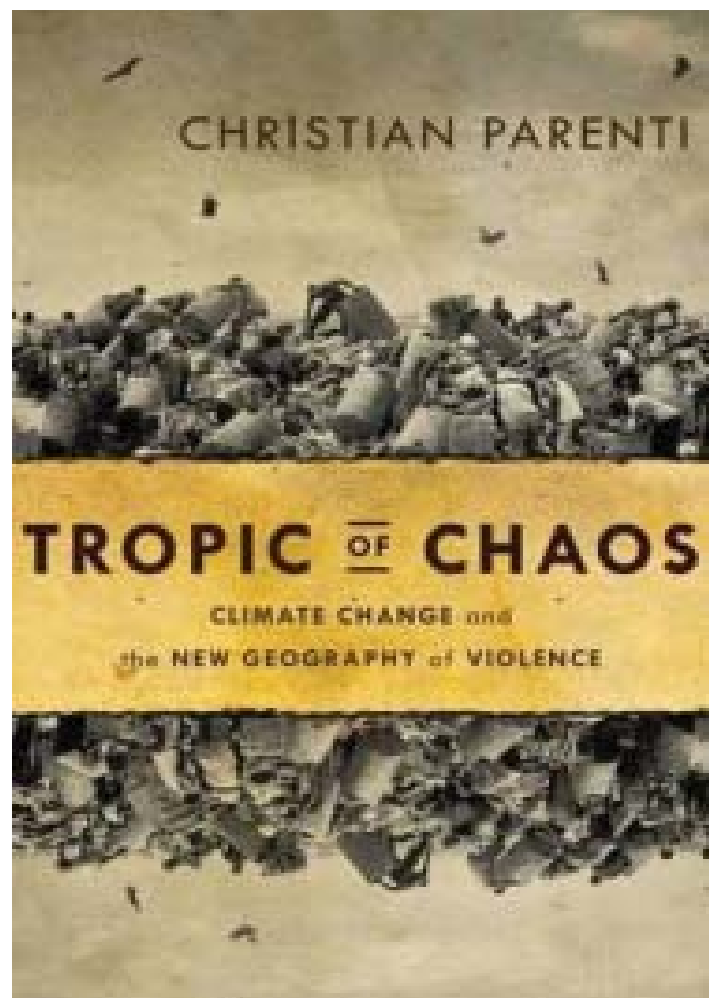
Another important point of leverage is the federal government's direct control over the supply of fossil fuels. According to the US Energy Information Agency 26.4 percent of total US fossil fuel production is sourced from federal and tribal lands. That means about a quarter of all U.S. greenhouse gas emissions originated as publicly owned fossil fuel reserves. According to Stratus Consulting, these government owned fuels produce annual greenhouse gas emissions equal to 283 million passenger vehicles.

Since 1982, the federal government has, according to the Environmental Working Group, "leased or offered for oil and gas drilling 229 million acres of public and private land in 12 western states." Worse yet, most of these reserves aren't even sold at a decent price. A report by Oil Change International estimates the US Government loses \$2.2 billion a year due to low royalties on public reserves; that's

10 percent of the \$22 billion annual subsidy the US Government gives to the petroleum industry.

Translation: the federal government owns vast amounts of fossil fuels and if we are serious about not burning all existing hydrocarbon reserves, that is the most feasible place to start. Unlike Exxon Mobil the government is, at least in theory, a publicly accountable institution.

Even as a lame duck president – or especially so as he is not worried about re-election – Obama could be forced to use his power to severely limit the amount of fossil fuels produced on our public lands. Like EPA enforcement of the Clean Air Act, aggressive presidential action on this front does not require approval from Congress.



If pressured by a movement, Obama could do several things. First, he could direct the secretary of the interior, Sally Jewell, to issue a Secretarial Order banning all further petroleum leasing until there is a federal energy strategy that takes into account the climate consequences of fossil fuel combustion.

Though the Interior Department is tasked with making public resources available for private exploration, it also has the well-<http://www.counterpunch.org/wp-content/dropzone/2012/12/hamm-parenti-web1-187x300.jpg> established power to pull lands from development “in order to maintain other public values.” Protecting the climate would fit the definition of a “public value.”

Imagine putting a quarter, to one third, of all known US fossil fuel reserves beyond the reach of Big Carbon. The economic and ideological impact would be tremendous; among other things this would send an important message to the rest of the world.

Lest that sound impossible, the Obama administration has done this sort of thing already. The previous secretary of the interior, Ken Salazar, withdrew one million acres of land around the Grand Canyon from possible uranium mining. The “other public values” he cited as justification included pollution risks to waterways and public health.

(Alas, Obama usually does the opposite. In 2013, the Administration, via the Interior Department’s Bureau of Land Management, offered up 5.7 million acres for lease to industry. The Interior Department also sped up the permitting process for drilling and opened an additional 59 million acres for oil and gas drilling offshore in the Gulf of Mexico. And, the BLM approved more than 800,000 acres for extra-filthy tar sands and oil shale devel-

opment in the Green River Formation, a vast stretch of terrain in Utah, Wyoming and Colorado that contains 2 to 7 times more energy and pollution than the Alberta Tar Sands. All very, very bad.)

A second, more difficult action would be to cancel existing leases whenever there can be found sufficient technical, financial, or environmental problems. Under the Mineral Leasing Act any non-producing lease can be cancelled automatically when the lessee violates the law, regulations, or lease terms. The Interior Department could be instructed to search for such violations and cancel leases accordingly.

The third thing Obama could do is go after producing leases, which can be cancelled for violations of law, regulation, or lease terms, but only after a judicial proceeding. That would be more difficult, but not impossible.

As Taylor McKinnon of the Center for Biological Diversity put it: “Averting the worst global warming means leaving most proved fossil fuel reserves in the ground. If the world is going to act, Obama will need to lead, and that leadership should start on U.S. public lands. He has the legal authority—does he have the political will?”

Obviously, he does not. But, like other presidents before him who have faced mass and disruptive protest, he could be forced to acquire it.

How to Attack

Clearly, the Obama administration will not use its control of public lands and the Clean Air Act unless hounded, harassed, and humiliated into doing so. How might activists

intervene to shape these processes? That has to be worked out in practice. Thankfully we have examples.

Tim deChristopher struck directly at the misuse of public lands when he sabotaged a BLM petroleum lease auction. Ingeniously, deChristopher just joined the bidding, out-bid the companies, and then refused to pay. Valiantly, the price deChristopher paid for calling attention to the BLM's disgusting, reckless, profligate, totally insane folly was two years in prison. But, in proof that direct action gets the goods, then secretary of the Interior, Ken Salazar, soon canceled many of the worst Bush-era oil and gas leases – including the patch deChristopher bid on.

If there is one thing we know about Obama it is that he is vain, wants to be loved by everyone, and absolutely hates criticism from the left. Perhaps that's why he seems to respond to it. Consider the fact that he is all but publicly committed to vetoing the Keystone XL pipeline. Clearly, the president did not like having Michael Brune, Bill McKibben, and scores of other high profile figures arrested at the end of his driveway anymore than he like tens of thousands of activists – many of them veterans of the 2008 Obama canvas – condemning him personally for selling out his daughters' futures. Nor does he like many young activists who use nonviolent direct action against Big Carbon's extraction and transportation operations. One suspects the equally self-regarding Sally Jewell, current Secretary of the Interior and former REI executive, is similarly sensitive.

Government gets such a bad rap that many on the Left overlook the good it does. But history is full of examples of state power serving as a progressive force and crystallizing left victo-

ries. It was not just the tenacity of CIO organizers against the bosses that led to the massive boom in union density during the 1930s and 1940s, the Wagner Act helped catalyze their power. Nor did the white power structure of the Jim Crow South ever relent, change its mind, say it was sorry, or in anyway not pursue it's agenda of racist segregation. But it was eventually forced to restore the vote to southern African-Americans by way of Federal laws and troops, which were forced to intervene by the Civil Rights Movement. When Act Up demanded AIDS research, they did not just target the medical industry, they also had a direct action campaign targeting the regulators of that industry, the USDA. From those efforts came an HIV treatment protocol. (For details check out the excellent documentary *How to Survive a Plague*.)

Or, more directly connected to the climate issue, recall the improbable origins of the EPA and the Clean Air Act, both signed into law by rightwing Richard Nixon; his hand forced by the massive protests of Earth Day, and all the other movements of that era. Today is different, but not entirely.

There are signs that the climate movement is thinking of creative ways to pressure government to lead on climate. Litigation by the Sierra Club and the Center for Biological Diversity has blocked all new public lands lease sales in California for over two years, and Friends of the Earth just filed a lawsuit demanding a halt to all leasing of US Government owned coal. The Center is planning an advocacy and protest campaign around both the EPA and leasing on public lands to start early in 2015.

The climate science is very clear, we do not have many years left to avoid the worst of runaway climate change, the movement's

ultimate short to medium term goal must be closing the fossil fuel industry. What force, what mechanisms, which institutions could actually do this? Does anyone really imagine that the fossil fuel industry can be convinced to change by way of smart arguments, or shamed out of existence, or tricked into believing there is a carbon bubble by way of spin and headlines, or even starved of investment capital?

Let's be as radical as reality itself. Ultimately, only Big Government, (if forced to by the people) will be strong enough to subdue and euthanize Big Carbon.

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