

Not with a Bang, but with a Whisper:  
Utilizing a Restorative Justice Framework  
to Address Issues of Ecocide and Environmental Harm

by

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## ABSTRACT

Human activity, such as industrialization and deforestation, have led to an increase in global temperatures and natural disaster events that have resulted in the death of over two million people and an economic loss of over USD \$3.64 trillion in the last 50 years. Governments, organizations, and activists across the globe have tried to reduce the collateral consequences of human activity on the planet; however, even with increased attention to these issues, there has yet to be much discussion of accountability for planetary harm. Greenhouse gas emissions, waste dumping, and climate change mostly result from individuals, corporations, and governments exploiting the planet of its natural resources freely, without direct and immediate consequence. In the field of criminal justice, the criminalization of and penalization for engagement in certain acts is meant to deter harmful acts. Therefore, to deter auto-genocide, one must ask whether perpetrators of global harm should be held accountable, and what accountability might look like in these scenarios. This article explores traditional definitions of “crime,” punishment, and the criminal label, and discusses the possibility of holding perpetrators of ecocide and the impending auto-genocide accountable utilizing a restorative justice framework.

## DEDICATION

This work would not have been possible without the people who kept me passionate and helped me to believe in myself. Grandpa, thank you for always showing interest in anything I was passionate about, even when those things may have seemed silly. I couldn't have made it this far without your belief in me. Dr. Wachholz, you were my guide into my first understandings of criminology. Your confidence in me and willingness to help me navigate my academic journey has been instrumental in getting me to this point in my career. To my partner, thank you for your patience and understanding, and for being my rock through everything. To my friends and family who listened, nodded, and humored me, thank you. I am grateful to you all.

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## CHAPTER 1

### INTRODUCTION

The human overconsumption of natural resources and accumulation of waste have created significant negative impacts on the environment, including climate change.

However, the global impact of environmental harms is not simply the result of aggregate individual acts; rather, corporations have a significant environmental impact on the globe. One hundred energy companies are responsible for 71% of all industry-led emissions, and further, the top fifteen U.S. food and beverage corporations generate over 630 million metric tons of greenhouse emissions each year (NRDC, 2019).

When a corporation commits a harmful act against the environment, the repercussion of this act is a fine (Cornell Law School, 2022). The cost of adhering to environmental policy can be relatively high, such as the costs of maintaining proper waste disposal or using approved chemicals that may be more expensive than their unapproved variants; these fines are a significant financial cost, and thus aim to offset the potential financial gains in committing harmful behavior (Cornell Law School, 2022). However, fines and other financial repercussions have been shown to not be a significant enough motivator in stemming harmful corporate behavior (South, 1998). Fines and monetary consequences can be absorbed by large corporations and can also be passed down to consumers in the form of increasing product or service pricing (South 1998; Ruggiero & South, 2010). Further, harmful actions that are committing by corporate entities can be difficult to prosecute due to multiple involved actors. Thus, current regulatory practice is not sufficient in stemming harmful corporate action against the

environment and, further, difficulty in establishing accountability compounds the lack of impetus to stop harmful behavior.

However, legally, corporations have been granted the status of an individual and are viewed within the lens of the law as having moral responsibility. Therefore, it may be possible to attempt to address harmful corporate acts using policies traditionally used for individual accountability, such as restorative justice. Restorative justice policies, which prioritize the restoration of harm with the goal of healing, have been employed to address acts that are deemed criminal in cases of individualistic instances. However, little consideration has been offered as to the utility of restorative justice in addressing corporate harms and crimes against the environment (Preston, 2011; Stark, 2016; Wijdekop & van Hoek, 2019; Forsyth, Soares, & Tepper, 2021). This thesis aims to fill a gap in the literature by providing a framework for implementing restorative justice practices in the case of corporate harm toward the environment.

Current justice practices focus on punishment and retribution, though supporters of the system claim that there is a focus upon rehabilitation (Cocklin, 1977; Mackenzie, 2001). These practices, such as the death penalty where the possibility of rehabilitation seems futile in the light of a sentence of death, center any act that is deemed criminal as an offense against the state and doesn't allow much agency to the victim in the pursuit of "justice" (Calhoun, 2013). Further, these practices have been shown to have little success in deterring future harmful behavior and recidivism (Benecchi, 2021). Centering a restorative justice approach instead of a retributive one, allows for a focus on healing and restoration, for the victim and their community, as well as for the offender (Hillyard & Tombs, 2007; Menkel-Meadow, 2007; Wijdekop & van Hoek, 2019). Restorative justice

principles prioritize the victim's needs over the state's and employs the concept of social equality to establish respect and dignity throughout the process of restoration (Calhoun, 2013). Ultimately, the goal is to meet the needs of all actors (victims, community, and offenders) and establish accountability without causing further harm in any form.

This article will begin with a discussion of the nuanced differences between harm and crime, followed by a consideration of intrinsic value. The concepts of ecocide, or massive devastation to the environment, and Marx's metabolic rift will then be introduced to highlight how current economic and social practices exacerbate the issues of environmental harm and ecocide. This will then be followed by a deeper analysis of accountability within the current United States' justice system and how restorative justice may be utilized to create healthier and safer communities. The example of the current oil drilling project in Alaska called the Willow Project will be discussed, drawing upon this restorative justice framework. For an auto-genocide, or the self-inflicted death of the human species, to be avoided, there must be an impetus for harmful actions against the environment to cease through consequences and accountability of those who do commit such acts.

## **Harms & Crimes**

Understanding how crime and harm are constituted amongst legal and social boundaries, as well as who is considered criminal, is essential to the conversation on the mass destruction of the environment, ecocide, and environmental harm. Traditional views on crime and those who are deemed criminal tend to exclude certain harmful actions, such as harm against the environment (Hillyard & Tombs, 2004; Michalowski, 2008; Greenfield & Paoli, 2013). In 1998, Henry and Lanier identified six ways criminologists



tend to define crime, these definitions of crime range from acts that are prohibited, prosecuted, and punished by criminal law to acts that incite moral outrage (Henry & Lanier, 1998). Definitions and considerations of what crime is also differs between cultures, countries, and even within communities. The constant changing of laws and regulations over time also serves as a demonstration that considerations of crime can be altered; what may be considered a criminally deemed act one year, may be completely decriminalized the next (Michalowksi, 2016).

This variability in the definitions and constructions of crime illustrates that crime in itself is a social construct and demonstrates that “crime” has no ontological reality. Meaning, without a story of who or what is criminal, crime would be impossible to recognize (Hillyard & Tombs, 2004). This is why different cultures and governments have differing criminal statutes and laws; what one culture may consider criminal, another may not. One can view the banning of abortion as an example of this. Across the United States, state governments have chosen to ban or protect individuals’ rights to abortion, with some areas criminalizing the act of attempting, providing, or successfully undergoing an abortion (Davis, 2022). This understanding of crime as a social construct has several implications, including that criminal acts and harmful acts are not always synonymous. Further, it also allows the understanding that certain harmful actions, such as homicide, are regarded as more serious harms than others, such as pollution.

Corporate environmental harms are largely considered outside the scope of “crime,” and so accountability for these harms is rare; often, if and when there are repercussions for these types of harms, such as toxic waste dumping, they are largely financial, i.e., fines or compensation penalties, which most corporations can easily absorb

or pass off on consumers (Ruggiero & South, 2010; Michalowski, 2008; Michalowski, 2015; Hillyard & Tombs, 2004). Understanding that crime is a subjective concept with no ontological reality provides context for why environmental harms are not taken as seriously as other forms of harm or acts that are deemed criminal, such as street crime.

### **Intrinsic Value**

Amongst the consideration of crime and harm, another important aspect to discuss is the idea of who is a victim and, further, what traits or aspects of this individual make them worthy of being a victim. When considering that crime itself is a social construct, it becomes important to consider that who or what we consider to be a victim is also subjective.

The concept of intrinsic value has its roots within traditional Indigenous knowledge and philosophical constructs. At its core, intrinsic value describes that any entity has value for the sole reason that it exists (Sandler, 2012). Intrinsic value is unconditional and is not determined by human consideration. American consumer culture, and the prevalence of capitalism and instrumental value demonstrates that intrinsic value is not prioritized when considering non-human entities, that is that an entity only has value if it is useful to the continuation of human supremacy over other species and the environment (Marx, 1984; Sandler, 2012; Crook & Short, 2014). Instrumental value dictates that the value of an entity is ascribed by its usefulness for human utilization, intrinsic value instead considers the entity to have value simply because it exists. Current society prioritizes the instrumental value of an entity, which has led to the overuse and overconsumption of natural resources, which in turn has led to events of ecocide, terminal erosion, and environmental harm (Marx, 1894; Crook &

Short, 2014; Lindgren, 2018). If instead intrinsic value is prioritized, then it becomes obvious that all entities deserve to be considered victims in events of harm.

Within modern society, especially cultures that prioritize a capitalistic economy, instrumental value, instead of intrinsic value, takes the forefront. Instrumental value posits that the value of an entity is conditional and is based upon the utility of that entity for human survival or use (Sandler, 2012). Historically, one of the main components necessary for a case of environmental harm to be deemed worthy of legal consideration is that the act must have a negative impact on human life (von Solinge, 2010; Van Uhm, 2017; Ruggiero & South, 2010; South, 1998; South & Wyatt, 2011; Higgins, Short, & South, 2013). However, if intrinsic value is considered within scopes of justice, it allows for the establishment of all entities, and not just humans, to be viable victims of harm. The concept of a viable victim considers who or what is *worthy* of being the victim of an act deemed criminal. Largely, orthodox criminology views viable victims as human, and even then, this varies based on race, gender identity, and profession (Strega, et al., 2014; Richardson & May, 2001).

The expansion upon the idea of who and what is a victim of harm, such as an ecosystem, non-human animals such as bears or birds, or even vegetation, trees, or permafrost, would allow for the establishment of accountability for those who commit harmful acts upon these entities as well. In an anthropocentric world, it becomes necessary for humans to help advocate for non-human entities. This can be done by advocates, activists, and, perhaps most crucially, subject experts. For example, considering trees to be viable victims and enlisting advocates from the academic community, such as a dendrologist, or environmental activists to supply information and

discourse regarding the harm that has been committed against the victim. This would lead to the establishment of accountability because it would allow for the centering of the victim and their advocates in providing context to the harm the actions caused. Within this context, then, the point is not to ensure nothing, and no one is ever harmed, but instead to prioritize respect and dignity to all entities and provide restoration when harm is caused. For example, while Native American communities do hunt animals for food and resources, they do so with rituals of respect towards the animal, as well as, hunting for necessity instead of sport to avoid overconsumption (Harrod, 2000).

### **The Metabolic Rift**

The prioritization of instrumental value over intrinsic value is an example of what Karl Marx describes as a metabolic rift. Marx and similar scholars are frequently criticized for their disregard of the environment and ecology in their theories (Foster, 1999). However, during the soil erosion crisis in England during the nineteenth century, where the over-exploitation of soil led to terminal erosion and triggered an agricultural crisis, Marx asserted that, like human labor, nature is exploitable and only important so far as it serves a purpose for profit (1894). Marx described the social metabolism of profit-driven practices as placing great strain on nature (1894). Social metabolism describes the ways that societies use, manage, transform, and discard materials, resources, and nature (Marx, 1894; Foster, 1999). Thus, the social metabolism of current American consumerism (over-consumption) creates an inability to regulate energy and resources adequately, leading to a metabolic rift.

Marx described metabolism as a constant exchange between humans and nature: humans cannot survive without nature, and nature is linked to itself, as humans are a part of nature (Foster, 1999). As previously mentioned, many of the actions that would lead to a metabolic rift are not acts that are deemed criminal, though they are certainly harmful (Crook & Short, 2014). When considering a topic such as the environment, the concept of the metabolic rift becomes important to describe the consequence of continued negative action. To continue to disregard the intrinsic value of all entities means that there will be continued overconsumption of resources, the environment, and non-human animals to the point that they will not be able to regenerate themselves. Without stemming our overconsumption and respecting and recognizing all entities as worthy of survival, the metabolic rift will continue to worsen. Examples of this can be seen in excessive carbon emissions that are damaging the atmosphere and causing temperature rises on a global scale, or toxic waste dumping that is causing cancers and other health risks (Lindsey & Dahlman, 2023; Environmental Protection Agency, 2023). If these harms are not ceased, and accountability is not established, the final result will be the eventual termination of the human species.

## **Ecocide**

Critics of the fields of criminology and genocide studies have expressed concerns over the lack of consideration for non-human entities, such as plants and non-human animals (Lindgren, 2018; Eichler, 2020). Further, criticism also considers the lack of respect for indigenous ontologies and epistemologies— leading to fields that are very anthropocentric and Western-focused (Etchart, 2017; Eichler, 2020). To address some

critiques of both genocide studies and the field of criminology, Professor Arthur W. Galston introduced the concept of “ecocide” in 1970 at the Conference on War and National Responsibility (Lindgren, 2018). Galston described ecocide as the purposeful and permanent destruction of an environment that renders it uninhabitable (Brady, 2014). Since then, ecocide has come to be defined as an act or series of actions that lead to the extensive damage to, destruction of, or loss of ecosystem(s), whether by human agency or other causes, to such an extent that peaceful enjoyment and habitation of the area by the inhabitants of that territory are severely diminished or no longer possible (Lindgren, 2018).

While the definitions of ecocide provide an understanding of how detrimental these harmful acts are, there is still little consideration for establishing accountability or consequence for committing ecocidal acts. This leads to a lack of significant repercussions for committing harmful acts against the environment. As has been mentioned previously, the consequence for committing harmful behaviors against the environment on a corporate level are fines which does not address the issue or necessarily resolve it (South, 1998; Cornell Law School, 2022). Most corporations are able to absorb these costs, are pass them down to consumers, as they are less expensive than following environmental guidelines (South, 1998; Wijdekop & van Hoek, 2019; Cornell Law School, 2022). Further, this exemplifies that current practice prioritizes the needs of the state over that of any victims involved. While the funds from the fine payments may be used in attempts to clean up the harm that was caused, there is little consideration of the victims of the harm, instead the focus is on paying back the state for the harm caused. This type of repercussion usually does not stop the harm, it simply generates an

inconvenience in harmful corporate behavior (South, 1998; Wijdekop & van Hoek, 2019). A restorative justice approach would instead center the victims and how the harm has affected them, involving the victim, their community, advocates of the victims (such as advocates for non-human victims), and the offender(s) (Calhoun, 2013). This allows for a process of healing and restoration by prioritizing the needs of the victims and communities instead of the needs of the state.

Further, ecocide is a consequence of a metabolic rift. Considering the currently accepted definition of ecocide, the actions that lead to an area being devastated to the point of incapability to support peaceful enjoyment of the space are based largely on overconsumption and the disregard for intrinsic value (Marx, 1894; Lindgren, 2018). As Marx (1894) asserted, the environment and the resources within it are exploitable in the push for profit, this shows that only instrumental value, or the value an entity has for human exploitation is considered in whether it deserves to survive and thrive in its natural circumstances. The practice of prioritizing instrumental value over intrinsic value allows for the social metabolism of overconsumption of resources and land area to reach the point of disallowing regeneration (Marx, 1984). When regeneration in an area is no longer possible, that area will decay to the point that it is no longer usable by its natural inhabitants (Marx, 1984; Lindgren, 2018). Thus, this overconsumption through the social metabolism of a society leads to a metabolic rift which then, in turn, is an ecocidal event. The consequences of a metabolic rift and ecocide events are dire to the human species and the non-human environment. As Marx (1984) has asserted, the destruction of the environment is the destruction of humankind, as humans are a part of the environment.

When first introducing the topic of ecocide in his 1970 address at the Conference on War and National Responsibility, Galston linked ecocide with the concept of genocide, describing the genocidal impact of environmental destruction (Crook & Short, 2014). Ultimately, humans require the environment to survive, the basic building blocks of life inclusive of the air we breathe, to the land we build shelters on are all a part of the environment. Further, humankind itself is a part of the environment. So, actions such as environmental harm and ecocide lead to the eventual inability to use and rely on our environment leading to an eventual termination of human existence (Marx, 1894). As much of the ecocide and environmental harm that occurs on a large scale are committed by humans, ecocide will eventually lead to an auto-genocide wherein human activity causes human extinction.

Indigenous populations, who have also raised the issue of the connection between ecocide and genocide, have been victims of this nexus for centuries in the name of colonization, urbanization, and development. As Wolfe (2006) articulates, colonization destroys so that the colonizer can replace what was there with their ideals. In the process of urbanization and the belief in development towards a “modern” way of life, traditional methods of living, such as traditional methods of caring for the environment like cultural burning or the usage of their language, are often destroyed (Wolfe, 2006). For many Indigenous communities, destruction came in the form of mass murder, the removal of cultural traditions and languages, the slaughtering and destruction of important resources, such as bison, and displacement to smaller land areas (Wolfe, 2006). While these issues have started to gain recognition by the general public, there still has yet to be any establishment of accountability for the harm caused to these communities. Further, the



destruction of the environment, non-human animals, and vegetation of the area continues to be ignored. Ultimately, for the establishment of accountability and for any form of justice to be served regarding these harms, there must be acceptance of these communities and entities as viable victims, which requires the consideration of their intrinsic value.

### **Accountability**

Establishing accountability for environmental harm under the current retributive system can be very difficult due to issues with prosecuting these harms, multiple involved actors, and state sanctioning of harmful behavior (Lemkin, 1946; South, 1998; Michalowski, 2008; Wijdekop & van Hoek, 2019). A legal ramification of harmful corporate behavior against the environment is in the form of fines, however, in cases of oil drilling, for example, the corporation has gained agreement from the state (government) to conduct such behavior (South, 1998; Wijdekop & van Hoek, 2019; Cornell Law School, 2022). Thus, within this context of oil drilling, while there are many harmful outputs of the behavior such as massive carbon emissions or destruction of non-human animals' habitats, if the corporation adheres to the record of decision from the government there are no legal ramifications for the harmful behavior as it has been deemed acceptable loss in the pursuit of economic gain (South, 1998; Bureau of Land Management, 2023). Many advocates and activist groups have argued that this establishment of accountability via financial repercussions is not sufficient for the sustaining of our environment, arguing that the seriousness of the harm is not reflected in the repercussions for committing the behavior (Higgins, Short, & South, 2013; Earth

Justice, 2023). Ultimately, current practices have not been successful in stemming harmful corporate behavior against the environment made apparent by the fact that these behaviors have continued since the inception of environmental policy in the United States (South, 1998; Hazrati & Heffron, 2021).

Within a restorative justice framework that is applied to environmental harm, three specific goals emerge: one, that those who have committed harm or whose actions will generate harm take active responsibility and accountability for their actions, two, that communication and dialogue be shared at all steps of the process (both proactively and reactively), and three, that through the dialogue ultimately the offender(s) provide restoration towards those harmed by their actions and actively take strides to not cause harm in the future (Wijdekop & van Hoek, 2019; Forsyth, et al., 2021). Accepting active responsibility and accountability for harmful actions begins with the offender recognizing and accepting their behavior as harmful. This may happen before or during the course of dialogue with those impacted by the harmful behavior. This acceptance of responsibility and accountability will then manifest in restorative actions that are agreed upon by the victims, those who are impacted by the harm (the community), and the offender, for example, written or spoken apologies to those impacted by the harm and all viable victims of the harm (Wijdekop & van Hoek, 2019). In a proactive utilization of restorative justice methods, the framework would be applied to the decisions behind possibly harmful behaviors to ensure that all potential harms of the decision are addressed (Hazarati & Heffron, 2021). This would ensure that any harm or potential harm is removed from a process or decision prior to it being implemented. In a reactive approach, where a harmful action has been committed, restorative justice methods in the

form of conferences and storytelling will be held regarding the specific action and harms. This process requires communication and dialogue between all involved actors and should be led by a “keeper” who facilitates the conference (Calhoun, 2013). This “keeper” would be the equivalent of a judge, capable of unbiased review and maintaining civility and relevance to the conversation, to provide an example within the context of the current system. This conference must be accessible by all those who are impacted by the harm, thus utilizing modern technology such as video conferencing will also be a component of this approach.

In the example of the Willow Project, an oil drilling project, this process can be implemented in several stages. If the process begins prior to the submission for approval from the government to begin the project, then a proactive approach can be used to ensure that any harmful behavior can be stemmed before it begins, such as completely altering the project or halting it. As the project has been approved and is underway, the process takes a reactive approach. In this manner, through a restorative justice framework, the numerous outcries, petitions, and letters of disapproval against the project should be considered as communication from those who have been and may be harmed by the project. In this case, a conference involving all actors should be called upon. As there are many involved individuals and victims, this process should be conducted multiple times to ensure that all voices have a space within the conversation to tell their stories of how the harm has or will impact them. Ideally, this conference would take place within the context of the area and communities that would be immediately harmed by this behavior, in the case of the Willow project this may be in Alaska with the Native communities of the area, while also allowing others who have and will be harmed to

participate through other means, such as video conferencing, written statements, etc. This creates the space for dialogue and conversation to come to the ultimate resolution of the involved offenders, inclusive of ConocoPhillips and the Biden administration, to take active responsibility and accountability for their harmful behavior.

The overarching prioritization of a restorative justice framework, as opposed to a retributive model, is to ensure that justice is found through the focusing on the violation of social relationships, through the harmful behavior, and the needs of the involved actors, without creating further harm (Van Ness, 2005; Wijdekop & van Hoek, 2019; Forsyth, et al., 2021). Social relationships or the relationships between all involved actors, and the violation of them, are crucial to this process as it allows the centering of the needs of those impacted by the harm instead of the needs of the state (Calhoun, 2013). This goal is completed through the process of communication and respect, that the current retributive system does not always employ due to the prioritization of the needs of the state over the needs of those who are harmed (Calhoun, 2013). In the consideration of ecocide or environmental harm, an example of a restorative justice outcome could be the requirement of training or education for the offender so that they are less likely to pursue the harmful act in the future, or audits of the corporation specifically considering environmental policies (Wijdekop & van Hoek, 2019).

The lack of proper establishment of accountability within the realm of environmental justice has often been a critique of the fields of criminology and criminal justice by activists and critical scholars (Crook & Short, 2014; Michalowski, 2008; Michalowski, 2015). Traditional means of holding accountability for harms and acts deemed criminal in the current criminal justice system centers retributive justice, which

focuses on punishment. However, this kind of system can perpetuate harm and violence by subjecting individuals to inhumane conditions as punishment and by centering the system and its priorities instead of the victim in the search for “justice” (Hillyard & Tombs, 2004).

Hillyard and Tombs (2004) define the idea of punishment as “pain delivery.” The intention of punishment is to deliberately impose “burdensome liability” for executing an act defined as unacceptable in order to stop that act from occurring again (Lamond, 2007). Under this definition, punishment is intended to deter individual behavior rather than incite change in the context or systems that likely instigated the individual’s actions (Anderson, 1994; Singh & Sprott, 2016; Hillyard & Tombs, 2004). In events of corporate behavior causing ecocide or environmental harm this form of punishment is not feasible. When individuals violate environmental regulations, they may be faced with jail time, fines, or other repercussions, however, in the case of corporate behavior the only repercussion is a fine (Cornell Law School, 2022). As most corporations are able to absorb this cost or pass it down to their consumers it does not become the “burdensome liability” that traditionally ensures accountability for the harmful action. (South, 1998; Hillyard & Tombs, 2004). Thus, because, largely, the costs of the fines are less than the cost of creating infrastructure and corporate practice that aligns with environmental sustainability guidance, there is no strong impetus to cease harmful corporate actions (Cornell law School, 2022; South 1998). Environmental harm, such as improper waste dumping or pollution is simply more cost effective for the large majority of corporations.

Further, to a great extent, large-scale harms against the environment are not committed by individuals and instead are committed by organizations, corporations, or larger groups (NRDC, 2019). This focus on retribution and individualistic punishment limits the ability of current regulations to establish accountability and provide impetus to cease harmful activity against the environment. As stated previously, current methods to attempt to establish accountability involve fines to the offending organization, however there may not be any follow up to the incident, or considerations of negating future harmful behavior (Cornell Law School, 2022). This approach also centers the violation the corporation committed against the state, it does not center the victims or the communities that experienced the harm (Schwendinger & Schwendinger, 1977; South, 1998; Wijdekop & van Hoek, 2019). Thus, in cases of ecocide and environmental harm within the current retributive system there is only the perpetuation of harm due to insufficient consequences and the lack of accountability towards future harmful behavior.

In opposition to the retributive justice model, restorative justice provides a more holistic and long-term solution to harmful behavior. While the term “restorative justice” was first coined by Albert Eglash in 1977, its principles are deeply embedded within Indigenous and traditional knowledge (Winfree Jr., 2002; Cunneen, 2002; Hazrati & Heffron, 2021; Van Ness, 2002; Van Ness & Strong, 2014; etc.). Many restorative justice practices, such as circle conferencing approaches in which dialogues are had by the victim(s), the communities, and the offender, are derived from the practices of Indigenous communities in conflict resolution and peacemaking (Van Ness, 2002; Calhoun, 2013). These practices center the victim(s) and the surrounding community, and

focus on restoring any wrongdoing caused by harmful behavior or actions (Van Ness, 2002; Gabbay, 2005; Calhoun, 2013).

One large difference between restorative and retributive approaches is the inclusion of the community that may have been impacted by the harm (Calhoun, 2013). As restorative justice views acts that are deemed criminal and harmful behavior as violations of relationships between a community, a victim of harm, and a perpetrator of harm, the community is an integral part of the discussion (Gabbay, 2005). Allowing all those who are impacted by harm to be involved in discussions and storytelling regarding that harm creates the space for healing for everyone and not just specific actors (Calhoun, 2013). In the case of a corporation, the offenders may include members of higher management such as CEOs, vice-presidents, and managers, or other employees who choose to be involved. This addition allows regeneration of social ties and relationships as well. Restorative justice practices center resolutions that promote responsibility, inclusion, consent, repair, and reconciliation (Gabbay, 2005; Sarre, 1999).

Creating accountability utilizing principles of restorative justice can be done by making mandatory processes of conferences and dialogue within environmentally harmful behavior between all different actors, victims, communities, and offenders. There has been success in utilizing these methods outside of the United States in Canada and New Zealand (Wijdekop & van Hoek, 2019). In some cases, considering intrinsic value, trees and rivers have been considered victims of environmental harm in these countries (Wijdekop & van Hoek, 2019). The principles of restorative justice allow accountability to be established in a manner that is less harmful to all involved parties through

communication and making amends, which take different forms depending on the situation. In some cases, amends can be in the form of written or spoken apologies, mandatory education and training for the offender, and community service work (Wijdekop & van Hoek, 2019; Calhoun, 2013). Some of these restoration efforts will be more symbolic in nature, as while trees, other vegetation, and non-human animals may not be able to receive written or spoken apologies, the act of apologizing provides legitimacy to the fact that these victims are viable victims of harmful behavior. Through a societal lens, this also will allow for a shift in culture towards universal acceptance of these entities' intrinsic value, and the fact that they are viable victims of harm. The focus of this process of justice is not punishment but the eventual repairing of relationships and the establishment of peace within the community (Van Ness, 2002).

As outlined within Marx's discussion of the metabolic rift, the prioritization of human interest and profit over all else creates the circumstances for ecocide and environmental devastation due to the overconsumption of resources and land area. This overconsumption stems from a lack of prioritization of intrinsic value, wherein society instead focuses largely on the instrumental value of an entity, or the value prescribed to it based on its usefulness for human gain due to the drive for profit within a capitalist society (Marx, 1894). This lack of acceptance of intrinsic value leads to a disregard for the environment, non-human animals, and vegetation as viable victims of harm. Further, the constant rush for profit also leaves many minority human communities, such as Indigenous communities, to suffer as well (Etchart, 2017; Lindgren, 2018). Due to current conceptions of harm and acts that are deemed criminal, acts of ecocide or environmental harm tend to lack sufficient establishment of accountability, leading to



little impetus to cease harmful actions (South, 1998; Cornell Law School, 2022).

Utilizing a restorative justice model would allow for these concerns to be mitigated by recentering priorities and creating a space of reflection and repair. Centering the needs of the state when establishing accountability does not necessarily allow for the understanding of the harm that the offender caused. Utilizing a restorative justice circle conference method would allow for the offending parties that have committed the harm to understand how the harm is affecting the actual victims. Further, it allows for the victims, community, and all those impacted by the harm to have a say in the restoration that must occur in order for the harm to be repaired. Specifically for the Willow Project, this may lead to the project ideally not being done at all, or significantly changed.

Considering intrinsic value allows a restorative justice model to create the circumstances for the resolution of harm for all viable victims. From here, moving forward, a restorative justice model will be applied to show the Willow Project as an example of how these practices can be implemented in reality to ensure that ecocide and environmental harm do not continue to be perpetuated.

## CHAPTER 2

### THE WILLOW PROJECT, OIL DRILLING, & A RESTORATIVE JUSTICE FRAMEWORK

Oil and its consumption are necessary for current American infrastructure, from transportation, such as gas-powered cars, to healthcare, in the manufacturing and distribution of medicines and supplies (Buell, 2012; Lincoln, 2005; Hess, et al., 2011). Within this section, oil and how it affects the American experience will be discussed, including a brief history of how oil has come to the forefront of the energy industry. Following this, a history of environmental protections and policy in the United States, as well as a consideration of the Environmental Protection Agency (EPA), will be discussed. The actions of the Trump and Biden administration regarding the EPA will also be explored. Finally, the Willow Project will be discussed at length, followed by a review of the support and concerns of the project.

#### **Oil & The American Experience**

Global reliance on fossil fuels such as oil has been well-documented for decades. Scholars who discuss the historical importance of oil and fossil fuels in the United States point to natural disasters that have left parts of the country without energy and electricity for months on end, such as the 1998 ice storm that affected parts of New York and Maine that left large populations in the cold and dark for a long period of time (Lincoln, 2005). They describe how these events illustrate how deeply interwoven the American experience is with fossil fuel and oil consumption.

#### ***The History & Importance of Oil & Oil Drilling***

In 1859, Americans struck oil in Pennsylvania, which generated a new industry and established the United States within a position of wealth and power (Buell, 2012). Oil continuously became more and more essential to the individual experience as previously unattainable things, like automobiles became an option for the lower working classes (Buell, 2012). With the integration of oil into industries and systems, there was the introduction of a new type of consumer culture wherein attainability by working-class individuals was possible. No longer was social and physical mobility limited in the way that it had been historically for these communities. Oil provided a relatively cheap and accessible option for energy with which anybody could become successful. While even at this time there were concerns about pollution within industrial and urban sites; they were quelled by the belief of progress. Cars and other automobiles allowed for the avoidance of animal waste that had cluttered the streets prior when horses were used for transportation. This belief in “cleanliness” allowed people to turn a blind eye towards air pollution as they could enjoy this new “cleaner” way of living utilizing gas and its companion – electricity (Buell, 2012).

Oil and electricity allowed for leaps in progress, including infrastructure and industry changes, such as telephone lines and power cables (Buell, 2012). Oil allowed the United States and its allies to win not one but two World Wars by creating the ability to invent weapons of mass destruction, such as tanks, diesel submarines, and TNT. Indeed, oil has been and continues to be integral to the American and global experience. From global wars to fried foods, oil has its reaches throughout every walk of life. Oil not only has an economic value but a cultural one, wherein facets of American life would be unrecognizable without it.

## **Environmental Protection: The History, The EPA, & Current State of Affairs**

The history of environmental protection policy in the United States begins with the law of the land. The beginnings of a colonized America with the Revolutionary War and the Constitution laid the groundwork for environmental protections in the future of the country (Andrews, 2006). After the war concluded, the drive for a decentralized government led to the dissemination of power to the states, inclusive of policy regarding the environment (Andrews, 2006). In 1842, almost 60 years after the signing of the Treaty of Paris, which ended the Revolutionary War, the United States Supreme Court ruled that the individual states would inherit the legal authority over previously royal-ruled entities, including fish and wildlife, waters, and other natural resources (Andrews, 2006).

It was not until the mid to late 1900s that a federal program would be introduced to consider environmental harm and policy in the United States; by the 1960s, public concern for the environment had grown due largely to concerns regarding agent orange and chemical warfare in the Vietnam war (Ruckelshaus, 1985). While some regulatory boards and legislation regarding the environment existed previously, their power and authority were extremely limited. States, as had been since the constitution, had regulatory power over environmental decisions. During the 1960s, the introduction of biological and environmental warfare with Agent Orange and the Vietnam War thrust environmental issues into the spotlight. Technological advances also had a hand in the increase of concern for the environment by the public (Ruckelshaus, 1985). The introduction of color TV allowed for widespread understanding of water and air pollution that was not as evident in grayscale imagery (Ruckelshaus, 1985). Specifically,

Ruckleshaus (1985) asserts that video of “brown smog against a blue sky” or a “yellow outfall flowing into a blue river” allows for a more descriptive understanding of environmental issues (p.456). Further issues with water and air pollution and the lack of action to reverse issues that stemmed from the introduction of oil and the industrial revolution started to become very apparent during this time frame. With these revelations came a slew of Congress-led laws and regulations regarding water and air pollution, waste disposal, radiation, toxic substances, and more (Ruckelshaus, 1985).

President Richard Nixon, in the early 1970s, introduced a 37-point message to the House of Representatives and Senate, which led to multiple regulatory and legislative considerations and established the Environmental Protection Agency (EPA) (Environmental Protection Agency, 2023). The EPA would have the capacity and authority to research environmental issues and pollutants; monitor environmental conditions; establish baselines; set and enforce air and water quality standards; and conduct ecological risk assessments<sup>1</sup>, amongst other goals (Environmental Protection Agency, 2023).

The EPA is the regulatory power to enforce the limited existing environmental regulations (Environmental Protection Agency, 2023). However, in recent years, the EPA has been further limited in its ability to function within its original purpose. Trump’s appointment to the Environmental Protection Agency, Scott Pruitt proved to create the circumstances for many environmental policy changes. Amongst other things, Pruitt is a known climate change skeptic and spent the majority of his career prior to this

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<sup>1</sup> A product of the insurance industry, ecological risk assessments were created in the 1970’s to assess risks to public health and safety, as well as risks to the environment as a basis to regulatory decision making (Suter II, 2007).

appointment litigating against the EPA (Dillon, et al., 2017) Pruitt was instrumental in Trump's decision to withdraw from the Paris Climate Agreement, which was an international agreement towards reducing global greenhouse emissions and addressing climate change. Further, scholars have mentioned that under Trump and Pruitt, the EPA's goals shifted from environmental policy and protection towards business and industry interests, specifically industries that cause harm to the environment (Dillon, et al., 2018). This was done through political appointments, using specific rhetoric that did not include descriptions or phrases such as "pollution" or "climate change" and instead focused on "economic growth", executive orders by Trump, restructuring of science advisory boards, and the types of meetings Pruitt was taking during his appointment (Dillon, et al., 2018).

Under the Trump administration, the EPA experienced changes that many scholars of varying fields considered to be highly detrimental (Samet, Burke, & Goldstein, 2017). As previously stated, under Trump and Pruitt, many policies and previous goals of the EPA were changed and dismantled. During Pruitt's appointment to the EPA, the agency attempted to create difficulty or undo approximately thirty existing regulations, including the rejection of a ban on certain pesticides that had been shown to cause issues in childhood development and the revocation of the Clean Power Plan (Dillon, et al., 2018). The changes made to the EPA during the Trump administration opened the gates to many environmentally questionable dealings moving forward.

### **The Willow Project**

Concerns regarding reliance on international oil reserves and importation, as well as a push towards supporting the American economy instead of foreign ones, have led to corporate push towards domestic oil drilling (Department of Energy, 2020). While oil

drilling in the United States on domestic soil is not a new development, the expansion of such projects, or the implementation of new ones, has been considered by many activists to go against the promises of the Biden administration during his presidential campaign (Protect Our Winters, 2023). There is further concern about the environmental and health impacts of the project and how it will impact global climate change and local Indigenous communities.

***The Project: Who, What, When, & Why***

The Willow Master Development Plan, known colloquially as the Willow Project, was proposed by the ConocoPhillips company to allow for oil drilling in Alaska's northern slope (United States Bureau of Land Management, 2023). Since 2012, ConocoPhillips has been considered an "upstream" company, which means that it focuses on the beginning aspects of the oil and gas process: exploration and drilling (Encyclopedia Britannica, 2023).

The area regarded as Alaska's Northern Slope is specifically entitled the National Petroleum Reserve by the Bureau of Land Management and spans approximately 23 million acres of land (U.S. Department of the Interior, 2023). While the area was specifically designated as a petroleum reserve in 1923 by President Warren Harding, it has been utilized for oil production since 1976, when the Prudhoe Bay field was created (U.S. Department of the Interior, 2023). It continues to be the site of much of America's oil production (National Energy Technology Laboratory, n.d.). Oil production in this area has been decreasing in the past few decades in part because of the age of the fields that are currently in place to produce oil. A fresh new project with new drilling and wells would resolve this issue (DeMarban, 2023). As Alaska's largest crude oil producer and as

the owner of the largest amount of exploration leases, ConocoPhillips stands as the largest profiteer and best option for new drilling projects, such as the Willow Project (ConocoPhillips, 2023).

Initially, the Willow Project's record of decision, inclusive of its environmental impact evaluation, was green-lit by the Trump administration in October of 2020 (U.S. Department of the Interior, 2020). However, after further consideration by the U.S. District Court for Alaska, the EIS (Environmental Impact Statement) was remanded back to the Bureau of Land Management due to insufficiencies<sup>2</sup> in addressing the National Environmental Policy Act (U.S. Department of the Interior, 2023). The final Environmental Impact Statement conducted under the Biden administration upheld the approval but reduced the scope of the project (U.S. Department of the Interior, 2023).

The original plans for the project included five drill sites and multitudes of infrastructure related to those sites, inclusive of roads, bridges, and pipelines<sup>3</sup>. Of these plans, the new record of decision eliminated two of the drilling sites and thus removed the necessity for any of the proposed infrastructure regarding those two sites<sup>4</sup>. The new ROD and finalized Willow Project Plan still allows the company to produce roughly 180,000 barrels of oil a day at its peak (NPR, 2023).

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<sup>2</sup> Specifically, the court remanded the ROD back to the BLM due to found insufficiencies regarding the following: 1) the BLM "improperly excluded analysis of foreign greenhouse gas emissions...", 2) improperly screened out alternatives from detailed analysis based on BLM's misunderstanding of leaseholders rights...", and 3) failed to give due consideration to the requirements in the NPRPA to afford 'maximum protection' to significant surface value in the Teshekpuk Lake Special Area...". (U.S. Department of the Interior, 2023).

<sup>3</sup> The original ROD (Record of Decision) also included: a central processing facility, an operations center pad, up to 37 miles of gravel roads, seven bridges, up to 575.4 miles of ice roads during construction, an airstrip, up to 315.9 miles of pipeline, a gravel mine site on federal land in the Alaskan Northern Slope, a sealift barge transport, a constructed freshwater reservoir, and up to three boat ramps.

<sup>4</sup> ConocoPhillips also agreed to relinquish their rights on 68,000 acres of existing exploratory land leases as a part of this decision.



Supporters of the Willow Project often mention aspects such as economic and financial benefits to the area and the United States. As per the most current Environmental Impact Statement by the EPA and BLM, in conjunction with multiple other organizations<sup>5</sup>, the alternatives and mitigation measures, such as limiting the project to three rather than five drilling pads, ensures limited impact upon the environment, human, and non-human wildlife. These alternatives include measures such as limiting helicopter trips and the amount of Project infrastructure. The Willow Project is projected to create 2500 construction jobs and 300 permanent jobs, over \$10 billion in revenue, and an estimated 600 million barrels of oil over the next 30 years (Bureau of Land Management, 2023; NPR, 2023; Friedman & Krauss, 2023). Further, ConocoPhillips has projected that in the neighboring land (which they currently lease), they may be able to extract up to 3 billion barrels of oil (NRDC, 2023).

While supporters largely tout the economic utility of the Willow Project, concerns amongst activists, scientists, and some local Native communities span the gamut of environmental harm, legal precedent, timeliness, and ecological justice. Though the updated and final Environmental Impact statement is more expansive and considers more aspects of wildlife and the environment than the original, the project will still be more environmentally devastating than many activists and scholars say it is worth (Protect Our Winters, 2023). The project has been described as a “carbon bomb,” referencing the 9.2 million metric tons of carbon emissions that it will expel into the atmosphere (NRDC, 2023). Further, the migration patterns of many native animals will still be negatively

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<sup>5</sup> Inclusive of the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Native Village of Nuiqsut, Iñupiat Community of the Arctic Slope, City of Nuiqsut, North Slope Borough, and the State of Alaska (U.S. Department of the Interior, 2023).

impacted by the project, and erosion has and will worsen (NPR, 2023). Conservative estimations of the environmental impact on the ground of the project include the loss of 532 acres of wetland, 619 acres of polar bear habitat disturbances, and more than 17,000 acres of habitat and migratory disturbances of birds in the area (NRDC, 2023).

Ultimately, while the affiliated organizations claim that the alternatives implemented for the project will be able to mitigate the majority of the issues that the project would cause environmentally by, for example, limiting infrastructure building and vehicle trips, the fact of the matter is that they will still negatively impact the area (BLM, 2023).

The reliance of America, specifically, on gas, has created a society that finds it difficult to function with even the threat of its removal. It is a fact that due to the level of integration of oil within infrastructure, economic and cultural systems, and consumerism, the reduction of utilization of oil is a tall task (NPR, 2023). While President Biden may have kept his word by legal standards, there is still concern about how his administration has been handling oil drilling projects and permits to drill. While the Bureau of Land Management can legally only proceed with applications to drill that meet the requirements of current environmental policy, a 2020 report by the U.S. Government Accountability Office showed that the government very rarely denies drilling permits (GAO, 2020). From 2014 to 2019, more than 95% of the APDs that were submitted were approved.

Further, as per ConocoPhillips' website, it considers itself to be committed to "efficient and effective exploration and production of oil and natural gas" (ConocoPhillips, 2023). However, as many activists and scholars note, the production of oil and natural gases is not efficient or timely by its very nature (NPR, 2023). Oil drilling

projects take a long time to come to fruition. Additionally, the Willow Project and ConocoPhillips have been the subjects of multiple lawsuits by movements and organizations such as Earthjustice in attempts to slow or completely stop the project from happening (Defenders of Wildlife, 2023; State of Alaska Department of Law, 2023; Earth Justice, 2023).

In an interview with NPR, Nagruk Harcharek, president of the Voice of the Arctic Inupiat, discussed why the group has voiced continuous support for the Willow Project. Specifically, Harcharek mentions the economic benefits of the project and other oil drilling projects like it for the Native communities in the area (NPR, 2023). As previously mentioned, one of the biggest pulls of the projects is the money and jobs the projects bring in. Here we can also see a form of a metabolic rift that has been forced upon communities, namely Indigenous communities, wherein there is the necessity of work and money; however, they must risk the land that they live on, their relationship with the land, and their health and safety to attain these necessary facets of life. Allowing projects like the Willow Project to continue sets the precedent that silence in the face of environmental injustice can be ‘bought’ by the appearance of economic attainment, even when members of the community have spoken up against the projects (Ahtuanguaruak, et al., 2023).

### **The Willow Project as an Example**

Through the lens of environmental justice, the Willow Project holds a great amount of potential. The future of the project stands as a precedent for future oil drilling operations, as well as land leasing, fossil fuel production and consumption, and the treatment and prioritization of non-human animals, vegetation and landscape, and Native

human communities in environmentally related legislation and decision-making. At its current position, where the project is still in development due to lawsuits and the considerable timeline involved with any oil drilling project, the Willow Project can be a prime example of the utilization of a restorative justice model to allow for the consideration of accountability.

It is within the current retributive criminal justice system that the Willow Project has been allowed to continue. While the newest ROD has generated small changes in impact to human and non-human animals, as well as the surrounding environment, there is still strong concern and accepted fact that the project will be harmful to the environment, migrating animals, the health and safety of nearby communities, the atmosphere, and future generations of human and non-human animals (Bureau of Land Management, 2023; NRDC, 2023; Protect Our Winters, 2023). Within this retributive system, any harm that comes from this project is considered acceptable loss in the pursuit of profit and human gain (Marx, 1894). This is because the current system focuses on the instrumental value of entities (Marx, 1894; Sandler, 2012). Thus, there is little consideration of the intrinsic value that these entities hold.

Within the retributive system that the Willow Project is set to continue in, not all viable victims are considered through the lens of their intrinsic value, instead they are considered at the level of their acceptable losses. For example, within the new ROD the amount of helicopter or vehicle trips are viewed in the context of “least potential” to harm or disturb wildlife (Bureau of Land Management, 2023). However, “least potential” for harm and disturbance within the context of the Willow Project includes issues such as the possibility that the availability of resources for surrounding wildlife and communities

could decrease due to “loss or alteration of habitat...; disturbance or displacement of animals; or direct injury or mortality”, this is however considered an acceptable loss within the ROD (Bureau of Land Management, 2023, p.21). Should any harm outside of what was allowed in the ROD occur, the most that can be done is the instigation of fines against the corporation, ConocoPhillips (Cornell Law School, 2022). Fundamentally, ascribing a monetary value to the loss of life, habitat, environment, etc., which if the company is capable of paying allows them to continue to cause the harm at the expense of a fine.

As previously mentioned, within the current criminal justice system, harms and acts that are deemed criminal are viewed as a violation of the state, and not as the violation of social relationships or the harm to the victim (Calhoun, 2013). Thus, if the state has greenlit the harm to occur, the voices of those who are harmed no longer take the forefront of the conversation. There is no establishment of accountability because, through a legal lens, the harm that is committed is an acceptable harm as it has been approved by the state. The Willow Project within the current retributive system, allows for the perpetuation of harm through the continuation of the concept of human supremacy over the environment by prioritizing the amount of money and oil that the project will produce over the harmful impacts to migratory patterns, carbon emissions, etc. This consideration that there is human supremacy over the environment is an example of Marx’s metabolic rift (1894). The continuation of the Willow Project, and projects like it, show the prioritization of human interest and the drive for profit over all else with a disregard for the impact on the environment and the human and non-human animals surrounding the area.

Within a restorative justice framework instead of that of a retributive justice system one of the primary considerations is the impact of the harm on the victim and community. As previously mentioned, restorative justice focuses upon the needs of the victims instead of the interests of the state or government (Calhoun, 2013;). When considering harmful corporate behavior, the victims and their community should be at the forefront of the discussion. Considering the Willow Project in this context the number of victims is very large, and they include human and non-human entities. The RODs and the conversation through a legal lens of the Willow project prioritizes the possibility of profit and production *over* the harm that these endeavors will cause, meaning that the harms are secondary to the possibility of economic growth – an acceptable level of harm.

## CHAPTER 3

### DISCUSSION

Restorative justice practices in instances of environmental harm and injustices committed by corporations can be divided into two categories: proactive and reactive. Prior to the occurrence of the event or even in the early stages of the event, a proactive approach can be taken. After an event is in its final stages or has been completed, the reactive approach will be necessary. Currently, the Willow Project is still within the window of proactive options. Firstly, as with any restorative justice model, those victimized must be considered. In the case of the Willow Project, there are many potential and current living beings that have been victimized, including the non-human animals of the area, wilderness and vegetation, Native human communities, and future (human and non-human) generations<sup>6</sup>. Further, potential perpetrators of harm would also be involved; for the Willow Project, this includes ConocoPhillips and potentially representatives from the EPA, BLM, and the Biden administration. Finally, the community surrounding those victimized must also be considered and involved in communication through a restorative justice model because all those impacted by harm should be included in conversations on that harm to allow for healing and restoration throughout all involved social relationships (Calhoun, 2013). In the case of the Willow Project and other similar environmentally focused cases, this would include the activism and science community.

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<sup>6</sup> Work conducted in the energy sector has seen success in utilizing the imagery of future generations to influence decision making (Hazrati & Heffron, 2021).

Theoretically, current practice does implement discussions between these three groups to a certain limited extent. There is limited public involvement in the approval of environmental impact statements; however, as is the case with the Willow Project, the time frame to become involved is extremely restricted and does not take into account “non-formal” methods of involvement. Environmental groups noted that the public only had a 45-day comment period for participation in the case of the Willow Project (Evergreen Action, 2022). This 45-day period for public participation included the participation of Native communities in the area, who were preparing for whaling season during that time (Evergreen Action, 2022). Further, the EIS and records of decision did not consider the “non-formal” methods of public participation, including several petitions against the project from Greenpeace, Change.org, and others that garnered over 5.2 million signatures (Greenpeace, 2023; MoveOn, 2023; Protect the Arctic, 2023; Daily Kos, 2023; Change.org, 2023). Thus, while there are attempts to include all parties in discussions, these attempts are weak at best.

However, these moments of collaboration are extremely limited in a way that would not be tangible under a restorative justice model. The current methods included in the records of decision allow for small groups of collaboration between the public and the organizations involved in the record of decision. However, within the restorative justice framework, this would be greatly expanded by extending timeframes for discussion throughout the process and include increase the options for inclusion as well. Using current technology such as video calling using options like Zoom, Google Meet, or FaceTime, individuals who would be affected by the proposed project would be able to



be involved. Further, including non-formal methods of participation will allow more actors impacted by the harm to be involved in communication.

A restorative justice approach would center intrinsic value instead of instrumental value, and this would ensure that any and all victims are kept safe, their needs are met, and, if any harm has occurred, that harm be restored. Realistic applications may include expansions of current practices, such as the previously mentioned public involvement in EIS (environmental impact statements) and RODs (records of decision), as well as the introduction of other forms of regulations, legislation, and policies. Ideally, using a restorative justice method as a proactive measure, restoration, and accountability in the form of compensation would not be necessary as the situation would not reach the point of being harmful.

A proactive measure would be a practice such as public and academic involvement to a greater extent than currently occurs. When considering the types of victims that may be included, once intrinsic value is considered, the academic and activist communities are necessary to include all types of viable victims, any entity that will be harmed in the process and implementation of the project. A whale, for example, cannot advocate for themselves; however, a marine biologist or a marine conservationist can advocate for them. Specifically in the case of the Willow Project, one can consider the non-human animals that live and migrate through the area, the Native communities, namely the Nuiqsut, have voiced concern for these animals and for their own safety in regard to the project. As these Native communities have been living in unison with these non-human animals for a long time, it would make sense that their voices should be considered essential in these conversations. In addition to their contributions, animal

advocates and experts in the area should be included in discussions on what is considered “acceptable losses” of habitat and non-human life. These contributions can be in the form of storytelling, research dissemination, conversations on lived experience, etc. Further, considering, for example, future generations prior to conducting a plan for a project may change the outcome to be less problematic. In considering the harm that will be caused by the Willow Project as harmful action instead of acceptable loss, there is the possibility of the establishment of accountability for harm due to the recognition that harm is being and will be caused. Ultimately, the viable victims that will be harmed in this project have not had their voices heard to a sufficient level. Thus, it becomes necessary in a restorative justice approach to create a translational and inclusive atmosphere.

Fundamentally, the alterations that were made to the Willow Project between the two records of decision are not enough. Though the most recent ROD does limit the project slightly, ultimately, it will still wreak environmental havoc upon the non-human animals, vegetation, human communities, and surrounding areas. This also does not consider the impact of consumption that will come from the project’s produced oil. The changes to the Willow Project in the newest ROD are simply a way for the current administration to claim to have done better by the environment than their predecessor without actually doing much better. In a restorative framework lens, the changes that were made in the newest ROD continue to exhibit the issue of putting profit above harm. If a true proactive restorative approach was to be utilized, then the harms that will occur would be prioritized over the profit the project will generate. This is because in a restorative justice framework that focuses on the intrinsic value of all entities, and thus allows them to be viable victims of harm, the harm that is caused to the social

relationships, and to the victims of the behavior, are more important than the needs (or wants) of the state.

Accountability in a restorative justice framework does not necessarily come in the form of traditional punishment but in the form of restoration to the victim. Restorative justice makes more sense in an environmental context than retributive practices. As an initial consideration, restorative justice centers the victims (or potential victims), which allows for their input in what would be best to restore the harm that may have been committed. Further, restorative justice practices are not as restricting as retributive justice in that it is not as individualistic or punishment focused. Should a harm have been committed, then the community and victim should have the opportunity to advocate for the resolution they feel would be the most restorative. These options could include practices such as apologies combined with financial compensation or environmental compensation such as planting trees, investing in environmental programmes and policies, etc.

Not only does a restorative justice framework allow for the consideration of all victims, but it also allows for a multitude of methods to atone for the harm that was caused. It also would allow for multiple types of restoration, supposing there are multiple victims, such as in the case of the Willow Project, where victims span the gamut of Native human communities to migratory birds and vegetation to future generations of human and non-human animals. In environmental cases that involve non-human animals or the environment as victims, the restoration process may not look the same as that with a human victim. Options like apologies coupled with financial restoration or the replanting of an area are all viable options. This framework will create the circumstances

for better establishment of accountability by empowering the voices of those who have been harmed and providing the space for conversation and discussion. However, for this to happen there must be societal acceptance of the importance of intrinsic value and the framework itself.

Creating institutional change is difficult, and even more so, changing the accepted norms and beliefs of a society. Thus, a restorative justice approach does not necessarily have to begin with such a major shift. Instead, the reformulation of current practices to be more inclusive and more accessible to the public and academic or activist communities can be a starting point. Returning to the example of the 45-day comment period for public participation and the lack of consideration of petitions and outcry regarding the Willow Project, at its core, this form of participation can be a part of a restorative model. Here we could see a restorative justice model take place by creating an event of discussion wherein further involvement by potential victims, advocates and academics, and potential perpetrators of harm can be had. This focus on communication instead of forced acceptance and convenient disregard of massive outcry can be a starting point towards creating understanding and moving towards a more environmentally sound outcome. Currently, the implication of the way that the Willow Project has been conducted prioritizes the economy, the corporation, and their interests, and not the safety or priorities of the potential victims. Once the intrinsic value of the potential victims is considered and equity amongst actors involved can be established, then considerations of harm and restoration can be finalized.

## CHAPTER 4

### IMPLICATIONS

The utilization of restorative justice to establish accountability for environmental harm creates a baseline for using these models to address other forms of harm and acts that are deemed criminal. Specifically, utilizing restorative justice models in other forms of corporate harm and more ‘traditional’ deemed criminal acts could also allow for a shift away from a fear-based society. Much of orthodox criminology focuses heavily on deterrence, fear, and punishment rather than more holistic considerations of healing, accountability, and peace. There seems to be a belief that if we “figure out” crime, we will create a “safer” space for everyone. However, these ideas leave a lot of questions unanswered. Who is everyone? What is safe? When will we know that we’ve “figured out” crime? Using restorative justice practices and centering intrinsic value allows us to expand our horizons and our preconceived notions of what justice is and who deserves it by investing in our communities, centering the voices and advocates of victims and the surrounding environment instead of punishment and perpetuating harm.

Current systems within American societies, inclusive of the criminal justice, legal, and governmental systems, focus heavily on the idea of individualistic retributive punishment. To truly embrace a restorative justice approach would require fundamental societal change. Academic support within criminology for restorative principles has grown over time, as has the support of the public, however the fact remains that these practices are still currently situated within a retributive system and focus upon harms and acts deemed criminal committed by individuals (Karp & Frank, 2016). Ultimately, to fully embrace a restorative justice framework the concept of justice needs to be reframed.

Instead of focusing upon punishment and the continuation of harm as retribution for a harmful act, there must be a centering of restoration and accountability to promote safety and peace within society. Thus, amongst the changes in legislation and regulation that do need to come first, a translational approach to restorative justice must be implemented. Further, considering intrinsic value and viable victims as a primary thought instead of a secondary one would force laws and legislation to also consider non-human animals and the environment within rulemaking. Thus, allowing for the establishment of accountability and the taking of active responsibility for harms by the offenders who perpetuate the harms will allow for important changes in environmental justice. Unlike retributive justice, restorative justice outcomes endeavor to ensure that future harms are not committed, and that the needs of the victims, human and non-human, and the community are at the forefront of the discussion of how the offender should exemplify that they recognize their accountability for the harm that they have caused (Calhoun, 2013). Environmental justice should not just be justice for humans but also for the environment around us.

Establishing accountability and accepting active responsibility are the first steps in the process of creating a better and more sustainable world for future generations of humans and the continued flourishing of non-human animals and vegetation. Within a proactive or reactive restorative justice model, this requires the establishment of accountability for harmful acts and the possibility of harmful acts. Considering, for example, future generations of human or non-human animals as a victim allows us to consider a proactive consideration for actions such as the Willow project. In a proactive model, the establishment of accountability for the possibility of a harmful act can be

mitigated in considering possible victims such as future generations of human and nonhuman animals, by choosing to follow other avenues such as generating alternatives that are appropriate and agreed upon by all parties or committing to other actions such as investing in education and training in environmental contexts (Hazrati & Heffron, 2021). The consideration of viable victims, however, requires the consideration of intrinsic value. This requires a shift away from anthropocentrism. Future research in this area should focus on considerations of allowing for systemic change surrounding the concept of anthropocentrism.

## CHAPTER 5

### CONCLUSION

As concerns for the environment continue to grow, over time, current systems to establish accountability for harms and crimes against the environment have proven to be lacking. Only a handful of countries worldwide have adopted laws against ecocide; Russia (1996), Kazakhstan (1997), Kyrgyz Republic, Tajikistan, Georgia, Belarus, Ukraine, Moldova, and Armenia (2003) (Eichler, 2020; Ecocide Law, nd.). It is apparent that current systems, such as our criminal justice systems and education systems, ways of retributive thinking that focuses harmful punishments as justice, and regulatory powers have not seen success in ceasing humankind's negative impact on our environment. Thus, we must advocate for a bigger change.

Utilizing restorative justice models will allow us as a society to better ourselves and the world around us rather than be such a negative impact on our surroundings. A fundamental shift in the way that we think is required for the longevity of our species. If we continue to exacerbate this metabolic rift between humankind and the environment through constant overconsumption, we will create for ourselves the circumstances for our demise. If we continue to allow the environment to be devastated by corporations and governments with no consequences or the establishment of accountability, all that we will get in return is a planet that is no longer capable of sustaining human life upon it. If nothing is done to address harms against the environment where those committing these atrocities are allowed to quietly continue their practices, the auto-genocide that we are ourselves creating the circumstances for will certainly be the end of human life on earth, not with a bang but with a whisper.



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