

# RESPONDING TO ECOCIDE THROUGH TRANSITIONAL JUSTICE

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## **Abstract**

This paper analyzes how Transitional Justice mechanisms might be deployed to redress injustices resulting from the perpetration of ecocide. It develops the notion of *ecocide as social death* as a class of environmental harms severe enough to trigger a Transitional Justice response. If a state authorizes ecological destruction in a way that demonstrates wanton disregard for the cultures intimately connected to those ecosystems, then it has violated core liberal principles of respect for pluralism. Transitional Justice can be effectively utilized in overcoming these harms to transform societies from ones that tolerate grave forms of environmental destruction to eco-friendly states that further environmentalist aims. This paper explores how the four kinds of transitional justice mechanisms can aid in abating and mitigating environmental problems: (1) punitive justice mechanisms (criminal trials, lustration, and sanctions); (2) reparative justice mechanisms (reparations, rehabilitation, memorialization, apologies, and guarantees of non-repetition); (3) truth-oriented mechanisms (truth commissions, reports, and education programs); and (4) institutional reform mechanisms (changing laws and amending constitutions).

## Keywords

Transitional Justice, Ecocide, Social Death, Genocide, Transitional Justice Mechanisms, Human Rights, Environmentalism

## Resumen

Este artículo analiza cómo podrían desplegarse los mecanismos de Justicia Transicional para reparar las injusticias resultantes de la perpetración de ecocidio. Desarrolla la noción de *ecocidio como muerte social* como una clase de daños medioambientales lo suficientemente graves como para desencadenar una respuesta de Justicia Transicional. Si un Estado autoriza la destrucción ecológica de una manera que demuestra un desprecio gratuito por las culturas íntimamente relacionadas con esos ecosistemas, entonces ha violado los principios liberales básicos de respeto al pluralismo. La Justicia Transicional puede utilizarse eficazmente para superar estos daños y transformar las sociedades que toleran graves formas de destrucción medioambiental en Estados respetuosos con el medio ambiente que promuevan los objetivos ecologistas. Este artículo explora cómo los cuatro tipos de mecanismos de justicia transicional pueden ayudar a reducir y mitigar los problemas medioambientales: (1) mecanismos de justicia punitiva (juicios penales, depuración y sanciones); (2) mecanismos de justicia reparadora (reparaciones, rehabilitación, conmemoración, disculpas y garantías de no repetición); (3) mecanismos orientados a la verdad (comisiones de la verdad, informes y programas educativos); y (4) mecanismos de reforma institucional (cambio de leyes y modificación de constituciones).

## Palabras clave

Justicia transicional, Ecocidio, Muerte social, Genocidio, Mecanismos de justicia transicional, Derechos humanos, Ecologismo

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## Introduction

Humans suffering the increasingly adverse effects of ecological degradation has prompted calls for a “green turn” in the discipline of Transitional Justice. Theorists urge for the recognition of environmental harms as severe enough to trigger a Transitional Justice response. In a recent paper, I develop the notion of “ecocide as social death” as a class of environmental harms to be included within a modestly expanded purview of Transitional Justice (Rodeiro 2023).<sup>1</sup> In this paper, I will continue to develop the model of ecocide as social death by analyzing how Transitional Justice mechanisms might provide redress for this exceeding unjust form of environmental destruction and help transform states into eco-friendly governments that further environmentalist aims. Before turning to the extended discussion of Transitional Justice mechanisms in post-ecocide settings, I will begin by reviewing why a successful green turn for the discipline requires careful specification of a class of

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<sup>1</sup>The paper further suggests that a green Transitional Justice might offer a solution to the institutionalized anti-environmentalism problematized within Critical Environmental Justice. Critical Environmental Justice is a recent turn in Environmental Justice (i.e., the movement to address environmental inequities) scholarship that rejects the state-centered and reformist approach of conventional Environmental Justice. See David Pellow’s book, *What is Critical Environmental Justice?* (Pellow 2018, 23).

environmental harms egregious enough to trigger a transitional response.

Transitional Justice was developed as a judicial and political approach to the securing of human rights in the aftermath of the atrocities of WWII and the Holocaust. It was further tested and refined during decolonization and after the collapse of the Soviet Bloc. In essence, it is an area of theory and practice concerned with moving states from failed socio-political systems, which engaged in and/or permitted grave social harms (e.g., genocide), toward societies that respect the rule of law, afford fair and equal treatment to all citizens, and strive to establish reciprocal trust institutionally and individually (Murphy 2017).

*The Journal of Genocide Research* recently published a special issue exploring the “genocide-ecocide nexus” (Crook and Short 2021, 155-161). Numerous authors within this issue advocate for radical social transformation to disrupt the “treadmill of production” (Schnaiberg 1980) which they characterize as a “genocide machine” (Davis and Zannis 1973) and “worldeater” (Dunlap and Jakobsen 2020). Based on the arguments of these theorists, one might conclude that living up to the “never again” motto of Transitional Justice demands the complete economic restructuring of any society based on a capitalist system.

But just as some scholars were hesitant to expand the discipline to confront socio-economic inequalities (Waldron 1992),<sup>2</sup> there are comparable reasons for refraining from such a broad inclusion of environmental harms. As Frank

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<sup>2</sup> Zinaida Miller explains that criticisms of including broader socio-economic issues in Transitional Justice commonly rely on the premise that such systemic economic issues are inherently more complex than civil and political rights abuses. Consequently, including them would overburden the discipline (Miller 2008).

Haldermann and Rachelle Kouassi discuss, “advocates of a narrow reading of transitional justice usually make an instrumental case for excluding [various economic, social, and cultural] rights. By expanding transitional justice to broad social and economic concerns, they argue, we risk freighting it with expectations so overstretched and impractical as to make the whole project meaningless” (Haldermann and Kouassi 2014, 514). I maintain that for Transitional Justice to undergo a successful green turn, it must do so in a manner that is persuasive, politically useful, and accommodating to the aims of the discipline. This entails considering how best to balance the (dis)advantages of enacting established but limited responses to confronting the present ecological crisis with adopting more far-reaching but untested approaches.

Polly Higgins defines ecocide as “the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished” (Higgins 2010, 63). Higgins’ activism and theorizing are at the heart of the proposed amendment to the Rome Statute of the International Criminal Court seeking to make the Crime of Ecocide the fifth recognized and prosecutable Crime Against Peace. Her conception of ecocide, although useful in other contexts, is not suitable for usage in Transitional Justice for several reasons. Foremost is that it focuses on individual liability rather than collective state responsibility. Second, is that it is broad enough to include environmental catastrophes caused by non-human actors like floods or earthquakes. Conceptualizing ecocide as an injustice that rises to the level of demanding transitional political restructuring must entail defining it specifically in terms of how it is a failure of the state.

According to Ruti Teitel's influential account of Transitional Justice, a fully adequate response to large-scale abuses of human rights must include transition to liberal democracy (Teitel 2000). The goal of (re)establishing liberal democracy is regarded as the quintessential feature that separates Transitional Justice from more general human rights approaches (Arthur 2009). A difficulty for including ecocide within the purview of Transitional Justice is that it must constitute a grave social harm that rises to the level of requiring the (re)establishment of a democratic state and (re)affirmation of its commitment to liberal principles.

Recent scholarship investigates how natural resource depletion can lead to human rights violations that trigger Transitional Justice mechanisms and processes (Zimmerer 2014).<sup>3</sup> Other research explores how, once transitional processes have already been initiated, it is important to consider issues of environmental justice to overcome and prevent human rights abuses (Ong 2017). Neither of these research projects analyze whether there are any kinds of environmental harms grave enough to engender responses in their own right. Instead of identifying environmental harms indirectly as either factors to consider during transition or as causes of violence, I aim to articulate when grave environmental harms themselves might trigger the need for Transitional Justice.

### **Ecocide as Genocide**

A straightforward and uncontroversial way of greening Transitional Justice is to include within its purview cases of ecocide perpetrated as a means of genocide, ethnic cleansing, and mass murder. History is replete with

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<sup>3</sup> Jurgen Zimmerer documents how environmental destruction is one of the main driving forces of collective violence (Zimmerer 2014).

instances of environmental harm committed for the purpose of killing the ecosystem's inhabitants. A paradigmatic illustration of human eradication via ecocide is the apocryphal tale of the Roman legions in the Third Punic War. The Romans leveled Carthage and sowed the land with salt to prevent regrowth. Henceforth, I will refer to such cases of environmental destruction deployed as a tactic to exterminate peoples as "ecocide as genocide." Sadly, not all cases of ecocide as genocide are legends; a contemporary example is Saddam Hussein's extermination of the Ma'dan, also known as the Marsh Arabs (Dellapena 2007).

After the defeat of the Iraqi army in the Gulf War, the Ma'dan and other Shiite Arabs in southern Iraq, spurred on by President Bush's calls to overthrow the Hussein Regime, rebelled (Dellapena 2007, 402-403). Hussein responded with overwhelming airpower and artillery fire. He poisoned the Ma'dan's wells and electrocuted the marshes in which they lived to end the rebellion and force the Ma'dan to abandon their ancestral home (Dellapena 2007, 403). Hussein succeeded this onslaught with a comprehensive plan to destroy the habitat, preventing the Ma'dan from returning home, by draining the marshes, dredging their canals, and constructing dams that left 90% of their wetlands destroyed via desiccation (Dellapena 2007, 403).

Draining the marshes represents a clear example of ecocide as genocide. It was a deliberate plan to destroy the environment as a means of ending the Ma'dan and their way of life. The result was essentially the eradication of the Marsh Arabs from their homeland, with only a few thousand of the approximately half a million original inhabitants remaining (Dellapena 2007, 403). The violence committed against the Ma'dan falls squarely within the Transitional Justice framework, as it presents a case of state-directed genocide, ethnic cleansing, and mass murder.

Transitional Justice has well-established and actionable socio-political and legal tools, policies, mechanisms, and procedures for confronting such situations. But there is a drawback to the ecocide as genocide model in that it may be too narrow. If Transitional Justice employs a restrictive conception of the injustice of ecocide, then it is unlikely it will be able to significantly contribute to confronting our present ecological crises, which is driven in large part by economically motivated forms of ecocide. Moreover, it appears that any theorists and practitioners of Transitional Justice would prefer a more robust green turn that is able to include a wider set of environmental harms within the discipline's purview.

Helpfully, genocide studies emphasize cultural eradication as a key component of the wrongness of genocide. This opens the possibility for expanding Transitional Justice to include the harm of cultural eradication as it occurs through ecological destruction. I contend that if genocide via ecocide is to be recognized by the discipline as requiring a transitional response then it follows that social death via ecocide should be as well.

### **Ecocide as Social Death**

Genocide is defined as the death of a people (*genos*), such as those belonging to a particular religion, ethnicity, or culture. Raphael Lemkin, the lawyer and activist who coined the term "genocide" and initiated the Genocide Convention, emphasizes the annihilation of a particular culture/way of life as central to the immorality of genocide. Lemkin aspired to explicitly include "Cultural Genocide," i.e., acts that undermine peoples' way of life, as part of the United Nations Genocide Convention (Moses 2010, 37). Claudia Card similarly conceives of the distinct harm committed in genocide as the severing of groups' vital social interests, such



as their cultural identity, inter-and-intra-generational connectedness, and social relations (Card 2003). She states, “In my view, the special evil of genocide lies in its infliction of not just physical death (when it does that) but social death, producing a consequent meaninglessness of one’s life and even of its termination” (Card 2003, 73). I employ Card’s concept of social death in articulating an environmentally responsive Transitional Justice.

The gravity of the issue of social death is perhaps more urgent than ever. Humanity is amid the greatest acceleration of cultural disappearance in history. The UN estimates that within one hundred years, 90% of worlds 7,000 languages will disappear. While the loss of language does not necessarily imply the end of a culture or the “death of a people,” it is the best indicator currently available (United Nations, *State of the World’s Indigenous Peoples* 2010). As Wolfgang Sachs laments, “with the demise of languages, entire cultures are vanishing from the history of civilization, never to be lived again. For each tongue contains its own way of perceiving man and nature, experiencing joy and sorrow, and finding meaning in the flow of events...once languages die out, cultures falter” (Sachs 1999, 93). Countless cultures have been lost or are in the process of losing their cultural identity, traditional means of survival, social relations, autonomy, and connection to their past.

Most of these cases of social death via cultural disappearance are not caused by state-sponsored ecocide aiming to achieve *mass death*, but rather by state-sponsored ecocide aiming to achieve *economic growth and development*. If Transitional Justice scholars and practitioners recognize that communities suffering from social death deserve normative consideration, then there are compelling reasons to expand the discipline’s purview to include deliberate state-sponsored/permitted acts of

environmental destruction that directly result in such outcomes. These deliberate acts include any state practice, plan, or policy that approves, supports, or advocates for ecocidal activity with adequate knowledge of the resulting ecological harms. State officials, institutions, or apparatuses are involved as primary authors of the harm, a central party that could have knowingly acted otherwise to prevent the ecocide.

Well-documented and vivid examples of state-sponsored ecocide that have resulted in social death include: (1) The Canadian government's decision to dam the La Grande River to provide urban communities electricity at the expense of the Northern Cree (Churchill 2002); (2) the British and Australian governments' authorizing nuclear testing at Maralinga that devastated the local Anangu people (Mattingley and Edwards 2016); (3) the Bolsonaro administration's decision to incentivize the clearing of the Amazonian rainforest in Brazil for agricultural development, which threatens the 400-500 indigenous groups who call the region home (Solly 2019); (4) Carbocol (a Colombian state-run company) and Exxon strip mining the Cerrejon Mountain for coal to the detriment of the indigenous Wayúu people and surrounding Afro-Colombian villages (Redner 2014), and (5) the government sponsored extermination of the buffalo in western North America to force the Plains Indians (e.g., The Crows, Cheyennes, Arapahos, Atsinas, and Sioux) to relocate to reservations (Isenberg 2000)<sup>4</sup>. In

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<sup>4</sup> There is evidence that a central aim of the federal government in exterminating the buffalo was to starve the Plains Indians and end their way of life, in which case it could be argued that this is as an instance of ecocide as genocide. This genocidal goal is expressed in the statement of Colonel Dodge, who commanded the operation to prevent hunters from crossing into indigenous hunting territory, when he told local hunters to, "kill every buffalo you can...every buffalo dead is an Indian gone" (Isenberg 1992, 237).

each of these cases, the ecocidal activity was carried out without the consent of negatively impacted communities.<sup>5</sup>

Some may worry that such an extension goes beyond the proper purview of Transitional Justice. Unlike more canonical Transitional Justice settings, such as post-authoritarian Argentina and Chile or post-conflict Bosnia and Rwanda, many of the states mentioned above are generally considered well-ordered liberal democratic regimes, including Canada, Australia, and the United Kingdom, and thus are not recognized as requiring drastic social transformation. Furthermore, none of the examples of state directed ecocide cited above include loss of human life anywhere near the magnitude of state-governed tragedies like the Holocaust or Stalin's Great Purges (1936-1938). Moreover, in the above cases (with possible exception of the government sponsored extermination of the buffalo in western North America), the states were not explicitly aiming to exterminate the local communities. For these

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<sup>5</sup>The understanding of "consent" in this context is based on international law and precedent, such as United Nations notion of "free prior and informed consent" (FPIC) from Article 10 of *The Declaration on the Rights of Indigenous Peoples* (2007). Vexing challenges remain for adequately establishing consent. For instance, how can it be certain that the will of a community is accurately being expressed or that persistent minorities are not being oppressed? Often, well positioned political actors (e.g., chiefs, elites, vocal minorities) make determinations that appear to express the community consenting but in fact are contrary to the group's interests. For example, in the case of the decision to dam the La Grande River, the Canadian government established a development-friendly committee of Cree (comprised of predominantly southern members of the tribe who were further integrated into mainstream Canadian society) called the "Grand Council of the Crees of Quebec" to negotiate on "behalf" of the Cree still inhabiting James Bay region (Churchill 2002, 299). This group had no historical precedent or traditional role in Cree culture; it did not even exist prior to the negotiation (Churchill 2002, 299).

reasons, one might argue that it seems normatively hyperbolic to compare examples of state driven ecocide resulting in the social death of a people to such atrocities as those committed by the Nazis.

However, if a state demonstrates a wanton disregard for a group of citizens' way of life by deliberately taking actions that result in the group's social/cultural annihilation, it seems plausible to argue *the state's basic structure is in need of reform*. For one, such a state has failed to live up to the basic liberal ideals of respecting, tolerating, and preserving reasonable pluralism and allowing citizens to pursue their own reasonable life-plans.<sup>6</sup>

For those who feels this expansion is too broad, I propose that the environmental harms under consideration may be limited to cases where the impacted community *objected* to the proposed ecocidal activity. Per my model, for an act to constitute ecocide rising to the level of concern for Transitional Justice requires three conditions be met: (1) the ecocide was commissioned directly by state agencies or with the state's blessing (i.e., legally); (2) without consent of impacted group(s); and (3) it resulted in significant social death of impacted group(s).

It is worth explaining at this point that Transitional Justice has a history of addressing oppressions perpetrated by non-state actors. For example, the International Criminal Tribunal for Rwanda and Gacaca courts' prosecution of the *interahamwe* (the Hutu civilian groups that killed Tutsi) after the Rwandan genocide, and the International Criminal Court's investigation of atrocities committed by the *janjaweed* (nomadic Sudanese Arabs that targeted non-Arab sedentary communities) in Darfur. In these and similar

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<sup>6</sup> A central tenet of liberalism espoused by prominent thinkers (e.g., John Rawls and Joseph Heath) is that states ought to remain neutral in their treatment of various reasonable life plans (Rodeiro 2021).

examples, Transitional Justice practitioners and institutions exhibit responsiveness to, and concern for, injustices committed by state sponsored militias, gangs, and civilian movements, acting outside of state bureaucratic apparatuses (e.g., military, police force, and other official agents). What matters is that the state is complicit in endorsing, supporting, or authorizing non-state agents' actions.

### **Potential Environmental Benefits of Transitional Justice Mechanisms**

I have now defended my model for the inclusion of certain environmental harms (ecocide as social death) in the class of wrongs warranting a Transitional Justice response. Such analysis assumes that transitional mechanisms and processes can serve to abate and mitigate environmental problems. While this seems a reasonable assumption, it would be helpful to conceptualize how environmentalist goals might be accomplished through specific Transitional Justice mechanisms. There is abundant literature conceptualizing the ways in which Transitional Justice mechanisms balance the competing goals of ending hostility, promoting social stability, increasing democracy, dispensing punitive justice to perpetrators, providing reparations to victims, establishing the rule of law, memorializing the past, seeking the truth, and transforming social structures. This section will contribute to this literature by investigating how Transitional Justice mechanisms might further environmentalist aims, including the preservation of habitats, environmental restoration, and the promotion of ecologically sustainable subsistence practices.

What might be done to address grave injustices resulting from ecocide? Although I will focus on post-ecocide settings, insights gleaned are broadly applicable to any transitional setting interested in environmentalist aims.

The analysis of Transitional Justice mechanisms is divided into four categories: (1) *punitive justice mechanisms* designed to bring perpetrators of mass atrocities to justice and to punish them for the crimes committed (e.g., criminal trials, lustration, and sanctions); (2) *reparative justice mechanisms* designed to offer redress to victims of atrocities for harms suffered, individually and collectively, in both material and symbolic ways (e.g., reparations, rehabilitation, memorialization, apologies, and guarantees of non-repetition); (3) *truth-oriented mechanisms* designed to allow the society to have a full accounting and documentation of what occurred and why, by investigating who suffered and how they were harmed, scrutinizing who committed the atrocities and how they benefited, and determining the root causes and structures that led to the injustice (e.g., truth and reconciliation commissions, reports, and education programs), and (4) *institutional reform mechanisms* designed to democratize and liberalize public institutions and the structure of society in order to prevent such atrocities from reoccurring and enable society to move forward to a brighter future (e.g., changing laws, amending constitutions, and modifying institutions). This four-part categorization of Transitional Justice processes is fairly standard in the international community, endorsed by the United Nations Office of the High Commissioner for Human Rights, the United Nations Peacebuilding Commission, and the United States Department of State Transitional Justice Initiative (United Nations 2014).

### **Punitive Justice Mechanisms**

Punitive justice is carried out in transitional settings for various purposes: as means of retribution re-balancing the moral scales by treating perpetrators harshly; as a means of deterrence discouraging behavior by instilling fear that the

consequences will be detrimental if the act is performed; as a means of having a pedagogical effect on society, expressing through harsh treatment of perpetrators that certain actions are wrong and will no longer be tolerated; as a socio-political means of upholding victims' rights by enacting punishment on behalf of victims, and, lastly, as means of signaling a break from the past by repudiating the injustices of the prior regime and enacting punishment, which affords the new state an opportunity to (re)establish the rule of law and strengthen civil society. In post-ecocide states, punishment of perpetrators can serve all these purposes. But how can these punitive measures further environmentalist aims?

One of the central punitive mechanisms employed by Transitional Justice is the use of trials and criminal punishment. These juridical processes potentially offer environmental benefits when responding to instances of ecocide. For one, trials provide an opportunity to gain information and establish a public record of harms to the ecosystem (e.g., what species were lost, the scope and scale of the damage, and how the local communities were impacted). The environmental evidence gathered through fact-finding over the course of litigating criminal cases may unearth a rich set of biological, ecological, and anthropological information, which might never have been discovered, documented, and publicized, absent the legal proceedings. This data could prove valuable in planning how to preserve comparable ecosystems or it might provide insight relevant for creating guidelines for restoring the affected habitat.

Beyond the prospects of learning relevant environmental information, criminal trials and punishments can assist environmental causes by incarcerating or socially isolating actors who have demonstrated they have little respect for nature, thereby restricting their ability to

detrimentally engage with the natural world. The legal punishment of ecocidal actors and organizations can furthermore function as a deterrent and pedagogical tool to express to the wider society that wanton disregard for the ecological health of habitats on which communities rely will no longer be tolerated.

A potential difficulty of prosecuting offenders for the perpetration of ecocide is that the ecocidal acts may have been legal at the time they were committed. *Ex post facto* application of the law may undermine the perceived legitimacy of proceedings and hinder transition. Fortunately, Transitional Justice has employed putative measures that may evade this problem by holding the state's decision-making apparatus to account.

*Lustration*, for example, can remove those in civil service and political positions who were associated with or complicit in wrongdoing. The term 'lustrate' has historically meant to "purify ceremonially as a means of removing blood-guiltiness and cleansing a house," as such it has consistently been concerned with coming to terms with the past" (Cepl 1997, 230). The term became a more commonly recognized concept after the widespread purge of government officials that occurred during the Revolutions of 1989 in Central and Eastern Europe, which resulted in the end of communist rule in the Eastern Bloc (Letki 2002). Lustration can avoid some of the legitimacy issues posed by *ex post facto* application of the law by framing such terminations as employment decisions rather than criminal punishments.

Alternatively, the state could pursue fines and legal takings, such as the confiscation of assets obtained through ecocide. Seizing pecuniary funds from actors who have demonstrated a propensity to exploit natural resources would weaken their ability to finance other ecocidal projects. The procured funds could then be utilized to finance



environmental projects such as conserving comparable ecosystems or working to restore the harmed ecosystem to its prior functioning. However, such measures may also trigger *ex post facto* legitimacy concerns if the initial acquisition and profit was carried out legally. The benefit of such an approach is that states can explicitly mandate the return of specific property such as the lands an impacted community was forced to abandon. This may present a more straightforward remedy to post-ecocide problems than monetary damages awarded in civil cases. For instance, Germany was mandated to return the artwork and cultural artifacts the Nazis had plundered in their attempt to create a super museum to reflect Hitler's personal tastes and supposedly glorify the Aryan race (Nicholas 1994). More recently, after the Persian Gulf War, the U.N. Security Council forced the Iraqi government to return the cultural property they had looted in their invasion of Kuwait (Sandholtz 2008).

For punitive measures to be effective, it is important that harsh treatments reflect the perpetrator's culpability and are proportional to the gravity of the harm. If too many citizens are censured, then the general population may turn against the transitional process before it is complete, or worse, trigger a backlash against these policies, which may lead to further environmental destruction and the entrenchment of anti-environmentalist sentiments.

### **Reparative Justice Mechanisms**

Reparative justice serves various functions in transitional settings. It serves as: a material and moral corrective re-balancing scales by assisting victims; a means of rehabilitation by restoring victims' sense of agency, self-respect, and other capabilities necessary for purposeful self-development; a means of having a pedagogical effect on

society by fostering social recognition that victims are equal citizens deserving of respect and moral consideration as members of the political community; a means of overcoming pervasive structural inequality by providing aid and support, both material and psychological, to ensure that victims' life prospects are comparable to the rest of society, and as a means of acknowledging the past, by memorializing the injustice and its impact on the victims. In post-ecocide states, repairing the harms done to victims can serve all these functions. But how can these reparative measures further environmental aims in particular?

For simplicity's sake, reparative mechanisms can be divided into two main categories: *direct reparation* (i.e., material compensation to those who have been wronged) and *symbolic memorialization* (i.e., processes designed to change victims' and societies' relationship with past wrongs). For instance, if a group who has suffered grave human rights violations receives a small sum from the state that is nowhere near commensurate to the harm experienced or the material losses the community endured, then this compensation might be viewed as an act of symbolic memorialization, in that the allotment is intended as a public acknowledgement and apology for past injustice. If, however, the intention behind the payment was to meaningfully assist victims in materially rebuilding their lives, then it would constitute a direct reparation, even if the payment proves inadequate for such purposes.

Direct reparations can be further subdivided into three categories: (1) *financial restitution* offering monetary payments aimed at making victims whole; (2) *"in-kind" compensation* restoring and returning specific entities or objects that victims lost, and (3) *rehabilitative service* offering support to assist victims in overcoming impediments resulting from past injustice. Recall the above-

mentioned example involving nuclear testing in the Anangu people's ancestral land. In 1995, the British government paid the Anangu peoples \$13.5 million dollars as compensation for the loss of their land at Maralinga. Such payment constitutes financial restitution (Korff 2017). But the state also assisted a few survivors (only five to be exact) by providing them medical care to treat their illnesses caused by exposure to radiation, which constitutes a rehabilitative service (Korff 2017). Additionally, in 2009, the Australian government returned most of Maralinga to the Anangu as a place safe for walking, building, camping, and hunting (Korff 2017). By 2014, the state had returned all the land, including the weapons testing range. Such acts constitute "in-kind" compensation (Korff 2017). There are thus various ways in which direct reparations have been implemented as remedies after ecocide.

A problem with financial restitution through monetary reimbursement is that many victims of ecocide may be unable to convert monetary funds into well-being because their way of life is not dependent on purchasing goods and services from the market system. Furthermore, victims of such grave harms may require massive financial allocation to even begin approaching the life they would have had had they not been unjustly burdened by ecocide. In-kind resource-compensation can avoid these problems by providing victims with things that money cannot buy, such as access to their ancestral lands. An environmental benefit of such measures is that they will likely require the state to undertake environmental cleanup projects to repair the damaged ecosystem and restore habitat to its prior functioning, or as close as possible, before transferring it back to its rightful owners. For instance, the British and Australian government attempted to decontaminate

Maralinga of hazardous radiation three times before it was returned to the Anangu (Korff 2017).

The environmental advantages of in-kind compensation measures are obvious in that they can restore habitats to their prior ecological functioning. Sadly, however, while returning communities and habitats to their pre-harm condition is an optimal reparative outcome, it is likely unfeasible in many instances of ecocide.

A problem with all forms of direct reparations is that their aim of making victims whole (i.e., returning victims to the state they would have been in had the wrongs never transpired) is likely doomed to fail in the wake of grave injustices such as ecocide. The reasons for pessimism are manifold: (1) the commensurate compensation for such grave injustices and injuries may be impossible to calculate; (2) circumstances and constraints may make restoring victims to their prior state impossible, and (3) competing justice concerns may make it unjustifiable to pursue making victims whole. How much financial compensation do victims of ecocide deserve for the loss of their way of life and connection to their ancestral home? Should rehabilitative measures be pursued if expanding the economy to pay for these services could lead to further environmental destruction? Lastly, how can victims be made whole in cases of ecocide so devastating that the impacted community has effectively disappeared? These and similar questions show the inherent difficulties and limitations of trying to pursue direct reparations in response to ecocide.

Fortunately, Transitional Justice has other reparative mechanisms such as *memorialization*, designed to symbolically respond to grave injustices. Memorialization measures include the establishment of museums, parks, memorials, exhibitions, demonstrations, ceremonies, and days of remembrance, which are designed to publicly

commemorate victims, raise awareness of past abuses, apologize, and help prevent reoccurrence. Unlike reparations, memorialization may accept that the harms of the past can never be entirely corrected, in that they may be forgotten or overcome but not undone. As such, memorialization instead aspires to provide victims, perpetrators, and society as a whole with opportunities to change their relationship with past wrongs.

There are already many examples of memorialization in response to environmental harms, such as Earth Day. Earth Day is a holiday celebrated on the first day of Spring in the Northern Hemisphere to demonstrate support for environmental protections and celebrate the Earth. It began in 1970 in response to an oil well blowout off the coast of Santa Barbara, California (Wheeling and Ufberg 2017). The oil spill spewed over three million gallons of oil and killed seabirds, seals, dolphins, sea lions, fish and other marine life over an 800 square-mile expanse of the Pacific (Wheeling and Ufberg 2017). More recently, Iceland memorialized Okojokull, the first glacier lost to climate change in the country, by holding a public ceremony to install a monument where the glacier once stood (Luckhurst 2019).

Another powerful instance of memorialization after an environmental harm is Alberto Banuelos-Fournier's monolithic memorial sculpture entitled, *The Wound*, commissioned by the Galician government in Spain to commemorate the sinking of a structurally deficient oil tanker off the coast in 2002 (Varona 2020, 669). The spill is considered the worst in the history of Europe and was responsible for spewing close to 80,000 tons of oil over two-thousand kilometers of the Spanish, Portuguese, and French coast (Varona 2020, 667). The monolithic statue (the largest in all of Spain) commemorates the wounded ecological landscape that resulted in the death of over

200,000 seabirds and countless other marine creatures. It also acknowledges the thousands of volunteers who helped to clean the spill up (Varona 2020, 667). Interestingly, since ecosystem functioning has been reestablished in the region and the beauty of the coast has been restored, the monument serves to remind present visitors of past ecological harm (Varona 2020, 669).

Memorialization efforts could include constructing museums, monuments, and exhibits to commemorate lost cultures and habitats. Zoological reserves, botanical gardens, and national parks may serve important memorialization functions post-ecocide. While they may not directly assist in environmental conservation or restoration, they could preserve valuable ecological information about lost habitat (e.g., taxonomies of the flora and fauna, food chains, and energy flows), which could provide insights into how best to protect or restore other comparable habitats. Memorialization efforts could also offer opportunities to teach eco-friendly practices to the public. For instance, victims of ecocide could be commissioned to offer tutorials, lessons, and reenactments in celebration of their traditional ecologically sustainable subsistence practices. There could also be days of remembrance that directly further environmentalist aims by including rituals such as planting trees or picking up trash in wildlife habitats.

### **Truth-Oriented Mechanisms**

Truth serves various functions in transitional settings: a means of understanding and reconciling injustice; a means of publicly and privately acknowledging the past; a means of establishing and demarcating culpability for wrongs; a means of justifying and motivating the need for social change, and a means of educating the public so such harms are less likely to occur in the future. Generally, truth-oriented

mechanisms in transitional settings can be divided into three interconnected processes: (1) *truth-seeking* (investigating past abuses); (2) *truth-documenting* (collecting and recording past abuses), and (3) *truth-disseminating* (reporting on past abuses). Transitional Justice has developed mechanisms to further each of these aims. For instance, the standard veridical process in transitional settings involves: first, enacting truth commissions and offering amnesty to assist in discovering the truth; then commissioning reports to document findings, and finally releasing, publishing, publicizing, and broadcasting the information to the public. But how can these truth-oriented activities further environmentalist objectives?

Truth-oriented mechanisms (e.g., truth commissions and offers of amnesty in return for information) generally aim at examining the root causes and patterns of violence. In post-ecocide states this may include establishing a truth and reconciliation commission as a venue in which victims can share their experiences with the public and perpetrators can offer information and take responsibility for their involvement in exchange for amnesty from criminal prosecution.

Employing truth-oriented mechanisms can serve reparative purposes in that the process of truth-seeking, truth-documentation, and truth-dissemination can itself be a form of reparation, reconciliation, and rehabilitation. Pursuing and propagating truth through these non-judicial institutions could further both punitive justice by publicly punishing perpetrators and reparative justice by publicly honoring victims, memorializing their harms, and rehabilitating their sense of agency. For instance, the act of establishing a truth and reconciliation commission signals to society that ecocide is an impermissible wrong. Moreover, motivating those involved to divulge information and admit

what happened could offer insights into the pervasive structures, institutions, norms, and policies that made such harms possible and that must be changed to prevent similar injustices. Since non-judicial truth-seeking mechanisms allow actors to divulge information without the threat of it being used against them, it is reasonable to assume that employing these mechanisms will assist post-ecocide societies in gathering valuable data and developing a more complete understanding regarding environmental harms than by relying exclusively on punitive justice mechanisms which suppress actors' desire to volunteer information.

A further epistemic benefit of non-judicial truth-oriented proceedings is that they likely enable and encourage a wider segment of society to testify. Those actors who might not have been directly involved with the commission of the ecocide may nonetheless feel obligated to volunteer information regarding their role in establishing the background conditions and social context that made the ecocidal activity possible. Moreover, permitting impacted citizens to testify regarding how they were harmed could provide a wealth of ecological information that might never have been discovered, documented, and publicized, absent a venue for victims to share their experiences. This ecological information could prove valuable in efforts to preserve comparable ecosystems or restore affected habitat. Likewise, if impacted citizens publicly describe their former way of life, it would afford the general public an opportunity to learn of alternative modes of subsistence (i.e., eco-friendlier practices) and to reflect on ways they might change their treatment of nature.

### **Institutional Reform Mechanisms**

As Colleen Murphy succinctly states, "transformation is the key overarching moral aim of responses to wrongdoing



in transitional contexts” (Murphy 2017, 112). But this social transformation must be conducted *justly* by dealing with the wrongs of particular perpetrators that were committed against particular victims.

Essentially, institutional reform mechanisms aim to transform public institutions from instruments of oppression into institutions that generate social trust, respect the rule of law, foster hope, further social capabilities, spread acknowledgment of equality and reciprocity between moral agents, restore confidence, and strengthen social stability. Institutional reform may take the form of amending constitutions, enacting legislation, restructuring institutions, increasing civilian oversight and involvement, and providing educational opportunities. Importantly, institutional reform must aim to democratize and liberalize the basic structure of society to prevent future injustice. To achieve this, the reform measures combat the pervasive structural inequities that facilitated and produced the injustice. It is thus imperative for post-ecocide states to end normalized and collective wrongdoing against impacted communities by altering the institutional structures that persistently prioritize certain relationships with the natural world over others.

In recent work, I have defended a notion of *eco-relational pluralism* which delineates when the pursuit of economic growth and development at the expense of local ecosystems violates the basic principles of respect and toleration undergirding liberal societies (Rodeiro 2021 and 2024). Post-ecocide states, in attempting to promote democratic and liberal values and social stability, must replace ecocidal social structures with forms of governance that respect peoples’ ability to maintain an ecologically sustainable relationship with the natural world. Without such structural change and social reform, the state risks

illiberally prioritizing certain reasonable conceptions of the good over others and as such fails to achieve Transitional Justice's aspiration of liberal democratic social transformation.

For institutional reform to be successful, it must transform *de jure* social conditions (the officially codified legal apparatus) and *de facto* social conditions (the hearts and minds of citizens). Both kinds of reform are intertwined and mutually reinforcing. Explicitly amending the written constitution, enacting legislation, and restructuring institutions will likely affect people's behaviors and attitudes. Conversely, changing the culture and subjective sentiments of the citizenry will likely spur legal reform.

Constitutional reform is a key mechanism for driving *de jure* social change in transitional settings. Constitutions embody the supreme law of the state, establish the formal rules that direct and constrain government power, and define the relationship between the government, institutions, and individuals. As constitutional scholar, Patrick Monahan explains, "a country's constitution is the set of fundamental principles that together describe the organizational framework of the state and the nature, the scope of, and the limitations of the exercise of state power" (Monahan 1997, 5). Hence, constitutional reform represents an important mechanism for changing the political order and basic structure of society.

Over the past few decades, there has been a groundswell of pro-environmental constitutional restructurings and amendments. David Boyd's thoroughly researched book, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*, documents the countries that have incorporated "some form of environmental protection provisions" in their constitutions. The number of countries

has grown from zero in the year 1975 to 147 out of the 193 countries with codified constitutions in 2012 (Boyd 2012, 76). For instance, “the right to live in a healthy environment” is now explicitly recognized in ninety-two constitutions. This is remarkable, since, as Boyd notes, “no other human right has achieved such a broad level of constitutional recognition in such a short period” (Boyd 2012, 76).

To ensure environmental constitutional reforms are effective in post-ecocide contexts, it is necessary for them to contain both substantive and procedural elements. The substantive component necessitates the constitutional amendment entitles impacted actors (citizens whose habitats have been deliberately destroyed without their consent) to bring claims against perpetrators and the state. The procedural element obligates state actors to involve and consult with potentially impacted citizens and communities before enacting policies or activities that may affect their environment.

I have already specified how punitive, reparative, and truth-oriented mechanisms each play an important pedagogical role in changing the hearts and minds of the citizenry in transitional settings. For instance, truth and reconciliation hearings, criminal trials, museums, public memorials, and monuments represent informal educational spaces that provide citizens opportunities to learn about, interpret, and reconcile with the past. As such, educational programs play a vital part in directly encouraging *de facto* social transformation in transitional contexts.

Public education programs can ensure the public understands how the transitional mechanisms work, why they are being implemented, and what they aim to achieve. To prevent backlash against environmental laws and policies that may force citizens to change their daily consumer behaviors, it is imperative for the state to explain *why*

promoting more sustainable social practices is necessary for preventing unjust ecocidal harms. Formal education programs can further aim to instill the liberal value of tolerance for different kinds of relationships with the natural world, with emphasis on the legitimacy of the desire to maintain an intimate and sustainable relationship with one's local habitat.

### **Conclusion**

This paper has built on my research exploring how Transitional Justice might include environmental harms in the class of wrongs severe enough to trigger transitional mechanisms and processes. A case has been made that the discipline may undertake a successful green turn by remaining focused on comparable kinds of harm (social death) and their causes (deliberate state actions) that are the traditional concerns of the discipline. I have proposed a model of ecocide as social death to be included in the purview of Transitional Justice.

The preceding discussion has attempted to clarify the environmental benefits of employing Transitional Justice mechanisms in response to ecocide. This has hopefully further illuminated the potential intersections between the goals of Transitional Justice and environmentalism by demonstrating how promoting the reparative, reconciliatory, transformative aims of Transitional Justice can further environmental sustainability, habitat restoration, and ecological conservation.

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