Ecocide, a crime against peace?

A conceptual analysis of world peace from a case of applied ethics on ecosystem harm

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Master's thesis at the Centre for Development and the Environment

UNIVERSITY OF OSLO

June 2019

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SUM: Centre for Development

and the Environment

University of Oslo

Spring 2019

D/s

2019

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http://www.duo.uio.no/

Print: Reprosentralen, University of Oslo

Abstract

The proposal for a Law of Ecocide (LOE) raises some ethical questions. As an amendment to the Rome Statute, it would give the International Criminal Court the mandate to prosecute individuals with superior responsibility for 'widespread, long-term and severe damage to the natural environment' in peacetime, and not just in war. Functioning herein as a 5th crime against peace, LOE could effectively improve the protection for ecosystems worldwide, as domestic legislation would follow, yet has been sitting on the desk of the United Nations Law Commission since 2010. In this thesis, I revisit the subject of a Law of Ecocide through empirical, logical, and normative investigations, within the interdisciplinary nexus of environmental ethics, philosophy of law, psychology and peace theory. My approach is based on green criminology or critical environmental studies and a range of corresponding qualitative methods. My objective is to reassess ecosystem harm in the conditions of peace, and address some of the ethical dilemmas of LOE.

Through archive analysis of a military ecocide (Agent Orange) compared to a contemporary case of corporate ecocide, I find reasons for a de-differentiation between legal and illegal environmental harm in the face of globalized corporate 'superpowers'. An ethical analysis of ecosystems' moral claim to justice is followed by a normative discussion on their legal claim to rights. Within the established debate of ecocentric and anthropocentric arguments, I consider a third option in the form of meta-ethical consequentialism. Using the lens of environmental ethics, I argue that the human rights doctrine establishes an efficient incentive for new legislation which avoids some of the problems of the 'nonhuman rights regime'. Finally, I draw on peace psychology, wherein 'the invisible harm' inherent in the neoliberalist free market adds to the discourse on ecocide as single events. Concluding that ecocide is not as much a crime *against* peace as it is conducted *by* peace, I make a basic proposition for a 'just peace' which implements ecological justice in a world of relentless corporate pressure on ecosystems.

Preface

During the process of writing, a terrifying yet wonderful event happened. I was in a regular meeting with my supervisor, Nina Witoszek, when our discussion fell upon my proposed concept of viewing ‘peace as a product’, with which she vehemently disagreed. She immediately requested my theoretical defense of the idea, upon which I broke a sweat more impressively than a proper response. Only later did I realize how valuable that interaction was: this was really the first time a thought of my own making had elicited such an entertained response from a fellow academic.

Given that the Centre for Development and the Environment is not dealing with reductionist science, thankfully, there is considerable leeway for creative thinking even within a strict claim-evidence setup. Where proper structure is a formal demand and mastered by many others than herself, it must be in this space or leeway that a student of the Humanities can make her individual contribution, however small. After 7 years of study, I had finally sparked a flicker of purely intellectual interest in one among the seasoned. A saying inspired by Aristotle, it is ‘the mark of the educated mind to be able to entertain a thought without accepting it’. If so, I see it as a personal landmark to have developed the mind from which that thought originates.

Nonetheless, as I taste the space outside of it, I fear the box is still too small.

I have been so fortunate as to have had a bold, unique, and enthusiastic supervisor – Thank you for your perseverance in all matters. In addition, I would like to thank a long line of professors at the University of Oslo and American University, whom along the way have instilled in me a trust in analytical abilities. Also, I wish to thank Odin Lysaker for a philosophy read-through; Armando Lamadrid and Mama cand.philol. for editing; Camilla for a listening ear; Misty for a blooming heart; and Erik for a helping hand, that dares to stir the waters.

A note of gratitude to my father especially for his unintended, effective moral support when at one point I would sheepishly joke that, with a finalized thesis, there might become something of me too (‘bli folk av meg også’). His prompt and loud reply from the other room was a strict, trustworthy annoyed ‘you already *have* become something, Margrethe. Get serious!’

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‘Peace’ and the Environment

> *The aspects of things that are most important for us are hidden because of their simplicity and familiarity. (One is unable to notice something because it is always before one's eyes.) The real foundations of (her) enquiry do not strike a (wo)man at all. Unless that fact has at some time struck (her). And this means: we fail to be struck by what, once seen, is most striking and most powerful.*
>
> (Ludwig Wittgenstein 1958:50e)

As of late, several actors on the world stage have made the connection between peace and the environment. The International Criminal Court, established to prosecute ‘crimes against peace’, recently published a policy paper stating that its process of selecting cases would now prioritize environmental crimes (2016). In this document, the Court proclaims it will pay ‘particular consideration’ to cases that fall within the jurisdiction of the Rome Statue resulting in ‘the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land’. The Norwegian Nobel Peace Prize Committee has already reflected a similar attitude, the first time in 2004 when it awarded its prize to the environmental activist Wangari Muta Maathai for her ‘contribution to sustainable development, democracy and peace’ (Nobel Media AB 2018a). In 2007, it awarded the Intergovernmental Panel on Climate Change (IPCC) and Al Gore on similar grounds, for ‘their efforts to build up and disseminate greater knowledge about man-made climate change, and to lay the foundations for the measures that are needed to counteract such change’ (Ibid.). This trend is not in decline: among the nominees for the Nobel Peace Prize 2019 is the World Wildlife Fund and the by-now famous environmental activist Greta Thunberg. The latest addition to this development is a group of environmental lawyers, philosophers and activists who have proposed to the United Nations Law Commission to include severe environmental damage as a transnational peace crime in the Rome Statute (*Eradicating Ecocide 2012*). In this thesis, I aim to give an ethical reply to that question. *Is* ecocide a crime against peace?

Avi Brisman reminds us that ‘how we describe something reveals our comprehension of it, and how we grasp something conditions how we behave and conduct ourselves’

(2014:23). The trend of placing peace in new causal connections gives reason to ask what its premises are, as we experience the phenomenon today. Conceptually, peace materializes on several levels. As the subjective experience of living undisturbed and in harmony, only the individual knows exactly what conditions precede it in her or his case. Peace as a societal state of being, on the other hand, is another matter. On the collective level, the concept is linked to culture and folk psychology; governance and political authority; business, economics and corporative power; legality and law, as well as knowledge generation and academia, among others. One thing is certain: the origins of our idea of peace go back far beyond what the ordinary citizen living in safety today is aware of. This context makes Wittgenstein's quote relevant again. That conceptual genealogy involves historical study of all abovementioned institutions and actors that influence the practical realization – and experience – of peace on the collective level.

In this thesis, which represents a critical environmental study, I will theorize on the current realization of peace and its ethical foundation in light of ecological justice. This exercise specifically evolves around the proposal to amend the Rome Statute within the International Criminal Court with a Law of Ecocide, which would criminalize vast and prolonged damage of a certain scale to ecosystems worldwide. Whereas current international legislation on such events protects ecosystems in the context of war exclusively, the Ecocide Law holds parties with superior responsibility liable for prosecution in peacetime as well.

The theoretical transition from relative to absolute protection invites several intriguing, comparative sub-studies: Firstly, humans' impact on other life forms in peacetime compared to our ecological impact in warfare; Secondly, humans' versus nonhumans' moral claim to justice through fair distribution of resources on a shared planet; Thirdly, tackling the question whether ecological justice should (and could) be realized through green human rights, or through an entirely new nonhuman rights regime. My exploration of these three issues combines the empirical with the ethical approach, and concludes with resorting to human psychology as the ultimate practical requirement for any ethical doctrine. I limit my reflections to the Law of Ecocide, an international case study that combines philosophy of law with arguments from environmental ethics. In conclusion, I will find grounds for a

reconceptualization of ‘crime’ and ‘peace; a dedifferentiation of legality thresholds; and increased interdisciplinarity, but also a criticism of the ecocentric neglect of human behavior, especially our psychological, political, and social dimension.

The power of a concept

The International Criminal Court (ICC) is the global judicial institution that can prosecute and sentence individual citizens from any of its 124 member countries. Its far-reaching mandate springs from the Rome Statute that came into force in 2002. The United Nations negotiated the Statute, whilst the Court it established functions as an independent body (*United Nations 2019b*). Many criminal lawyers make the wrongful interpretation that the ICC provides some sort of code of all of international criminal law (ICL) (Cassese 2013:10). This is not the case. Instead, the ICC Statute embraces a set of rules that are only applicable by the Court itself (Ibid.). Other international courts, such as The International Criminal Tribune of Yugoslavia (ICTY), the European Court of Human Rights (ECHR) and others, each have their own statute they adhere by. That being said, the Rome Statute is special in that it describes general rules of ICL, as well as the most detailed account of international crimes to date (Cassese 2013:10). A permanent legal instrument, the ICC describes acts so horrendous that the global community unanimously accepts them as ‘crimes against peace’.

The Court is assuredly a premier result of international diplomacy and intergovernmental cooperation. On this arena, the concept of ‘peace’ chiefly functions as a political ‘least common denominator’, allowing representatives from a variety of different cultures to build international agreements on collectively perceived common ground. Its associated sense of fellowship encourages united action despite numerous ideological differences: no one disagrees with protecting ‘peace on Earth’ (hence, most likely, the name of the crimes in question). However mobilizing, one is left wondering if the convenient function of a political common denominator has led the international community, scholars, scientists and diplomatic actors alike, to ignore peace’s descriptive content. In contrast, war as a scholarly topic has enjoyed extensive attention to the degree where we now have several categories, typologies and complex causal understanding of its consequences

(Norheim-Martinsen and Nyhamar 2015). Except for the dichotomy of 'negative' and 'positive', little other differentiation exists with regard to peace (*Kroc Institute 2019*). In general, societies with the least likelihood of deadly conflict in the world today are considered the most peaceful (*Institute for Economics & Peace* 2018).

Internationally, the concept of peace is of most collective value as a vague normative and universal ideal that makes it impossible to alienate any one country by its promotion. In comparison, less practical value comes from it as a descriptive and particular phenomenon with an actual, factual (and ultimately material) basis. For that reason, I believe, scholarly discussion has yet to assess 'peace and the environment' with the former as the independent variable. This debate gained momentum in the 1990's, wherein authors have discussed whether resource scarcity lead to resource wars and other security concerns, hinders regional integration and policy cooperation, yield political instability and social unrest, amongst others (Brock 1991; Brauch 2008). I argue that the reverse association is true: 'peace' as a social-axiological, and thereby cultural, concept today is in practice often contingent on the creation of severe ecological harm. An overarching objective of the thesis, in addition to my research questions, is to encourage improved study of this reverse association in conventional peace research on environmental issues. My effort herein builds especially on green criminology. Only, instead of reconceptualizing 'crime' through a new understanding of harm and socio-ecological interdependence, as these criminologists do, I also aim to deconstruct 'peace' by the same parameters. As we will see, ecocide is a devastating harm that may follow both from military and entirely non-military actions.

Granted, there are many studies with 'development' as an independent variable and the extent to which it causes damage to the environment (Stern, Common and Barbier 1996; Wilhite and Norgard 2004; Adams 2009; Saboori and Sulaiman 2013; Arminen and Menegaki 2019). This subfield of social research and political ecology has rightfully broadened and partly corrected the discourse on sustainability as a process. This debate, however, often stagnates in a discursive deadlock on growth and decoupling. The fundamental disagreement pertains to whether sustainable or 'green growth' is economically feasible, or better yet, ideologically desirable. Among the most robust ethical conclusions are notions on 'the good life', where

generalizability is often at risk of disintegrating in the subjectivity of the author or its specific academic branch. As a result, concluding notions may be toothless as departure points for change, whether institutional or attitudinal, in nonadjacent areas and intellectual cultures such as politics or business. Instead, tackling '(justice in) peace' through criminological lenses opens up for an interdisciplinary investigation of the political perspective in addition to ethical and judicial ones. This critical environmental study falls within environmental governance, a subfield of political ecology. As it is, many consider climate change a political matter above all else, thus in need of political solutions (Tor Benjaminsen; Halvard Buhaug; Siri Eriksen; Francois Gemenne, public lecture 07.12.2018). Herein, I hope to infuse the predominantly political discourse on 'peace' with insights provided by environmental humanities with the field of law as their case-specific juxtaposition.

Classical economics and axiology

Economics have become another political common denominator and mobilizing force in international politics. A case in point is the Global Peace Index report, where economics is the only other aspect taken under consideration (Institute for Economics and Peace 2018). Globally, no states disagree with the project of achieving financial growth – except, famously, Bhutan. Viewing the Earth as commodity dates back to John Locke's 'Second Treatise of the Government' from 1689. In Locke's view, any man who 'mixed' his hard labor with the soil acquired the right to own that piece of land by virtue of his work (pp.116). In modern times, commoditization of the planet has especially informed environmental policy since the 1970s (Higgins 2010:109). Permit allocation, soft regulation and inadequate enforcement provisions have allowed for heavy exploitation by industries with naturally limited scopes of concern. Companies exist to generate profit through efficient and productive use of resources available; or as Milton Friedman put it in his well-known 1970 article, to 'make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom' (pp.1). Yet, when it comes to ethical concerns, they are hard to quantify, and easy to use as an alibi for selfish behavior and vested interests (Hart and Zingales 2017). Custom is almost impossible to enforce. The regulatory force

left when norms and non-binding soft law fail to protect society's interests, is hard law and herein its criminal department.

Neo-liberalism is the most prevalent ideology of our time, as Arne Johan Vetlesen puts it (2009:128). However, the more we idolize the free market, the more trust we put in the ethical disposition of decision-makers in private enterprise. What if our industrial civilization commenced, and has progressed ever since, based on a fundamental misconception of the value of the nonhuman world? If environmental valuation is not a matter of corporate social responsibility, but biological-moral considerability? The question then becomes of when 'the moral imperative trumps the economic imperative' (*Eradicating Ecocide 2012:2*). Friedman argued for an unapologetic stance for public company leaders, which is to leave issues of ethical proportions up to the government and civil society entirely. Hart and Zingales claim 'Friedman is right only if the profit-making and damage-generating activities of companies are separable or if government perfectly internalizes externalities through laws and regulations. Neither of these seems very plausible' (2017). The authors therefore argue that businesses should increase shareholder *welfare*, not value. Today, however, most companies live by the so-called 'shareholder primacy theory', a philosophy that encourages the maximization of market value for stockholders as a firm's foremost obligation (Stout 2013). From this it follows that leaving the well-being of natural common goods up to commercial interests alone means reducing living organisms and human livelihood to a matter of economics, profit and margins. As it is, a mistaken idea of the value of inanimate things will necessarily create an unjust threshold for legality, especially regarding businesses that profit from their use. It is this notion of a historic axiological fallacy with regard to ecology that has prompted the proposal for an international Law of Ecocide (LOE).

I begin my study empirically by investigating the Agent Orange ecocide in the Vietnam War. Herein, I will look at bioaccumulation of TCDD in Vietnam's mangrove forest and interconnected ecosystems following massive herbicidal dispersion starting in 1961 and lasting until 1971. Among many detrimental effects of what was called the 'tactical herbicide program', scientists discovered TCDD's continuous uptake in the food chain, with the cancerous and teratogenic (birth-deforming) toxic found in local newborns decades after the war (Hatfield

Consultations 1998). Naturally, these effects would not have been avoided even if the same program had been a peaceful affair, instead of a wartime operation. I will highlight how the same mechanism goes for contemporary cases, such as a recent U.S. governmental crop eradication program set in place with the objective of curbing the problem of increasing drug traffic. While the government only intended for the pesticide program to target illegal narcotics production, what followed, however, was not only the destruction of crops, but worsened health and quality of life for local inhabitants and the nonhuman biosphere as well (South 2007:233). Evidently, the environmental effects of this ecocidal event manifested themselves far beyond, and independently of, the program's strictly political target.

Worth noting is that, in neither case could the individuals within the U.S. government responsible for the pesticide programs be charged for an international crime. In the first instance because the environmental damage was deemed a 'military necessity' at the time (the Vietnam War), and in the second because the ecological harm occurred in peacetime (albeit called the 'drug war'). Meanwhile, an imminent global-environmental threat loomed after Saddam Hussein destroyed 1250 oil wells during Iraq's invasion of Kuwait that caused smoke plumes climbing 45,000 feet into the atmosphere (Eriksen 2011:45). Had the ICC existed at this point, the Court could have convicted Hussein personally, but only *after* producing evidence that Iraqi forces did not gain a proportionate military advantage from the destruction. Arguably, air pollution is just as harmful to all life dependent on clean air when it originates from legal industrial activity, as when it occurs from a military advantage. The deaths of 4.2 million deaths every year worldwide from air pollution is plainly causally nondiscriminatory (*WHO 2019*). There is a point to be made on accepting geopolitical interests as an alibi for increased pollution in a time of climate change. However, even if accepting this state of affairs, the question remains: why are severely harmful actions that are disallowed in the scenario of war, allowed in peacetime? Why do state-leaders and CEOs get away with decisions that, if made by a military commander, could have rendered that person liable for criminal prosecution?

History and moral philosophy

As it is, this was not the initial idea when an international court prosecuting crimes against peace was to be established. Turning to the history of the International Criminal Court, the years-long diplomatic efforts culminating in the Rome Statue indeed included ecocide (Gauger, Rabatel-Fernel, Kulbicki, Short and Higgins 2013). The years 1984-1996 were of pivotal importance to the development of Article 26, where the parties formulated ecocide as a Crime against Humanity, and thus applicable in peacetime. As a surprising turn of events, however, the UN's International Law Commission removed the article in 1996. A series of behind-closed-doors affairs preceded the exclusion, including some apparently unilateral decisions that there are lacking reports of (Gauger et al. 2013:10).

Nevertheless, the result of decades' worth of negotiations kept its purpose of serving justice to victims of atrocities. A collective international community agreed on a detailed definition of several inhumane atrocities by which to condemn. These are today the 'core four' international crimes: war crimes, where legislation began; crimes against humanity, genocide, and crimes of aggression, the latest addition to the Court (Cassese 2013). In chapter two, I subject these 'core four' to a premise investigation in an ethical analysis and comparison with the proposed crime of ecocide. The theoretical point of departure is humans' impact on nonhumans' interests that constitutes a biological/moral relationship. Given our influence, societies are in need of a moral theory that encompasses this relationship (Baxter 2005). Due to humans' position as moral agents, several authors argue for the need for a moral framework even where nonhumans are involved (Benton 1998; Gamlund 2007). Among these, I have chosen Brian Baxter's theory of ecological justice, departing from distributive justice, as my general theoretical framework.

The Law of Ecocide (LOE) constitutes a transition from 'owning Nature' in a commoditizing approach, to 'owing Nature' in a stewardship sense, as Higgins argues (2012:35). This, however, is not as small a matter as the change of a consonant might suggest. Whereas the 'owning Nature' paradigm by default has been limited to national legislation, practical implementation of an 'owing Nature' philosophy would require the notion of moral obligation towards the environment to be pushed up to the highest level of criminal prosecution today, the ICC. Granted,

this moral-universalist approach was the case when members of the United Nations ratified its Declaration of Human Rights more than 70 years ago.

Just the same, moral universalism in the case of LOE is at odds with a strong, existing principle of sovereignty within global environmental governance. The UN Environment Programme and its Convention on Biological Diversity from 2010 proclaims that ‘states have, in accordance with the Charter of the United Nations and the principle of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies’ (Art.3). Granted, there are multitudes of national environmental laws in place in countries around the world. Some have even adopted the terminology of ecocide as a named crime against peace already, including Armenia, Belarus, the Republic of Moldova, Ukraine and Georgia, as well as Kazahkstan, Kyrgyztsan and Tajikistan (Gauger, Rabatel-Fernel, Kulbicki, Short and Higgins 2013:12). Notably, Vietnam was the first among these to include ecocide in domestic law in 1990. Nevertheless, trusting the imperative regulation of economic and political actors to national-legislative branches opens up to widely differing practices on a transboundary, interconnected system. Internationally, current treaties are still either relatively non-binding, such as international environmental agreements (IEAs), or sector-specific, as is the case with the Law of the Seas (Andresen, Boasson and Hønneland. 2012:74).

Ecology and human impact

Concretely, ecocide is ‘the extensive damage, destruction to or loss of ecosystems 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 2012:3). Corporate-turned-environmentalist lawyer and barrister, Polly Higgins maintains that this is the consequence of corporate and political practices today (2010). A subfield within the social science study of crime called ‘green criminology’ has emerged since the start of the millennium, deriving from the same observation. This is a field that problematizes given definitions and classifications of crime and harm, offering alternative proposals about means by which justice and rights can be achieved (Crook, Short, South 2018:300). Scholars of this field examine:

> (…) laws and regulations which actually uphold and legitimize intolerable exploitation of nonhuman animals and of nature are passed by means of the legislation processes supported by capitalist and consumerist interests, despite the increasing importance of environmental issues in modern contexts. (Sollund 2012:4)

In the face of this fatal dynamic, Higgins - the mind behind the Ecocide Law proposal - asks how we can create a legal duty to care for the Earth (2012:4). It is a form of restorative justice, where offenders convicted of having breached 'a right of Nature' should 'make good for the damage, not merely buy their way out of the problem' (2010:143). Within her justification for the proposal, Higgins argues that 'by its very nature, ecocide leads to resource depletion, and where there is escalation of resource depletion, war comes chasing close behind' (2012:9). However, science does not support this claim. Research on resource wars, understood as human conflict arising due to increased resource scarcity in an area, is inconclusive (Buhaug 2018:9). Bernaue, Böhmelt and Koubi argue that although there is a direct causal link between environmental degradation and conflict in specific cases, evidence on a systematic and unconditional direct causal relationship is not obtainable. Instead, the effect environmental changes have on violent conflict 'appears to be contingent on a set of intervening economic and political factors that determine adaptation capacity' (2012:2). Scheffran et. al (2012) point to the methodological variation on this topic, including the multiple ways in which researchers operationalize conflict. They too find that many other conditions, such as the economic and political contexts, have to be met for environment degradation to accelerate violent conflict in the data. The inconclusiveness of these findings makes it impossible to justify LOE based on the claim that ecosystem destruction escalates conflict.

Yet, these findings do not debunk the reverse association. What impact do the conditions of peace have on the environment? In May 2019, the International Socio-Political Panel on Biodiversity and Ecosystem Services (IPBES) made public their first global assessment on the state of natural systems, and the life therein, since their renowned millennial 2005 report. Increased interest in the idea of so-called 'ecosystem services' was a direct effect of the 2005 report, which has since boosted calls for environmental governance of ecosystems based on economic incentives (Coscieme and Scout 2019). Nevertheless, management and governance of natural resources and wilderness has not been enough to ensure viable natural life.

According to IPBES, the diversity within species, between species and of ecosystems 'is declining faster than at any time in human history' (2019:2). In sum, the report states with certainty that 'humanity is a dominant global influence on life on earth", which has caused a 47 % decline of natural terrestrial, freshwater and marine ecosystems (2019:11). The 5th Assessment by the International Panel on Climate Change is also a scientific statement to the acute urgency of commensurable climate action efforts (IPCC 2018). Worth noting, ecosystem failure, specie loss, and climate change are interrelated phenomena. For instance, marine and terrestrial ecosystems absorbs up to 60 % of global anthropogenic carbon emissions (IPBES 2019:2). Preserving viable ecosystems on land and in sea is therefore a vital measure in countering the effects of climate change. Yet, the phenomena can be treated separately, especially with regard to law. The question of accountability and liability is for instance relatively easier to solve for ecosystem harm than climate change contribution. The scope of my thesis herein relates to ecosystems.

Given the situation of environmental decline, there is reason to question the entire idea of harmonic and well-functioning nations in place today. In a global study of carbon footprint that accounted for carbon emissions from the entire supply chain, Hertwich and Peters find that different categories of goods and services correlate with levels of individual expenditure. At high per capita expenditure, mobility and the consumption of manufacture goods cause the largest greenhouse gas emissions. The authors state that 'we expect the importance of these categories to increase with further increases in income as consumers purchase more luxury items relative to necessities' (2009:6418). These findings support a hypothesis that the most affluent nations in the world are also the largest polluters when the entire chain of production is taken into account, including the emissions that occur outside the consumer's own country. Overall, the study confirms that 'our daily consumption and production decisions drive global emissions' (2009:6419).

However, are affluent countries necessarily the most peaceful? A recent index based on data from World Economic Forum and The Global Institute For Peace has ranked the world's countries as according to how safe they are (Getzoff 2019). The index included risks of both natural disaster and risks of crime, terrorism and war. Interestingly, I find that among the top 20 safest countries in the index, 10 nations

also figure among the top 20 in a list over countries' GDP per capita (World Economic Outlook Database 2019). Combined with Hertwich and Peters' study, this initial survey indicates a positive and direct correlation between peaceful nations (PN) and ecological footprint from consumption.

In general, inhabitants of wealthy nations live highly polluting lives: apart from buying cars, we use that car more frequently, or go on intercontinental vacation, and increasingly so (Trædal 2016; Vetlesen 2015). On a macro level, contemporary societies need to continuously – and increasingly – consume and produce, in a constant trade and value exchange, to uphold the individual lifestyle and societal state of being its inhabitants consider as '(living in) peace' today. Without a 1% growth in GDP each year (or more), politicians are quick to echo economists who warn of the dire consequences for job security, private households economies, and the welfare system at large (Dorfman 2017). It is the underlying implication of 'peace as progress through growth', adhered to by industrialized and developing countries alike, that may constitute a detrimental relationship between ultimate goals and material exhaustion. The problem with increasingly wealthy people in poorer countries, or 'emerging economies', is not just the wealth they acquire and its ecological origins. Problematic aspects also includes the taste for high-impact consumption patterns that comes with the acquisition, such as normalizing an unprecedented high meat intake (Hansen and Jakobsen 2019).

Law and change

On the backdrop of unprecedented human impact on the world's climate and ecology, pressure to change international criminal law (ICL) seems to be rising. A key figure in ICL, Antonio Cassese however, describes a thorough, accumulative and empirical process of development prior to amending the Rome Statue of the International Criminal Court (ICC) with an Ecocide Law:

> International crimes proper (…) result from the cumulative presence of the following elements. 1. Violations of rules of customary international law as well as treaty provisions. 2. Such rules are intended to protect values of the whole international community as such and consequently bind all states and individuals. *The values at issue are not propounded by scholars or thought up by starry-eyed philosophers*. Rather, they are laid down in a string of

> international instruments (…). 3. There exists a universal interest in repressing these crimes. (2013:25, my highlights)

According to Cassese, this process requires that the populations within member states of the Court agree on a concern for the environment, and the heightened need to protect it. A problem arises, however, if a booming industry is more important to the public than the environment is. Brian Andrew, for instance, identifies the lack of regulation of carbon externalities a combined market failure *and* government failure (2008). Consumers drive free markets and constituents drive democratic governments, which bring into the forefront of discussion the matter of psychology.

For most part, the valuation of Nature has proven to conflict with economic and political agents' ability to assess the damage done to what was valued in the first place. Briefly touched upon in this introduction, there are grounds for considering the following: Harmonic societies share the traits of a wealth acquisition and consumption culture (except Bhutan, respectively). The material basis for this culture, however, involve irreparable harm to ecosystems all over the planet. Green criminologist Tanya Wyatt succinctly encapsulates an academic, holistic shift starting to come about in some academic fields, observing a 'growing awareness of the interconnectedness of global climate systems' that 'calls for the reassessment of harm' (2014:1).

Proponents of a 5th crime against peace, counting scientific articles, books, thought pieces, organizations and campaigns since the 1970's until today, argue that the only term that properly acknowledges the extent of this harm is 'ecocide'. Firstly, the concept recognizes the existential suffering injurious industrial activity imposes on Nature and all its inhabitants directly. In addition, it highlights the suffering inflicted on people that rely upon ecological stability for peaceful coexistence with their surroundings. Notably, an ecocide can come about as a naturogenic event, with a natural cause (*Eradicating Ecocide 2012*). Today, many of those directly affected by ecocidal events, like hurricanes and tsunamis, are indigenous people and primary producers in coastal countries and Latin America especially (Nielsen 2011:4).

Granted, Cassese's admonition of a traditionally narrow path in proper and democratic development of ICL is one that is uninterrupted by 'starry-eyed scholars'. Just the same, he does not solve the problem that arises when the public for some

reason is incapable of recognizing harm that may ultimately threaten the 'universal values' that he speaks of. Science on the state of life-sustaining natural systems as it stands indicates the cognitive limitations to that capacity. Cognitive limitations, in turn, affect political and civil society that would normally push for legislative change, turning them into acquiescent bystanders of irreversible damage to their own irreplaceable ecosystems (Baxter 2005:179).

In a rare, psychologically complex case such as this, insights from scholars and philosophers are arguably welcome contributions to the judicial development of ICL, contrary to Cassese's assertions. These efforts include the reassessment of lawful practices that may have unknown and severe effects on people and planet, a criminological research to which this thesis will contribute. In chapter three, I make the case somewhat in support of Cassese that philosophical doctrine cannot accommodate for all of the elements that are needed to spur legal change internationally. That being said, the case of the Law of Ecocide demonstrates how philosophers do provide ethical insights that are still partly constitutive of international law. As one prominent author within green criminology puts it:

> Interdisciplinary thought may help create a firm theoretical and empirical ground from which to develop convincing arguments and effective strategies for altering the present course of exploitation which endangers so many people, plants and animals, both now and in the future. (Sollund 2012:4)

Thesis organization

Objective

I have dedicated my master's thesis to an interdisciplinary study of International Criminal Law as a case of applied ethics. The chosen case is the Law of Ecocide (LOE), proposed to the UN Law Commission in 2010 by environmental lawyer Polly Higgins and her team. My main research question is: 'on what ethical basis may the Rome Statute be amended with the proposal for a Law of Ecocide?' I consider LOE an attempt at implementing ecological justice into an otherwise anthropocentric rule of law. My objective is twofold. Firstly, I aim to reassess the characteristics, causal links and position of ecosystem harm in high-consumption societies today. By this, I hope to infuse a lacking discourse on ecologically destructive practices by industry

especially, with empirical observations and subsequent theoretical processing that includes logical-ethical analysis. Secondly, my investigations should amount to a critical reconceptualization of peace that provides some original thought material on the subject from a criminological perspective. The integrative discussion that result from these two objectives arises in chapter four. Since ecocide today mainly stems from industrial activity as negative externalities to a growing production and consumption worldwide, I integrate a study of the nature of ecocidal harm with a critical view on the main features of neoliberalist ethics, including its discursive power and psychological effects. Through a cultural understanding of all components, this debate brings about a suggested reconceptualization of 'peace' that encompasses the version of ecological justice processed in earlier chapters.

As for my case-specific inquiries, they reflect current efforts speaking to the need for increased protection of Nature. In that respect, the claim to a healthy environment has yet to be recognized a human right. I will go into the main pros and cons from the ongoing discussion in the field, with those arguing for green human rights on the one hand (the so-called Rights to Environment, or RTE camp), and those in favor of endowing legal standing for natural entities on the other (the Rights of Environment, or ROE). Hereby, I aim to organize this discussion of foundational ethics, and map out which arguments belong to which axiological camp.

Rationale and literature review

An uprising in environmental awareness since the 1970's has spurred many philosophers to read their old teachers with new eyes. Espen Gamlund (2007) reinterprets Baruch Spinoza's moral system by distinguishing between its explicit anthropocentric teachings, and its premises. Gamlund argues that the anthropocentric directives are rather the conclusions of a philosopher whose culture influenced his thought. Spinoza's paradigm may just as well give rise to a non-anthropocentric system, endowing moral status to both individual and holistic nonhuman entities (pp.6). Similarly, Reichberg and Syse (2010) re-read of Thomas Aquinas' just war theory was prompted by increased knowledge on the damage done unto the environment during war. They concluded that the principles of just war are applicable to the concept of environmental justice, and hereby increased protection,

in wartime. From here, a multitude of scholars has worked to establish the call for increased protection of the environment. Julian Wyatt (2010) uses armed conflict scenarios to study the relation between international environmental law and international humanitarian law. In her master's thesis, Kimberly Eriksen (2011) assesses whether the current legislation provides adequate protection for the environment in war. Her discussion about the principles of warfare as recorded in ICL is judicial in nature, as well as only briefly touches upon the Rome Statute. This document of law will be of central concern here, and my method will be predominantly ethical.

Some have based their arguments for increased ecological protection on non-anthropocentric ethics, striving to integrate ecology into our idea of intrinsic value (Næss 1990; O'Neill 1992; Wetlesen 1999). Polly Higgins (2010, 2012) has argued extensively for a Law of Ecocide, specifically on an ethical basis as well, yet her discussions pertain to the political domain and its persuasive, subjective rhetoric. Naturally, her arguments are consistently in favor of LOE. Others that have taken an academic route in studying ecocide through a reconceptualization of crime and harm focus on climate change and opt for an interdisciplinary approach less in-depth in the ethics department (White and Kramer 2015). As for my notion of 'the invisible harm', Hugh Finn and Nahiid S. Stephens (2017) makes use of this term in their discussions about land use in Australia, and Goldstein (2017) in discussing environmental toxicity from corporations. Yet, neither of the authors process the concept theoretically in direct opposition to Adam Smith's 'the invisible hand', which is what I do in chapter four.

With regard to environmental rights, Steve Vanderheiden (2012) provides an impressive collection of essays, while David Boyd (2012) reviews 193 constitutions that are part of the *Environmental Rights Revolution*. Apart from Nature and justice, I seek to strengthen the associative link between the environment and regulation of businesses. Herein, ecological economy research in particular has considered the ethical value of ecosystems, for instance up against market policy mentality such as the ethical boundary to market-based instruments (MBI's) (Goméz-Baggethun and Muradian 2015).

Theoretical framework and methodology

As mentioned, my research question of whether ecocide is a crime against peace (CAP) or not is ethical at its core. As such, my theoretical framework includes anthropocentrism, ecocentrism and biocentrism. Specifically, I have chosen Brian Baxter's generation and formulation of a theory of ecological justice from 2005 as my general moral framework, visited in chapter two. Departing from my research question of whether ecocide really is a CAP, the methodology of subsequent chapters consists of several qualitative methods. These include a case study drawing on archival analysis; document analysis of the judicial documents containing the proposed amendment and the Rome Statute; and a comparative, ethical analysis of the two. Following these descriptive investigations in chapter one and two, my discussion in chapter three provides a critical reflection on the chosen theory of ecological justice and its ecocentric stance. The fourth chapter lays out a conceptual analysis of 'peace'. The thesis thus contains both empirical and theoretical sections. At the end of the day, I aspire to structure a case-specific academic debate involving peace, justice and the environment, and make a case for applied ethics in modern environmental-legislative studies that concludes on a conceptual analysis.

Structure

My problem at hand, as reflected in the thesis title, entails three sub-questions: By Higgins' definition, what are the characteristics of an ecocide and how do these relate to the four CAP? *Should* the Law of Ecocide be amended to the Rome Statute? If so, how could it be amended? The first is descriptive in nature and assessed through empirical investigation, while the second and third are normative and assessed through an ethical premise investigation and subsequently a philosophical discussion. I have devoted chapter three to the discussion of philosophy behind LOE, with a concluding note on the psychological aspect of what may create support for the proposal. The list of psychological requirements in chapter three is not exhaustive, but takes applied ethics one step further down the road of implementation. In the next chapter, psychology, culture, economics and peace theory arguments are woven together in a challenging, yet interesting discussion.

Following the introduction, the first chapter contains historical and some contemporary case studies on ecocide used either as a weapon of war, or as what I call a method (for sustaining a consumption culture) in peacetime. Archival analysis conducted on material in the *Foreign Relations Archives of the United States* (FRUS) from the Vietnam War, as mentioned earlier, demonstrates the massive, bio-accumulating casualties and damage to civilian life as direct consequences of ecocide used as a weapon of war. This study later works as a natural point of reference when I later in the chapter turn to examples of the industry actor of Monsanto, accused of willfully causing ecocide and for neglecting to inform consumers of the risk of its herbicide weed killer containing glyphosate.

The second chapter specifies the analytical crux of the thesis, and include a comparative analysis of the crimes against peace and LOE. In so doing, I concern myself with moral philosophy, and environmental ethics as Brian Baxter, who himself departs from John Rawls, relates it to justice and moral considerability on the part of nonhumans. Herein, I discuss moral universalism in the case of LOE. One reservation I must make in advance is that the reader should preferably consider chapter three as a broadening of my discussion and not a continuation of the narrow focus in chapter two. Instead, where Baxter functions as an overarching theory and position in this second chapter, I have situated his work among other environmental justice theoreticians in the next part of my thesis.

The third chapter concerns itself with an in-depth study of a fork in the road in academia: should international criminal law develop green human rights, or ecosystems' rights of their own? The question of how ICL institutions should adapt to and process ecological justice can be answered in strictly ethical terms, and in a practical-political sense. I will depart from the former, amounting to an integrated argument that draws upon the latter two as well ('meta-ethical consequentialism'), concluding on a suggestion for what works best in the case of LOE and the Statute. I will conclude on whether the ICC is the optimal platform for ecological justice, or if old ideas of an independent International Court of the Environment should be revived for this purpose.

With the argumentative structure described in the first part of chapter three, its second part focuses on psychological requirements for a meaningful regime of

ecological justice to come about. In the fourth chapter, I connect the final dots between economics and environmental harm. This chapter reflects a deliberate choice to go further into the domain of psychology and culture. Here, I find sufficient points of contact from respective fields to build an interdisciplinary theory of ‘the invisible harm’ as a structural phenomenon ultimately arising from a neoliberalist belief system. This theory leads me to a basic proposal for just peace. The fifth and final chapter contains concluding notes on all of the above, as well as the need for further integrated studies that focus on interconnectedness. My aim in the last chapter is to attain a greater understanding of the proposal of LOE, and the concept of peace that is perhaps too powerful and impactful in its convenient definitional vagueness.

1 Case studies
Ecosystem Harm in Practice

I remember thinking it was very strange. That humans were capable of changing the Earth's climate. Because if we were (…) we wouldn't be talking about anything else. Headlines, radio, newspapers. You would never read or hear about anything else, as if it was a world war going on. If burning fossil fuels was so bad, it threatened our very existence, how could we just continue like before? Why were there no restrictions? Why wasn't it made illegal?

(Greta Thunberg, TedxStockholm, November 2018)

Just as ecosystem damage implicates the fate of humans, so the concept of ecocide is intimately related to the concept of genocide (Crook, Short, South 2018). In the international dialogue between states, the term 'genocide' has a high and respected political standing. Without exception, naming the possibility of a genocidal atrocity immediately invokes a formalized duty and responsibility for the observers to investigate. Consensus on this international responsibility has birthed interceptive concepts such as 'humanitarian intervention' and 'Responsibility to Protect'. On the downside, powerful states have historically shown hesitance in employing the terminology, likely due to the political string of legal obligations set in motion by naming a mass murder. Pedagogic exercises on learning about genocide, therefore, often include how 'politics plays into what gets acknowledged as genocide, when and why, and what gets ignored' (Waterston and Kukaj 2007:514).

There is no reason to expect otherwise if the ICC were to criminalize ecocide. The lack thereof still, after 10 years of advocating internally in the UN for an international criminal law against ecocidal activities, all but confirms clear and present hesitation to criminalize. I would argue that the sources for this reluctance are not only political, but strictly linguistic-cultural as well. An absent public discourse on ecosystem harm prevents constituents and law officials in the UN, the EU and other blocs, to engage with the heart of the meaning of 'ecocide'. Without knowledge about ecocide's empirical grounds, member countries have a hard time realizing its intricate connections to the values that global judicial institutions are set to preserve.

Where new terms open up for understanding phenomena in new ways, they also require elaborate explanation and cultural translation. The connotative link between ecocide and genocide is practically nonexistent in the public debate about crimes today, expect in certain academic milieus. As a micro-parallel, not a single person I have approached during my research have heard of the term 'ecocide'. Except for my conversations with green criminologists, this 'finding' goes for laypeople and scholars alike.

I am devoting this chapter to charge the concept with empirical associations for the reader, before embarking on an ethical, comparative analysis of the four international crimes in chapter two. Intended as a prelude to the ethical comparison, this current chapter will process some real-life cases that provide a descriptive investigation of ecocide. Herein, I will look at ecocide both when it has been strategically carried out in war, and when executed by political or industrial actors in peacetime. Because as long as the connection between peace and ecocide is an obscured and under-investigated link, the context of war might provide a more accessible understanding of ecosystem harm. Additionally, it opens the gate to discussing immorality as a necessity when a nation is under threat, and axiology within a superpower's global-influential apparatus. Later, I will reflect upon the connections between a military superpower historically, and international multi-billion-dollar companies today. My focus will therefore center on the historical military case. The peacetime study investigates the case of Monsanto, and the highly controversial agrochemical glyphosate. Drawing on these examples, I will conclude on the unique characteristics of ecocidal events as they emerge from both contexts, and discuss how these interplay with the need for a de-differentiation of legality thresholds in environmental legislation today.

1.1 Ecocide as a weapon of war

As my main case study, I have chosen the use of Agent Orange and other pesticide agents during the 10-year long military herbicide program in the Vietnam War. As a publically archived, historical case, it gives access to a decades-long record and descriptive chain of events. Drawing on both political, military and scientific material, the long timeframe of the case enables my analysis to integrate several

aspects into a more comprehensive and diachronic view. I have selected archival documents for historical analysis primarily from the United States' digital *Foreign Relations* archive as well as Military Procurement documents; official accounts of the Vietnamese and American cooperation to use defoliants in the combat of North Vietnamese troops; scientific reports on the ecological and health effects of the herbicides program; and United Nations Resolutions. Others have researched protection of the environment in warfare, so the objective here is rather to document what humanitarian and ecological consequences were prompted by anthropocentric decision-making in a military setting (Eriksen 2011). Adjacent to this study, my analysis also touches upon some issues within the evolution of public and legal recognition of environmental damage.

There is hardly any originality in an analysis of the use of bioweapons, since the Vietnam War has been subject to extensive scholarly scrutiny in this regard (Young 2009). The use of 'tactical herbicides', Agent Orange being the most well-known, has given rise to decades worth of controversy within the U.S., as well as international attention (Young 2009:1). Consequently, the herbicides central (and toxic) ingredient, TCDD, is one of the most researched molecules worldwide (Young 2009:161). What is unique about my study, however, is that it rests on a theoretical framework that situates the war in the axiological typology of anthropocentrism, biocentrism and ecocentrism, giving way to value evaluation. As such, I will look at evidence from the military-political reasoning process prior to the use of Agent Orange and TCDD compounds to establish the degree of environmental awareness in the ethical assessments of the time. The display of main pros and cons with regards to defoliation and enemy crop destruction is intended to illustrate the power of value norms within a superpower's political apparatus, which will lead to a critical argument of anthropocentrism and its effects. To the best of my knowledge, this specific ethical exercise has not been done before. The historical analysis that follows does not aim to give a full account of the Vietnam War. Rather, its objective is to extract from the chain of events those elements that shed light on American and South Vietnamese intentions and axiology as demonstrated by the government in relation to massive and continuous ecological harm as justifiable means.

1.1.1 Morals in warfare

Before embarking on a study of morality displayed by military decision-makers, I should briefly address the premise of whether this is possible in the first place. Can we study morals in war? Nicholas Fotion (1986), a military ethicist, explains the rift between realists and pacifists on this issue. Realists believe the rules of war demand a temporary abandonment of morals altogether. They highlight the exceptionality of wartime, emphasizing its negative impact on ethical conduct where 'it becomes quite out of the question to behave ethically' (1986:12). Other realists contest this stance for creating a moral alibi for war actions, and view the existential threat posed to a nation's security in warfare as a moral restraint, not abolition. The restraint guides political leaders to a less ethical demeanor than they would normally exhibit, were they not acting in a public capacity under extreme circumstances (Reichberg and Syse 2000:457). Pacifist ethicists abandon the possibility of going to war altogether, because there can never be 'just wars' (Fotion 1986:2). In this chapter, a moral investigation necessitates that I take a realist position: I uphold as fact that military action will continue to happen, and assert that these can exist in just ways.

Interestingly, after the Second World War a consensus emerged among academics that the traditional fields studying conflict and peace had failed. Despite centuries of research and theory generation within history, international law, philosophy, and politics had not brought with it a meaningful curtailment of war activities (Pedersen 1967:126). Sciences such as sociology and psychology instead became the new arenas for international peace and conflict research initiatives, resulting in books like 'the Nature of Conflict' in 1957 funded by UNESCO. One of the adversaries of this methodological development was Kenneth Waltz. He argued, among others, against UNESCO's new-born conviction and starting point of analysis that 'war begins in the minds of men'. According to Waltz, there are three main approaches to the study of war. The view that aggressive conflict between groups springs from Man's inherent aggression is the first approach, reflecting a 'tendency of some realists to attribute the necessary amorality, or even immorality, of world politics to the inherently bad character of man', Waltz claimed (Pedersen 1967:131). The second approach, in contrast, makes the inner systems of the State the causal framework for understanding a war, while the third option attributes the reason for war to the

international system. Waltz concludes that ‘a foreign policy based on the (third) image of international relations is neither moral nor immoral, but embodies merely a reasoned response to the world about us’ (Pedersen 1967:131). Here, Waltz upholds the possibility of moral wars through the presence of reasoning, which is the position I take in my analysis.

The pressures imposed by war situations on military commanders take different forms. An existential threat is permanently present for as long as the war is ongoing; sometimes extending into peacetime as well (Fotion 1986:12). Semi-permanent pressures require deliberated responses proportional to the danger. Other threats are urgent and requires an immediate response, a situation typically referred to as ‘the heat of battle’. The decision to initiate a massive herbicides program in South Vietnam did not occur due to the heat of the moment. On the contrary, its use followed from reflected deliberation. Philosophies of war that generalize a ‘heat of battle’ restraint to every wartime scenario neglect the differences between long-term and short-term agendas in conflicts and other significant variables. In the present case, the Vietnam War was a prolonged affair, where one of the military powers, the U.S., did not fend for their national security directly nor on their own territory.

Quincy Wright argues that war is primarily a social phenomenon and not a philosophical one (Pedersen 1967:125). The precursors, trajectory, and consequences of conflict are products of society, he claimed, including its political, social, economic, scientific and technological situation. The Second Indochina War, taking place in Vietnam, was no exception. One example is that, to explain American interference in this conflict, the analysis has to engage in the global-political context of the Cold War. I will therefore follow both Waltz’ and Wright’s example in this study, and give space to its social and political context, including the state of scientific knowledge, preceding the use of Agent Orange. The objective is to contextualize the reasoning of American and South-Vietnamese decision-makers to display which general environmental attitudes led to the strategic utilization of harmful herbicides. In turn, I will question how those attitudes are partly institutionalized in the ICL and its rules of lawful conduct in war still.

Although situational factors might compel the favoring of other arguments than what a peacetime situation would, what the individual or group consider its core or

cultural values arguably do not change simply due to situational variables. Instead, an acute situation may require a shift in the prioritization of these values according to the particular needs for survival that arise during an existential threat. For example, a person may be inclined in combat to downplay some of what is highly valued under normal circumstances, in order to obtain a goal that will ensure survival for oneself or others. A soldier who accepts going hungry to save the lives of civilians has not stopped appreciating food, just as one who accepts pain to reduce that of others has not become a temporary masochist valuing pain over pleasure. Instead, a person will always include what she considers precious on a fundamental level, such as food and physical well-being, into her reasoning processes. These values will be factored in as input to the pro-versus-con process of deciding what to do, before opting for another, temporarily more valuable target. I apply this notion of balancing of values to my case with the following hypothesis: Americans choose not to heed environmental concerns in the decision to opt for defoliants in South Vietnam. Yet, this is not to say they did not consider it a cost. Despite not being a priority, the health of forests and local inhabitants should still be included in the documented bureaucracy of arguing for and against an herbicide program, insofar as it is seen as a cost of that program. If a factor is not included, it is equally ethically discounted as no cost at all.

1.1.2 Vietnam and Agent Orange

When elephants fight, it is the grass that suffers

(African proverb, source unknown)

Some historians claim ‘dramatic novelty’ to the process of globalization insofar as this process can be counted as an unprecedented global epoch starting in the half past century, as a discontinuation of earlier societal transformations. This *sui generis* categorization follows from how unusually sweeping globalization has been in its impact on human lives, arguably beyond what is normally involved in identifying a particular period of time (Stearns 2010:125). Whether or not one sides with these ‘new global historians’ on the issue, that there is reason for such world history questions concerning the 1950’s until today, reflects the particularly dramatic period in which military Agent Orange took place. This was true especially for the United States of America.

Since the Second World War, a gradual process of moving from isolationism to globalism had slowly forged American foreign policy into the strong and complex international aggressor of the early 1960's (Stearns 2010:133). The federation's ambitious pivot as the 'global policeman' and ruling superpower of the West, in an antagonistic relationship with the Soviet Union as that of the East, put their vision of an American-led, global proliferation of liberal democracy at the forefront of the agenda. When the conflict in Vietnam ideologically consisted of a communist North in opposition to a non-communist South, one may suspect its symbolism as a 'clash of giants' became as imperative as its actuality in the context of the Cold War. The prospect of a communist victory in what was perceived a logistical key country in Southeast Asia, with its 'crucial sea routes, vital natural resources, and markets essential for Japanese economic recovery', ultimately compelled American leaders to engage in the venture (Stearns 2010:133).

There were other geopolitical concerns as well. Firstly, the possibility of a Chinese intervention was something the United States strongly wanted to prevent, but they also feared repercussions extending to Europe. For instance, allied plans of a mutual defense cooperation on the European continent following the Second World War could be severely impeded by a French defeat in Vietnam (Herring 2008:661-662). Geopolitical concerns regarding the international scale of the Vietnam conflict were also reflected in the political embrace of Eisenhower's well-known Domino Theory. A doomsday prophecy on ideological warfare at the time, this theory projected the inevitable proliferation of Communism if it succeeded in Vietnam, from the Middle East to Japan (Ibid.). One of the key administrative organs in the American apparatus, the Operations Cooperating Board (OBC), stated: 'Our success (in Vietnam) constitutes perhaps the single greatest hindrance to further territorial expansion elsewhere in Southeast Asia' (FRUS 1958:42). Functioning as an administrative focal point of the Vietnam operation, the OBC had the task of providing concrete measures to be made during the operation and delegated these to different branches of bureaucracy. In conjunction with the previous quote from a report in 1958, the Board established the following:

> Viet-Nam assumes a special importance in U.S. policies and courses of action in Southeast Asia because of its exposed position as an outpost of the free world face-to-face with a powerful and threatening communist regime

> occupying part of its territory, and because Viet-Nam is the principal country in the area where a free government and a communist regime compete directly for the same territory and a whole nation. (pp.42)

This excerpt shows how the drivers of the entire historical period that was the Cold War came full force in Vietnam, to the degree that some would say it turned the period inside out: 'Vietnam ceased to be an arena for the Cold War conflict; instead the Cold War became a means of dealing with the Vietnam War' (Ball 1998:115). Overall, from the OCB report we detect the American end goal of a united, democratic, and regionally independent yet ever pro-American Vietnam. Just the same, there was also a reluctance as to the nature of the American presence in the conflict.

What type of assistance best served their objective? How involved should American forces be in the actual military operations? The decision to initiate a far-reaching herbicides program, consisting of 19 million gallons' worth of chemical cocktails, can be seen in light of such reluctance to become too deeply involved, and the careful consideration it entailed. My analysis begins where the OCB proclaims that '*the most determined efforts are justified* to preserve the integrity and strengthen the position of the country' (1958:42, my highlights).

According to Ball, another notable consideration that weighed heavily on U.S. foreign policy decisions at the time was that of credibility (1998:115). The concept of credibility encapsulates the essence of American Cold War policies in the 1960's, following a period with several incidents in the international arena that put pressure on the notion of the U.S. as a credible superpower. This image had received blows as a result of the tense standoff between the U.S. and China over the Taiwan straits in 1954-55, including President Eisenhower's vague threats of nuclear retaliation, with which he never followed through. The ongoing construction of a nuclear world balance also put a great strain on the consideration of the United States not appearing 'weak'. Only a year before the herbicide program was initiated, riots in Eastern Europe had tested the capabilities of the United States (Herring 2008:664). American globalism at this point encouraged the use of 'firmness' in states not yet influenced by the Soviet Union or China, a desire that eventually crystallized itself in their efforts relating to the country of South Vietnam (Ball 1998:115). In 1965, following the decision to deploy ground combat troops for the first time, President Johnson

answered the most insisting critic of the impending escalation thusly: ‘Wouldn’t all these countries say that Uncle Sam was a paper tiger, wouldn’t we lose credibility breaking the word of three Presidents?’ (Ball 1998:131). Where ‘American Cold War policy was effectively mortgaged to the fate of that Asian country’ between 1965 and 1972, the political interests in Vietnam during the time of our study cannot be underestimated (Ball 1998:115).

Simultaneously, reports characterized the South-Vietnamese leader Diem himself as ‘recalcitrant’ and in opposition to American consultancy (FRUS 1962b). These depictions reveal an attitude of American administrations with a lot to lose, and yet narrow navigation room directly within the foreign government upon which so many of their interests depended. In 1960, a year before initial testing of the herbicides, it was also reported that the Diem administration’s handling of the Communist threat had spurred internal dissatisfaction as well. One report read: ‘Army elements actually tried (to) seize power through a coup in November because of dissatisfaction with government’s political methods and failure (to) defeat Communists (…) which, while they might be unsuccessful, weaken (the) Diem government to such extent that Commie takeover will be facilitated’ (FRUS 1960:745). One could read from this that both the Diem government and the Americans needed a large-scale strategic plan demonstrating to the South Vietnamese people that sufficient efforts were being made. At the same time, Secretary of State, Mr. McNamara, readily emphasized that ‘our objectives are to help the Vietnamese fight their war and to reduce, not increase, our own combat role’ (FRUS 1962c). How could the United States be of sufficient assistance to a foreign nation on the brink of both inner takeovers from dissatisfied citizens and the external threat of Communist North Vietnam growing in strength, without increasing their own combat presence?

Excessive use, limited knowledge

One of the solutions to this ‘balancing act’ became the herbicide program. Along with a general increase of the U.S. intervention in 1962, including the expansion of military advisers from 400 to 16,000, using defoliants to effectively manipulate the field in which they operated became an appealing additional measure (Ball 1998:129). A defoliant is a chemical herbicide that causes the leaves to fall from

trees and growing plants (Park and Allaby 2017). What has become known as Agent Orange, however, differed from the defoliant mixtures used in average agriculture and gardening due to its contents of TCDD (2,3,7,8- tetrachlorodibenzo-para-dioxin). This was notably a substance that has later proved to be highly toxic. In the years 1961 (when testing began) to 1971, the American forces sprayed a total of 19 million gallons of herbicides on Vietnamese territory, of which 11 million were Agent Orange (Institute of Medicine 1994). The areas sprayed were mostly in the countryside, where the Americans believed that 'the battle (would) largely be won' (1962g), including at least 10.3 % of inland forests (Blackman, Fryer, Lang and Newton 1974:xii). However, it also became common practice to spray both outer and interior perimeters of bases with herbicides due to heavy vegetation in the rainy season, allowing for enemy ambushes close to the base (Ross, Hewitt, Armitage, Solomon, Watkins and Ginevan 2015:82-83).

On the administrative side, the American military procured Agent Orange from numerous chemical companies. In the Military Procurement Specification for Herbicide Orange, its intended use is stated as following: 'the material is used as a systemic growth regulator to kill and defoliate vegetation' (Department of the Air Force 1974). A Committee that has reviewed the health effects in Vietnam veterans at Institute of Medicine breaks down a twofold objective of using Agent Orange, according to the different political programs: Firstly, to defoliate forest cover for enemy forces and improve sighting and visibility, and secondly to destroy enemy crops (1994, no page). For this purpose, American high officials, including Secretary of State, Robert Strange McNamara, recommended that the President approve the 'initiation of an operational herbicide program in nine selected portions of the Delta area of South Vietnam, comprising approximately 60 miles of overland routes' to start with in August 1962 (1962f:567).

In the same year that the use of Agent Orange reached its height, President Johnson approved legislation on the National Wilderness Preservation System domestically (Hansen 1970:292). The peak period of heavy herbicide spraying (and accompanied foreign wildlife habitat destruction) lasted from 1966 until 1969. Today, the extent of spraying has left TCDD still traceable in certain 'hot spots' in Vietnam (Tuan Hung et. Al 2017). Due to its mixture of dioxin, Agent Orange functions as a carcinogen,

which is a substance that causes cancer by changing the DNA. Its toxic nature was unknown at the time.

Remarkably, ‘at the time that Orange Herbicide was procured for use in South Vietnam, TCDD was NOT recognized as either a contaminant or as an issue of quality control’, according to Young (2009:169). In fact, the necessary capability for ‘accurately assessing the levels of TCDD in herbicide formulations’ did not even exist in the 1960’s (Young 2009:163). It was not until 1970 that the United States Congress belatedly ordered studies assessing the ecological and biological impact of the military use of herbicides in Vietnam (Young 2009:166; NRC 1974). This means that more than 10 years passed from the initial operations before the U.S. attained substantial information on the actual effects of TCDD and its associated dioxin. Since then, the scientific focus has been on the health effects especially relating to the cancerous and teratogenic (birth deforming) character of the toxins (Schecter, Colacino and Birnbaum 2019). The expenditure of these studies, however, constitutes a vital social justice problem with regard to post-war restoration. Only in 1980 did the Vietnamese Government establish a team of medical doctors mandated to study ‘the consequences of the chemicals used during the Viet Nam war’ (Hatfield Consultancy 1998, Appendix 1). The team, as well as external health agencies, however, were consistently critical to in-country research, due to the highly sophisticated analysis requirements and costs associated with dioxin sample analyses. The economy of a developing country having many pressing budget posts, both funding and sampling capabilities have been historically limited in Vietnam.

As late as in 1993, the undetermined environmental effects of Agent Orange dioxin constituted a persisting issue of concern expressed by the Vietnamese people. In response, the government and community agencies finally set in motion ambitious forest rehabilitation programs, all the while knowing that future success was uncertain as financial capital potentially would not be available (Hatfield Consultancy Ltd. 1998). Entering the new millennium, there still had been no ‘systematic, comprehensive, well-designed environmental studies of residual dioxin contamination from war-time herbicide applications’ in South Vietnam (Hatfield Consultancy Ltd. 1998), as well as ‘no large-scale epidemiological study of

herbicides and the health of either the Vietnamese population or war veterans' (Stellman, Stellman, Christian, Weber and Tomasallo 2003).

The economics of reforestation and restoration speaks to the particularly disadvantaged position of Vietnam as the target country for extraordinary high-impact military operations. When left to clean up the mess itself following American withdrawal, the country has proved too poor to adequately address the situation and implement necessary action to remediate the damages. American administrations on their part have not been willing to conduct such studies themselves or otherwise take responsibility for the decision to initiate an ecologically disastrous herbicide program.

The reasoning process

The discussion on whether to initiate the herbicide program materialized among in a series of official letters and memoranda between Washington D.C. and Saigon between 1961 and 1962. Firstly, there were reports of reluctance from Washington officials regarding use of tactical herbicides, notably for reasons other than those of environmental protection. As it were, defoliation met less political resistance than crop destruction. At a time when the defoliation program had been approved and was reported 'very successful' (FRUS 1962c:690), a letter from the Director of the Vietnam Working Group, writing from Washington, to the American ambassador in Saigon (FRUS 1962c:581), reads:

> Crop destruction was shot down in State and the prospects are not good (…) The objections are centered around the Governor's general feeling that destroying crops by helicopters, even though flown by Vietnamese, will be a dramatic and frightening demonstration of white man's weapons used against Asian food. And secondly, how can we be sure that we are destroying food for Viet Cong use only (…)

The concerns described in this letter only address the interpersonal relations between the United States personnel and the South Vietnamese population. The Operations Cooperating Board expressed similar sentiments earlier (1958:45):

> Although the U.S. and its citizens continue to enjoy popularity in Viet-Nam the large scale of American representation in that country presents a potential source of offense to Vietnamese sensibilities (…) While the general attitude

> toward the U.S. is friendly, extreme nationalism and concomitant anti-western feeling are not far below the surface

Some politicians, such as Deputy Assistant Secretary of State Edward Rice, were 'firmly opposed' to crop destruction. On August 2nd, 1962, he warned of how the proponents 'do not deal adequately with the costs implicit in the wider use which probably would follow' (1962h). Where this could have been a cautionary note on the ecological long-term effects of the program, it ultimately is not: the concern is solely in regard to the image of the U.S. internationally. Commenting on the principle of winning a war by winning the hearts of the people, Rice worries that 'if we make chemicals available for crop destruction we would not be able long to deny it to the world. This would hurt us everywhere' (1962h).

Arguments against the tactic did not put an end to the herbicide program for defoliation purposes approved by the United States' President Kennedy in 1962. As dreaded by some in Washington, however, herbicide aerosols drifting from a target to unintended areas did become a problem and hurt South-Vietnamese peasants, which in turn was thought to fuel Viet Cong propaganda (1962d). Despite calling these political concerns 'serious liabilities', Hilsman still maintains that 'under certain conditions, the benefits from an effective program for destroying crops might be even weightier' (1962d). Evidently, ecological damage is not part of the reasoning process here. Instead, officials reassured the people in Washington D.C. that food in the area was plentiful. Essentially, the main positives from 'an effective program' (later described as 'extensive') were the restraint it could put on Viet Cong activities, when they could not stockpile food anymore and had to spend more time gathering food rather than fighting. Some believed that these results would outweigh the political negatives.

Other main arguments for the program told of 'considerable Viet Cong strength in the areas of interest', and did indeed call the operations an 'attack' that might add the 'bonus effect' of increased engagement with the enemy, which at this time refrained as much as possible form open battle (1962e). President Diem in the South-Vietnamese government at the time himself 'consistently supported the use of herbicides, *particularly* for crop destruction' (FRUS 1962e: my highlights). Another official remarks that 'because of the superstitious nature of the rural peasant in

Vietnam, the ability (…) to kill large areas of vegetation 'magically' makes a deep impression on him' (1962e). Supposedly, during a defoliation operation in the Delta Mangrove, 'one hundred and twelve Viet Cong surrendered when it was publicly announced that additional defoliation operations would be conducted' (1962e). All in all, hoping to gain a 'substantial military advantage', officials had high confidence in the available methods of determining targets, based on best available ground and air intelligence, taking into account 'all necessary factors' (1962f). A vital factor lacking in that account at the time, which today has become clear was the unintended humanitarian and ecological effect of TCDD.

The aftermath

Not all remained complacent in the event of such extended use of an unknown substance on foreign soil. Reflecting public debate, the term 'ecocide' is brought up in the preface in a joint report from 1974 by the National Academy of Science (NAS) and National Research Council (NRC), on orders from the U.S. Congress. The study was supposed to investigate the ecological and physiological effects of the herbicide program in South Vietnam, three years after its conclusion. Here, ecocide is mentioned apparently as way of justifying the need for scientific facts on the table, essentially connecting the voiced environmental concerns to a sensationalist – or rather, what the report considers an exaggerated – media trend at the time:

> (…) claims have been made that these compounds 'poisoned' the soil, rendering large areas incapable of supporting either indigenous or crop vegetation. Some of these reports have conveyed the impression that vast parts of South Vietnam are barren and will remain so for unknown but extensive periods of time. The term 'ecocide', i.e., the destruction of the plant and animal community on a large scale and in an irreversible manner, has been used.
>
> (Blackman, Fryer, Lang and Newton 1974:1-2)

The joint report by NAS and NRC further states that the volume of dispersed herbicides was roughly five to ten times higher than in normal agricultural practice. The systematic frequency of the program often rendered areas sprayed twice or more, and not seldom within a relatively short period of time (Blackman, Fryer, Lang and Newton 1974:2). Importantly, this strictly quantitative report provided a scientific cornerstone to the American position in the Convention on Environmental

Modification (ENMOD) in 1976. Against the backdrop of what we know today, said report is an interesting read. Acknowledging the 'intrinsic irrationality of war', the research aimed, among others, to 'assist in judgment as to whether, in the future, such herbicide usage should be considered to fall within or outside the category of chemical warfare to be eschewed, as defined in the Geneva protocols' (Blackman, Fryer, Lang and Newton 1974:4). This objective faltered, however, as the NAs and NRC study was forced into methodological tiptoeing around strict security measures still in effect at the time. Restrictions, for instance, allowed sampling only from forests sprayed once, when this was rather the exception to the rule of multiple sprayings. At one point, military activity in areas of study resulted in open fire against a plane with Committee members when trying to obtain aerial-photographic data as a poor substitute for ground samples (pp. viii-xii).

Given these limitations, it is my opinion that the report is arguably more assertive than called for in concluding, among others, that 'on balance, the untoward effects of the herbicide program on the health of the South Vietnamese people appear to have been smaller than one might have feared' (pp.xi). With very restricted access to reliable data, the notion 'that no serious sequelae have since been definitely discerned is fortunate indeed' is much too optimistic, to say the least (Ibid.). Compared to what we know today, the report from 1974 was plainly negligent of the fact that dioxin is a substance with an aptitude for bioaccumulation and biomagnification in the food chain (Hatfield Consultancy Ltd. 1998). This makes it a particularly persistent contaminator once introduced to an ecosystem. For this reason, detrimental health effects from the uptake of TCDD, through the intake of food and water, are still observable today (Tuyet-Hanh et. al 2015; Pham et. al 2015).

For research conducted almost three decades later, notably free of the above-mentioned security restraints, findings were radically different. A study of Aluoi Valley concluded that spraying indicated 'serious problems', showing a 'consistent pattern of food-chain contamination by Agent Orange dioxin found, which included soils, fishpond sediment, cultured fish, ducks, and humans' (1998). Evidence included high dioxin levels in inhabitants born after the war, confirming continuing uptake. Recent studies from TCDD 'hot spots' continue to validate this finding (Pham, Nguyen, Boivin, Zajacova, Huzurbazar and Bergman 2015). Others assessed

the ecological effects on forests, finding only a slow restoration 18 years after the sprayings. From this, researchers estimated full reforestation to take no less than 100 years (FIPI 1991). Overall, herbicide application during the war significantly altered land use in southern Vietnam. Local farmers had to substitute farmland made unfit to grow food because of Agent Orange contamination, by previously untouched forests. This practice further increased deforestation. At the end of the century, some forest areas had seen successful rehabilitation, but for the most part they 'remained as barren wasteland which has been invaded by coarse grass species that prevent natural forest regeneration' (Hatfield Consultancy Ltd. 1998). Notably, the authors of the Aluoi Valley report remark that, if their study had been conducted within Western jurisdiction, the site would have been declared contaminated and 'major environmental cleanup and more extensive studies would be mandated and implemented' (FIPI 1991). This is another important note to the social justice aspect of environmental degradation of the scale seen in the Vietnam conflict.

The 'Jungle Exception'

There exists in particular one exception to the rule of protection, among the multitude of legal documents providing protection for the environment when states are involved in physical war. At the Environmental Modification Convention (ENMOD) of 1976, participants discussed the use of pesticides for defoliating forests used as enemy cover. Notwithstanding a general prohibition put in place against bioengineering and environmental modification techniques, the prolonged discussion finally went in favor of allowing such herbicide programs in certain cases. Subsequently, a protocol added in 1980 includes article 2(4), which forbids attacking forests or jungles '*except* if such natural elements are used to cover, conceal or camouflage combatants or military objectives or are military objectives themselves' (*International Committee of the Red Cross* 2013b, my highlights). This wording has made the resolution known also as the 'Jungle Exception'.

The additional protocol allows for the use of bioweapons in specific instances, guided by a case-by-case consideration, and stands unrevised today. As the ENMOD Convention does not constitute an absolute ban on the use of defoliants internationally, countries have interpreted it differently in domestic military manuals

(*International Committee of Red Cross* 2013a). Although it is not encouraged, the additional clause continues to render it a legal possibility for states to use pesticide defoliants, to the potential detriment of entire ecosystems in harm's way. This is exactly what Agent Orange was designed to do. In this case, the international-judicial community chose to justify a harmful act by its function, as something 'necessary in times of war', instead of condemning it by its negative effect on people and ecosystems at any point in time. With the jungle exception in place, it might compromise the global-institutional ability to properly apprehend crimes in other contexts.

1.2 Ecocide as a method in peace

All the while this chapter mainly focuses on the historical ecocide case that was the use of TCDD herbicides for military purposes, the following section provides for some comparative points with which to identify key ecocidal traits later. Herein, I am mostly concerned with the scale of distribution of the Monsanto herbicides, and the public and scientific reactions to their legal products.

1.2.1 Monsanto and Glyphosate

One of the companies that produced Agent Orange in its time was Monsanto. Today, it employs over 21,000 people in agriculture and GMO production across the globe, and is the 5th leading agrochemical company in the world based on sales (Monsanto 2017). One of Monsanto's foremost commercial products is the weed killer 'Roundup'. Importantly, Roundup is a glyphosate (N-phosphono-methyl glycine)-based herbicide (GHB), a substance that is at the heart of one of the largest cases of agrochemical dispute in the European Union (EU).

In November 2017, the European Commission both prolonged the authorization for glyphosate for five more years, as well as increased the Acceptable Daily Intake (ADI) (Landrogan and Belpoggi 2018, no page). This decision by the EU spurred massive opposition, however, as important research on the toxicity and teratogenic effect of glyphosate is inconclusive. The most recent controversy concerns the International Agency for Research on Cancer (IARC) and the European Food Safety

Authority (EFSA). The IARC has concluded that glyphosate is a probable human carcinogen (Portier, Armstrong, Baguley, Baur, Belyaev, Bellé, Belpoggi et al. 2016:743). EFSA, on the other hand, reaches a contrary conclusion. In the case of glyphosate, their report (RAR) finds that 'classification and labelling for carcinogenesis is not warranted' and that 'glyphosate is devoid of genotoxic potential' (2014:160).

Authors that take a critical methodological look at these main contrasting reports have since clarified the debate, among others in a commentary signed by 93 scientists in total (Portier et al. 2016). Here, the authors claim that the RAR report by EFSA ignores significant evidence to glyphosate's toxicity, including its consistent findings of cancer tumors in mice. Pointing to the standard procedure guidelines devised for evaluation and analysis of carcinogenicity data, the team finds that RAR's methods in analyzing historical controls and trends are simply not in accordance with these. (This finding is peculiar, given EFSA's scientifically prestigious position.) On this basis, the Portier et al. publication states that glyphosate is a 'probable human carcinogen', same as the IARC (2016:743). In a recent turn of events, Philip Landrigan and Fiorella Belpoggi announce the initiation of a neutral study that will be 'the most comprehensive' investigation on GHBs to date. The study will last up to 4 years, and aims to counter the effect of the recent dispute that has yielded 'regulatory uncertainty' across the market (2018).

The gravity of this case of scientific controversy cannot be understated. Roundup is the most used herbicide weed killer in the world to the degree that we could speak of an agricultural GHB-dependency. Genetically modified organisms (GMOs) used worldwide are immune to just glyphosate, which would make a swift transition to any new weed killer impossible (Tarazona, Court-Marques, Tiramani, Reich, Pfeil, Istace and Crivellente 2017). Notably, glyphosate figures in over 750 commercial products' content list, in products sold both in industrial farming markets and for home gardening (Landrigan and Belpoggi 2018). Adding importance to the abovementioned debate, scientists have found traces of glyphosate at minimal levels yet widely distributed in wheat flour (Simonetti, Cartaud, Quinn, Marotti and Dinelli 2015); seawater (Mercurio, Flores, Mueller, Carter and Negri 2014); and human urine (Conrad et al. 2017).

Given the extensive use of glyphosate ever since it was first licensed for commercial sales in 1974, it is alarming that neither Monsanto nor governmental agencies have mapped its full effect on human and ecological health until now (Landrigan and Belpoggi 2018). The recent conclusions by several scientific teams amount to that glyphosate is in fact 'probably' a carcinogen, as TCDD in Agent Orange was. It is a baffling notion that, for more 40 years, millions of people worldwide have likely been exposed to a toxic substance that could cause severe damage to their health and shorten their lifespans significantly. Where the military herbicides were sprayed on orders from armed forces officials under existential threats and pressure from war, these commercial herbicides have been distributed by marketing mechanisms and free will of the agricultural actors themselves. Equally disconcerting in the context of the hazards to public health glyphosate probably has and continues to pose, Monsanto company had a net income of 2260 million U.S. dollars in 2017 (Monsanto 2017).

It is on this background that three separate lawsuits against Monsanto most recently have materialized. Here, Monsanto has received critique that strengthens the case for its legal liability, on the argument that the company has not adequately tried to discover whether Roundup is indeed carcinogenic. The plaintiffs' defenders have also accused the company of not having properly warned of the potential risk (Nosowitz 2019). In all three legal cases, one of which included a plaintiff pair both diagnosed with non-Hodgin lymphoma, the jury issued verdicts that sentenced Monsanto to damage compensations ranging from $80 million to $2 billion (Ibid.).

The case of Monsanto brings to the forefront of my inquiry on crimes against peace the scale of corporate influence over people and the environment in peacetime. Given its massive annual revenue as well as global potential outreach, the company holds in several ways a capacity similar to a global superpower. Still, legal prosecution of these corporations does not yet entail international courts, much less mechanisms that would enable prosecution not of the company, but of the individuals therein that carry the superior responsibility when the firm commits a harm. Instead, the company itself enjoys the legal personhood in court, where the jury acts as if it was a person. Higgins notes on the lack of discussion when a minor court case in 1886 created this legal precedence:

> the words spoken by the Chief Justice Morrison R. Waite were not spoken as judgement, were not challenged nor subjected to legal examination. (Instead) they were relied upon and accepted as law to justify the imposition of rights and responsibilities upon a 'fictional person' (the corporation). (2012:25)

Notably, proponents for a Law of Ecocide have used Monsanto and glyphosate case as a mock trial scenario in 2016 to test for whether LOE can be used in court or not. The mock jury included professional practitioners of law and received substantial media attention. It found that, had ecocide been an international crime, Monsanto could have been tried and sentenced based on LOE in its current form (European Civil Forum Association 2016).

1.3 Similarities across contexts

One of the key characteristics of ecocide that I would like to highlight is the atypical tempo and longitude of an ecocidal event, which is good to keep in mind when I later compare ecocide to the other four crimes against peace (CAP). Registered effects following from the Vietnam War in human studies and forest restoration studies showed several aspects to the temporal feature. For instance, bioaccumulation in the food chain and water clearly indicates how an ecocide may span across decades, and its effects build up slowly. As the injury from spraying and pesticide use occurs on a microscopic level, it may easily come about without being visible to the unguided eye. In fact, the biochemical effects from herbicides are so hard to dissect and sensitive to measurement techniques and equipment that scientific dispute arose in both cases. This controversy, in turn, had a direct effect on regulations. In the case of Agent Orange, the ENMOD Conference decided to take the inadequate NAS and NRC report into account and allow a 'jungle exception' protocol, while in the case of glyphosate use in the EU, there was the decision to not only extend its use but also raise the level of accepted daily intake.

Where researchers have documented the severe effects for humans apparent decades after the fact, the ecological consequences may stretch across not just several generations but even centuries. Historical cases are therefore better sources for observing these features than more recent events, such as the Monsanto case. The temporal attribute, with all these nuances accounted for, separates ecocide from other

atrocities such as genocide, war crimes and crimes against humanity. I will get back to the nature of ecocidal harm in chapter four.

Furthermore, the temporal trait also relates to a key notion about victims. Ecocide victimology includes nonhuman life invisible in the immediate aftermath of an attack, similar to major parts of the attack itself where the damage is chemical and microscopic. Whereas victims of the four existing CAP are easily recognizable, seeing the 'bloodshed' of an ecosystem under attack takes scientific inquiry and sampling. Counting the casualties after the use of bioweapons such as 'tactical herbicides' requires expert knowledge about the target area, and documenting the disaster takes not only a camera and a reporter, but sophisticated sampling gear, techniques, and competent professionals. Perhaps most significantly, environmental consequence analyses require time. Where a bombed city instantly speaks for itself, knowledge and understanding of an ecological system in ruins or a body affected by cancerous toxins may stay obscured for decades.

The chosen example of toxic herbicide spraying, starting from 1961 with effects continuing until this millennium, indicates both the temporal and the victimological traits of ecocide. The same is true for the case of Monsanto and the recent lawsuit. The social justice dimension of these two cases foreshadow as well a later discussion in my thesis of whether to encapsulate ecocide in the human rights regime as a case of intergenerational justice.

The Agent Orange case occurred in a war scenario, executed through a political-military decision-making process. It problematizes the long-term biological stability traded for a short-term military objective, and how geopolitical goals at one point in time dwindle compared to the humanitarian and ecological suffering still in effect long after their conclusion. Today, it is hard to fathom that children have been born with deformed bodies ultimately due to a political theory called 'the Domino Effect'. Overall, the Vietnam case involves an intricate interplay of politics and science in their influence on the development of law. In light of the documented longitude and unconventional victimology of ecocide, this interplay creates a strong argument for increased criminalization of environmental modification both in war and in peace.

The difference in choice

Arguably, the critical study of the use of ecocide as a tactic and a weapon of war rests on the notion of choice. Did the superior decision-makers within the American and South-Vietnamese government have a choice prior to spraying Agent Orange? Given the amount of correspondence debating the pros and cons of the defoliant program, there is evidence to claim that they did. Notably, their choice was limited in two ways: firstly, it occurred during the Cold War, which was a time perceived by the U.S. military as a great ideological threat. Secondly, the decision-makers did not have enough information on the chemically hazardous attributes of TCDD. However, the extenuating effect of this is weakened by the fact that the U.S. actively decided not to obtain such information.

Aristotle argues that 'what is chosen' is determined by rational deliberation, which makes my analysis of the reasoning process even more purposeful (Howarth and Leaman 2001:93). Moral virtue is a state that involves choice, constituting what Aristotle sometimes called 'intellectual desire' (Ibid.). As a cognitive exercise, the virtue requires intellectual thought in that it involves the capacity to assess alternative courses of actions. In Western traditional philosophy, choice is herein intricately associated with morality and freedom: having the freedom of alternatives to choose between, and the moral sense to choose wisely. Applied to the case of military ethics, I agree with the realists that maintain that a person's choice becomes less free in wartime. Crucially, this notion amplifies the moral significance of choice when studying ecocide alongside commercial perpetrators. Where a commander-in-chief operates under morally-restrained circumstances, the industrial activities that cause corporate ecocide occur in peacetime. Individuals with executive responsibility in a corporation enjoy a relatively freer rational deliberation, given that they do not have to deal with existential threats, as in the case of commanders of a military body deliberating ecocide to attain strategic advances during a war. In turn, this entails an increased freedom of choice. From this line of reasoning, it seems plausible to deduce an elevated moral responsibility, and fault, of industrial actors conducting ecosystem harm because they have a greater 'amount' of choice. I will engage further in an ethical discussion on ecology and morality in the next chapter, adding 'justice' to the mix.

1.3.1 De-differentiation

De-differentiation is where an original separation between two things is repealed through a scrutiny of the premises for separation. The next pages concern the evidence for whether a de-differentiation between what is considered legal and illegal environmental harm is needed, based on of the ecological and humanitarian consequences of this harm.

Historically, the United States has had to provide for legitimate legal and moral justification for their military conduct abroad. This is mostly because of their sheer capability and significance as a world superpower (Rafter 2010:39). Environmental considerations are seldom part of this justification. The need to provide justification for wartime actions as according to capability is still interesting. As I noted in my introduction, wars are rarer than ever. Yuval Harari calls this the departure from the 'Law of the Jungle'. Today, society no longer expects military conflict just around the corner (2010:16). Be that as it may, other powers exist in peacetime with 'spheres of influence' similar to a world superpower (Chen 2018). These are the multinational corporations, firms, and financial organizations belonging to multi-billion dollar industries that, through global trade, permeate and affect nearly every society in the world.

Legality as a societal concept is majorly influential in our lives. In liberal democracies, deeming something a lawful act constitutes the general public's acceptance of its exertion and consequences. It bespeaks a trust in the responsible parties' conduct, to the extent that their actions escape further scrutiny simply by extension of principle. Why look deeper into affairs that are entirely legal? It is then a question of the international society's ability to recognize substantial harm when the Rome Statute of the International Criminal Court works to criminalize 'widespread, long-term and severe damage to the natural environment' only in war (*UN General Assembly 1998*). Systematic environmental damage and destruction in peacetime, which by all indicators presents to be the case with Monsanto, have yet to be made a matter of collective legal responsibility beyond varying degrees of multilateral commitments. This means that ecosystem destruction, including water, air and soil contamination of a certain magnitude goes unaccounted for in peacetime, when the exact same damage happening in war is internationally recognized as a

criminal offense for its impact and its victims. As seen in this chapter, political context is not associated with any meaningful difference in the effects of environmental degradation.

Significantly, recognizing the offense that this type of harm arguably constitutes would have been unattainable through traditional conceptualization of lawful conduct. In fact, eco-global criminologist, Rob White, comments on the vested interests such as corporate lobbying that are themselves involved in the process of passing laws (2017:243). This practice gives reason to reassess legal thresholds. Historically, the judicial domain paved the way for large-scale industrial pollution in the first place (Higgins 2010, 2012). Hereby, reflections on ecocide depart from questioning an anthropocentric perception of harm currently institutionalized. Resolution 2, article 4 of the ENMOD Convention – providing the 'Jungle exception' – is a case-in-point. In the modern-day legal framework of the Rome Statute, human perception and experience of context function as the sole point of reference when assessing ecosystem harm. Is the action that is affecting the environment a war or peacetime activity? If the latter is affirmative, further examination of the ecological effects of the harmful activity is instantly unnecessary. According to the threshold of legality set by the ICC, ecosystem harm in peacetime is legal today.

In contrast to this relative definition, green criminology and the Law of Ecocide (LOE) consider substantial harm done to certain natural entities a crime on an absolute basis. Regardless of its original legality, advocates for LOE unapologetically assess harm as the ecosystem in question experiences it. They look at what degree of damage the environmental entity can withstand and still be in a regenerative, ecological balance. This assessment requires a multi-level system approach of how harm relates not just to the ecosystem that experiences the harm directly, but the prolonged and indirect effect on global ecology as well. Also, it assesses indirect harm on the people that rely on the ecosystem as a natural resource. I will turn to ecosystem damage as a wicked problem in chapter four. Tanya Wyatt explains that eco-global (or green) criminology takes on 'both legal and illegal practices as they threaten global ecological well-being because of the interconnectedness of the planet' (2014:2). Ultimately, the emergence of green criminology addresses the backfire problem of humanity trying to 'define itself' out

of the consequences of some of its members' actions. Damage to nature is arguably harm nonetheless, whether we call it legal, collateral, or military necessity.

On a parallel to the Agent Orange case, access to nuclear weapons in 1945 was considered, prior to their use, an effective method to end a merciless war (Kalnes, Austvik, Heidrun, Røhr 2011:17). The nuclear-positive attitude changed, however, once the final effects of the new technology became clear. The nuclear bomb over Hiroshima alone led to the death of 140 000 Japanese civilians (ibid.), the destruction of two cities, and to DNA mutations and birth defects for several generations (Pham, Nguyen, Boivin, Zajacova, Huzurbazar and Bergman 2015). The accepted price for ending the war soon became too great a cost to allow for future use. Soon, a strong, global non-nuclear-proliferation movement, within just about every judicial chamber concerned with national and international security altogether, had materialized. The non-proliferation movement since then has resulted in numerous agreements and international bans on the use and/or storage of nuclear weapons. By this, a global community has set a new hard limit for what it consider ethically defensible with regard to Man's harm against Man.

Notably, such an international stir has not happened yet in the case of using defoliants as a military tactic to eradicate the possibility for the enemy to find cover in the jungle. On the contrary, the exception for protection in Resolution 31/72 is still available for military powers' extensive use of bioweapons, without significant protest. Any desire to revise current legal agreements of tactical destruction of ecosystems in wartime must follow from analyses investigating the question: Are the effects for human and nonhuman life that much different, in terms of peaceful socio-ecological coexistence? What is the morally acceptable extent of Man's harm against Nature?

In the case of an American hot seat in the Cold War and the fatal ecological and humanitarian warfare that followed, this question remained wholly unresolved. Those in power deciding to execute the herbicide program consisting of 'tactical herbicides' did not make sufficient efforts to obtain necessary information prior to its use. That lacking informative basis for making crucial decisions both seemingly followed from, and further encouraged, an anthropocentric set of values on the part of the inter-governmental military community. That being said, even with what we

know today, science is still not fully aware of the complexity of ecosystems; our institutionalized 'humans-first-and-only' value systems make us even less so. The case from the Vietnam conflict therefore strongly encourages an 'error on the side of caution'-policy with respect to ecological modification and harm. The Law of Ecocide manifests this principle in its biocentric understanding of harm. As demonstrated in this chapter, however, the amendment entails a notable axiological shift. For the community of states then to embrace it will demand an ethical restructuring of the international judicial system of fundamental proportions. The next chapter will embark on parts of the moral-argumentative groundwork of that task.

My objective in this chapter, has been to compare nations' actions in warfare with their actions in peacetime. The results discriminated much less between peace and war, than a conceptual and legal separation implies. As it is, the case of the Monsanto Company provides a description of a corporate ecocide similar to that of the case of Agent Orange used from 1961-1971 during the Vietnam War.

Over the course of history, war itself has changed dramatically and is in continuous need of reassessment (Norheim-Martinsen and Nyhamar 2015). In the early days of establishing the just war theory, conflict arose as rivalry between nation-states, declared in broad daylight and initiated almost on formal invitation from one national leader to another. The nations' armies would use recognized weapons, and attain these from a small-scale, slow-paced industry compared to that of the modern day. Since then, conflict in its most extreme form has developed into a chaotic array of methods, actors, capabilities, results, and causalities. Attacks can be invisible and even go unnoticed for longer periods, enemies can be unofficial, and capabilities unknown. Where effects of military combat were previously immediate and detectable, the effects of aggressive intrusion today may be long-term and incremental, yet nonetheless severe. Another host of characteristics of modern warfare is hostilities enacted 'in the shadows' or in unconventional arenas. The proliferation of diverse forms of terrorist activity, cyber wars, unorthodox coalitions of non-state actors and states, unrecognized regimes, guerilla groups, solo actors and non-governmental organizations are cases-in-point to the organizational challenges of the military today (Augier, Knudsen and McNaby 2014).

Firstly, the changes from conventional to unconventional warfare already obscure the line between peace and war. This means that real threats may occur and invoke unapologetic defense strategies from the threatened party, when society at large experiences an undisturbed daily life. Secondly, military objectives may also put Nature in harm's way even when there is no threat. These are situations occurring when armed forces conduct their military exercises. A new study has concluded that the use of naval mid-frequency sonar sends beaked whales into a 'fight or flight' response that overrides their natural survival instincts (de Quirós et al. 2019). Some will plunge to the ocean depths faster and further that they normally would, resulting in diving sickness. Others will become so distressed that they 'flee' to land. The study found that, since the 1960's, the documented use of sonar consistently correlates with mass stranding events (MSE) of beaked whales. Checking for all other factors, the researchers conclude that sonar is fatal to beaked whales. The use of naval sonar is a frequent military tool, used directly in war but also in peacetime in preparatory exercises, as well as to check for threats.

Secondly, modern-day attacks on the environment fit right into this picture. Its victims, crimes, perpetrators and causal relationships are untraditional, yet arguably equally catastrophic. Unexpected as it seems, support for LOE may lie in the adaptive mentality of modern warfare: a readiness that what danger, harm and threats look like are subject to both constant and drastic change. This adaptive approach is evident in flexible domestic defense institutions, international alliances and conflict studies. Now, military stakeholders focus on guerilla and non-state actors instead of states, for instance. In order to adapt, the military defense apparatus has had to go through a conceptual transformation, and systematically reassess and redefine the concepts of danger, harm and threats. As a case-in-point, one of NATO's foremost tasks nowadays is tackling cyber warfare (*Washington Post 2019*).

I propose that the same institutional, methodological and perceptive change is necessary in the case of severe and lasting harm to the environment, of which we have only recently started to understand the severity. This means that liberal societies' peace and sustainability research and response systems need to go through a similar transformation and conceptual revision. My investigations of the American-military herbicide program and its aftermath compared on several points to the

Monsanto case of corporate ecocide. I argue that the similarities prove that, in some instances today still, justice and legality are not the same. Given the identified harm in these cases, a vacuum of environmental justice seems to exist even where legal actors exercise their power within the current threshold of legality.

2 Analysis
The Ethics of Crime

Part of my objective in this thesis is to broaden the discussion in non-environmentalist fora, such as the International Criminal Court, on the subject of Nature's rights, and provide an argument for closer alignment with human rights than current discourse herein gives credit. A central question to which I will respond is 'can we speak of harm against ecosystems by the same terms as we speak of harm against humans and/or humanity?' In the case of the Vietnam War, institutionalized anthropocentrism in the international justice system allowed for an ecological destruction on a mass-scale to take place. Here, the American and South-Vietnamese government used strategically induced ecocide as a weapon of war through the crop and forest eradication program. Their distribution of the highly toxic, bio-accumulative substance known as 'Agent Orange' on vast natural areas had fatal humanitarian and ecological effects, some of which scientist could still confirm decades after the last sprayings. Characteristic for ecocidal events, the slow-paced timeline in this case spans across generations, creating a direct link between to predecessors' choices and actions.

The case of Agent Orange alarms us to the fact that current value systems and environmental attitudes may not guarantee sufficient, long-term protection of the environment. Without such protection, even industrial activity and political decisions in peacetime may threaten peaceful socio-ecological coexistence between people and planet. Consequentialists would argue that this evidence alone proves the need for changing International Criminal Law where it appears guided by a flawed axiology. A necessary precursor to that debate, however, is investigating the philosophical logic behind these 'humans only'-justice norms. Specifically, I will look at the basic premises of moral considerability in ICL to see if they bear logical scrutiny.

To provide for a case of applied environmental ethics, I now turn to the Rome Statute (hereby the Statute) of ICC in Hague and the amendment document that contains the proposed Law of Ecocide (LOE). The proposal entails significantly improving the protection of ecosystems in peacetime, by criminalizing it within top international law institutions. This could be considered a radical step, considering the 124 member

countries of ICC it would subsequently and unapologetically bind. I therefore believe that LOE benefits from being justified beyond just consequentialist and pragmatist grounds. I also appreciate the particular vacuum of justice revealed in the last chapter, where military decision-makers never considered ecocide to be an offense. This finding bears the promise of what may come from an increased awareness of the roots of the issue, and from ethical assumptions on the role of ecosystems when compared to humans or even nation states.

As noted by military ethicist Fotion, 'a work in applied ethics requires a general moral philosophy to provide consistency and justification for its analysis' (1986:10). For this purpose, I have selected the work of Brian Baxter (2005) to guide my studies of justice and morality in this chapter. In the following, I will give a recapitulation of his theory of ecological justice, which will be used as my general moral framework in the comparative analysis of the Statute and LOE. From there I will compare the two on the prospect of amending LOE to the Statute on a strictly ethical basis. Succeeding chapters will then deal with other factors involved in changing substantial international law, such as domestic law in member countries in direct support of the amendment, the current political situation, psychological requirements, alternative solutions with similar outcome, and more. Paving the way for that discussion, the comparative analysis in this chapter reaches the interim conclusion that a lacking recognition of ecosystems' moral claim to humans' community of justice is logically flawed. As recipients of distributive justice and their fair share of the common pool of resources that is to be distributed, humans on the individual level, group level and as organized in nations in fact qualify on fewer occasions than ecosystems within a given framework of ecological justice. Just the same, Baxter's inattention to the human rights regime and the analytical need for redeeming this is pointed out, and hence will follow from chapter three.

2.1 A Theory of ecological justice

Psychologist and economist, Per Espen Stoknes, calls climate change 'the perfect moral storm' because it encapsulates three cardinal ethical challenges (2015:143). Firstly, it is a global problem. This calls for a global moralism that takes into account among other the skewered effects between poor and rich populations. Secondly, it

involves intergenerational aspects on which the global community of states have not concluded (today, only three countries provide constitutional rights to future generations). And thirdly, as according to Stoknes, our 'ethical tools are underdeveloped in many of the relevant areas, such as the moral value of nonhuman nature and the extent to which we have obligations to protect' it (Ibid.). In his book *A Theory of Ecological Justice*, Brian Baxter (2005) develops a moral theory that deals with the first and the third of these major issues with regard to ecosystem destruction. Intergenerational justice will resurface in our discussion in chapter three.

I have found Baxter's ideas suitable as a general moral theory for my ethical analysis in this chapter because it addresses many of the immediate issues with the Law of Ecocide. Firstly, LOE's universal applicability as an amendment to criminal law on the *international* level of governance constitutes a universalist approach to moral reasoning concerning the protection of ecosystems. A general moral theory that is relative and constructivist in nature is therefore unfit for our purpose of analyzing LOE. Secondly, LOE's linking of ecology and global justice renders multiple environmental philosophies less than fertile. Few herein truly process eco-justice as a distinctive component integrated into their moral theories about human responsibility and our interaction with Nature (Washington, Chapron, Kopnina, Curry, Gray, and Piccolo 2018:372). Arne Næss' deep ecology could have been a natural point of departure for universal respect implemented on the international level, yet he hardly touches upon justice at all throughout his contemplations (later we will see other arguments put forward as to the impossibility of using Næss in this regard). As the objective of this chapter is to formulate a case of applied ethics eventually guiding an actual judicial dilemma today, the more easily implementable the case, the better.

As a starting point, Baxter expresses his dissatisfaction with anthropocentric axiology as a motive for wildlife and habitat preservation. Saving ecosystems or entire species from extinction exhaustively for humans' own sake, regardless of whether it is humans living today or our generations to come, neglects the possibility of every species' inherent right to life. It also blatantly ignores a basic ontological premise of inhabitants of the nonhuman world; that these too are (nonhuman) *beings*. As such, they arguably have their own sense of well-being, their own basic needs and

most importantly, their own verifiable interests in living a good life. But is the nonhuman world of any human moral concern?

Baxter believes the biological/moral debate is inescapable, and already long established, for as long as human beings themselves are biological entities. As such, we necessarily have to fulfill our needs in direct relation with the (rest of the) biosphere (for as long as this cannot be done indirectly by sealing ourselves off hermetically through technology, that is) (Baxter 2005:80). Such a dependency necessitates interaction between the human and the nonhuman world to the degree of influencing each other's well-being and interests through our shared surroundings. Given that anthropogenic influence on other biotic entities' interests is a matter of moral concern, humans' direct interaction with nonhumans makes it impossible to avoid moral problems. Baxter argues that a theory of ecological justice is then necessary to understand this relationship, and to be able to enact upon a morally just conduct as moral agents ourselves.

Since what connects the two parties is a shared planet with finite, transboundary resources, any meaningful theory must necessarily be universalist. Existing precedence for this is firstly and most intuitively found in the human rights regime. A discussion on the human-nonhuman-nexus as it relates to genocide-ecocide will be addressed, but only after finalizing the necessary premise investigation that I provide in this chapter. Secondly, precedence for a universalist moral theory on Nature's rights is provided for in *distributive justice* as well. This regime enjoys consensus as an international affair, a defensible position by way of recognizing the interconnectedness between inhabitants within and outside a given territory (2005:7,13). On this background, Baxter searches for a distributive justice framework befitting his biological/moral scope specifically. He eliminates both Walzer's shared social meaning paradigm, and Nozick's take based on market outcome, as many creatures 'possess the capacity neither for the autonomous choice of values nor for the social creation of meaning' (pp.94). Rawlsian contractualism instead proves itself fit for use. This places Baxter's work within a liberal theoretical domain, with which he is pleased. After all, it is Rawls' paradigm that permeates the floor stones of a liberal theory of justice, Baxter notes (Ibid.).

2.1.1 Obstacles

Before embarking on what ontological qualifications are required of recipients of resource distribution, Baxter notes on a typical obstacle in the biological/moral debate. That is the common Kantian starting point of deeming morality in itself *à priori* a strictly human-to-human affair, only applicable to and between autonomous beings (pp.95). This Kantian premise and principle bears the resemblance of a premature conclusion, I would argue, when it is robbed of the chance to build on any theorization at all. Why should only moral issues between humans be debated? Kant and his followers of this conviction give no explanation. As the Kantian principle appears to be an unsubstantiated normative statement, it seems sensible to disregard it (as an example of flawed anthropocentric-philosophical practice, if anything). Or as Baxter puts it: 'it is a key claim of ecological justice that this is not a defensible assumption'.

However, Kant's intellectual heritage in this regard is of no small significance. In fact, the idea of morality as exclusively closed-off to the nonhuman world – regardless of humans' impact on it as moral agents themselves – has informed moral philosophy ever since its formulation (and probably before). This is why Baxter treats the endeavor of falsifying this position as equally extensive, considering it a matter not just of individual counter-arguments, but of 'putting forward a more or less coherent moral *vision* within which the idea of distributive justice to the non-person segment of life makes clear and compelling sense' (pp.77).

At this point, Baxter has established the inescapable nature of the biological/moral debate, and rejected the Kantian principle of nonhumans' exclusion to moral considerability. Having overcome these obstacles, he is ready to contemplate what constitute legitimate claims on behalf of nonhumans as recipients of distributive justice, corresponding to the Rawlsian principle of fair shares.

2.1.2 Clarification of terms

To clarify in advance, the term 'resources' in the following is not to be understood in its typical functionalistic sense, where it refers to materials of practical value to humans alone. Instead, the term denotes all of the natural world which function as a

resource to all life, needed by both humans and animals and even bacterium in order to survive, flourish, and achieve a sense (for the sentient) of well-being. In Baxter's words, the pool of resources is what he calls the 'biosphere from which all draw their sustenance and which all have the potential to affect adversely or otherwise' (2005:81). He elaborates on how this interaction has evolved:

> Human beings still can and do adversely affect each other's welfare interests through their impacts on the environmental resources to which all need access. But they do so now across time and space in a manner not readily envisaged in previous periods. The idea of the 'ecological footprint' neatly embodies this concept. This is that individual human beings appropriate certain amounts of the planet's environmental resources to service their life-styles. (Ibid.)

The author points out that this concept encompasses a new understanding of justice between humans as 'part of the idea of environmental citizenship'. However, he argues that this conceptualization covers nonhuman organisms as well: 'for human beings can take more than their fair share of environmental resources from all morally considerable beings, not just their fellow humans' (2005:81). In ecological justice, a fair distribution of resources means that humans' ecological footprint do not exceed that which is their fair share when *all* of the biosphere is considered.

To clarify the relation between the concept of a pool of resources and ecosystems: an ecosystem both partly constitutes the pool of resources, in the sense that it creates for instance the clean air and water that is consumed in an ecological footprint. At the same time, that same ecosystem includes sentient and nonsentient nonhuman life that themselves have a need to use the resources to which they contribute.

The term 'ecological justice' also invites some reflection. In this text, ecological justice means to ensure the same product of justice (however currently conceptualized) for nonhumans as well as human beings and thus equal treatment in that sense. Ideally, this entails that the given justice parameters are in line with the interconnectedness of ecology as well as humanity. As such, it is understood as an ideal paradigm yet to be realized.

2.1.3 Baxter's Criteria for Moral Considerability

Contribution

In his search for valid criteria among nonhumans to be included in our distributive justice paradigm as of now, Baxter uses current members of this community as a benchmark. Who is included among humans, what characterizes them and makes them eligible for the inclusion in the community? One suggested criterion that is found within the literature is that of *contribution*. In order to have a moral claim to receive the resources under distribution, nonhumans must contribute to the common pool of resources that are to be shared. The objection to this concept is formulated in the following: 'issues of distributive justice can only arise when those beings *voluntarily cooperate* to produce and/or preserve a set of goods, such as environmental benefits'. Needless to say, nonhuman organisms cannot be said to voluntarily engage in a sort of contract with people. (Had that been the case, one could assume they would have broken the contract long ago.) With this objection in mind, some argue that 'the question cannot meaningfully be raised of what share of those benefits different organisms should receive' (pp.77). Baxter vigorously opposes this contractual position by pointing to members of the human species whom also do not engage voluntarily in a social contract of any kind. Following birth, babies have no authority when it comes to survival that would deem its relationship with its parents or other caretakers a voluntary, conscious participation within a social contract. He also reminds the reader that ethics that demand a form of active acknowledgement clearly operates on an unfair, human-biased platform. Animals, let alone vegetative organisms, do not have the capacity to understand the concept of 'bio-social contracts', much less to 'voluntarily cooperate' within them. The objection, then, echoes that against the Kantian principle: a contractualist criterion to nonhumans' moral participation is anthropocentrically pre-biased in favor of human cognition. This blocks out nonhumans from the outset, attempting to dismiss the biological/moral debate of distributive justice in its cradle. In support of Baxter, I discard the attempt on the same grounds as he did human-to-human morality, namely as an indefensible assumption (until actually proven otherwise).

A problem not so easily discarded, however, arises when the criterion of *contribution* renders entities such as mountains and air moral considerability. These too arguably

contribute to the pool of resources which are to be distributed. Does this mean that humans should have moral obligations to air, earth or water (the biosphere excluded)? There are two main objections to this idea. One is that abiotic terrain have themselves no interest in justice, provided that interest is a conscious exercise. Why would we include natural entities in our moral community that themselves have no desire in taking part? Another is that it fails to hold when applied to humans: many of our own species do *not* contribute (such as babies, very young children or dementia patients), yet these are still indisputably valid recipients of justice (Baxter 2005:100). The suggested criterion of *contribution* does, however, provide for a hitherto neglected aspect of the pool of resources, namely its origin. Consequently, it should be included in the list of criteria, only not operate alone.

Interest

To redeem these flaws, Baxter puts forward the concept of *interest* to work together with that of *contribution*. As abiotic nature consists of non-living entities such as mountains, the running water of rivers and air, and these in themselves have no interest in justice, speaking of *interest* seems to escape the caveats that became apparent on the subject of *contribution*. In addition, this criterion provides for a means to identify and differentiate between different categories of moral claims among the nonhuman. Pressing this point, Baxter claims that ‘a theory of justice cannot avoid to attempt to distinguish the claims in justice of different kinds of organism on the basis of different interests each possesses’ (2005:86). Beings that can experience and process pain arguably have a psychological interest in avoiding discomfort in addition to an existential one. This separates for instance animals from organisms without the similar pain-processing ability, such as bacterium.

Worth noting is how *interest* does not exclude the notion of *contribution*; it just adds to it. When Baxter later considers nonhumans claim upon consideration from moral agents, he uses their ‘enormous contribution to the provision of vital benefits’ as justification (pp.85). The same way that babies and other cannot make their interest heard, despite an evident interest in staying alive, nonhumans’ inability to physically *voice* their interests is an invalid benchmark for excluding them from the community of justice.

One objection to this criterion is how it relates to *need*. Is an interest in resources the same as a need for resources? John Rawls, who Baxter departs from, saw justice as fairness, a theory which was need-based. Baxter disregards the differentiation between needs and interests. I argue that where ecology is concerned, it is quite relevant to speak of the need for resources as it relates to survival.

Ability (to access and to use)

Finally, distributive justice is granted those that are eligible for property rights. If you can own or hold resources as property, this makes you eligible for being included in the justice community. Baxter argues that this qualification goes for nonhumans as well, through their ability both to *access* and to *use* the resources in question. The criteria used for property rights constitute a core element of the theory of ecological justice. Not only does Baxter dismiss a contractual basis for engaging in the distribution of environmental resources, but he also dismisses a *conscious* basis for this when all above-mentioned criteria are evident.

Summing up, our general moral frame establishes the following criteria for being part of the current distributive justice paradigm: *contribution* (to the pool of resources), interest (in receiving these), and the ability *to access* and *to use* (see table 1). From here, however, there remains the consideration of whether all different nonhumans should be included, based on these criteria. Does it extend to non-sentients or only sentient organisms? And in either case, is it the individual nonhuman or its collective we are talking about? Without going much into detail at this point, Baxter criticizes, among others, DeGrazia (1996) here. By limiting his case for moral considerability to individual sentient life-forms, he ‘makes it very difficult to bring (his) arguments to bear on the issues with which ecological justice is concerned, such as the survival of species’, Baxter maintains (2005:49). Conclusively, the theory of ecological justice takes a holistic view upon the nonhumans’ claim to moral value in humans’ value system.

To conclude, Baxter defends a universalist approach to the biological/moral debate. This means he describes a legitimate claim to an inclusion within the distributive justice community (in turn, to humans’ morality) as according to three specific criteria (see table 1). For as long as these are met, there should be no contextual

reasons for excluding nonhumans, he maintains. There are several advantages with using Baxter for the purpose of analyzing the Law of Ecocide's ethical compatibility with the Rome Statute, respectively. Firstly, the theory of ecological justice provides for metaphysical concepts that all entities that will be part of the analysis can be meaningfully subjected to. Also, ecocentric in his ways, Baxter is unapologetically rooted outside the current axiological sphere of the Rome Statute. This makes him a more neutral ground to start off on, which is preferable in an ethical analysis.

2.1.4 Objections

Few general theoretical frameworks are completely perfect for application in specific cases, however, and Baxter's theory of ecological justice is no exception. Despite its advantages, it is worth noting how it got to its position that systematic resource exclusion of nonhumans is wrong. As mentioned earlier, the method Baxter uses to counter his fiercest opponents is often through pointing to babies in particular. They are considered members of the community today, yet they neither contribute; voice their interest (at least not directly); have the ability to access and to use the resources without aid; nor engage in the production of resources or a distributive interaction with other members of the justice community on a voluntary, contractual or conscious basis. Nevertheless, there is a reason why babies are included and not animals. Evidently, the community of justice that Baxter is trying to expand sees a higher value in their human offspring than in infant, grown and large groups of nonhumans, even entire species themselves.

Somewhat similar to Peter Singer on his contemplations of human newborns, Baxter avoids going into this problem and deciding on its resolution, unfortunately. Instead, he uses the characteristics of the already included babies exclusively as a point in question for his claim (since babies are recipient of distributive justice today, and animals share many of the traits of babies, animals and plants should be recipients as well). Arguably, however, the abovementioned fact can be used against him just as well—specifically, babies *have* more value than animals and plants, and thus more right to be granted their fair share of the resources available. In using the theory of ecological justice as formulated by Baxter, I will accept his position for the sake of my analysis. Going more in depth on this problem in the following discussion

section, however, I find that further a broadening of my theoretical framework is beneficial.

Further, Baxter frames his theory within a distributive justice paradigm of John Rawls that is need-based, as mentioned earlier. Yet he himself uses *interest* instead of *need*, by which the latter is only implied. Arguably, *need* is a stronger impetus for fair distribution than *interest* because it underlines the gravity of not doing so. Where resources that are needed for a species' or entire ecosystem's survival are withheld from them, they will suffer on an existential basis, and ultimately die. I argue that the choice of departing from *interest* as a criterion puts the proximal factor of (basal) needs unnecessarily far back in the thought process as a whole.

The contribution principle

Baxter speaks of actors contributing to the pool of natural resources that is up for equal and just distribution. 'The contribution principle', however, is also known as something else in environmental ethics (Caney 2012:135). It refers to the idea that those contributing the most to pollution—meaning to reduce the common pool of resources—should do the biggest clean-up. This way, it is a form of reversed principle as that of Baxter's contribution criterion. The argument goes: Natural entities that contribute to the resource pool should be made part of the community of justice. Within that community, those who contribute to pollution on the other hand should be the duty-bearers morally accountable/liable for taking care of the newcomers, so to speak. This line of logic leaves the wealthy individuals of the Earth the most responsible for redeeming the detrimental climate situation, as they have contributed the most to causing it. Such a conclusion would augment the legal concept of 'superior responsibility' into a moral size. LOE in the Statute targets these individuals.

The recapitulation provided above is a starting point for my discussions in the chapters to follow. In the following subchapters, I will turn to LOE and to the CAP through the lens of Baxter, to establish on what basis they are eligible as platforms for ecological justice.

2.2 The Law of Ecocide proposal

In the words of Baxter, LOE proposes to include ecosystems in the distributive community of justice, alongside human beings' and nations' claim to the pool of resources currently protected in international criminal law. The proposed amendment to the Statute defining the crime of ecocide has been made public by its advocates (see eradicatingecocide.com or attachments to this document). Its full definition of the crime reads:

> acts or omissions committed in times of peace or conflict by any senior person within the course of State, corporate or any other entity's activity which cause, contribute to, or may be expected to cause or contribute to serious ecological, climate or cultural loss or damage to or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished.

There are several key-note characteristics to this formulation. First of all, it addresses actions taking place in peacetime as well as conflict, bringing back the documented, initial intention from the decades-long negotiations preceding the establishment of the ICC. As noted earlier, this places it firmly on moral universalist ground in accordance with Baxter: there are no exceptions put forward to ecological justice founded in relativity. Further on, the provided definition targets individuals with superior responsibility regardless of the nature of their position. Whether the people in question are state officials, financial actors or company CEO's does not matter as long as they are capable of conducting the ecologically harmful act. This universal argument for legal liability corresponds to its first characteristic of moral universalism.

Next, the definition put forward by LOE includes not only activity which cause and/or contribute to serious damage, but that 'may be *expected* to' do so. This is a particular point of interest of what has been integrated in the proposal. In order to expect future damage or destruction, one would have to base ones' predictions on solid informative grounds, *prior* to engaging in a given activity. Baxter maintains that extensive knowledge would be necessary for human beings to 'come to an informed and defensible view of what is in the interest of nonhuman, of the kind

necessary to make decisions of ecological justice possible' (Baxter 2005:83). This point leads us to the issue of who can speak on behalf of nonhumans, which will not be addressed further in this chapter (pp.78). To make LOE valid in line with Baxter, humankind needs to acquaint itself far more intimately with the actual biological needs of the ecosystems eligible as objects for ecocide. LOE itself anticipates this stance. It states:

> for the purpose of paragraph 1: The Paris Agreement of 4 November 2016 shall be considered to be established premise for prior knowledge by the State, corporate or any other entity's senior person, or any other person of superior responsibility

By using the Paris Agreement as a benchmark, LOE provides for a common and indisputable reference point known to all member states of the Statute. By doing so, however, it also associates itself with the Agreement's axiology and discourse. The climate action regime as set forward in Paris is unambiguously anthropocentric, justifying climate adaptation through the needs of the human race and survival of modern civilization. Not to mention, its measures have been deemed by many a scientist as a far cry from the actual effort needed to get the global ecosystems back on track. Baxter's biocentric ethics, in comparison, apparently calls for knowledge beyond that provided by the IPCC, and for other reasons (than for the sake of people primarily).

The proposed law further reads: 'to establish seriousness, impact(s) must be widespread, long-term and severe'. This is the wording of current Art.8, paragraph 2b(iv) in the Statute defining such environmental destruction a war crime (*UN General Assembly 1998*). LOE carefully aligns itself with the existing protective precedence for the environment when pushing to expand it by making ecocide a punishable offense in peacetime. In consequence, ecosystems are granted a claim to humans' morality only after what would have to be a gradual intensifying of impact. The proposal's ambition in this regard does not correspond entirely with ecological justice as outlined by Baxter. Whereas LOE targets harm coming into existence only when the impact has reached a certain magnitude, Baxter's defines injustice as harm done to the nonhuman organisms regardless of scale. This injustice arises not after the fact but *prima facie* any harmful interaction between the human and nonhuman in

a biological-moral relationship*. His is therefore broader, in which he concludes on the right to protection in the following:

> ecological justice seeks to pursue what its exponents regard as the basic insight that all living entities which share in, and jointly sustain by their activities, a single biosphere are *prima facie* entitled to claim against each other, or to have claimed on their behalf, a fair share of the resources which they jointly make available within that biosphere, subject to the right to self-protection. (2005:151, my highlights)

Neither LOE nor the theory of justice put forward individual rights for nonhumans comparable to every individual human though. LOE unambiguously addresses ecosystems, the ecological collective. Paragraph 1(b) defines 'ecosystems' as 'a biological community of interdependent inhabitants and their physical environment'. The theory of ecological justice equals a biocentric (holistic) approach, by Gamlund's definition, as it endows moral standing to whole species or systems in the biosphere (2007). Where ecosystems are defined as the biological community, and not the individual specimen, a Law that criminalizes the partial or whole destruction of such requires (only) the justification of a holistic approach to environmental harm. Ensuring justice for the individual specimen of a species is not necessary. This is 'good news' in our case, as the latter attempt firstly would have generated significant public objection, and secondly with little hope of finding resolve within Baxter's moral framework.

Paragraph 1(c) states the purpose of 'territory'. This means 'one or more of the following habitats, unrestricted by State or jurisdictional boundaries: (i) terrestrial, (ii) fresh-water, marine or high seas, (iii) atmosphere, (iv) other natural habitats.' As for 'peaceful enjoyment', paragraph 1(d) explains that this means 'peace, health and cultural integrity'. As access to the common pool of resources, as provided by the biosphere, arguably functions as a basic premise for the experience of peace, the definition of 'peace' is formulated in a way as to easily link its objectives to that of Baxter's theory (fair distribution). In addition, clean water, air, nutritious food, natural darkness, silence, and the shelter of environmental surroundings is vital for human and nonhuman health.

One of the most essential points for comparison between LOE and Baxter is which life forms are included in the recipient category for peaceful enjoyment: inhabitants.

Paragraph 1(e) reads inhabitants as ‘indigenous occupants and/or settled communities of a territory consisting of one or more of the following: (i) humans, (ii) animals, fish, birds or insects, (iii) plant species, (iv) other living organisms’. The question arises whether ‘indigenous occupants’ and ‘settled communities’ refer to human indigenous societies exclusively, or include those of nonhumans. For the purpose of further analysis, this thesis reads the above-mentioned groups as nonhumans, as the current wording opens up for such a legal interpretation. Abiotic nature such as mountains is not included in said paragraph, yet its protection would most likely follow from the above as there are few places on Earth with no vegetation or living organisms. (For ecological justice in outer space though, this wording could be revised.)

As a whole, the position of deeming ecocide a criminal offense aligns itself with Baxter’s of including nonhumans in the community of justice through endowing moral considerability upon them. The lack of protection for ecology in and for itself is viewed unjust and, by extension, immoral. Baxter goes further, however, in justifying this protection than does LOE, which refer to established environmental political and legal regimes such as the Paris Agreement and paragraph 2b(iv) of Art.8 on War Crimes. The proposed amendment to the Statute thus falls short on the biocentrism framing the theory of ecological justice, as neither of these established institutions are non-anthropocentric. On the other hand, it does acknowledge several elements that are integral to said distributive justice theory:

1) Avoiding damage that prevents the ‘peaceful enjoyment’ of inhabitants, implicitly stating this as their interest (which is translatable to the purpose of ensuring a fair distribution of resources);

2) Including nonhuman organisms in the group of those inhabitants (which directly and explicitly includes ecosystems’ different forms of life in the community of justice);

    a. By including animals, fish, birds, insects, plant species and other living organisms as ‘inhabitants’, their ability to access and to use the peaceful enjoyment in question is implied;

3) the interdependency between inhabitants, and between them and their physical surroundings, within all natural habitats (which alludes to the criteria of contribution and represents a biocentric understanding of ecology).

In short, LOE notably elevates the notion of ecocide to the same level as the four other crimes against peace, instead of proposing to integrate it as a subordinated international crime within one of the existing. By doing so, the proposed amendment puts forward a legislative and moral equal footing of recognition for ecosystems as is currently in place for individual humans, groups of humans, and states (crimes of aggression).

2.3 A comparative analysis

As we have seen, LOE proposes that the rights of ecosystems should be engraved into the marble of our global halls of justice, for the ultimate protection of peace for all inhabitants of the world. Drawing on the textual analysis conducted so far, LOE's implementation seems ethically defensible judging the law proposal alone by the one conceptualization of ecological justice presented here. Given the environmentalist position of those that have proposed and advocated for LOE, however, its alignment with a theory of ecological justice is unsurprising. A more demanding groundwork for bridging the gap between LOE and the Rome Statute begins when Baxter's theory guides an ethical reading of the latter. What elbow space is there for ecological justice in the four existing crimes against peace (CAP)? An ethical analysis of the Statute through Baxter is presented in the following.

First off, the reason why a theory of ecological justice is applicable to CAP at all must be reiterated. The Rome Statue is the governing document which sets out the existing international crimes, recognized world-wide as atrocities unaccepted by the international community. In so doing, however, it has yet to address the protection of ecology, and loss, damage or destruction conducted in peacetime (eradicateecocide.com). The Law of Ecocide puts forward a logic on the prerequisites for peace, and the justice measures to protect these, that is not easily dismissed in CAP's current vacuum of ecological protection. Notably, international

crimes can be divided into three: conduct, consequences and circumstances (Cassese 2013:38). Ecocide as a crime would constitute the consequence of a harmful conduct.

Art.5 presents the four crimes within the jurisdiction of the Court. These are:

(a) The crime of genocide;

(b) Crimes against humanity;

(c) War crimes;

(d) The Crime of aggression

Art. 6, 7 and 8 subsequently includes a description of the crimes in terms of who the protection and rights are aimed at, and what form of harmful activity qualifies as violation of these under the Statute. Overall, the wording of the Statute is limited to human affairs, such as methods for harming a population. For ecosystems to be 'kidnapped' (wildlife), 'enslaved' or 'tortured, a more extensive phenomenological discussion on ecosystems attributes is needed. This is not necessary here, as the proposal for an ecocide law only includes the 'widespread, long-term and severe' loss, damage to or destruction of habitat. Instead, for the purpose of the analysis in this chapter it is the element of 'who' that is the most important aspect, as this entails who or what are considered recipients of justice and thus currently included in the moral and justice community. The theory of ecological justice independently provides for three eligibility criteria. Previous exercise of analyzing LOE demonstrated that these criteria are meaningful when discussing which entities should have a moral claim to a fair share of the common resources, a demand the Statute currently does not protect.

Crime/ Recipient *Criteria for Recipient of Distributive Justice*	War Crimes: **Humans** **Individual**	Crimes against Humanity: **Humans** **Groups**	Crimes of Aggression: **Nation-states** **Individual**	Genocide: **Humans** **Groups**	Ecocide: **Nonhumans (ecosystems)** **Groups**
Contribution	No	No	No	No	✓
Interest	✓	✓	✓	✓	✓
To access and to use	÷ elders, babies, incapacitated	÷ elders, babies, incapacitated	✓	÷ elders, babies, incapacitated	✓

Table 1: Baxter's non-contractual criteria for moral considerability applied to the crimes against peace

Genocide

The crime of genocide concerns human beings on the group level. It has been discussed whether the killing or serious injury of only one member of a national, ethnical, racial or religious group should qualify under the Statute, for as long as it accompanied a demonstrated intent of eradicating the group in its entirety. This position has not been adhered to. The analysis therefore departs from the notion of human population as a distinct justice recipient entity in itself, only, it finds no characteristics on the group level that are not in place on the individual. People are protected under this law, and crimes against humanity, in peacetime as well as in war.

The pool of resources as it has been defined here renders human beings irrelevant to both its creation and maintaining. Except for our contribution of CO2 when we breathe out, humans are merely consumers. As has been sufficiently documented, there is an abundance of carbon in the pool of resources, so our contribution in that regard is excessive at this point. This goes for humans both as individuals and as groups. The recipients of justice that are protected by the Law of Genocide can therefore be said not to contribute to the pool of resources which is to be distributed within the community of justice.

Inevitably, humanity does possess an interest in the pool on group level the same way it does within each individual human being. When it comes to the ability to access and to use the resources, the same limitation goes for the group as for the individual as argued by Baxter earlier: babies, elders, and people with a functional handicap or otherwise incapacitated do not exert the ability to access the resources necessary for survival on their own. This limitation applies to their ability to use the resources as well.

Ultimately, the recipients of justice as portrayed within the crime of genocide fail to qualify for one of the criteria within an ecological justice framework; they qualify fully on one occasion, and conditionally on another.

Crimes against humanity

The Crimes Against Humanity Law has been put in place to protect the individuals not associated with a specific group from atrocious acts of harm besides that of murder. It differs from the Law of Genocide in that the offense can take place even where the inhumane actions in question do not target a whole, distinct group, but a few civilians. However, international criminal law does require a '*general context* of criminal conduct, consisting of a widespread *or* systematic practice of unlawful attacks against the civilian population' (Cassese 2013:94, author's highlights). Crimes against humanity are therefore of a '*large-scale* or *massive nature*' (pp.92, author's highlights). To conclude on the relation between this offense and human rights, Cassese states that 'isolated inhumane acts of this nature may constitute grave infringements of human rights or war crimes, but fall short of the stigma attaching to crimes against humanity' (pp.93). With regards to the criteria of interest, contribution and ability to access and to use, the same result goes for this CAP as the former.

War crimes

War crimes as outlined in the Statute is the one CAP law that can concern one individual victim. In this exercise, the same results therefore go for this CAP as the two former, however, as the analysis has limited itself to the characteristics of recipients and finds no apparent difference herein in the ontological differences between the group and the individual human being.

Crimes of aggression

The latest addition to the Court, the Law of Crimes of Aggression, aims at keeping the peace between nations through criminalizing unprovoked infringements on state sovereignty (Cassese 2013). The recipient for justice in this case amounts to nation-states. At first glance, it would seem that nations do not contribute to the pool of natural resources, but have both an interest and a perfected, industrialized ability to access and to use them, if not in a circular and thus ecologically defensible way. Interestingly, however, the emerging opportunity of Negative Emissions Technology (NET) gives way to debating state's direct and actual contribution to the pool through creating clean(er) air and contributing to halt the effect of excessive carbon in the biosphere. In that case, it seems reasonable to accredit successful anthropogenic uptake of carbon from the atmosphere to the collective structure that is states (although this would depend on the political relation between companies and governments in the technological production line). As NET has not been deployed on a large scale yet, this becomes more of a theoretical after-thought, although it is still worth noting its demonstrating effect on nations' possible *future* direct benefaction to this pool. Thus the criterion of contribution is not ontologically beyond reach of this recipient.

To what degree nations' interest in their fair share of the distributed resources is comparable to that of the individual and the ecosystem has not been contemplated before. For the purpose of this exercise it seems reasonable to assume a nation's interest as the accumulation of that of its citizens. As there is no evidence for anticipating exponential growth in that regard, a nation's interest in its fair share of resources is here considered equal to that of a single individual.

Ecocide

As a reminder, ecosystems as a recipient group of justice within the Statute is defined as occurring only after 'widespread, long-term and severe' harm done unto a system of a certain size (Higgins 2012:3). As an example, proposed subjects are Repparfjorden, as well as Lofoten, Vesterålen and Senja in Northern Norway (but not your local 2 m2 pond). These marine ecosystems provide clean water, fish for food and food for fish, and an abundance of aquamarine life and contingent life on land such as reindeer herds. Based on this, all ecosystems contribute to the common

pool of resources in the sense of either directly constituting those resources, or indirectly producing them (algae ensures the preferred acidic balance in water; plants produce oxygen, and so on). All ecosystems have an interest in these resources. Worth noting, LOE unapologetically demands knowledge prior to an activity that 'may be expected to' cause irreparable damage as according to the nature of ecosystems' interest and needs, a knowledge which is to be instilled in persons with superior responsibility. Interestingly, one of the founding figures of international criminal law, the late Antonio Cassese, also speaks of 'the knowledge principle' within CAP. The concept comes to surface during the discussion of the mental element of international crimes (Cassese 2013:39). Christopher Stone was among the first to argue for legal rights for natural objects (1972). Stone writes about the guardianship model, where an appointed guardian speaks on behalf of the ecosystem whose rights have been violated, and by this exerts a role as one with knowledge on its needs. Here, he is unimpressed regarding objections to whether this model is possible, and compares natural entities with the State (pp.471):

> Natural objects *can* communicate their wants (needs) to us, and in ways that are not terribly ambiguous. I am sure I can judge with more certainty and meaningfulness whether and when my lawn wants (needs) water, than the Attorney General can judge whether and when the United States wants (needs) to take an appeal from an adverse judgement by a lower court. The lawn tells me that it wants water by a certain dryness of the blades and soil (…); how does 'the United States' communicate to the Attorney General?

He goes on by extending this logic to business:

> The guardian-attorney for a smog-endangered stand of pines could venture with more confidence that his client wants the smog stopped, than the directors of a corporation can assert that 'the corporation' wants dividends declared.

Lastly, all ecosystems and their inhabitants are able to access the pool and to use the resources therein, utterly independent of human interaction. The recipients of distributive justice as portrayed in the Law of Ecocide are thus eligible for such as according to all three criteria put forward in Baxter's theory.

2.3.2 Deliberation

While the results of this ethical analysis have granted ecocide and ecosystems a superior role, as the only recipient group eligible through all three criteria, some obstacles present themselves. Notably, the human rights that currently frame the international crimes depart from the idea that being human is extraordinary, no matter its national, ethnic, racial or religious affiliation, in that there lies an inherent value to every person. Can this be said about every single ecosystem? Arguably not, as that would juxtapose phenomena with very different cognitive functions and entailing life existing on different levels (the life of a singular person versus the myriad of life forms within a given ecosystem). In addition, the living creatures within an ecosystem include both sentient and non-sentient organisms According to Baxter, sentients and nonsentients have proportionally varying degree of 'self-awareness and elements of personhood', and as such can only be individualized to a commensurable extent (2005:150). Naturally, this separates all nonhumans from all humans, who can always be individualized. To account for the biological/moral relationship in question in full, more criteria could be added to Baxter's list and the table of which I have produced in this chapter. Had we, for instance, attributed 'individuality' to the list, ecosystems would have scored worse: both individual humans, groups and nations can be argued to hold a superior form of individuality, with precedence in the human rights regime, where ecosystems cannot to the same extent.

Yet, the matter of individuality does not render ecosystems completely without *any* intrinsic value of their own, qualifying for at least some degree of moral recognition and accompanying protective measures in their own right. There thus appears to exist a need for further discussion on inherent value more along the lines, for instance, of Norwegian philosopher, Arne Næss, and what he called 'deep ecology'. What the theory of ecological justice does, in essence, is dissolving the culturally set division between Man and Nature as irreconcilable categories on each side of the dividing line. Instead, similarities between the two are put forward (in the three criteria for moral considerability), posing as an argument for – if not equal treatment and fair distribution – then a moral reconsideration.

Næss held a long-time and vigorous opposition to the dichotomy of inert Nature and active humanity (Riggio 2015:145). In the case of criminalizing environmental destruction of a certain scale it would be plausible to argue for a moral theory as deriving from non-anthropocentric ethics, such as deep ecology: Nature is a living organism with inherent worth equal (if not same) as humans. Therefore, destroying large entities of it (here ecosystems) beyond the regenerative ability of those parts can be considered causing death equal (if not same) to taking the lives of a specific group of humans. The problem is that this line of reasoning presupposes alignment with an impossible premise: Nature's inherent worth or intrinsic value. How can this be true, when such value inevitably has been bestowed upon the natural entity in question by humans? Nina Witoszek and Peder Anker (1998) have pinpointed this cyclic argumentation inherent in some of Næss' works.

Making a Law for Ecocide inescapable international standard for the 124 member countries of the ICC would need ethical justification that escapes cyclic argumentation specific to any one philosophy. Baxter too becomes subject to this scrutiny. His choice of using the distributive justice paradigm potentially allows for a loophole through which his theory of ecological justice may escape such criticism. Where Næss and his deep ecology platform creates a new paradigm altogether, Baxter limits himself to reform the existing, expanding the community of justice already in place. Still, many questions arise. First of all, justice is a societal, thus necessarily 'human' concept. Is it at all possible to include nonhumans in a community that is of a constitutive social power strictly between human beings?

At the end of the day, there are several aspects of the crimes against peace regime that the theory of ecological justice, isolated in the way I have done here (for the purpose of clear-cut, logical progression), does not account for. These include individuality as a unique quality in humans, the social and relational dimension of community and rights, and further down the line, the political dimension of an international institution. I will address some of these questions in the next chapters.

2.4 Chapter conclusions

This chapter has engaged in a textual analysis of the Law of Ecocide with the theory of ecological justice as theoretical framework, followed by a comparison to the existing international crimes against peace. It has found that the 'vacuum of justice' currently in place where ecological destruction is only recognized and enforced in wartime holds the potential for amending LOE to the Statute. Baxter developed a set of three criteria that, in his opinion, should activate moral claim to justice. Within this scheme of criteria, ecosystems score on all three: They contribute to the resources that people and planet depend upon, share an equal interest in their fair share as all humans, and exert the ability to access and use this portion where many humans do not have this ability. Still, criminal-environmental legislation in international criminal law renders ecosystems none of the distributive justice the fulfillment of these criteria should entail. The exclusion of nonhumans from this community's moral recognition is therefore a serious offense in an ecological framework demonstrably aligned with or even surpassing some of the ethical premises of the Statute.

An objection to this finding is the lack within the theory of ecological justice to account for the unique value placed on every single person by the current guiding regime of international crimes: the human rights. This calls for a further discussion on how ecosystems compare to this quintessential aspect of the CAP. The objection does not, however, render the findings as shown in Table 1 categorically irrelevant to the discussion of LOE in the Statute. The analysis still confirms the righteous claim of ecosystems for moral considerability within the (human) community of distributive justice. Rather, the objection speaks to the need to assess differing *levels* of the moral claim and standing within the community, once included. As formulated by Baxter, 'all theories of justice have to enunciate general principles and leave individual jurisdictions to put some legal beef on them and find out ways of resolving the complexities involved' (2005:151).

Baxter's contribution to the agenda of LOE is defending the view that ecocide would have been an injustice even if climate change and ecological collapse in some parts of the world (such as the Arctic, coral reeves, great forests) had not been in place

(which LOE entertains by associating itself directly with the Paris Agreement). The question arises of how best to redeem this injustice and implement ecological justice in its place.

By this, the thesis has arrived at one of the core questions within the biological/moral debate, and one which constitutes a significant fork in the road for environmental ethicist: should ecological justice be incorporated as a distinct yet subordinated concept within the existing human rights regime? Or should it create its own? As it is, this question is encapsulated in almost perfect parallels with that of LOE: should the Law of Ecocide be amended as a separate crime against peace in its own weight, as is currently proposed, or be incorporated into one of the existing four? Better yet, should we create an entirely new institution, an International Court of Ecological Justice instead? Which of these models should be put in place? This subset of questions is relevant in the pursuit of reaching an overall conclusion on whether LOE holds an ethical claim to inclusion in the international crimes regime.

3 Discussion
(Non)Human Rights?

The last chapter arrived at a logical inconsistency with regard to a lack of protection for large natural entities. Based on Brian Baxter's theory of ecological justice, I found that ecosystems' interest, contribution and ability to access and use resources all compare to the interest, contribution and ability of the *current* justice recipients within the Rome Statute. The ethical analysis herein stipulated that there is no reason why ecosystems should not receive justice, by having the Statute criminalize ecocide. As such, the analysis concluded on a range of sub-questions relating to hierarchy and model. Does the existing human rights regime sufficiently capture the ecological justice as outlined in my ethical analysis, or must ecosystems be given rights of their own?

For the last four decades, scholars of political, legal and environmental thought have worked towards establishing a new rights protection regime that responds to modern ecological challenges. This pertains to those of species extinction, resource depletion, loss of wilderness, climate change, and more. Among the ample range of ideas produced so far, there are three distinguishable main approaches: the *extensionist* approach; the *Rights to Environment* (RTE); and the *Rights of Environment* (ROE).

The extensionist method discusses environmental protection benefits as they appear in other domains of law (such as property rights), and is less relevant in my discussion of a law proposal with a scope that goes beyond existing legislation. RTE, on the other hand, encompasses efforts to enact explicit rights for people to a safe or otherwise uninterrupted, natural environment. It still considers people the rightful right-holders, but make the interconnectedness of ecological needs and a healthy life a legal matter. This is where the defense for environmental, or 'green', human rights fall. Lastly, proponents for ROE make a different interpretation of the beneficiaries of justice, and ultimately argue for the ambitious repositioning of nonhumans or inanimate natural objects as unconventional right-holders. This is the approach of granting legal personhood to entities other than humans, making nonhuman organisms justice beneficiaries in their own right, and hereby creating 'nonhuman rights' (Vanderheiden 2012:xi).

The proposal for a Law of Ecocide (LOE) constitutes a separate universal Peace Crime and not a subordinated crime under any of the existing four. As such, it is not immediately apparent if the amendment belongs in the RTE or the ROE approach. The Rome Statute does not endow rights directly to the subjects of its jurisdictional authority, but gives protection by passing sentence. As a case-specific point of departure, the bedrock of the crimes against peace is the human rights regime. Article 21(3) of the ICC Statute clarifies the Court's relation to human rights. Herein, it instructs the Court to interpret all other judicial sources in conformity with international human rights, as well as give them absolute precedence where other sources contradict their intent (Cassese 2013:11). From this perspective, it follows that an amendment to the Rome Statute that makes ecocide the 5th CAP would not equal making ecosystems the recipients of their own rights; rather, it would establish an uncompromised justice equality between human beings, nations, and distinct natural systems. An ecocide offender would then be viable for prosecution solely on the basis of having damaged an ecosystem, without any humans (directly) involved. This form of equal footing before the Law clearly goes beyond anthropocentrism. Therefore, the presence of an international ecocide crime requires a theoretical basis of justice that is non-anthropocentric. This means that *in order to* amend the proposal, the ICC must adopt an ecocentric or biocentric position, which in essence means abolishing the human rights regime.

An alternative is to avoid such a radical change by building on the existing human rights legal framework and make freedom from ecocidal harm to ones' environment a green human right. The RTE option eliminates the need to justify both Nature's rights and equal standing, as well as the immense axiological shift the ROE approach constitutes. At the same time, RTE seems to fail on the account of tackling the problem of ecosystem harm by its roots: anthropocentric law fails to understand humans' impact on Nature beyond a functionalistic value system since it does not include humans as inherently part of Nature.

In this chapter, I investigate what is the most congruent approach for a new environmental protection regime to come about. This leads me to consider different philosophical arguments. Usually, they are organized within a strictly judicial framework, separated by way of which forms of rights expansion or legal

personhood they advocate. To the best of my knowledge, authors have not subjected them to an ethical organization guided by ecocentrism, biocentrism and anthropocentrism. Since this thesis focuses on ethics, I aim to contribute by positioning the main approaches and arguments herein through the lens of environmental ethicists. In turn, a new organization may open up experiential and argumentative possibilities on the part of legal recognition for ecocide.

3.1 Differing positions

The chapter will display a non-exhaustive example set of competing theories in the field debating environmental justice and rights. Before going into that, I would like to highlight the distinction that ecological justice and nonhuman rights are not the same. The form of ecological justice I worked with in the previous chapter involves the inclusion of ecosystems into the community of justice. The inclusion is based on the argument that ecosystems demonstrate a non-instrumental value by qualifying for the same criteria as humans. However, there is not an automatic link between intrinsic value and rights (Nickel and Magraw 2010:466). Baxter argues that nonhumans should have moral considerability in the eyes of humans. Endowing natural objects rights in their own capacity is *one* way of doing this (the ROE approach). Ensuring just treatment through the creation of green human rights is another approach (the RTE method). The implication of the latter is that a justice system may be just even if the recipients of justice do not have rights themselves.

So far, I have assessed the moral claim of ecosystems to humans' morality, in the sense that we humans take '*glocal*' (global and local) natural entities, of a certain scale, into consideration when we deal out the resources humans control, such as clean air, water, and land. The last chapter concluded with the idea that ecosystems have a rightful claim to be included in our distributive, moral community, because they express an interest in those resources; contribute to them; and exert the abilities required to independently access and use the same stock pool as humans. Nevertheless, the subject of this chapter is to set the moral claim up against a *legal* claim to actual rights. Here, it is my take on Baxter that a separation can be made (and should be). As long as ecosystems are included *to any degree* in the community of justice, humans may redeem ecological injustice by making a legal instrument

preventing ecocides in no less than 124 countries. Whether this instrument should come in the shape of green human rights, an Ecocide Law or nonhuman rights, however, is another matter.

Furthermore, there is a point to be made on ecosystems' previously unambiguous eligibility for Baxter's criteria, when applied to their claim to legal rights. In fact, they seem to fail on every account. These natural systems do not have an interest in rights, as they can have no conception of what a right is (where they have a clear conception of and hereby interest in resources). They do not contribute to developing or upholding legal systems, in any other sense than feeding the jury. Lastly, they do not have the ability to 'access' and 'use' rights, in the sense of speaking their case within judicial organs. Granted, several authorities on this topic have countered this last point on the possibility for legal guardianship as it exists for other right-holders without independent agency (Stone 1972; Washington, Chapron, Kopnina, Curry, Gray and Piccolo 2018). Another point is that some countries have already made constitutional rights to the environmental common goods of a nation explicit for future generations, despite the fact that these cannot speak for themselves either (Gosseries 2008:448-452). Nevertheless, with only one out of three of Baxter's criteria fulfilled in the case of ecosystems' legal claim, there are clearly differences between ecological justice and nonhuman rights, to which I now turn.

The following sections will process the main pros and cons on the matter of rights to or for the environment, and their relation to an Ecocide Law. While this thesis does not summarize an exhaustive literature review within this complex field, and I will not discuss all relevant arguments, it does present a selection of the issues most germane to my analysis. This approach intends to encourage fruitful reflection on the contradistinction between morality and legality, the theoretical and practical value of environmental ethics, and more.

3.1.1 Ecocentrism

To clarify, I use 'ecocentrism' to refer to the holistic environmental philosophy that places an inherent value on natural systems and views them as moral subjects. Its holistic feature springs from the systematic rather than individual assessment of these systems. Herein, an entire ecosystem is the proper unit for moral concern, and not an

individual specimen within it. According to Nettinger and Throop (1999), ecocentric ethics has traditionally relied heavily on holism to provide its empirical foundation. It regards as its central environmental objective the protection and preservation of ecological systems, such as habitats, species and populations (*Britannica*, s.v. 'biocentrism', read 10.5.19). A main point of separation from biocentrists is that ecocentrists are willing to let one individual life be lost for the sake of the whole. This way, ecocentric positions are relieved of the teleological problem facing biocentrism that for instance overpopulation of one species may threaten the survival of others, or the integrity and stability of an ecosystem (Ibid.). According to a biocentric ethics approach, life should be considered the absolute criterion of moral standing. According to ecocentrism, the whole of a natural system, including abiotic nature such as mountains, rocks and mud, should be granted the status of moral subjects.

At a time when public discourse is just beginning to show a perceptibility for more radical climate action, related debates in academic circles have been going on for a substantial amount of time. In particular, this involves the discussion on an extension of moral rights to nonhuman species. Historically, there has been an accumulative development in the consideration of moral standing within populations, ever since the idea of universal rights was embedded in the revolutionary constitutions that shaped the 18th and 19th century (Benton 1998:152). The French and later the American Revolution both radically transformed the rights of fellow humans, through a reconceptualized value regime. Since then, legal discourse on women and children have undergone substantial ontological improvement in terms of autonomy, followed by justice for and legal empowerment of indigenous peoples, and others. By now, the principle of equitable rights for all people has acquired 'near universal moral authority' (Ibid.). Since the end of the 20th century, philosophers counting the likes of Peter Singer and Tom Regan have argued that now is the time to go beyond the boundaries of the human species, in order to ensure a just society for all inhabitants (pp.153-154).

The value of (a) life

Arne Næss explains the habit of anthropocentric thinking by the notion that 'to counter apathy and low self-esteem, moral philosophers have occasionally made the mistake of placing humankind in a unique position in respects incompatible with an open attitude to the rest of nature' (1990:192). Among authors instead advocating for the intrinsic value of nonhuman beings, it is not uncommon to point to the substantial change of consciousness involved in the abolishment of slavery (Higgins 2010). Arne Johan Vetlesen contends with this practice by clarifying the difference between internal and external axiological shifts. The shift to realize intrinsic value for all humans, and not just some, is a strictly internal one. Here, a movement has occurred from the particularistic to the universal, all the while within the confines of anthropocentrism. A far more drastic change is involved in shifting from anthropocentrism to ecocentrism and endowing animals or oceans inherent value. Vetlesen claims that 'indeed, the revolutionary character of the abolition of slavery would pale – philosophically as well as politically – in comparison with the shift from holding and practicing an anthropocentric worldview to adopting a nonanthropocentric, bioethical one' (2015:8).

Firstly, the question of human or nonhuman rights brings back an earlier criticism of mine of Baxter. In his processing of the three criteria of interest, contribution, and ability (to access and to use), he contends that babies, elders and handicapped humans are included in the community of justice, despite lacking in these areas. As a weak point in his theory, Baxter refuses to reflect further on why the human community considers any human (individual level) of higher value than any nonhumans (group). Instead, he deems it automatically illogical that babies, elders and otherwise incapacitated humans are included in the community where ecosystems are not, despite the fact that they contribute more. His rejection of an *à priori* assumption of humans' higher worth equates to an ecocentric stance. Should Baxter be wrong in assuming this non-anthropocentric position, ecological justice must be absorbed by the human point of reference and subordinated within human rights. Should he be right that the anthropocentric value system is an incorrect position to assume, ecological justice is best channeled through its own separate

establishment, either as the 5th crime against peace, if not as an independent Court of Ecological Justice.

A point that Nina Witoszeck and Peder Anker (1998) make in that regard is that axiology is the product of human creation and therefore destined to cyclic argumentation, strictly limited to human cognition. Who is Baxter, human as any, to say that the *à priori* position of babies' higher inherent worth despite their functional shortcomings, is wrong? On the other hand, the position Baxter disagrees with has yielded significant trouble and suffering on the part of humans, who now face both climate change and collapse of some of our life-sustaining system (IPCC 2014, 2018; IPBES 2016, 2019). The scope of the challenges alone demands an urgent solution. An anthropocentric premise of humans' superior worth to the direct exclusion of nonhumans has also done great damage to ecology and the biosphere directly, whose inhabitants seem to have a noteworthy claim to our morality and thus avoidance of unnecessary suffering, if nothing else.

Right to life and duty to care

As mentioned earlier, Polly Higgins has campaigned for about a decade for ecocide to become an internationally acknowledged atrocity along the same lines as the four crimes against peace. In her books *Eradicating Ecocide* (2010) and *Earth Is Our Business* (2012), she explains how she came up with the proposal of LOE, and argues extensively for its amendment to the Rome Statute. There are two concepts in particular that make up her justification: the right to life (for all life), and the duty to care. What she is not too particular about is that in philosophy, these are separated concepts, belonging to two different forms of deontology. This is the branch within ethics concerned with duties, distinguishable from virtue ethics and pragmatic ethics (also called consequentialism). As noted by Espen Gamlund, 'within the framework of a deontological ethic based on duties, moral status is ascribed to all subjects to whom we as moral agents have direct duties', where duty to care belongs (2007:4). Meanwhile, within a deontology 'based on rights, moral status is ascribed to all subjects with basic rights', which is where the concept of a right to life falls (Ibid.).

Baxter's theory belongs to a deontological ethics based on duties, I would say, which maintains that humans have duties towards the nonhumans due to the former's status

as moral agents, and the obligations that entails. Yet, Baxter broadens the typical scope of reasoning when he directly opposes the Kantian principle of only viewing other moral agents as possible recipients for the executions of these duties. Kant simply left nonhumans out of humans' moral concerns; in essence to do with as we please, to which Baxter objects. His argument is that nonhumans should become part of our distributive justice community because they fulfill the criteria for inclusion, against which he finds no coherent logical objections. At the same time, he is directing the argument of duty towards the concept of rights when his project consists of proving the legitimate claim to distributive justice for nonhuman beings. Baxter's argues for ecological justice firstly on the basis of duties, and secondly on the concept of rights.

In deontological ethics, however, the rights in question are *à priori* (already assumed and established) privileges. Deontology does not ascribe moral status to subjects *after* they have claimed rights (which would have been *à posteriori* rights). Here, Baxter's argument deviates from a rights deontology where he argues that nonhumans should have rights *because* they have a moral claim, and not the other way around. At the end of the day, the justice framework as put forward by Baxter supports Higgins' justification both on the point of rights and on the question of duties. Whether these are duties *to care* specifically, as Higgins proposes, and not general moral duties, as Baxter implies, requires further debate. Common for both of the authors is that duty in this regard originate from the obligations that follow from just being human, and not from moral obligations of the objects that those duties are directed towards (the Kantian principle). This separates Higgins, Baxter and others from the 'green future' and 'social justice' camp among anthropocentric viewpoints, whom mainly treat duties as the result of properties within the (rather than 'duty-bearer properties').

What it is like to be an ecosystem

In the branch of philosophy known as 'Philosophy of Mind', the objects of study are Metaphysics and the Physical in a logical search for the nature and directionality of consciousness. A textbook exercise in phenomenology herein is asking the question 'what is it like to be a bat?' (Nagel 2002:219). An interesting theoretical possibility

presents itself should we apply a holistic approach to this exercise. What is it like to be an ecosystem? Such an inquiry calls into question the way one ecosystem differs from another, and if there is any form of so-called 'qualia' to the experience of being an ecosystem. The concept of 'qualia' is hard to define, but pertains to a phenomenological exceptionality that oneself experiences as stemming from within a living thing (Dennett 2002:226). It is a generally adopted view that every individual organism has qualia, but does a collection of individual life, as is the case of ecosystems? At what point is the unique experience of life 'whole' in the sense that the ecosystem through which the experience is processed, is whole? I wish to entertain some aspects of a possible reply to these questions.

Jeremy Waldron explains how a communal good is contingent on the participation of all other affected parties (1987). He makes the argument that individual experiences of a communal good, such as a good atmosphere at a party or solidarity in a society, equals to the fragments of experience in the individual, such as the acts in an opera show. A good is communal when its benefits only accrue on the collective level. Befitted to my case, Waldron's parallel between the individual phenomenology and the collective invites a similar parallel to be drawn between the individual ecosystem and the environment as a whole as a communal good.

One of Simon Hailwood's most distinctive contributions according to Baxter is his 'congruence argument', which evolves around the fact that nature is independent of humanity, constituting what he calls their 'otherness' (Baxter 2005:102). Hailwood consistently addresses 'Nature' rather than 'nonhumans' and their claim to moral considerability, so as to include abiotic nature as well (Ibid.). Nature's otherness functions itself as grounds for their non-instrumental value. This makes sense; if the Earth existed solely for humans' use, then why would it continue to exist in the feasible hypothetical scenario that humans did not? To draw upon another field relevant for this exact theoretical exercise, the field of Philosophy of Mind operates with different hypotheticals to falsify truths about consciousness. One of these is the 'conceivability argument, that has been invented to test materialism's claim that consciousness is merely physical, not metaphysical (Chalmers 2002). This argument goes as follows: It is conceivable that there could exist zombies in a different world, identical to us. They would be able to live, because they had bodies that (in the case

zombies could exist) provided them with organic functions. If this is conceivable, then consciousness cannot be metaphysical, because humans too have bodies that provide for such functions; yet, humans are not zombies. The conceivability argument can be used to inform our inference on ecosystems independence, as it is conceivable that the Earth exists with a complete nonhuman biosphere, including ecosystems small and large. In Hailwoods' view, this independent status proves ecosystems' non-instrumental value; an interim conclusion germane to the purpose of this study, naturally.

The congruence argument relates to the comparison between the political structure that is liberal states, and the ecological structures within nature (Hailwood 2003:1-7, in Baxter 2005:103-105). Hailwood then puts forward the neutrality of both the state and nature. In Baxter's words:

> the state facilitates by means of a regime of reasonable basic rules the pursuit by individuals of their views of the good life, and remains neutral between them; nature facilitates by means of the provision of material substrates the same pursuit of different views of the good life, and remains neutral between them. (2005:105)

All the same, one crucial difference between a state and an ecosystem concerns the above-mentioned congruence: where the state has been made by humans and for humans, it is completely dependent on its inhabitants taking use of it by developing their comprehensive views on its foundation. The ecosystem, on the other hand, exists, functions and thrives regardless of the use humans imposed on it. The congruence argument thus compares natural structures with a human state system, and concludes with a superiority of naturogenic, or nature-made, ecosystems over the anthropogenic, human-made state.

3.1.2 Anthropocentrism

As a reminder, anthropocentrism is a philosophical belief system in which humans are the supreme entity of central concern and of utmost significance in the natural world (Boslaugh 4.5.19). Under this headline, I will give examples of defenders of enhanced rights protection that base their arguments on either human superior value directly, or on an instrumentalist understanding of Nature that departs from perceived human interests. This line of thinking includes cultural value environmentalists,

social justice advocates, and scholars concerned with ecological justice as the desired end state, but support human rights as a means for achieving it. According to Simon Caney, anthropogenic climate change undermines several key human rights (in Vanderheiden 2012:123). These are rights to life, health and subsistence, and the negative right not to forcibly evicted from ones' home. Caney argues that these violations are sufficient grounds for changing substantial law. In the following section, I argue that the human rights doctrine establishes an efficient incentive for new legislation, in ways ecocentric arguments struggle to match. However, the regime that currently poses as the framework of international criminal law seems to falter on several points of ethical defense, when compared to ecocentric ethics.

Cross-generational duty

Duty makes just as much of an entrance in this camp as it does in the ecocentric one. The two of them differ, however, with regard to the directional nature of duty. Where ecocentrism believes humans may have duties directly towards nonhumans, anthropocentrism only considers it possible to have duties towards other humans. In this camp, many argue that those living today (specifically the wealthy inhabitants on Earth) are duty-bearers on behalf of future people (Feinberg 1980). Others go beyond the notion of duty when discussing the responsibility of present generations, and instead deliberate whether future people should have rights themselves (Gosseries 2008). Three constitutions have so far included rights for their future citizens, which includes the Japanese, the Norwegian and the Bolivian constitution (Gosseries 2008:448).

On this basis, Caney processes how a just distribution of responsibility for climate change today could come about through a combination of the Contribution principle and the Ability to Pay principle (In Vanderheiden 2012:135).

Recently, social unrest has erupted in over 100 countries where pupils have participated in 'school strikes for the climate'. As a global movement, this suggests that many among the youth population are of the opinion that governments and grown-ups owe it to them today to tackle climate change by commensurable means. Duty in the ecocentric camp, on the other hand, relates to present humans' moral duty towards nonhuman creatures and/or the natural world at large. In comparison,

duty along anthropocentric argumentation pertain to either fellow humans living today (the social justice camp), or future posterity (the green future camp), or both.

Rights as relational

Richard Hiskes (2009) opposes both an ecocentric ethics and its accompanying rhetoric, or its storyline. He brings forward the concept of 'emergent rights' as a result of rights' relational character. By this is meant that a person's rights only come into view in interaction with others, and as such have emergent properties (2009:35). From here, group effects of humans' interactions with Nature elicit emergent green human rights. Foundational to Hiskes' idea of emergence is the interconnectedness within ecological organization. The rights in question appear on the basis of the group effect of humans' interaction with Nature. Given that this effect is especially precarious and significant from one generation to another, environmental (emergent) human rights 'also ought properly to belong to future generations as well' (2009:30). Therefore, Hiskes aims to formulate an intergenerational justice through what he calls 'reflective reciprocity' (Ibid).

Realizing the social-relational essence of human rights begs the question of what humans' relation with Nature is, and if it too can emerge within a social context. Hiskes has an interesting notion that 'to call rights 'human' is to recognize their ineluctably social character' (pp.29). The distance to 'natural rights', associated as well with the 'natural state' known especially from John Locke, is widened herein. A by now well-known formulation, Vetlesen encapsulated the current state of things as, far from being a natural state, instead a downright 'denial of Nature' (2015). Today, a majority of affluent populations have deviated so far from our original relation of dependency with Nature that we have begun to deny its existence in our lives. Among other observations, Vetlesen writes how the 'the insights of critical social theory need to be expanded beyond the human-centered and purely societal dimension, in order that the changes occurring within the humans-nature relationship come fully into view' (pp.11). This wording implies that the humans-nature relation can be accounted for within a social theory paradigm still. A case-specific corrective to Vetlesen is that the human rights is a judicial regime, not a critical theory, and therefore does not allow for this expansion even if green human rights were to

become a fact. As succinctly noted by Hiskes, inherent in the concept of 'human' rights is exactly the social dimension. An environmental version of this regime may bring about ecological justice indirectly, but will nevertheless continue to exclude nonhumans and their habitats from notions of community beyond that. There herein seems to exist a distinct difference between a community of justice, and a social community 'of identification', of sorts. Is there room for an improved relationship with our natural surroundings within a conceptual framework permeated by human-to-human relational primacy?

Rights as political

The presence of the State amplifies the relational character of rights. Several authors have suggested that without the State, there are no rights (Arendt 1951/1979; Hiskes 2009). In this, they oppose the proposition that rights are abstract things: without a State to facilitate them, they cannot operate and thus exist in any meaningful way. As an example, Lynn Hunt (2007) claims that 'human rights only become meaningful when they gain political content. They are not the rights of humans in a state of nature; they are the rights of humans in society'. This makes rights intimately connected with political identity, according to Richard Hiskes, to the degree where justice unavoidably necessitates political identities. Given that such identities are only truly attainable in democratic states, Hiskes deducts that constitutionalism and participatory democracy constitute the only political environment possible to make substantial and procedural law (2009:143). Implicit in his reasoning lies the critique of dictatorship that it does not facilitate the sense of loyalty, community and personal connection to the State as you would in a citizen who identities with it freely and willingly. Herein he builds among others on Immanuel Kant, who insisted that since 'individual persons are by nature autonomous, duties that attenuate autonomy cannot be morally required' (Hiskes 2009:11).

Scaling up this theory, Hiskes subsequently claims that citizenship and nationalism, in turn, pave way for a *shared* identity. This is where a group share their sense of belonging to a community within national state-borders. To counter the long-term group effect of humans on ecosystems today, intergenerational justice must be put in place. To Hiskes, nationalism is the only way in which society can create a sense of

community and obligation that may be shared not just spatially across distances, but temporarily across generations. For this reason, 'humans possess environmental rights only as citizens of their own transgenerational national communities' (2009:143). It is therefore futile to push for new laws for the environment outside the nation-state and human political identity, such as the abstract emotional domain. This is because empathy would never spur the powerful, shared identity between humans that create a form of rudimentary collective cognition. It is this baseline that allows an individual to relate to, or experience a meaningful relation with, future people. Equally ineffective are the attempts by environmental philosophers to base a defense for intrinsic value on an expansion, or deepening, of humans' relationship with nature. Arne Næss and Andreas Weber, for instance, employs 'Self-realization!' as a mantra or near-spiritual convictions of Gaia theory. Hiskes believes that, without a sense of nationalism shared among the nation's ideological constituents, such an identification with humans' natural surroundings is unobtainable. What Hiskes does not attend to is the possibility of granting ecosystems citizenship, but that investigation exceeds my scope here.

In response to these arguments, some proponents reject that ecological justice has to be intergenerational. By advocating for nature's rights on its own, ecocentrists are relieving the pressure on a new rights regime to function cross-generationally. Instead, natural systems should gain legal personhood and absolute protection for their ontological value alone, they argue, as opposed to a politically relative acknowledgement that is only 'activated' in war situations. The fact that natural entities exist and have many of the same characteristics that have entitled others to rights before, including being highly affected by moral human agents and our societies today, justifies Nature's rights. Had there been no tomorrow, this legal claim of on the part of ecosystems would still be in effect, ecocentrism maintains. In parallel to abstaining from intergenerational justice, the social justice aspect is not the central question for ecocentric thinkers. They defend the delineation of their scope by maintaining that ecological justice and social justice are entirely different concepts within philosophy of law.

3.1.3 Catch 22

At this point, a distinct theoretical problem in the case of LOE is beginning to show. The ecocentrism that is foundational for endowing ecosystems a moral standing, is holistic. As a consequence, any individual life within it becomes secondary in value to the bigger whole. Once this possibility has been institutionalized in international, legal fora, there is no saying what may come of it politically and symbolically. Human rights, on their end, are strictly individualistic. Every single individual is valuable simply by existing; saving the group by killing the one will always constitute a violation of the human rights to the one whose life has been sacrificed for the collective. Most utilitarian ethics are for this reason not compliant with human rights standards (*check*).

To integrate the two within the same justice system seems to be impossible, as the value each places on 'a life' is inconsistent. Either an ecocentric doctrine takes precedence and creates a break with the hitherto uncompromised individuality of human rights, or anthropocentrism continues as the guiding doctrine and preserves what we may call the 'sacredness' of a single individual. Human rights activist and refugee, Iyad El-Baghdadi, alluded to the ramifications that might occur if this theoretical problem is not solved, saying 'dictators love everything that waters down the human rights – everything' (personal communication April 29th 2019). In fact, it would be logically more beneficial to infuse the ICC Statute with a proposal stemming from biocentric ethics, instead of an ecocentric Ecocide Law. Unlike its ecocentric opponent, biocentrism endows a right to life for every individual specimen of the biosphere, which respects the 'sacred' individuality of human rights. The teleological problem explained earlier and relating exclusively to biocentrism still applies, however. In addition, this position increases rather than decreases the difficulties with justifying nonhumans' moral claim. In line with the previous chapter analysis, each species, or specimen of a species, does not hold the same qualifications and eligibility to distributive justice as an ecosystem does.

The relational character of rights seems to continue to exclude ecosystems, even in the case of 'greening' the former. For as long as nonhumans are not granted rights as well, a shared identity between humans and nonhumans as described by Hiskes will be unattainable. With Vetlesen's notion of the existential denial of

Nature in mind, green human rights could run the risk of not fixing the pressing environmental problems that began the quest for a new rights regime in the first place. In addition, green human rights seem to lack theoretical support on the account of deontology, the value of life, and phenomenology of ecosystems, as a 'worldview that denies nonhuman nature any value, agency or justice' (Washington, Chapron, Kopnina, Curry, Gray, and Piccolo 2018:372). An ecocentric rights regime, however, could dangerously dilute human rights, in a time where several parts of the world far from respect the value of a human, and provides an ever-pressing need for an uncompromised crimes against peace regime. Notably, biocentric ethics would avoid the similar dilution of human rights. On the other hand, it does not provide for theoretical-logical evidence to a moral claim to begin with the way ecocentric ecological justice does, through a holistic approach based on the contribution of whole ecosystems.

3.2 Meta-ethical consequentialism

There is another way of solving this catch 22 issue I have encountered thus far. This method concerns the *practical* value of the different theoretical positions, regardless of their logical validity. As it is, both camps that I have gone through in this chapter desire a change of substantial law to some degree. Which one has a better chance, or record, of success? My thesis departed from the increasingly crucial and voiced fact that ecosystems all over the planet are failing to recover from vast ecocidal harm. A new procedural possibility comes about if we apply consequentialism to the debate about which axiological position is most congruent with ecological justice. I will then arrive at kind of consequentialist ethics, or meta-ethical consequentialism. This takes the form of choosing the ethical paradigm that will produce the best outcome compared to other paradigms, in turn constituting the most ethical choice by virtue of its consequences. Driven by pragmatism, a meta-ethical stance goes contrary to philosophical doctrine, all the while provides for an implementable solution to my previous catch 22 issue.

This far, I have found that anthropocentric and ecocentric arguments hold precedence over the other in each their respective fields. I will now look at which of these fields holds the most practical value. In the previous section, I organized some of the

central arguments in the nonhuman rights debate according to their foundational axiology. This makes it easy to know exactly which arguments to avoid once we choose an ethics on pragmatist and consequentialist grounds. I therefore expect to be able to debunk all of the arguments within either the ecocentric camp or the anthropocentric camp on a meta-ethical basis at the end of this chapter.

3.2.1 The practical value of theoretical knowledge

The world-renowned eco-philosopher Arne Næss left his professorate in semantics on the pragmatic notion of the value of knowledge. A close acquaintance and colleague, David Rothenberg, explained that, to Næss, 'it had always been not just a 'love of wisdom', but a love of wisdom related to action. And action without this underlying wisdom is useless' (1990:1). Given the crucial timeframe of making effective climate action happen within 11 years, one could argue that wisdom without action is also useless (IPCC 2014, 2018). This has been the mentality when studying threats of human-to-human conflict in traditional peace research. Research on peacebuilding and resolving conflict that do not result in concrete conflict resolutions are seldom conducted. Quincy Wright, one of the intellectual pools for peace research, agrees in his book *The Study of War* in 1942. According to Wright, 'planning for peace cannot take place in the armchair. It can take place only in practical action to meet international problems' (Historisk Tidsskrift 1967:125). A modern version of these words has been presented by professor Sebastian Mernild, upon receiving the award *Dane of the Year*: 'knowledge is worth nothing for as long as it lies on my computer' (Aagard 2018). According to a meta-ethical standpoint, the same thought-to-action mentality should go for environmental ethicists as well.

This is not to say ideas do not matter. Neither is it a nihilist suggestion to abandon moral truths altogether. Instead, the 'practical value' mantra takes into account the lowest common denominator in environmental policy. Herein, an idea may be very influential for the individual's life, whilst have no effect on macro-level and institutional change. Instead, an ecological justice regime would have to pertain to the *universal* elements of human psychology, to enable its implementation on a global scale where mass loss of ecological life and habitats can be avoided.

3.2.2 The starving philosopher

In this sense, taking abundant and unaffected ecosystems for granted has not only been a fault of neo-classical economic theories, as well as the governments, producers and consumers that adhere to a so-called free market (which I will discuss in chapter four). Philosophers are equally to blame to the degree they have established theories of applied ethics that are not contingent on the human psyche. Granted, traditional philosophy is a pillar of academia that reckons knowledge to exist on an objective level regardless of psychology. (Whether we are able to abstract it or not is another, sometimes psychological matter.) The specific branch of applied ethics, however, exists to decrease this gap. It departs from practical normative challenges and use philosophy as a 'tool to address important moral issues in various practical disciplines' (Petersen and Ryberg 2016; Haramia 2018). As such, environmental ethics is a specific branch of applied ethics.

Directionality is a precise matter, however. In applied ethics, it is not the case that a philosopher fits her theory as according to the practical case. Instead, she sheds light on the case and its possible solutions by using an already developed philosophical method. Although this approach safely runs clear of inductive problems, it also misses universal truths that may exist outside of the philosophical domain. Environmental ethicists, for instance, oft speak of 'Man' and 'Nature' when theorizing on socio-ecological coexistence, as is typical in a field of abstract thinking. Yet, they rarely problematize if this vague terminology and method itself alienates audiences. David Rothenberg (Næss 1990:7) comes close when he notes on the usefulness of a wider vocabulary and richer language in discussions about the environment, and thus calls for new words and terms pertaining to the environment. Rothenberg asks: 'if an easier word (than 'environment') existed, the notion of environmental conservation might be more widely accepted in our culture' (Ibid.) Here, he alludes to psychology and psycholinguistics. Unfortunately, Rothenberg fails to generate any general principles for environmental philosophy on the matter of accessible terminology, despite the fact that every human being perceives ethical lessons through any one language. The lack of general psycholinguistic principles in environmental ethics must necessarily affect the degree to which the public, in turn, carries out a theory herein.

In a case of applied ethics, the ethicist will account for the relevant case-specific context. I argue that accounts where human psychology is *not* intimately integrated, simply do not situate the generated knowledge enough. This methodological shortcoming will inevitably amount to moral doctrines that are too limited beyond the theoretical, however case-specific, domain. Negligence towards the barrier for implementation that is universal human psychology is unnecessary. Not only that; it is an academic practice with diminishing practical value to society in a time of governmental climate emergency declarations, where climate ethics is related to pressing real-world problems even more than some other fields of ethics (BBC 2019; Tremmel 2018:1). Upon the prospect of a future world with failing food systems (and more), it is a shortcoming even visionary environmental ethicists cannot afford.

In my case, thus far, I have abstracted knowledge from empirical cases, ethical analysis and discussion. This knowledge, in turn, is essentially useless outside of the theoretical domain if I do not make an adaptation to its practical environment logically inherent. A meta-ethical stance herein radically changes the parameters for success, not by removing the philosophical arguments reviewed above, but by adding to them. In my case of an Ecocide Law, humans are the justice facilitators in question and thus the best indicator for success of implementing a new ecological justice regime. Given that the ICC has a member base of 124 countries in total, I cannot simply look at group level psychology. Instead, my investigation must focus on basic human faculties and the universal elements of the human psyche.

Others have mapped the judicial-practical prerequisites through the anthropocentric impetus, and so I will not go into that aspect. Baxter observed that ‘the requirements of ecological justice become more complex as the psychology of the organisms we are considering also become more complex’ (2005:149). In the following, I focus my efforts on accounting for some of the complexity to relevant prerequisites, as they relate to general aspects of the human self and life. Certainly, there are many types of these requirements; here, I will go into a selection of those I consider among the most essential. I have conducted this exercise with the aim of testing for the practical value of the idea of ecological justice.

3.3 Human psychology

All ideas can have a significant effect only when human beings are ready to receive them.

(Baxter 2005:194)

This far in the chapter, I have found that anthropocentric and ecocentric arguments held precedence over the other in each their respective fields. In the end, I put forward the possibility (and necessity) of a third position that took the form of meta-ethical consequentialism. This position allows for choosing the axiological platform that most likely would produce the desired outcome. The most central concern for proponents of an Ecocide Law is the restoration and protection of ecosystems currently depleted by the global industry. The International Criminal Court, however, has a member base of 124 countries in total. In order to obtain the goal of criminalization on the international level, I must look at what basic human faculties likely shared by all group members that facilitate the acceptance of a new law. Baxter himself observed that 'the requirements of ecological justice become more complex as the psychology of the organisms we are considering also become more complex' (2005:149). I will now aim to account for some of the complexity to relevant prerequisites, as they relate to general aspects of the human self and life. Certainly, there are many types of these requirements; here, I will go into a selection of those I consider among the most essential. I have conducted this exercise with the aim of testing for the practical value of the idea of ecological justice.

3.3.1 Motivation through self-interest

In addition to the need for humans, as moral agents, to acquaint themselves with knowledge, there is the notion of moral *motivation* to act upon ecological justice. This is a distinct element from the ethical justification for doing so. Arguably, Baxter and the philosophers he bases his theory on have provided compelling evidence in chapter two for moral considerability applied to inhabitants of the Earth's existing biosphere other than human beings. Yet, as informed by Nagel (1991:4-5) in Baxter (2005:88), there still remains the problem of integrating the universal, impartial viewpoint upheld by LOE into the subjective element of personal motivation. As

research within the emerging field of climate psychology shows, motivational deficit is a problem particular to the issue of how the public relates to climate change.

Where a perceived self-interest might result from rational deliberation, raw and subconscious emotions are integral to how information about the environment is received (Nordgaard 2001). Stoknes argues that a reason for a lack in behavioral change derives from apocalyptic rhetoric, as well as degrowth or other perceived negative discourses, which creates 'unpalatable' climate messages that the public tend reflexively to disregard (2015:149). Moser (2010) too identify communication techniques frequently used to convey the importance of climate action and lifestyle adaptation that result in the opposite effect. Stoknes (2015) further argues for understanding 'climate apathy' as a result of the psychological defense mechanism where people distance themselves from perceived threats if they are unmanageable for the individual. This negative feedback loop feeds into how Baxter puts it, namely that 'people may grasp the moral imperative intellectually, but not put it into practice because they see no reason from their personal perspective to do so' (2005:88).

On the other hand is the case of Greta Thunberg, the Swedish youth activist for stronger climate policies that became internationally known from her demonstrations outside the Swedish parliament starting in August 2018. Almost single-handedly, Thunberg has spurred an international movement of school strikes against their domestic governments. The strike in March 2019 alone accounted for an estimated 1.6 million students, participating across 125 countries, walking out of school. Notably, Thunberg's narrative is almost exclusively apocalyptic, calling global warming an 'existential crisis' and urging world leaders 'to panic' rather than give reassurance (BBC 2019). The egoism aspect of the climate youth movement is unambiguously present: those that go on strike are those that will be the most severely affected by climate change themselves. This position also makes their case harder to ignore.

Tim Hayward (1998) in Baxter (2005) presents a notion of mutual self-respect. In relation to nonhumans, he argues that it is in our own interest as moral agents to implement respect for other living phenomena and beings in our daily conduct (pp.89). This notion seems to correspond with Arne Næss' idea of the responsible, dutiful persons, fulfilling a role that is impossible (and undesirable) to escape, as it is

predetermined from humans' superior abilities as stewards over Nature (1990). Their train of thoughts may be anthropocentric in essence, yet should not be mistaken for egoism when it is self-interest as moral beings that drives it, Baxter argues (2005:89). Such moral imperative inherently includes a genuine concern for others.

Others disagree with considering selfish acts an erroneous starting point for environmental action and concern. As the United Nations' website reports on, current Secretary-General, António Guterre, makes a more clear-cut differentiation between altruistic ego and blatant self-interest. Upon a visit to Pacific islands existentially threatened by climate change, he made of point of saying that it was not for solidarity and generosity that is needed from decision-makers around the world, but 'enlightened self-interest' (2019a).

Singer makes some interesting remarks on the tendency to consider self-interest and ethics as mutually exclusive (1997). Notably, consumption fuels the supplying industry, causing ecocide as a so-called production externality. Where the privileged consumerist way of living in energy-intensive societies is often subject to inhere-mentioned criticism of moral decay, the modern human has gotten the impression that what she (believes she) wants in life will always come at an ethical and moral cost. As Singer succinctly states contrary to this belief, 'to live an ethical life is not self-sacrifice, but self-fulfillment' (1997:i). LOE works to criminalize big industry for operating unethically and unjustly, as well as governments for failing to protect their citizens from hazardous industrial activity and pollution. Instead of sacrificing part of our society and economy, could LOE be fulfilling it? In light of Stoknes' abovementioned theories on climate apathy, replacing the sacrifice narrative of new legislation with a fulfillment narrative of this kind could hold substantial potential for motivating inhabitants to support change.

Overall, there is evidence to the claim that a current gap between knowledge and action essentially is not a problem of information, but of motivation in its utmost psychological sense. Those that see an evident self-interest in institutional change in environmental issues are more likely to engage in making the change happen. Consequently, ensuring public and political support for LOE needs to go through a process of actively creating personal imperatives among the public for a majority to support its inclusion. Notably, there is an important distinction between so-called

ethical egoism and psychological egoism. The former stands as a normative and prescriptive ethical theory, and is what we might categorize Hayward's take on mutual and moral self-interest as. The latter, on the other hand, constitutes a psychological theory maintaining that people will act upon whatever benefit themselves firstly (Rachels and Rachels 2007:80). Should the theory of psychological egoism be correct, ecological justice in any form likely benefits from appealing to every individual's ego. The anthropocentric social justice agenda, as an example, might be less mobilizing because it is a solidarity movement.

3.3.2 Personality type and political identity

A study by Victoria Hurth (2010) shows that identity is one of the key psychological elements fundamental to a person's inclination to sustainability. In particular, different personality types are indicators and determinants of consumption: people within the high-income group and associated high-energy consumption display so-called 'affluent identities.' Somewhat paradoxically, this identity type correlates with frequently expressed desires, attitudes and intentions to consume ethically and sustainably. Still, they lead a lifestyle with the opposite effect. Hurt present essentially two reasons for this. Firstly, the affluent identity stands in direct opposition to the environmental identity, along the lines of a negative definition and identification process ('what an environmentalist is, I am not'). The affluent identities are also more 'salient, desirable, and likely to result in more social support' than the environmentalist type (2010:123). Secondly, 'the invocation of the affluent identity is liable to result in high-energy consumption' (Ibid.). In other words, identity through conspicuous consumption is a significantly positive social feedback loop.

Political identity may also be influential in the question of an Ecocide Law, through a person's susceptibility for change. Conservatism is defined as the tendency to resist change and defend the status quo (Yudkin 2018:32). Psychologist Karen Jenner (2009) distinguishes three different forms of conservatisms based on their response to normative threats: laissez-faire, status quo and authoritarian. Of the three, she finds an increase in perceived normative threats particularly increased the influence

of authoritarianism on intolerance of both racial, political, and moral difference (pp. 189).

Moral Foundations Theory suggests that ideological differences, such as the ones underlying the variants of conservatism, stem from divergent value systems (Yudkin 2018:38). A study shows that the more conservative a person was, the more important to her are values such as loyalty (standing with one's group, family, and nation), authority (submitting to tradition and legitimate authority), and purity (abhorrence for disgusting things, foods, actions):

> While the conservative mindset is targeted toward more "Person-centred" values such as discipline, duty, and responsibility, the liberal mindset is focused more toward "Situation-centred" values such as compassion, fairness, and protection of the vulnerable. (2018:44)

From this, it seems plausible to infer that, all the while for instance duty is a trait of a conservative political mentality, it is not a duty 'to care' specifically.

In an interview with Noam Chomsky by *Global Policy*, the author draws a connection between the pressures on average citizens' life that are associated with global capitalism and its 'profit-maximizing logic', and the rise in political authoritarianism (Polychroniou 2018). Without deviating too far into a political economy analysis in a segment that focuses on psychology, I make note of the possibility that neoliberalism and a free global market exacerbate authoritarian tendencies in certain identity types, which in turn will push back on institutional change of any kind. As it is, conservatives' preference for status quo is indiscriminate, and disregards whether the proposed change ultimately works to the person's benefit.

Within the context of conservative right-wing parties growing in strength on the European continent, support for the radical change that an ecocentric and care-oriented proposal for LOE demands seems increasingly unattainable (Ibid.). A response to the rise of authoritarianism in accordance with the Moral Foundations Theory would instead appeal to the traditional moral values of loyalty, authority, and purity.

3.4 Conclusions

In this chapter, I have looked at some essential points within the field of a new environmental rights regime, in the pursuit of a solution on which ethical approach that is best suited to fulfill ecological justice for ecosystems. Should the human society develop environmental human rights, or a nonhuman rights regime on its own?

In the current discourse on environmental justice, another dividing line between the ecocentric and the anthropocentric debate appears in that regard, namely that of a paternalistic narrative. In Higgins' books, there is the use of the parallel between parents and their child, and corporations and the ecosystems that they manage in their production (2012:8). The child as an analogy for Earth or a natural system frequently appears in Baxter's discussion as well. It is interesting that, within the environmentalist body of thought, the Earth is subjected to both the pre-adult discourse, and to the maternal discourse ('Mother Earth') with apparently equal ease. For example, Bolivia has led the way in constitutional green rights by charting the 'Constitution for the Rights of Mother Earth' (Higgins 2012:52-57). Within the ecocentric stewardship discourse, speaking of the planetary system in the inferior sense as a helpless child that needs to be cared for may evoke maternal/paternal feelings in the receiving party.

The anthropocentric environmental human rights position, in comparison, leaves little room for personification of the Earth of this sort. The planet we inhabit is neither 'Mother' nor child. The paternal narrative is still novel in the language culture of international law institutions. That being the case, anthropocentric position may hold an additional advantage when it comes to implementing a new rights regime now. Not only is its structure and ethical content aligned with an already existing regime of rights that enjoys near universal moral recognition, namely human rights; it also speaks about the issue of environmentalism with an established terminology and narrative. This instantaneously closes the psychological gap between decision-makers relating to intangible concepts such as climate change, harm to life, and global ecosystem depletion beyond their regenerative abilities.

It seems to me that ecocentrism takes precedence over anthropocentric views with regard to ethics, metaphysics, and justice as it relates to morality. This is important to acknowledge. Anthropocentrism, on the other hand, takes precedence with regard to collectivity and social psychology, through recognizing the relational and political feature of rights as they emerge in a society and human community of justice. A meta-ethical consequentialist stance renders the latter aspects more congruent for institutional change to come about than the former aspects. This makes anthropocentric stance by extension the most congruent for eco-global justice to materialize on the international arena.

The human psyche is in the way of a readily implementable Given that anthropocentrism hereby is best suited for this task, any scholar seeking to spur action from wisdom should choose this ethical stance out of pragmatism, I argue. Since I started working on this thesis, Polly Higgins' team has apparently begun to adopt a similar stance. Their most recent effort involves subordinating LOE to article 7.1, Crimes against Humanity; not making it a 5th Crime in its own right (e-letter 30.5.19). They have also argued for ecocide as a form of genocide.

4 Discussion
The Invisible Harm

As I mention in the introduction, one of the main objectives of my thesis pertains to a conceptual analysis of peace. Here, I presented some principal points on peace and the environment, on which I now want to conclude. Although chapters 1-3 barely mention the concept of peace, they provide a fruitful, interdisciplinary groundwork when I now turn to the conceptual analysis of peace in the following. As such, this final discussion chapter aims to integrate several streams of my lines of reasoning thus far, from prior investigations of ecosystem harm in practice, the ethics of harm, and axiology in justice.

One of the new elements I will present in this chapter is peace psychology, and its insights into cultural tolerance for violence. Its cultural perspective gives way for redefining peace through a reassessment of harm as cultural elements both. Up until this point, I have looked at single incidents of ecocide, as well as harm as a specific concept in philosophy of law and ethics. Throughout this chapter, I develop a suggestion for a simplified theory for understanding how harm is *structurally* situated in a modern, Western society. In peacetime, these structures directly concern classical economy. Herein, I distinguish a structural 'invisible harm' from what we today call the 'externalities of production'. By reassessing and redefining such externalities in light of a reassessment of harm from green criminology, I wish to encourage cross-fertilization and add an explanatory aspect to the critique of neoliberalism and historical axioms of the free market.

To summarize, another of my main objectives has been to reassess environmental harm as it derives from legal ecocide in peacetime. To that end, chapter one investigated a historical case where the American and South Vietnamese government decided to spray vast areas of jungle forest and crops regularly over a period 10 years, as part of a 'tactical herbicide' program. From the online archives of *Foreign Relations of the United States* (FRUS), I looked through every available document in the Saigon-Washington correspondence between 1961 and 1962. This was the official period of deliberation within the American military apparatus that produced the pros and cons of Agent Orange and other 'herbicide cocktails'. Surprisingly, I

could not find a single remark of concern for the ecological damage that would inevitably follow. Granted, soldiers on the ground probably saw little value in a treacherous and fatiguing tropical jungle that was hard to navigate through for foreign troops, and in that case reported as much up the chain of command. High officials, on the other hand, had a superior responsibility to assess all relevant factors of harm in their deliberation.

Furthermore, crops constitute livelihood and necessities, which could be expected to hold at least some universal valuation in the U.S. apparatus as well as in the Vietnamese government. Despite this, within the debate of denying enemy forces access to food, I was unable to obtain a single objection from either of the parties on the occasion of substantial loss of crops and permanently endanger the food security of civilians. The correspondence documents also showed very little trace of longitudinal thinking, and there was nothing to imply an 'err on the side of caution' mentality despite the great impact the herbicide program had (which was instead described as 'a great success')(FRUS 1968e). Every time tactical herbicides were brought up in the official letters, the reasons for either commencing the program or shelving it reflected human-oriented concerns exclusively, biased towards the American government and South Vietnamese President Diem (and not, for instance, the South Vietnamese population) (FRUS 1962e).

Today, the letters speak to a global superpower's reasoning process at one point in time, permeated by state-territorial incentives, geopolitics and diplomatic stakes, including the international image of the U.S. on the post-war world stage. Paying heed to reports from natural sciences and subsequent development in international law on geoengineering (the ENMOD Conference), the case study in chapter one demonstrated possible humanitarian, ecological and institutional consequences that may follow from strictly anthropocentric reasoning by global superpowers.

This historically documented anthropocentrism guiding these deliberations during the Vietnam War gains relevance when we compare the Agent Orange case to recent events, such as the trials involving the herbicide company Monsanto. As I touch upon in the subchapter about morals in warfare, some argue that existential threats to a nation have a negative effect the on the moral ability of its governing authority (Reichberg and Syse 2000:457). The context of the Cold War constituted a highly

pressured political situation, and renders in retrospect perhaps some moral relief for shortsighted anthropocentric decision-making. However, these alibis are not directly transferable to business CEOs whom conduct their activity in peacetime. They do not face existential threats to their nation's security, yet tough competition on the global market will necessarily affect their *organization's* well-being. In this regard, it would have been interesting to conduct psychological studies on the mentality of high-official military commanders in a wartime situation, as opposed to that of business CEOs in multinational corporations. For now, we may take note of business ethics studies concluding that companies will benefit from lessons of military organization (Augier, Knudsen and McNab 2014). In the following sections, I will elaborate on harmful conduct in the context of peace by drawing on adjacent fields.

4.1 Direct and structural harm

4.1.1 A wicked problem

Due to its complexity, political scientists often categorize and study environmental harm as 'wicked problems' (Akamani, Groninger and Holzmueller 2016). One of the ten characteristics of a wicked problem is that its causes 'can be explained in numerous ways; the choice of explanation determines the nature of the solution to the problem' (Rittel and Weber 1973). Hiskes adds another quality to this description, by calling environmental harm a phenomenon with 'weakened causal efficacy' (2009:45). Not only are its causes unevenly allocated: the harm itself is diffusely distributed across people, areas, and time. Some of the harm is visible, while some occur on a cellular or micro-organic level. Therefore, weakened causal efficacy makes it harder to identify the full extent of environmental harm. As shown in chapter one, this is one of the key traits of ecocide. In the field of law, weakened causal efficacy correlates with weakened points of law. In other words, legal motions may be dismissed for a lack of evidence of the total damage caused. For Ecocide Law to be applicable in court requires a solid understanding of the harm involved.

It is possible to apply theoretical concepts from other sub-disciplines when attempting to understand ecological harm. In peace psychology, scientists make a separation between direct and structural violence (*Britannica,* 'peace psychology',

read 10.5.19). The difference pertains to the nature of fatalities that result from what type of violence, where 'direct violence injures or kills people quickly and dramatically, whereas structural violence is much more widespread and kills far more people by depriving them of satisfaction of their basic needs' (Ibid.). This is a fruitful distinction to apply in the case of widespread, long-term and severe damage to an ecosystem. In the spraying of Agent Orange in the 1960's, there are no reports of instant deaths as an immediate result. To the extent that this was the case, the herbicide program was not directly violent. Yet, thousands of people suffered irrevocable damage to their bodies and general health because of Agent Orange and TCDD, including DNA mutations in newborns and adults. Even where this damage was not fatal, it caused irrevocable and intergenerational suffering to its victims. The Agent Orange program also resulted in vast damage of jungle and crop areas, with the restoration of the forest estimated to take up to 100 years, in turn affecting the livelihood and traditional way of living for local inhabitants for decades (FIPI 1991).

4.1.2 A cultural conception

The military historian John Keegan was known for developing the position that war is a product of culture and not biology, in opposition to evolutionary theoreticians such as Edward Wilson and Richard Wrangham (Horgan 2012). Keegan stipulates that the behavioral conditioning soldiers go through to suppress biologically primed flight responses to life-threatening situations can be seen as an analogy for how society and governments have been conditioned to endure and press for war at large. Thus, according to Keegan, warfare is produced. Herein, Keegan emphasizes 'the steady march of firepower up the continuum of intensity over the last hundred and fifty years' that soldiers have faced (1981:137). His descriptions give immediate associations to the reports from the natural sciences about the increasing strain placed on forests, oceans, wildlife, and ecology. The latter has also increased tremendously since the second industrial revolution, yet it was not until the 1980's that Nature's relief figured as an important issue on the international calendar (Andresen, Boasson and Hønneland 2012:12). The United Nations conceptualized this relief predominantly through the concept of 'sustainable development', coined in the renowned report 'Our Common Future' (Brundtland 1987). For about four decades, however, knowledge of the industrial 'firepower' in modern times has been

readily available internationally. Even so, the global conglomerate of states still struggles for instance to avoid a 1.5 degree Celsius rise, illustrating a lack of commensurable climate action (IPCC 2018).

Some explanation for the slow advance in providing relief for natural entities may be offered by the adjacent field of peace psychology. Like Keegan, peace psychology also builds upon an understanding of violence as cultural. This occurs 'when beliefs are used to justify either direct or structural violence' (*Britannica,* s.v. 'peace psychology', read 10.5.19). In this view, a belief that war is necessary and justifiable in some instances, constituting a 'just war' theory, is seen as a cultural cognitive scheme justifying violence. By the same parameters, a peace concept is also a culturally violent scheme where it encompasses beliefs that justify structural violence. When regarded in economic terms, a society that vindicates harm from the production line of the products its inhabitants consume essentially holds values that cause and perpetuate violence of a structural nature. At the end of the day, a peace psychological perspective poses a critical stance on the high-consumption culture of affluent groups in both industrialized and developing countries.

There are some notable hindrances to using 'harm' and 'violence' interchangeably. Green criminologists usually employ a 'violence' terminology only when referring to human-to-human aggression (White 2017:244-246). Significant scholarly works such as one IPBES report, which functions as a universal reference point for the milieu at large, only speak of direct and indirect anthropogenic 'drivers' (2016:54). Also, there is a theoretical difference between harm and violence that might be significant. Where harm may occur involuntarily, the notion of violence is laden with intent.

Depending on whether we speak of direct or structural harm, this dissimilarity with violence could potentially encompass a moral alibi for the belief system that allows harm to continue to happen. As it is, the belief that justifies the action does not necessarily justify the structural harm insofar the link between the two is obscure. Take for instance a guy who buys a sweater made of acrylic fabric. During the wash cycle, the sweater will emit micro-plastic fibres that ends up in the ocean. Recent research has shown that, where laundry is an overall significant source of micro-plastic contamination of the environment, acrylic clothes will release 80% more fibres than fabric made from a synthetic-natural combination (Napper and Thompson

2016:43). Here, there is little reason to believe that the consumer sufficiently perceives the link between the action and the resulting harm to the degree that he can be considered to support culturally conditioned violence.

That being said, it is not immediately self-evident the degree to which intent should be of relevance. In the Ecocide Law, intent does *not* matter with regard to liability and accountability in the prosecution process (Higgins 2012:51). Using 'violence' interchangeably with 'harm' may be necessary to increase the gravity of ecocide harm, to the degree that it might justify the connotative link with 'genocide' (which is definitely violence). Arguably, an individual with the power to contribute to global structures that contaminate or destroy life-sustaining systems, cause harm that leads to loss of human lives regardless of intent.

Based on the above, I argue that there are grounds for distinguishing between intended cultural violence, and unintended cultural violence. At this point, we face another dimension of ecocide that I have not reviewed before. This is the possibility that ecocide is a *greater* offense to humanity than the other four CAP, exactly because the type of violence it constitutes is structural, and not direct. There are two reasons for why we should consider this possibility. Firstly, the structural and thus elusive nature of cultural harm makes it harder to identify corporate and political ecocide and prosecute those with superior responsibility herein. When the ICC finds a person guilty of one of the 'core four' international crimes, the harm caused by that individual is visible in broad daylight. The Monsanto and Agent Orange cases demonstrated that ecocidal injury, on the other hand, is not as visible and compliant within a conventional understanding of harm.

Secondly, because of the first characteristic, a *greater* number of human deaths could follow from ecological structural harm than from direct violence. Due to the lack of detection and regulatory mechanisms, the number of fatalities would most likely increase as time passes. As I noted in chapter one, genocide has a high political standing internationally, in the sense that its recognition instantly invokes collective duties to end the atrocity. The structural dimension of ecocide makes this efficient collective response more difficult to achieve, because it is harder to assert when an ecocide has taken place, and its full spatial and temporal picture. For ecocide to

function as a viable legislative concept, it is necessary to set in motion special response mechanisms that will aid the human eye.

There is another reason more people may be expected to die from ecocide than from committed atrocities. This is the accumulative nature of structural harm, especially where ecological systems are concerned. When an ecosystem falls victim to grave exploitation, the loss of nonhuman life is not limited to the animals, plants, and micro-organisms that immediately die from the direct violence being inflicted at the present time. Another vital injury inflicted upon that ecosystem is that it is unable to provide life in the future. The ecological system's capacity to flourish and create naturally excessive gene pools, among others, is a particularly sensitive aspect of its life-sustaining function. As it is, an ecosystem of the magnitude that the Ecocide Law deals with will never fully regain these capabilities once industrial activity has significantly disrupted it, resulting in a literally immeasurable future loss of value:

> Wild places are facing the same extinction crisis as species. Similarly to species extinction, the erosion of the wilderness is essentially irreversible. (…) the first impacts of industry on wilderness areas are the most damaging. And once it has been eroded, an intact ecosystem and its many values can never be fully restored. (Watson, Lee, Venter, Jones 2018:30)

Harm: Crime:	Direct violence	Structural violence	Intended	Unintended
Ecocide	---	X	X	X
Genocide/CAP	X	---	X	---

Table 2: Types of violence and types of crime, revealing a gap in current legislation where structural harm, intended as well as unintended, is not protected against by the Rome Statute.

As a side note, the accumulative aspect of ecocide violence urges us to consider some contrasting principles in humans' relation to Nature. Here, ecosystem flourishing can hardly fully take place within a governance model of marginal thinking, where the modern human axiom of 'count every fish and every wolf', if you will, goes contrary to the natural principle of chaotic abundance (Bjørnstad 2015:6253). This collision reflects another nuance of the neoliberalist ethics that I will attend to in a moment.

To summarize, Keegan's position that culture is a dominant feature of warfare corresponds with peace psychology's view on violence as cultural. Combined, these elements alert us to the possibility that the tolerance for harm in peacetime is also a creation of cultural conception – even when the violence in question is structural and not direct. In conclusion, we may view ecosystem harm as cultural if it derives from a belief system that supports either direct or structural violence. Structural harm, in turn, may be categorized as intended and unintended. On this basis, I now turn to a rudimentary discussion of axioms in neoliberalist economics that I will argue fuel a structural and often unintended form of damage, through a historically flawed ethical doctrine.

4.2 Neoliberalist ethics

The transitional power of the market to create new societies has received noteworthy attention from radical perspectives. Posner and Weyl (2017) envision a just society through the radicalization of the market, where all private ownership is abandoned for the benefit of public audit and ownership. This, they believe, will ensure true form of 'radical democracy', where every constituent may influence the parts of society she cares about, receive allowances for her personal data when used by companies, and work in a fair labor market. At the opposite end is David Friedman who, in his book *Machinery of Freedom* (1989), refers to private property as determinantal to an individual's liberty. Rather than abolish private ownership, Friedman argues that individual property rights should be augmented, to the extent of 'anarcho-capitalism' and even stateless legal systems.

On both occasions, the authors' canvasses of the free market, covering several hundred pages each, connect their ideas to justice, freedom and equality. Despite their visionary scope, they fail completely to integrate into the crux of their theses the social aspects of ecology on a finite planet. This is interesting given that the authors' objective is radical restructuring of the given system: the lack thereof in ecological terms may be a reflection of the limits of the current mode of economic thinking. As mentioned earlier, the most prevalent economic ideology today is neoliberalism (Vetlesen 2009:128). David Harvey (2005) sums up this theory in the following:

> Neoliberalism is in the first instance a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices. (2005:71)

Importantly, Harvey is quick to acknowledge the normative dimension of neoliberalist thinking:

> Neoliberalism has, in short, become hegemonic as a mode of discourse. It has pervasive effects on ways of thought to the point where it has become incorporated into the common-sense way many of us interpret, live in, and understand the world. (2005:72)

4.2.1 The carefree market

The accredited founder of economic liberalization theory (today called 'classical economics'), Adam Smith, argued in his book *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) that his theory would produce a governance system that best benefited all citizens. Notably, he did not support this system on the basis of ideology, but out of practicality. He maintained that the free market was a superior way to govern, not because it was morally right, but because it was the most sensible way to provide for work, wealth, and freedom through autonomy for all of the population. Smith's deliberations on the value of inanimate objects were not axiological by nature, and he does not explicitly provide an idealist basis for the valuation of inanimate things. His doctrine instead encompassed the meaning of labor, production, the relation between a worker and his nation, and adjacent subjects.

In this regard, Smith became famous in particular for a concept birthed in the following paragraph:

> By preferring the support of domestic to that of foreign industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention. (2007:349)

Popke (2011) posits that a prominent feature of neoliberalism has since been to 'instill an increasingly narrow and individualized sense of responsibility and ethical

agency' (Finewood and Stroup 2012:74). Ultimately, the invisible hand is the fundamental principle of a neoliberal economy where the market is a self-regulatory force. This means that, in principle, the free market is able to adjust to all obstacles to national wealth and citizens' well-being, including environmental hazards. Once consumers are provided the information that certain goods or form of consumption will harm their interests in the long run, they will stop buying those goods and services. However, knowledge about climate change and ecosystem depletion has been mainstream information ever since the 1980's, including the report *Our Common Future* by the United Nations and the *Limits to Growth* business cooperation (Brundtland 1987; D.H. Meadows, D.L. Meadows, Randers and Behrens 1972). 40 years later, the market has yet to adjust sufficiently: in a comprehensive summary of progress, the IPBES report flags target 4.1 'sustainable production and consumption' with the worst score ('poor'), for an overall global trend that shows little or even negative progress (2019:22).

This lack of market responsiveness may lie in the fact that a polluted environment 'is of little importance to the economic agent' (Bazin 2009:635). Nevertheless, the notion (and prescription) of an invisible hand has held its dominant position in Western civilization and influenced its economies in recurrent waves of governmental neoliberalism, as well as global free trade.

Another important premise to a functioning market is the possibility of externalities (Andrew 2008). This concept entails a cost or benefit to production that affects a third party and not the producer. These external effects are 'not reflected in the prices charged for the goods and services being provided' (OECD 2003). Defining externalities sets the bar for what is to be counted as production value and what not, also in the sense of who's to bear the cost. With regard to environmental harm, Brian Andrew explains that:

> For the past 200 years or more, firms have not met the full cost of their production and have imposed significant costs arising from pollution on society generally, and there has never been a comprehensive attempt to measure these costs. (2008:395)

In this quote, the author himself describes negative externalities as 'costs' that are being imposed on society. And still, what classical economics calls 'externalities' is

in fact ecocide, should the negative effects accrue to massive, long-term and severe damage 'such that peaceful enjoyment by the inhabitants has been or will be severely diminished.' Going beyond a monetizing terminology, where harm even to this incredible degree is called 'costs', may be a useful way to defy neoliberalist financial axioms and acknowledge the moral dimension of these effects.

In light of the two features described so far, namely the automatic mechanisms of the free market and externalities, it is my position that the sentence directly following Smith's conceptualization of 'the invisible hand' is of pivotal importance to revisit in our day and age. He makes the following statement on the economic agent who 'intends only his gain':

> Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it. (2007:349)

Herein, Smith himself does not base his arguments for the free market on notions of individual profit and wealth accumulation by a 'first come first served' resource extrapolation. On the contrary, he believes that 'by pursuing his own interest', the final beneficiary of an economic agent's free will is the whole of society. From this, I would infer that inadvertently harming people and planet through production and consumption is not in accordance with the utilitarian value system Smith defends. Herein, profit seeking from multi-national companies at the expense of ordinary people's benefit from Nature, or their health, arguably does not fulfill the foundational vision of a functioning free market. In that sense, a neoclassical economic system that causes ecocide as a form of structural violence is arguably a kind of perversion of the founding father's original intent.

One example of this is from hydraulic fracturing (or fracking) of the Marcellus Shale in the United States, a large shale bed that includes West Virginia. One of West Virginia's candidates running for Congress in 2018, Paula Jean Swearengin, figured in the Netflix documentary *Knock Down the House.* One of her quotes therein has since been frequently used to express the blind eye that the U.S. turns to harmful industry, and the illogical legal precedence at play. Swearengin says: 'if another country came in here, blew up our mountains and poisoned our water, we'd go to war. But industry can.' (Roeper 2019). In the extrapolation of minerals, legal habit

even allows the fracking industry's physical takeover of private property, an otherwise highly protected legal category in the States:

> People who own homes or farms in the state may not own the minerals below them. In West Virginia, century-old legal doctrines have allowed gas companies that have leased those minerals to do what's "reasonably necessary" to get to them, even if the surface owners object. The underground horizontal wells often cross surface property lines. (Ward Jr., Shaw and Clark 2018)

Fracking is an extraction technique that has been developed to access otherwise inaccessible fuel deposits. Michael Finewood and Laura Stroup (2012) explain that among the risks involved, water pollution is a prominent one. The authors shed light on why fracking has not yet been put an end to, by describing a neoliberalization of the water discourse. Water is a 'multi-faceted, multi-value resource' at the risk of irrevocable degradation in the industrial production process of natural gas (pp.76). Nonetheless, the industry has been able to redefine the public discourse on the value of water 'as an economic input', so that its degradation in one case makes perfect sense 'in a broader benefit/cost framework' (Ibid.). This practice successfully creates a new hydro-social relationship that reduces the cultural meaning and noneconomic value people normally associate with water, to that of a monetized commodity 'belonging' to the global markets. In this picture, those who oppose the fracking practice even on the notion of human rights and water security become 'anti-jobs' and even 'anti-welfare', which naturally delegitimizes their opposition from the outset.

The findings in this study speak to the powerful position of neoliberalist ethics today. Not only does it constitute a moral baseline of limited responsibility that all influences economic agents and institutions, including a morally 'carefree' mentality towards severely harmful external effects literary defined as beyond concern. In addition, the neoliberalist environment discourse, as Finewood and Stroup refer to it by, continues to hold great legitimacy in reshaping public perception and environmental regulations (2012:76). Wielding the power of meaning, the oil and gas industry effectively quells its opposition by way of economic capacity (including paying for lobbyists and lawyers), and through its hold over people's worldviews.

4.2.2 Two sides of the same coin

Christopher Shawa and Birgitte Nerlich (2015) also make some significant observations on the account of the neoliberalist environment discourse. Their studies pertain to the domain of climate change governance, yet I believe their findings are transferable to ecosystem policies and law. In a comprehensive analysis of international climate policy documents between 1992 and 2012, Shawa and Nerlich find that a binary environment/economy dichotomy dominates the top-down conveyance of these policies (pp.38). Public discourses herein assume two traditionally opposing value systems: a 'pristine nature' on the one hand, and 'economic growth' on the diametric other. Consequently, the world as presented by what the authors call 'high politics' has only two states under climate change: 'impacted' and 'not impacted' (pp.39).

There are numerous negative effects from the oversimplified reduction of the world into two. It limits the public's imagination about the future in general, as well as provides specific metaphors and concepts that further narrow down the public's climate adaptation ambition. For instance, the persistent use of a single number (2 degrees Celsius warming), through which the impacted/not impacted dual framing is expressed, 'validate and perform a targets approach' (Shawa and Nerlich 2015:38). According to the authors:

> a form of intertextuality (therefore) appears to be at work in reducing the world to a state of either impacted or not impacted, growth or recession, war or peace. The danger lies on the other side of the 2 degree line, and hence climate policy becomes a fight against an external threat, the vanquishing of which will allow the world to return to the stable and balanced norm of late neo-liberal economics. (Ibid.)

A similar mechanism may potentially be at play for LOE in the case of war and peace, as the authors themselves mention. This is where a discourse against violence and atrocities evolves that urges the employment of all efforts to avoid war: for as long as modern societies achieve this goal, then in peacetime, 'anything goes', because threats in their most simplified versions are avoided. Antithetically, a positive effect could arise from removing the war/peace dichotomy in discourse about environmental damage. Dissolving the binary system should allow for a more nuanced understanding of the structural harm of peacetime ecocide. This is

ultimately the objective of a de-differentiation of legal activities in peace that are illegal in war, described in chapter one. Alternatively, advocates for LOE could utilize the dichotomy by a military framing of ecosystem harm (e.g. a 'humans' peace equates to war on Nature' narrative).

According to Shawa and Nerlich, the 'sustainable development' dialectic in the 1992 Framework Convention on Climate Change is a direct response to the environment/economy dichotomy (2015:38). Today, this ambition is encapsulated is The Sustainable Development Goals (the SDGs) anchored in the UN since 2015. Some researchers warn that a 'governance by indicators' problem arises where the formulation of the 169 indicators, for each of the 17 overall objectives, have a political dimension beyond the technical and scientific (McNeill and Fukuda-Parr 2019). In its current cherry-picking version, the SDG platform allows rich countries to choose to attain the goals that are achievable through economic means. Herein, in principle, the more economic growth experienced by a nation, the more funds it is able to provide for human-related developmental relief. A problem arises when that growth has largely derived from excessive ecological resource depletion beyond ecosystems' regenerative abilities. This issue of conventional economic growth is so acute, the IPBES report breaks with convention of strictly separating political economy and the environmental science and proclaims that, if we do not deviate from a conventional growth economy, it will be impossible to change the current trajectory of ecosystem depletion (IPBES 2019; Henriksen 2019).

With the IPBES report's conclusions in mind, providing for humanitarian relief with finances gained from ecological destruction arguably makes for an unsustainable development trajectory. The SDGs have become a bedrock of international cooperation on environmental issues. The concept of sustainable development tries to deal with the economy/environment dichotomy, but unfortunately only solves it on the discursive level for as long as economic growth happens to the cost of ecosystems' decline (IPBES 2019:4,19). In practicality, the SDGs' method allows anthropocentric economic-political incentives to guide its development decision-making. In that respect, I argue that the Sustainable Development Goals as a political platform supports my claim that the current trajectory and conceptualization of peaceful societies is at the continuous expense of Nature.

4.2.3 Psychology revisited: the better life

At the heart of the invisible harm is the psychological discrepancy between ideas and people's knowledge about their material premise. Inhabitants in a consumer culture take functioning ecosystems, the very basis of all goods being consumed, for granted. This takes place not only in the minds of individuals, but systematically in the organized structure of the free market. Economic actors expect for instance flies, birds, insects just 'to be there', somewhere in the periphery, and to be as unaffected by our daily lives as we personally are by their demise. Unfortunately, there is only truth to the opposite, as the majority of agricultural product necessitates pollination from insects and not just wind (IPBES 2016). The expectancy that the consequences of consumption is limited to any single purchase is also an inherent premise of modern everyday consumption. I am not financing deforestation and irreversible loss of habitat; I am buying a book (Wyatt 2014). I am not contributing to 4.2 annual deaths related to air pollution, much less to global warming; I am going for a weekend holiday in New York City (WHO 2019). There is an unquestioned underlying assumption that the resources providing the abundance we see in our grocery shelves will last forever, and continue to bring with them our feelings of safety and contentedness.

This was the expectancy of Adam Smith as well. As a theoretical measure, he never imagined a world of finite resources in which the market functions. Smith also took infinite resources for granted, as was perfectly reasonable to do in his time and age. He developed his model and equations for a market that was supposed to function more than 200 years ago. Interestingly, the contextual discrepancy between Smith's time and ours have been taking into account in contemporary economic research on the topic of inequality: 'at the time Adam Smith laid many of the foundations of modern economics, there were likely small differences between the richest and the poorest nations in the world' (Acemoglu 2012:545). The 'takenforgrantedness' on behalf of ecological systems, on the other hand, is a mistake that continues to reverberate through history. In contemporary neoliberal economies, corporate ecocide remains externalized.

When regarded in this light, one could suggest that the framework for western liberal democracies' ideas of development, progress, and economic activity is historically

and functionally flawed. I add to that critique by suggesting that this flaw has worked its way from an economic theory, all the way up to our notion of collective and international peacefulness. This is because the idea of peace is a cultural category, and necessarily influenced by the ideology of the economic system that frames that culture. A person's idea about what kind of 'better life' and goods she can attain necessarily builds on the means with which she thinks it is permissible to attain those goals. To the degree there is a cohesive link between events of thought and action in the case of consumption, the modern concept of peace today is equally faulty and unjust (not just the economic system itself that causes ecocide).

Baxter makes the following observation on that notion:

> (…) environmental resources is certainly about survival, but it is in the area of 'flourishing' that serious complications arise. For here it is a matter of protracted and ongoing dispute what forms of life for human beings may properly be encompassed within the concept of flourishing. Liberalism tries to leave the matter largely for individual judgement (…) in their pursuit of their view of the good life. (2005:149)

Fotion maintains that some ideas about the good life require the accumulative addition of goods that are not fundamental for survival, yet necessary to attain the desired life the fundamental rights depicted in the outset (1986:12). This is transferable to the industrial sector. Today, it has a need to exploit on a level that is not necessary in order for its employees, board or shareholders to survive on the profit it makes. Nevertheless, the exploitative demand becomes unavoidable as an effect of the fundamental business survival principle from the outset of a viable company in a competitive market: constant growth. In his best-selling book *How are we to live?*, Peter Singer provides some tools with which to tackle the economic measure of 'growth' as a matter of perception (1997). He disseminates the evolution of greed as a misunderstood conceptualization of self-interest, and its effect on our notion of the good life. Making a strong case against materialistic living, Singer argues:

> A better life is open to us (…) *except* in the sense made dominant by a consumer society that promotes acquisition as the standard of what is good. Once we get rid of that dominant conception of the good life, we can again bring to the centre of the stage questions about the preservation of the planet's ecology, and about global justice. Only then can we hope to see a renewal of the will to deal with the root causes of poverty, crime, and the

> short-term destruction of our planet's resources. A politics based on ethics could be radical, in the original sense of the term: that is, it could change things from the roots. (pp.20-21)

In the book *The Biology of Wonder*, Andreas Weber connects Singer's notion with the perception and understanding of ecosystems, bringing the inquiry full circle. Searching for the 'leading question for an ecological ethic', Weber argues it cannot be focused on the behavior of a moral subject alone:

> (…) we have seen that it is impossible to reason about an ecological ethics, or an ethical position concerning the living in general, without taking into account the true needs of living beings (…) These needs are always mingled with the needs of others and (…) all thinking about a possible ethics has to start from this vantage point. This has another crucial consequence: we cannot think about what a good life is *if we do not ask ourselves how a healthy ecosystem works.* (2016:344, my highlights)

Big industry irrevocably interrupts and destroys some of the world's most sensitive old-growth forests, fjords, wetlands, mountains and more, making them incapable of functioning (being) the same way afterwards as before the intrusion. The companies in question, on the other hand, function within a continuous cycle of bankruptcies, merges and acquisitions, new actors, products and boards. Where one company's harmful practice ends, however, the one next in line continues the same offense, even when the activity of the newcomer is a 'first', and seemingly incidental. Understanding the systematic and oft unintended organization of such irreversible harm is a prerequisite to end it on an institutional level. Barriers to comprehending the harm inflicted by ones' actions may be equally anticipated at the executive top level of suppliers, as at the ground level and demanders. I have argued that these barriers include psychological biases (Stoknes 2015; Norgaard 2011; Moser 2010), and cultural ones, through ideas about the good life.

Most of the various individuals driving the consumption behind ecocide reside in affluent industrialized countries, and increasingly in so-called emerging economies. Whether by intent or subconscious psychological barriers, decision-makers within a free market have arguably proven incapable of acting upon the full picture and consequences of their actions as they relate to the environment. Going back to my introduction, Friedman Milton (1970) presented a triangulation of regulatory forces for business, consisting of ethics, customs, and law. On the backdrop of a locked

market mechanism as I have described in this chapter, hard law that prohibits environmental damage regardless of political context has never been more imperative. The case of neoliberalism as a historical and global, ethical doctrine, however, is not only a reflection on what legal institutions that are needed. It also begs the question of what ethical paradigm may meaningfully substitute it.

4.3 A just peace

Harvey (2005) maintains that economic liberalism is a belief system as much as it is a political governance or economic management system. Its moral doctrine upholds anthropocentric cultural values such as the conviction that harm against Nature is justified in the production of everyday goods in order to uphold humans' current way of life. Seemingly beyond the scope of concern for Smith himself, economic liberalism is infused by such value principles and axioms. Today, just about every modern high-consumption society has firmly founded its understanding of (all) life on the doctrine provided by neoliberalism.

A prime example of this conviction is seen in the fact that long-term ecological harm is accepted as 'externalities' and not counted as loss in value. Smith had little reason to integrate the environment into his theory in a time where trade was not as globalized and market demand not as impactful as today. Once a permissible flaw in the economic calculation, the externality axiom has since evolved into a cultural conceptualization of optimal peaceful living in modern societies. Looking at the ecological consequences of externalities, a fundamental problem with a neoclassical free market becomes as clear as ever. Not only is a fundamental mechanism the invisible hand, but the invisible harm. This theorem constitutes both a reconceptualization of, and a theoretical counterbalance to, the invisible hand in the neo-classical model. Ecocide by the invisible hand of ideological neoliberalism amounts to culturally conditioned violence.

An international society could redeem the misconception of ecosystem damage as externalities by agreeing that it *is* a loss of value (in more than just the financial sense). I argue that institutionalizing the Law of Ecocide in any form is an effective way to do this because it criminalizes the extreme version of that harm, namely

ecocide. Given that rights are political, social, and protective of humans' 'sacred' individuality, ecologically justice is preferably set to life without giving nonhumans' rights. For that to happen, the justice system must ensure sufficient moral treatment of ecosystems, to the degree where resource extrapolation does not include severe, long-lasting harm and ecocide is prohibited.

How does ecological justice correspond to the concept of peace? Theorization about 'just peace', as opposed to just wars, is an emerging field (Allan and Keller 2006). One of the most famous theoretician on just wars is theologian Thomas Aquinas from the 1200's. His just war theory posits that military deadly force can be justified from the outset (*jus ad bellum*), and inflicted in the following in a fair manner (*jus in bello*) (Ibid.).

A just peace theory mimicking this separation, yet where we still include the cultural violence that we see today, could discuss two aspects. Firstly, when severe harm in production is justified from the outset ('no society can provide for its citizens' needs without permanently damaging ecosystems and its 'life-value stakeholders' to some degree); and secondly, when it is justly conducted ('the rate of ecosystem destruction is fair'). Fulfilling the imitation, the first of these reflections constitutes a *jus ad pax* (the right to peace) principle, while the second amount to *jus in pace* (the right in peace). It is my personal experience that, when the logic of justified violence is 'turned on its head' like this, the just war doctrine loses some its charm defended among others by Fotion (1986).

In any case, *jus ad pax* and *jus in pace* theories are both redundant for as long as the society in question does not recognize that any harm has occurred at all. Instead, when it sees vast ecosystem harm as legitimate actions it will necessarily set the threshold for legality accordingly. This way, the society may continue to experience itself as just, without even having to go through the trouble of justifying the violence (since it does not acknowledge its existence). The threshold for legality that comes with this national image, in turn, continues to allow the ecocidal harm in its otherwise peaceful, daily conduct, and to foster the value framework that accepted corporative and political damage to ecology to begin with.

The concept of ‘the invisible harm’ aims to break this chain of events by putting its entirety on display. In so doing, the explanatory concept provides a foundation for even closer scrutiny of corporate and political harm to the environment in peacetime than LOE currently invites, because it goes beyond the reference to ecocide as single events. Here, ‘the invisible harm’ encapsulates the structural element of ecological harm, as a neoliberalist market reflex currently in perfect parallel to the invisible hand. In order to understand the interplay within a psycho-cultural modernity-ecology-economy nexus, I argue it is essential to include this structural and cultural dimension of harm in the discourse on ‘peace’.

In the case where society *did* acknowledge the harm from externalities, but wanted to avoid and not justify it, two competing alternatives of peaceful collectives present themselves. The first avoids direct harm but allows structural, ‘invisible’ damage to happen, either through negligence or through inability. This seems to fit the case of our current societies, where the safest countries on Earth (and least probability for death and direct injury) correlate with the highest trade-linked ecological footprints (I briefly compared these indexes on page 11).

The other alternative for peace is one that avoids direct harm, but ensures that no victims arise on the structural level as well. In the case that a peace ideal was to evade violence completely, just peace as a collective realization of society is a pacifist ideal that avoids the creation of victims of harm at all points in its economy’s production line. Thus, I posit that only the last of these versions constitutes an ecologically just peace ideal for future societies.

5 Conclusion
Peace Without Trees

Using trees as a symbol of peace is in keeping with a widespread African tradition. For example, the elders of the Kikuyu carried a staff from the thigi tree that, when placed between two disputing sides, caused them to stop fighting and seek reconciliation. (…) Such practices are part of an extensive cultural heritage, which contributes both to the conservation of habitats and to cultures of peace. With the destruction of these cultures and the introduction of new values, local biodiversity is no longer valued or protected and as a result, it is quickly degraded and disappears.

(Peace Prize Laureate Wangari Muta Maathai, Nobel lecture 2004)

Most of the world's nations conceptualize world peace as a collective project through international institutions such as the United Nations (UN). This cooperation was at a pinnacle in 1998 when the UN members agreed on the Rome Statute, which in turn established an independent International Criminal Court (ICC) and the statutory crimes against peace. Through the ICC, the international community aspires to protect peace as one of its most precious universal values: by ensuring that individuals with superior responsibility are put on trial for atrocities such as war crimes, genocidal persecution and torture, the Court serves justice to victims of intolerable, extreme and direct harm against humans.

The increasing pressure on Nature that is happening worldwide simultaneously, however, calls for a closer conceptual study of peace. This inquiry is also necessary where proponents for a Law of Ecocide (LOE) actively use the peace discourse to support Higgins' proposed amendment. Admittedly, aiming to dissect the meaning behind peace as a concept initially appears like hunting down a mirage. Available testimonies of an intangible phenomenon are often evasive, unstructured, and occurring on several levels: from individual conviction and psychology, through institutional objectives and to international political communication. Significantly, the concept of 'ecocide' has anchored a conceptual analysis of peace. In this thesis, it has provided a physical basis on the same structural and globalized level as where peaceful, energy-intensive societies exist.

In chapter two, I discussed the inadequate discourse on ‘ecocide’. Without common knowledge about ecocide, public support for LOE in all 124 ICC member countries will likely be hard to attain. For as long as the harm that LOE protects against remains an invisible feature to everyday life immersed in a neoliberalist discourse on value, an Ecocide Law will likely seem alienating to people who do not already hold ecocentric values. Where it is also perceived to have a diluting effect on human rights, LOE will have even less of a chance for success internationally.

Based on the points I have outlined in this thesis, I have reached the conclusion that acquisition-, consumption- and growth-oriented markets constitute cultural harm and violence. The culturally conditioned violence derives from the definition of ecocide as ‘externalities’, instead of ecological injustice and a hazard for future prosperity. Anthropocentric axioms are just as much a part of the modern ‘economic machinery’ as the national budget is, to borrow Næss’ terminology (1990:25). Interestingly, the concept of peace feeds into a cyclic element in the system at large by providing a political alibi, incentive, and moral vacuum to uphold current economic structures globally and between states. One example of this is the SDG’s. This cycle proceeds with *more* production and acquisition of goods, resulting in a growingly content, or peaceful, society.

An ethical analysis and discussion of the proposal for a Law of Ecocide, as provided here, shows that it is a proposal for many things. Firstly, to enhance the protection of ecosystems, as a response to their well-documented distress. Secondly, to up the obligations of the international community on behalf of all people and nonhumans dependent on a healthy ecology, and tie UN and ICC member nations tighter together in the wicked problem of structural harm against ecosystems that follows from neoliberalist logic. Thirdly, to change our view of ‘crime’, ‘harm’, and what constitutes just criminal laws in a modern age of humans’ tremendous technological, ecology-disruptive capacity.

Lastly and most importantly, it is a proposal to better our understanding of ‘peace’. I have chosen to emphasize this aspect in my thesis, and integrated the ethical analysis of LOE, as a method, into a conceptual analysis. Peace is hard to define and concur on internationally, harder than it is to be in agreement on descriptive criteria for war (even in these times of asymmetrical warfare). The International Criminal Court

provides in this regard for a negative definition: a peaceful society is, as a minimum, the opposite of the crimes of war, genocide, aggression towards other states and against humanity as a whole. This should give us hope as to the good intentions and aspirations of a joint human society: we do not accept extreme and unnecessary harm where we can prevent it.

However, living standards in modern peaceful societies seem to create cultural structures of violence still. These are perpetuated at nearly every level of governance for as long as 'negative externalities' are not meaningfully accounted for. Because of structural violence, affluent, Western nations especially have not succeeded in adhering to an uncompromised non-violence ideal. From this notion follows a rearrangement of the topmost peaceful countries in the world. The Nordic countries, for instance, might be among the nations in the world with the happiest citizens (*Institute for Economics & Peace* 2018), yet they are far from the most peaceful nations by the definition I have presented here. The ICC denies ecosystems access to its community of moral justice, and categorically excludes nonhumans from its efforts to create world peace. In turn, this exclusion facilitates systematized harm where corporations and political entities may include ecocide in their notion of 'business as usual'. A neoliberalist doctrine such as this have already proven to cause severe, intergenerational harm to people and planet resulting from bioaccumulation of carcinogenic pesticides both in war and in peacetime. The substantial evidence for an ecocidal, unjust peace ideal at play in international fora today is therefore an ethical problem beyond ecocentric conviction.

A reversed directionality to conflict studies of peace and the environment encourages the reorganization of affluent countries' ambitions, ideals, and parameters for success. Ecological justice in practice would look at nonhumans' claim to our sense of morality in direct relation with the chase for a better life that never seems to be good enough. Until then, the concept of peace drives many political and industrial efforts, all the while encompassing both harmful and non-harmful practices. For this reason, it should be studied in the future within a framework cognizant of the fact that something criminal, unethical, and unjust for humanity (and 'nonhumanity') might be taking place. This brings me to the point of interdisciplinarity.

5.1.1 The ecosystem approach

The ecosystem approach was agreed upon by the Parties to the Biodiversity Convention in 2000, and pertains to the necessity for decision-makers 'to view ecosystem pressures comprehensively' (Andresen, Boasson and Hønneland 2012:126). In addition, the approach encourages that the Parties see their objectives' interconnectedness, including conservation in an economic context. Similarly, interdisciplinarity necessitates complex systems (Newell 2001). In the case of ecocide, it requires complex theories that are attentive to the cultural heritage from neoliberalism's instrumentalist view on ecosystems. As an example, justice theorists would preferably avoid functionalistic definitions of natural resources from the outset, such as Chris Armstrong *à priori* formulation that they are 'raw materials available from the natural world, which are (therefore) not produced by humans but which are nevertheless useful to them' (2017:11).

As mentioned in my opening chapter, Cassese provides useful principles for how 'international crimes proper' should come about (2013:25). However, he does not solve the problem of universal values without knowledge (what Næss likely would have called 'action without wisdom'). Developing international criminal laws that regulate the heavily impactful global trade would need to take into account the inability of consumers and producers alike to realize the inherent harm of the market. Where Cassese ignores the possibility of a lack of knowledge in the development of law, Smith equally ignores it in economics. Had we looked closer at other important institutions arguably influencing the set of values in society, I hypothesize that a similar trend would surface.

The lack of knowledge involves the impossible task for the individual to see clearly a harm that is 'invisible' because it arises on the structural level. The effect of this can be approached primarily through the study of two parallel processes: psychology, and culture. Thus, I argue that solving the wicked problem that is environmental injury in a globalized economy must be rooted in humanistic studies that are able effectively to identify, formulate, and generate knowledge on how harm, crime, money, value and peace are cultural categories. William Newell makes a relevant notion in that regard, on how the humanities are typically 'more concerned with behavior that is idiosyncratic, unique, and personal—not regular, predictable, and

lawful', as opposed to the natural and social sciences (2001:4). Interestingly and important to bear in mind in future research, this potentially makes the disciplines that are indispensable in studying cultural phenomena potentially the least inclined to use complex systems approaches that seems necessary to understand anthropogenic damage to Nature.

Before eco-global criminology emerged, ecosystem depletion has traditionally been approached predominantly as isolated, exclusive studies within either the natural sciences (the IPCC and IPBES reports), the judicial department (as through the proposal for a Law of Ecocide), or the field of environmental ethics and philosophy (such as Næss and deep ecology or Vetlesen and the 'Denial of Nature'). However thematically comprehensive each study may be, the interaction effect between for instance different levels of analysis, such as the individual psyche, the group culture and the institutional doctrine, may go wholly unattended. In turn, specialized studies will necessarily yield specialized and narrow replies, at the expense of a theory's practical value.

This effect became evident in my case as well. In chapter three, I rather uncomfortably broke with the conventional method pertained to philosophy of logical and theoretical thinking, and instead chose a 'meta-ethical consequentialist' approach. Only then was I able to conclude on a reply to the legal debate on human and nonhuman rights that is at any rate transferable to domains of thinking and action *other* than philosophy. Where there is a loss of practical value in a generated theory, the public inevitably misses the knowledge therein because the theory will never see the light of day outside its respective field. In the unique case of environmental disaster, this is where the image of a 'starving philosopher' comes into play. Turning Næss' quote on its head, I propose that in a time with ecocide and ecosystem collapse, wisdom without action is useless (1990:1).

Mark Everard notes on the consequences of a specialization of knowledge in studies of the environment:

> We suffer still from too great a fragmentation into disciplinary specialisms both in research and other branches of education. Of course, specialist focus is necessary in a complex world wherein we need those who can think through difficult ecological, chemical, engineering, planning, fiscal, and other

> problems. However, what remains distinctly lacking is the 'glue' that joins these different sectoral interests together, for all are distinct only as a matter of anthropocentric definition; all constitute different facets of the same interconnected natural, human, and economic world. (2016:126)

A literary interpretation of Everard could yield the idea that the 'glue' of interdisciplinary thinking may in fact dissolve anthropocentrism in academia. Having said that, there are a couple of pitfalls pertaining to an increasing integration of academic fields. Meta-ethical consequentialism is an example of the possibilities within an interdisciplinary mindset, I would argue. As an ethical position, it maintains that ethics can and should guide choices. At the same time, its pragmatic approach reflects an impatience for action that, for the most part, I find atypical for philosophy (even applied ethics). The impatience and action-oriented trait of meta-ethical consequentialism makes it open for objections that it is a form of 'quasi-ethics', and not laid down on proper logical reasoning. Such a fault usually has a delegitimizing effect in academic circles. The oozing pragmatism of this stance could also reduce its allure for readers wanting to change their ways on a basis of immortal morals. Here, 'pragmatist ethics' would have the opposite effect.

Friedrich Waismann provides another argument for the need for philosophy:

> The results of philosophical reflection are not propositions but the clarification of propositions. Wherever real progress has been made in the history of philosophy, it resided not so much in the results as in the attitude to the questions: in what was regarded as a problem, or alternatively, in what was recognized as a falsely formulated question and excluded as such. (1977:81)

In this master's thesis, I hope to have contributed to recognizing a falsely formulated question of what harm is, by clarifying the nature of systematic harm in a neoliberalist free market. I have chosen to focus on human psychology on individual and group level as the context for the ICC and LOE. One of the reasons for this is that the invisible harm that I have concluded on is essentially psychological and cultural, and relates to peace and harm as culture phenomena. This made for more intricately woven chapters given that the overall subject has been ecosystems' relation to the Human, whether through a moral claim to humans' sense of justice, or a legal claim to our system of rights.

With the integrative debate finalized in chapter four in mind, there are several interesting, possible pathways forward from where my thesis ends. One aspect to go more in depth on is the institutional level of analysis. John Rawls canvasses liberal democracies through constitutional society and comprehensive world-views, which would have made for an interesting line of thought to follow (Baxter 2005:201). A less theoretical extension of my discussion could have been to study political communication applied to international climate negotiations, departing for instance from Norway's international image and work as a peace nation (Ihlen, Skogerbø and Allern 2015).

Is ecocide a crime against peace? After careful consideration and tackling this research question from several different angles, it is my conclusion to this research question that ecocide should not be considered a separate CAP on an ethical basis. I do not find that the legal claim to rights is strong enough to earn nonhumans rights on their own in a social, psychological, and political justice community as of yet. I do find, however, that ecosystems' moral claim to justice validates enhanced international protection equivalent to a de-differentiation of legal and illegal practices today. It is therefore my final take on the matter that ecocide is a crime conducted *by* peace. Peaceful societies that follow neoliberalist ethics, including a conventional-functionalistic valuation of ecology, will necessarily perpetuate the invisible harm that is the repeated instances of widespread, long-term and severe damage done unto living and experiencing ecosystems in peacetime. Ergo, the member states of the International Criminal Court should integrate the Law of Ecocide into one of the other CAP as a case of ecological distributive justice, in the honorable pursuit of peace on Earth.

Afterword

On April 25, the news reached me that Polly Higgins had passed on Easter Sunday. Her team *Eradicating Ecocide* wrote that she left 'peacefully, in the company of her devoted husband Ian and close friends, with a mischievous smile on her face' (e-letter 25.4.19). The loss of a human being with whom I feel some sort of connection makes a much stronger impact, and touches me more, than the death of an ecosystem ever will. A person's life feels more meaningful, and the irreversibility that seals its closure ever more regrettable, never to be made undone. An ecosystem, on the other hand, may replace another ecosystem. That is true for me at least, all the while knowing that I hold only a human perspective. I do not have the familiarity with natural landscapes and movement for an intelligent distinction between for instance one coral reef and another, its position within just this set of neighboring mountains and underwater hills, or this flora and fauna. At least, I can discover much the same, or equal, meaning in another pristine coral sanctuary, and find that it works as a substitute.

Yet, this prospect requires that there *is* another reef with enough meaning to explore. In our day and age, that future is not safe with the system. Ecosystems in every corner of the globe is in decline, either by becoming smaller in size or simpler in complexity. I did feel something when I learnt that industrial activity makes an ecosystem lose features of *being* it can never truly get back again – because I am a traditional creature and I like things the way they are. These days, I am so conservative, they could name a national park after me. The normative threat of dwindling wilderness makes me less and less tolerant to change, 'don't you move that city border another inch' when I read that today, only 23% is left of the planet's wilderness (>10,000 km contiguous zone) (Watson, Lee, Venter and Jones 2018:27). 100 years ago, when Kurt Eisner was murdered in Munich, we had 85%. Then, I truly despair.

No one can replace Polly Higgins. The unique combination of personal attributes made up her *gestalt*, her very own whole, as it were (Næss 1990:57-59). No one can imitate her qualia, the outsider's experience of what it was like to be *her* (Bennett 2002:226). I am reminded in that regard of the autobiographical diary of the German

citizen Anne Frank. Ending abruptly at one page, her diary touched people by way of individuality and particularity likely more than any statistics of the Jewish genocide during the Second World War could. It is perhaps the one published book whose very essence of a story is told simply through the absence of a finish.

And so, the crimes against peace came into being to protect that. To protect a sacred Self from irreversible damage to its life and safety. For the same protection to go for ecosystems, their individuality must become clearer to us. The wholeness in the case of the environment must become more valuable. Avi Brisman, whom I quoted in the beginning of this text, highlights the importance of studying concepts as gateways to our understanding and indicators for change. As a reminder, he argues that 'how we describe something reveals our comprehension of it, and how we grasp something conditions how we behave and conduct ourselves' (2014:23). I would argue that a form of gestalt thinking can contribute to this end, to help us see each ecosystem in relation to its spatial whole that is the environment, and each ecocidal act at any one place and time in the temporal whole that is the future of its constituent parts, both human and nonhuman.

Improving the outlook for our common future firstly requires successfully improving our common knowledge. Safe to say, the more we (feel like we) know a human being, the more meaningful and irreplaceable the person's life becomes. Perhaps equally, the more we feel like we 'know' ecosystems, the more we also understand just how irreplaceable they too are in a human world. *Especially* in a human world. This process, though, cannot take place in a forced framework of 'Mother Earth's' inherent value, as there are those who do not, and will not, speak the ecocentric language and understand the world through its concepts. Instead, a common approach must take in the *real* tragedy of the commons that is the lowest common denominator, what we can all agree on and then barely call our own. A down-to-Earth-pragmatism such as this would mean to enclose the public discourse on ecosystems with their social, psychological and moral value to *us*, first and foremost.

Because let us not forget, lessons about increased environmental protection can be learned from 'how it is like to be human' too. Homo sapiens may not have become gods quite yet, far from it: in our relentless developing of societies, still driven by a too narrow, economic idea of world peace, we eliminate the natural systems human

hands can never replace. No matter how advanced our technology becomes: wild nature and the natural functioning of impossible biological systems are always the exact opposites of technological and industrial interference (Watson, Lee, Venter and Jones 2018:30).

Still, it is also true of humans that, every day, we create meaning where there was none (in the human mind). Perhaps there *is* no point to a Northern white rhino, last of its kind. How fantastic, then, that we, the Mistresses and Masters of Meaning, can defy the nonexistent because we see that it is good! Until the pioneers of green criminology came about, ecocide 'was not there'. Legal scholars defined crime by the legality threshold already in place, instead of by the factual harm and destruction in unconventional contexts. This harm is one we can easily study once we rid ourselves of the habitual expectation that it is not there. Now, scholars from multiple fields who reassess and redefine society's most foundational concepts may encourage its inhabitants to relive and relearn.

The study of such as politics, psychology, and culture expands this reflective exercise to the national and global level. This is where institutional change is at any rate proportional to the wickedly complex challenge of transnational crimes against ecosystems, and adequate environmental governance. In a joint task force tackling some of the most complicated issues thinkable, I do believe philosophers and ethicists are invaluable as well, although I have treated them rudely in this thesis. Pushing against habitual thinking and inherited axioms, they reboot a valuable bottom-up understanding of the common values we hold, starting from the individual experience where change begins:

Can I have peace without trees?

Can the world?

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Attachments

A) The Law of Ecocide, excerpt

See: https://eradicatingecocide.com/the-law/the-model-law/

THE CRIME

Ecocide crime is:

1. acts or omissions committed in times of peace or conflict by any senior person within the course of State, corporate or any other entity's activity which cause, contribute to, or may be expected to cause or contribute to serious ecological, climate or cultural loss or damage to or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished.

2. To establish seriousness, impact(s) must be widespread, long-term or severe.

3. For the purposes of paragraph 1:

(a) 'climate loss or damage to or destruction of' means impact(s) of one or more of the following occurrences, unrestricted by State or jurisdictional boundaries: (i) rising sea-levels, (ii) hurricanes, typhoons or cyclones, (iii) earthquakes, (iv) other climate occurrences;

(b) 'ecosystems' means means a biological community of interdependent inhabitants and their physical environment;

(c) 'territory(ies)' means one or more of the following habitats, unrestricted by State or jurisdictional boundaries: (i) terrestrial, (ii) fresh-water, marine or high seas, (iii) atmosphere, (iv) other natural habitats;

(d) 'peaceful enjoyment' means peace, health and cultural integrity;

(e) ‘inhabitants’ means indigenous occupants and/or settled communities of a territory consisting of one or more of the following: (i) humans, (ii) animals, fish, birds or insects, (iii) plant species, (iv) other living organisms.

4. For the purposes of paragraph 1: the Paris Agreement of 4 November 2016 shall be considered to be established premise for prior knowledge by State, corporate or any other entity’s senior person, or any other person of superior responsibility.

THE ELEMENTS

The perpetrator’s acts or omissions caused, contributed to, or may be expected to cause or contribute to serious ecological, climate or cultural loss or damage to, or destruction of ecosystem(s) of a given territory(ies).

The perpetrator’s activity has or will severely diminish peaceful enjoyment by the inhabitants.

The perpetrator had knowledge or ought to have had knowledge of the likelihood of ecological, climate or cultural harm.

The perpetrator was a senior person within the course of State, corporate or any other entity’s activity in times of peace or conflict.

B) The Rome Statute, link

See: https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf