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Green Criminology And Indigenous Rights: Legal Responses To Ecological Harm In Indigenous Territories

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Abstract
This paper compares and contrasts the areas of green criminology and Indigenous rights by relating to how the law can be used to address environmental crime in Indigenous lands. With the help of a doctrinal and qualitative approach, the paper relies on the analysis of case law, legislation, and commentary to determine the shortcomings of environmental legal protection of Indigenous peoples. It analyses sovereignty conflicts, Indigeneity with particular attention given to customary law, epistemic struggle, as well as the knowledge system under circumstances associated with conditions relating to environments. The paper illuminates the way the colonial legal systems persistently disadvantage the Indigenous environmental governance, as well as a consideration of how environmental movements, tribunal theatre, eco-cinema, and Indigenous-led research are shaping up to pursue justice and change. The comparative examination has shown that although there are jurisdictions that have achieved more in integrating Indigenous voices (through co-management arrangements or the legalisation of natural persons), there are still underlying systemic obstacles. The paper ends with a plea for legal amendments to acknowledge the Indigenous customary law, to have the systems of environmental guardianships in place, as well as a change in the methods of justice (based on the issues of restorative justice with a focus on Indigenous values being observed). This article contributes to the brand-new green criminology since it introduces the concept of an anti-colonial legal practice that includes Indigenous sovereignty and nature protection.

Keywords:
Green criminology, Indigenous rights, customary law, environmental justice, ecological harm, colonialism, restorative justice, state sovereignty, legal reform, and environmental guardianship.

1. INTRODUCTION

Green criminology is a relatively new sub-discipline of criminology, which focuses on environmental injustice, in the context that some environmental injustices are not criminalised, and can nevertheless have damaging social and environmentally harmful ramifications. Green criminology expounds on environmental justice and ecological ethics to criticise the injustices in the law and the justice systems that permit the continued exploitation of the environment to the detriment of vulnerable people. It gains further relevance when considered in conjunction with indigenous rights since indigenous people in most parts of the planet are the primary victims of environmental abuse, and they lack adequate means of legal redress or political power. Environmental destruction in indigenous societies is seldom singular, but is something that occurs in relationship to histories of colonisation and dispossession, and cultural degradation. Activities like deforestation, mining, and diversion of water are often directed at the lands of the indigenous people, and such activities contradict not only environmental sustainability but also indigenous sovereignty. These evils are not only ecological and environmental but epistemological, too, destroying local traditions of nature knowing and being. This is essential in the indigenous epistemologies that attack eco-colonialism (Ohenhen and Abakporo 2024), where the myths and crime that pollute environments and extinguish lives linguistically dress themselves as development. Martinez et al. (2023) also record the fact that California Indigenous communities have fire management traditions that hold anticolonial approaches to balancing the ecology of California, coupled with reclaiming their ancestral capacity.

In addition to that, indigenous environmental governance is not recognised or respected by settler-state legal frameworks. Nursey-Bray et al. (2022) indicate that even the urban-settled populations of indigenous peoples are discriminated against in approaches to climate adaptation, to be rendered as the so-called urban nullius. Such an exclusion is symptomatic of a more entrenched epistemic injustice as criticised by

Weaver (2024) of dominant scientific paradigms as a mode of undermining indigenous ecological knowledge systems. This kind of dynamics is also reflected using creations; Hibbard (2022) examines how Palestinian art exposes the ecological violence of colonialism, which is in line with the rest of the world in terms of the indigenous population. Even in literature, one can find something that serves this discourse. Thakur et al. (2024) examine a novel called The Living Mountain by Amitav Ghosh, where they observe that not only was it a critique of green imperialism, but also how the imperialism of kind regards the land as well as culture, as a resource to exploit in the name of environmentalism. That being the case, there is an urgent need to question the sufficiency and fairness of legal responses to ecological damages in indigenous lands. This paper will set out to critically evaluate these legal mechanisms using the field of green criminology and how they lead us to succeed or fail, or contribute to the continued life of colonial structures. The inclusion of indigenous voices, practices, and knowledge systems in the central position of this study will help develop a more equitable and accountable interpretation of environmental degradation and legal responsibility.

2. LITERATURE REVIEW

Green Criminology: Foundations and Southern Perspectives

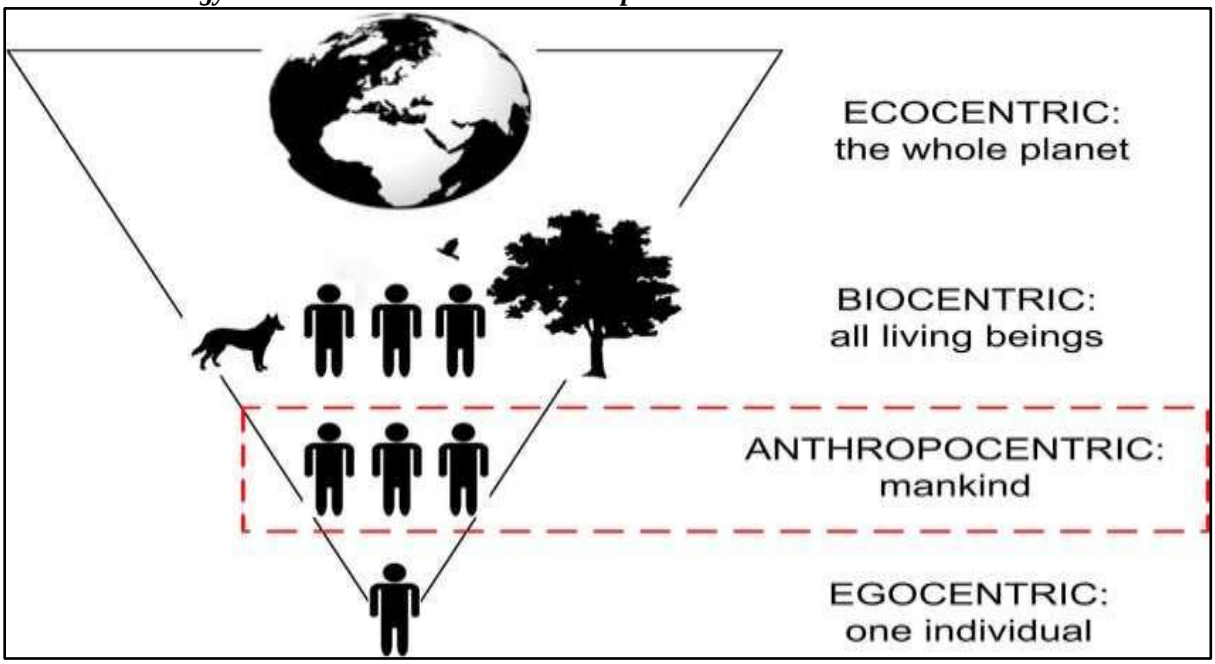

Figure 1: Concept of Green Criminology
(Source: Goyes et al. 2021)

Green criminology came into existence as a result of a crucial necessity to visualise environmental crimes not covered by traditional law. Other scholars, such as Lynch and Long (2022), point out the role that green criminology can play in revealing the ecologically damaging tendencies of capitalist systems and how they sideline the lives of nonhuman and indigenous people. The field criticises the incompetence of common criminal law in meeting green crimes, which are destructive acts to nature, yet have gone free without any legal charges. It is of special concern to the southern settings where native people are under increased ecological pressure. Goyes et al. (2021) stress the utility of such a concept as southern green cultural criminology in learning the importance of indigenous worldviews on nature as a form of kin, rather than as a commodity. The work they have done with Colombian indigenous communities shows an intense spiritual and cultural association with land, which contravenes Western notions of law.

Legal Anthropology and Indigenous Legal Systems

The interface between green criminology and legal anthropology brings more insight into the indigenous ecological justice. Leonard et al. (2023) coined a new term, rematriation, the reinstitution of indigenous control of water and ecosystems, as a legal and spiritual establishment. It continues traditions of indigenous governance of land in which stewardship often assumes the importance of balance over

ownership. In Price et al. (2022), the case of agroecological practices among the indigenous communities in Canada is used to show how land-centred governance works. In the meantime, Wilke and Morales (2024) suggest the establishment of hybrid models, as is the case in Colombia, where bioresource management is exemplified. All these are examples of how indigenous legal systems provide promising, age-old models of ecological governance. Nevertheless, they are systematically rejected or overlooked in the setting of settler-colonialism. In the work by Powell (2024), discussing environmental policy in Maryland, the legal extermination of Native people becomes an obstacle to addressing the climate crisis inclusively. This is indicative of a larger concern: law does not seem to adapt to indigenous epistemologies; in fact, it does not acknowledge their existence. Probyn-Rapsey and Russell (2022) have a different approach, suggesting a triadic model (Indigenous, Settler, Animal) because it is the most decentered model that is considered de-colonializing the human-nature relationship, as law needs to pay attention to interspecies justice.

International Legal Frameworks: UNDRIP, ILO 169, and Gaps

The rights of the indigenous peoples are promoted by international conventions like the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169, which promote the rights of indigenous people to land, culture, and self-determination. Nonetheless, their implementation is not consistent enough. Although they offer a normative framework for justice, they are poorly enforced internationally by national governments that have interests in resource extraction. According to Goyes (2021), unless there are local implementation mechanisms and the participation of indigenous people, they may end up bearing more chin than content.

Environmental Aesthetics, Representation, and Legal Voice

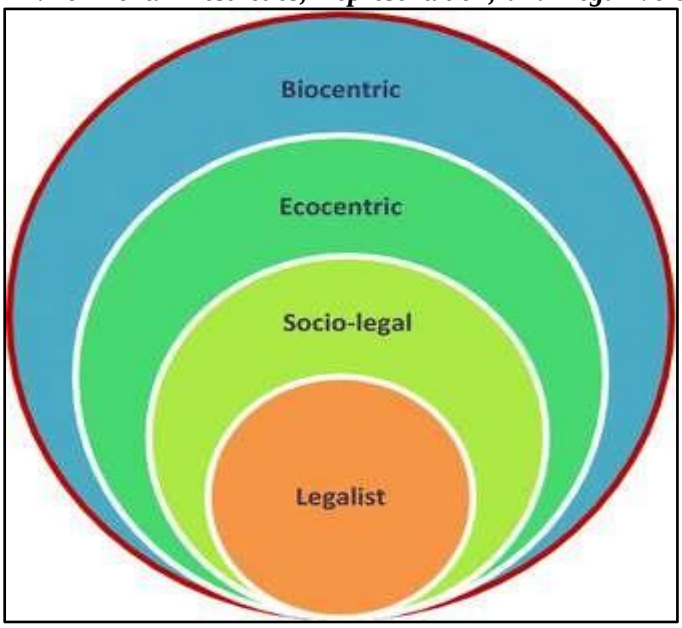

Figure 2: The Conceptual Compatibility Between Green Criminology and Human Security
(Source: Nellis, 2021)

The cultural representation and expression of indigenous people and their resistance towards ecological harms are gaining significance in green criminology, too. Describing how ecocinema can become a means of agitation, De Groof (2022) develops the concept of anticolonial eco-cinema as a form of resistance capable of breaking exploitative schemas. Further highlighting this, Nellis (2021) examines tribunal theatre as a form of giving voice to nonhuman nature in legal-like contexts. In the meantime, Goldsmith (2024) compares the colonial and current customary cultural constructions of the indigenous individuals as ecological heroes or inert victims, who have lost their legal agency. These images have direct implications for environmental justice perceptions among the people and policymakers.

Emerging Gaps and Research Needs

Even in the instances where increasing numbers of interdisciplinary practices will take place at the interface of green criminology, indigenous rights, and law, there exist a few gaps. First, the question of

enforcement is an issue of concern. There are laws, yet there are few systems to punish corporations and governments, particularly on indigenous land. Second, intersectional justice is half-baked, particularly when it comes to gender, urban indigeneity and species justice. As discussed by Nursey-Bray et al. (2022, cited above), the Indigenous people living in urban areas tend to be left out of climate policy frameworks and even out of legal recognition. Lastly, the incursion of the indigenous ecological knowledge in law is relegated to secondary status to the mainstream.

3. METHODOLOGY

This study will develop a qualitative and doctrinal legal analysis to critically assess the extent to which environmental laws, legal systems, and justice systems are reacting to environmental degradation in the lands of the indigenous people. The qualitative aspect permits interpretive examination of the case studies, cultural contexts and indigenous epistemologies, with the doctrinal method being used to arrange an analysis of relevant statutes, case law, international instruments, and scholarly reviews applicable to the topic of green criminology and indigenous rights.

The national and international law used in the conceptualisation includes national and international approaches to the law, constitutional law, environmental protection law, frameworks that recognise people as a part of customary law, hands, and international legal tools of human rights like UNDRIP and ILO 169. There will be a review of the relevant case laws in the context of indigenous land claims and environmental conflicts, and special attention to the Indian and Canadian jurisprudence, providing a comparative legal perspective. This comparative perspective identifies the disparities in the structure of legal pluralism and natives participating in nature government- the Canadian system of treaties is held in contrast to the lawfully recognised forest rights of the tribes in India under the Forest Rights Act.

Existing critical criminological and anthropological pieces of literature are also utilised in the research. This is discussed most importantly by Parsons et al. (2021) of the necessity to integrate indigenous environmental justice frameworks into policy and legislation. Hakim and Srihadiati (2025) report the role of the Baduy community of Indonesia living law that implicitly challenges the colonial formation of the legal paradigm and represents the effectiveness of customary legal customs to resist certain ecological destruction. Similarly, Sharif and Uddin (2023) illustrate that formalised legal frameworks in Bangladesh do not refer to indigenous voices when settling on the issue of the crime of the environment, reinforcing the necessity of inclusive structures.

The interpretation of the primary and secondary data will all be done using a decolonial and green criminology prism, which acknowledges the power imbalance that exists between indigenous groups and settler-state establishments. Ethical issues will entail observing indigenous sovereignty, shunning extractive approaches to analysis, and giving the indigenous a centre stage in analysis. There is also a lack of direct participation by human subjects, and the study is based entirely on publicly accessible legal and academic sources.

4. Case Study and Legal Analysis

In a bid to explore the interaction of environmental degradation, government action, legal structures and indigenous opposition, two high-profile cases will be discussed in this section: the Vedanta mining project in the State of Odisha, India, and recent oil-producing activities in the Ecuadorian Amazon. These are two extremely contentiously cared zones were environmental against nature destruction, clash with resident resistance, legal insecurity as well as the continuous legacies of eco colonization.

Case 1: Vedanta and the Dongria Kondh Tribe, Odisha, India

The ecological and cultural threat to the Dongria Kondh tribe was extremely hazardous due to the bauxite mining of the holy Niyamgiri hills which Vedanta Resources had proposed to explode. The project posed a risk in terms of biodiversity, water and the land-based economy in the rural areas. This assault on the environment was not just the loss of trees but also a whole people were at threat that had built its worldview and justice on spiritual ecology. The reaction of the Indian state to it was initially favourable to industrial growth, a phenomenon, according to Bedford et al. (2022), known as the digital-green paradox, to the current criminology community, as there has been a strong interconnection between modernisation and environmental degradation. After a groundbreaking legal tool: a 2013 Supreme Court

judgement which empowered Gram Sabha (village council) hearings to determine the life or death of the project, the Ministry of Environment and Forests (MoEF) finally withdrew its approval. This was the first time that such a decentralised approach was used, and it allowed the legal acknowledgement of indigenous sovereignty, which is close to the idea of procedural justice, as promoted by Maxwell and Maxwell (2022). But the struggle was not only a legal one. It was also epistemological and cultural, such as the performances and resistance based on rituals as documented by Ohenhen and Abakporo (2024). The fight by indigenous peoples was not only happening in a courtroom, but it was also occurring in the streets with people doing their ceremonies, claiming their ecological and spiritual home, which acts as a resistance to the ideology of green imperialism, as Thakur et al. (2024) stated in their interpretation of The Living Mountain.

Case 2: Oil Extraction in the Ecuadorian Amazon and the Waorani People

The Waorani people have a long history of opposition to oil production in the Ecuadorian Amazon, which has led to massive destruction of the environment: deforestation, land degradation and poisoning of water due to a long-standing history of oil exploration. The state response in many cases was allied with MNCs and sometimes sought to pursue economic growth in preference over ecological or indigenous interests: this is an expression of what Killean and Dempster (2022) outline as the limits of transitional justice in post-colonial states that fail to remediate past deep-seated harms to the ecology. In 2019, the Ecuadorian Constitutional Court acknowledged the right of the Waorani to claim free, prior and informed consent (FPIC), which is affirmed on the international level by the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the International Labour Organisation Convention 169. This decision gave legitimacy to the tribal land demands of the Waorani and that their right to decide how the land can be used. Nonetheless, enforcement is fragile. As Haluska (2023) claims, legal victories can be mere symbolic until structural changes toward restorative justice, incorporating indigenous forms of law and the rights of nature, are in place. The opposition by the Waorani is not one-dimensional- it consists of legal activism, international outreach, and employing digital technologies telling their stories through mapping their ancestral territory, which can be defined as a post-capitalocentric approach (Bedford et al., 2022). According to Martinez et al. (2023), strategies of defending their lands are not simply defensive behaviours but modes of anti-colonial ecological thought, especially in their reconstitutive engagements with fire, forest, and kinship.

Synthesis and Critical Reflection

However, the similarity in these case studies is the incidental miscarriage of justice due to indigenous forms of knowing being subordinated to existing legal systems. In both settings, indigenous resistance is cross-contextual beyond court case litigation, and it involves cultural, spiritual, and even performative ASPECTS focusing on the wider picture of justice. Nursey-Bray et al. (2022) also raise a warning against the so-called urban nullius, in which indigenous peoples, and particularly those not located in traditional homelands, are invisible to policy frameworks, replicating the same phenomenon that happens in rural spaces. More importantly, the two cases impugn the validity of green developmentalism, supporting the assertion that the rights to ecological protection and indigenous sovereignty are mutually reinforcing. The incorporation of local legal knowledge and systems into official environmental management is a work in progress that is not likely to be complete any time soon, but these case studies capture both the possibility and the constraints of the current legal instruments to respond to ecological damages on Aboriginal land.

5. DISCUSSION

The areas of concern where green criminology and Indigenous rights intersect are that there are various gaps in there being legal protection of the ecological harm taking place in the Indigenous territories. This is one of the most enduring obstacles since even the state systems cannot accept or refuse to accept the Indigenous ontologies into their fixed systems of environmental governance defined by the colonial and capitalist values. As Hibbard (2022) describes it using the example of Palestinian art, destruction of the environment in the name of development is more often than not an extension of processes of colonialism-- one referred to as painting colonialism green. This criticism can be offered to international law systems that, despite seemingly enshrining environmentally progressive provisions, often end up curtailing

Indigenous sovereignty by prioritising the larger state-based agenda of conservation or development. Pre-eminent here is the conflict between state sovereignty and self-determination. Leonard et al. (2023) propose to rematriate the water governance, i.e., delivering responsibilities back to Indigenous people through the recognition of water research sovereignty. Their discussion points to how even the participatory research frameworks tend to reinstitute colonising control over knowledge production and managing nature. This undermines customary law that is embedded within the relationships of spirits and the environment, and was sometimes hidden within the dominant accounts of law on many occasions.

Environmental groups and legal organisations are ambivalent as well. On the one hand, courts are the essential devices to exercise Indigenous rights, particularly in such states as Canada and New Zealand. Nevertheless, these legal struggles tend to be partial, retributive and vulnerable to the changes in the political weather. Nellis (2021) brings a new dimension to it by using tribunal theatre as a method of environmental advocacy since it may be raised by artistic and cultural creators where traditional law has little space to accommodate environmental justice. In a similar vein, De Groof (2022) demands an "eco-cinema" based on the aesthetics of anticolonialism as she emphasises that the reformation of the law needs to be both culturally sensitive and emancipatory and not just thought in technocratic terms. In a lamenting fashion, Weaver (2024) bemoans the epistemic marginalisation of Indigenous ecological knowledge, stating that science and religion have become the means of the so-called settler imagination, by and large. This form of epistemic resistance: Indigenous rejection of land segmentation into the resources, serves to undermine assumptions of law in ownership, utilisation and environmental worth. This view of the world is hardly ever capable of admission by the settler legal imagination, which strengthens extractive legal and economic orders, which green criminology attempts to problematize. Moreover, Probyn-Rapsey and Russell (2022) suggest a three-pronged (Indigenous, settler, animal) model of comprehending the many environmental incidents contained in non-human as well as human victims. These ways of thinking promote a broader sense of justice beyond the human species or even as far as intergenerational justice that stretches the existing measures of law designed to protect the environment. Finally, green criminology forces legal experts to rethink justice as something other than punishment and control. It focuses specifically on structural transformation, involving addressing colonial legacies that find their expression in the law, exaggeration of Indigenous legal orders, and the creation of ecological solidarity. The reform of the law in the future should become intersectional, community-driven, and dialogic, accountable to Indigenous cosmological understandings, and bereft of co-opting by state or corporate forces. These researchers argue thus, as they explain that solving the problem of environmental justice in Indigenous lands necessitates maintaining a paradigm shift at the paradigm level, which is no longer extractive legality but relational responsibility.

6. CONCLUSION AND RECOMMENDATIONS

This research paper has considered the overlap of green criminology and Indigenous rights through the perspective of how the law can be used to respond to environmental degradation within the limits of Indigenous land. The study has advocated a doctrinal and qualitative approach through comparative-based knowledge to the fact that there are indicators of significant legal gaps in protection and justice that the legal systems tend to create by peripheralizing Indigenous ecological knowledge and the customary law. Although there have been encouraging trends in the harmonisation of Indigenous governance into some legal frameworks, including an exclusive share in the control of natural resources or the legal status of natural resources, such as an ecosystem, in various jurisdictions, they continue to operate on colonial premises that uphold only state authority at the expense of Indigenous sovereignty.

As per the analysis, there are some essential reforms that should be initiated. The first is that importance must be given to the way that customary law can be recognised and incorporated in the national legal framework, not just as a symbolic measure but as a working legal framework in environmental governance. Second, they need to adopt formal positions of Indigenous environmental guardians who can monitor, report and take actions against ecological damage within their territories. Such roles need to be well-financed and even allowed by law to be effective. Third, the statutory amendments ought to have

Indigenous consent mechanisms, where plans of development machinery would not be able to proceed without the free, prior, and informed consent (FPIC) of the Indigenous people.
The next research must be devoted to carrying out the empirical studies of the ecological justice activities led by Indigenous peoples in order to evaluate the results and the positive experience. Also, it is especially important to consider restorative justice approaches to environmental crimes, especially those that rely on Indigenous traditions of healing and restoration. Such models are capable of providing whole-of-life solutions that can be more than just punishment-based responses and apply to the relational and spiritual aspects of ecological destruction, which remain a key focus in Indigenous worldviews.

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