

Galston's Legal Legacy: re-reading the Birth Process of the Concept of Ecocide

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Abstract

The concept of ecocide was developed in response to the ecological war of the Vietnam through a legal simulation by Galston. In Galston's view, just as the destruction of human groups is a crime against humanity and has been criminalized as "genocide," the destruction of ecosystem(s) is a crime against humanity and must be criminalized as "ecocide" in a treaty. However, the international community has so far failed to implement Galston's idea and criminalize ecocide as an international crime. Using a descriptive-analytical approach and library resources, this research examines the process of developing this concept as well as its essence in Galston's legal perspective and to evaluate it. It aims to familiarize the legal community with the theory of ecocide crime, to provide a ground for ecocide criminalization at the four levels of local, national, regional, and international, as well as for the emergence of an universal criminal policy to protect the Earth against severe, widespread, or long-term ecological damages.

Keywords: *Galston, Ecocide, Crimes against Environment, Ecological warfare, Ecological Holocaust, Environment.*

1. Introduction

Ecocide is a new concept in the fields of criminal law and international criminal law. This concept refers to the cause of severe, widespread or long-term ecological harm to the environment and ecosystems. The idea of criminalization of ecocide as an international crime was raised in the 1970s for the first time. However, this green legal idea did not become an international criminal norm. This research seeks to study why and how this concept was born in the history of international criminal law.

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2. Methodology

The current research was conducted in the field of the history of ecocide law. To this end, it was necessary that researchers return to the past and begin their historical studies in this field. The authors used a descriptive-analytical approach and library resources to study the process of invention of the concept of ecocide as well as its essence in *Galston's* legal thought, and to critique and evaluate this green legal idea from a legal point of view.

3. Results and discussion

The concept of "**ecocide**" was coined in response to the ecological Vietnam War and through a legal analogy by *Arthur William Galston*, who likened the destruction of Vietnam's environment by the US military to the Holocaust (the systematic massacre of Jews and minorities by Nazi Germany) during World War II. The difference between the two catastrophes is that in Nazi Germany, only the human society and the human ecosystem were attacked and a "**human holocaust**" took place, while in Vietnam, the natural society and plant and animal ecosystems were also destroyed. In other words, in addition to a "human holocaust," a parallel "**ecological holocaust**" occurred in Vietnam, which deserved criminalization. To this end, *Galston* used the same legal formula of *Raphael Lemkin* (who coined the term genocide), and introduced the new concept of "**ecocide**" from the combination of the Greek word "*oikos*" meaning 'home, nature, and ecosystem', and the Latin word "*caedere*" meaning 'to kill, to cut down, and to destroy' to criminalize these destructive events. According to *Galston's* legal thought, just as the extermination of human groups is a crime against humanity and criminalized as "genocide" under international law, the destruction of natural ecosystem(s) is a crime against humanity and must be criminalized under "**ecocide**" by the United Nations in the form of a new international treaty. This is *Galston's green legal legacy*.

The legal idea of **international criminalization of ecocide** failed at the time, but after fifty years, the result of *Galston's* critical and green legal thought can be clearly observed in the legal definition of ecocide given by the "**Independent Expert Panel for the Legal Definition of Ecocide**" on June 22, 2021, which provided a new and ecological definition of this crime for criminalization as the **Fifth International Crime** and included in the Statute of the International Criminal Court (1998); This definition marks **the paradigm shift** in the sphere of international criminal law and the transition from a Anthropocentric to an eco-centric perspective. According to this definition:

"Article 8 ter: Ecocide

1. For the purpose of this Statute, "ecocide" means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.

2. For the purpose of paragraph 1:

a. "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;

b. "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;

c. "Widespread" means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;

d. "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;

e. "Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space."

4. Conclusion

From a legal point of view, it can be argued that although *Galston's* legal idea is the first green step in **the international criminalization of ecocide**, the content of this innovative notion is not very clear, rich, comprehensive, and effective, and it cannot meet current legal needs of human societies and properly protect the planet Earth. The reason for this can be attributed to the recent emergence of this concept, *Galston's* lack of legal expertise, as well as the recent emergence of the two disciplines of international criminal law and international environmental law at that time. Nevertheless, the ecocide legal theory should still be considered *Galston's* legal legacy. Although he could not, unlike *Raphael Lemkin*, develop his legal idea and formulate a coherent legal theory of ecocide for its international criminalization, by inventing the concept of ecocide and proposing the idea of its international criminalization, he laid the first foundation of this green legal theory. Today and at the beginning of the third wave of criminalization of ecocide at the local, national, regional, and international levels, it can also be argued that *Galston's* legal thought has made its impact on the contemporary international criminal law. In fact, such a transformation in green vision in the sphere of international criminal law is the result of *Galston's* green's legal thought and is, in fact, his "legal legacy." It was *Galston* who paved the way for this "**green philosophical-ethical transition**" in the international criminal law and ecocide criminalization alongside "genocide" and the recognition of "crimes against the environment" alongside "crimes against humanity." Now that **the renaissance of the ecocide legal theory** has begun, the international community in general and ecocide experts and researchers in particular can take positive steps by relying on each of *Galston's* four legacies to guarantee the right to a good environment and

development of a coherent and effective criminal policy against ecocide in four local, national, regional, and international levels to protect the planet from severe, widespread, or long-term ecological harms.

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