

Justice for Trees: Representations of the Law in Richard Powers' *The Overstory*

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Abstract

This article examines the representation of ecological justice and the legal responsibilities for nonhuman species in the novel *The Overstory* (2018) by Richard Powers. Focusing on the preservation of the forest, I argue that the novel illustrates how the capitalist and anthropocentric foundations of the legal system

hinder any human attempts, whether it is through breaking or fixing the law, to achieve ecological justice for trees. Without reducing the need for immediate environmental interventions, *The Overstory* portrays the complex ambiguity of acting on the behalf of nature in the Anthropocene.

Right before the start of the Madrid Climate Change Summit of 2019, the United Nations Secretary-General Antonio Guterres publicly articulated the need to stop humanity's "war against nature" (Binnie). Guterres' framing of the ecological crisis and the extraction of natural resources as an act of war is common rhetoric. Given that in the last five years the world has annually lost ten million hectares of forest, Patt Morrison writes in the *Los Angeles Times* that "humanity is waging an inexplicable war on trees." Similarly, Michael Williams calls the period between 1945 and 1995 "The Great Onslaught" (395), as during this time more forest was logged than in the entire existence of humanity. Bram Büscher and Robert Fletcher explain how the term "green war" (106) can be used to encapsulate these acts of violence towards nature as well as the behaviour of humans to violently defend nature in the face of these threats. One place where this battle between humans and nature takes place is in law. Should humanity have a legal responsibility for other species? In what way could the destruction of a forest be legally prohibited? In other words: is it possible for the law to become a productive discourse to achieve justice for the suffering of nature? These questions are raised in the novel *The Overstory* (2018) by Richard Powers. Together with Annie Proulx' *Barkskins* (2016), Karl Marlantes' *Deep River* (2019), and Michael Christie's *Greenwood* (2019), *The Overstory* is part of what Mark Athitakis in *The Washington Post* describes as a subgenre of ecofiction that focuses on the human-nature relationship in regard to deforestation. Most of these novels describe the effects of deforestation by focusing on the history of logging, but *The Overstory* is interested in the precarious status of trees across various disciplines in contemporary society. As such, scholars have analysed the novel's metareflections on the impact of ecocritical literature (Hess 2019), the representation of the scientific paradigm around plant life and how this impacts the form of the novel (Spengler 2019; Masiero 2020), as well as its focus on technology in relation to the environmental crisis (Caracciolo 2019).

What has been excluded from these discussions about *The Overstory* is how its characters attempt to stop deforestation through interactions with the law. This lack of scholarly attention is noticeable since a majority of the narrative revolves around a group of environmental activists

breaking laws to generate attention for the disappearing forest. As such, this article focuses on how *The Overstory* portrays the complexities of current legal discourses that prevent the establishment of ecological justice. I argue that the novel illustrates the inherent capitalist and anthropocentric foundations of legal systems that deem any transformation of the law, whether it is through radical activism or court cases, as insufficient for asserting the rights of nature. In doing so, the novel brings about a critical awareness about the complex systems that reinforce the destruction of nature. To situate this argument in contemporary discussions about deforestation, the article starts with a theoretical overview on how plant blindness results in the exploitation of nature and the limitations of environmental law. This discourse analysis provides the framework that allows for a critical evaluation of representations of activism, justice, and law. What follows is a close reading of the novel's most important attempts to establish ecological justice for the forest. This includes a fictionalization of environmental protests in the 1990s, attempts to change the law through court cases, and the implementation of self-learning algorithms. However, these events turn out to be inadequate to protect the forest. The article's conclusion connects the ambivalence of how to secure ecological justice to the impact of *The Overstory* in changing the perspective of the reader. Like John Ryan argues, there is a "pressing need to devise frameworks for governing the ethics of human interactions with the botanical world" (61). By focusing on *The Overstory*, this article examines how literature imagines these necessary ethics in regard to ecological justice and the law.

Plant Blindness: Trees and the Law

James Wandersee and Elisabeth Schuster coined the term "plant blindness" in 1998 for the inability of many people in the United States to notice plants.¹ This condition leads to a failure of recognizing the vital

¹ Wandersee and Schuster focus on the general "US public's inattention" for plants, but as Alexandros Amprazis and Penelope Papadopoulou point out, the concept of plant blindness should be approached with more nuance by taking into account how Indigenous communities and people from various sociocultural backgrounds relate to plants and flora (1068).

role of plants in the biosphere and human affairs, an inability to appreciate plant-aesthetics and “the misguided, anthropocentric ranking of plants as inferior” (Wandersee and Schuster). In his influential book *Plant-Thinking* (2013) Michael Marder argues that although plants are living beings, humans fail to “detect the slightest resemblances to our life in them” (3), which results in the unlimited exploitation of nature. This inferior position ascribed to plants is, for example, manifested in Western law that prioritizes the welfare of humankind above all other forms of life. Legal rights are restricted to humans and legislation enables land to become private human property. Only in rare circumstances do Western theories of law consider nature and nonhuman species as rightful entities (Burdon 28). Yet in the face of climate change and deforestation, there is an increasing demand for ecological justice, namely the recognition that every natural entity is entitled to enjoy the fullness of their own life (Schlosberg 104). To achieve ecological justice, scholars have emphasized the need for a radical different philosophy of law such as “Earth jurisprudence,” proposed by Thomas Berry in 2001. This system states that humans are part of a broader community of geological and biological species. The Earth is not a collection of objects for mankind’s exploitation, but a subject (29). Earth jurisprudence seeks strategies that can undermine the anthropocentric principles of law so that “habitats of all species [...] [can] be given legal status as sacred and inviolable” (Berry 161). This idea has also been discussed by Christopher Stone in his famous essay “Should Trees Have Standing? Toward Legal Rights for Natural Objects,” where he emphasizes the necessity to grant legal standing to trees, rivers, and mountains. He argues that similar to each successive extension of rights to women, Native Americans, and people of colour, the circle of concern in society must now widen to incorporate the rights of nature (454).

To some extent, forests have already been acknowledged as living entities that should be protected through the instalment of environmental laws. For example, it is legally prohibited to remove, destroy, or sell timber from wild forest preserves like Adirondack and Catskill Park in the United States (Wohlleben 234). But despite such environmental legislation, what is considered ecological justice has not been achieved.

In comparison with countries in Latin America and Europe, the U.S. has the least rigorous regulation of forestry on private lands. Whereas Westcoast forestry laws include State Forest Practice Acts and staff for regulatory enforcement, Southern and Midwestern states tend to operate through largely ineffective voluntary approaches (McGinley et al. 491). What complicates the efficiency of environmental legislation is that it regulates “activities in the here and now [...] to achieve something in another time and space” (Bosselmann 2428). Clearcutting the forest immediately benefits humans, either by selling the logs or using the land, whereas the detrimental effects of deforestation like the loss of biodiversity or increase in temperatures manifest over a much longer time period (Runyan and D’Odorico 177). This disjunction affects the public acceptance of environmental laws that are not focused on immediate profits for humans. Because of the inefficient legislation and the lack of an overarching ethical foundation in society to preserve nature, Klaus Bosselmann argues that through laws “a number of *trees* have been saved, but the *forest* is [still] disappearing” (2433, emphasis in original).

These problems are also addressed in *The Overstory* as the novel exposes the anthropocentric principles of the law that complicate the quest for justice. Through the inclusion of scientific information about how trees communicate with each other, the way in which they exchange nutrients to ensure the survival of the forest and the vital roles trees play in healthy ecosystems, the novel works against plant blindness that would assert trees as passive, mute, and non-living beings. By continuously emphasizing that trees are alive, the novel points towards the urgency of establishing ecological justice for the forest as it suffers under the reign of logging companies. The main characters in the novel attempt to achieve justice through two different interactions with the law. Various characters take on the names of trees like Maidenhair, Douglas fir, Maple, and Mulberry, to break the law and create awareness about deforestation whereas others engage with forest conservation in a non-violent manner by simply reflecting on how to change the legal system. But as will be discussed, both strategies prove to be inadequate.

Breaking the Law: Tree-Activism

One of the main plotlines in *The Overstory* is a fictionalized account of the Redwood forest activism that took place during the 1990s in California, one of the most intractable environmental conflicts in American history. The protest was primarily led by the radical environmental group Earth First! who aimed at mobilizing mass-movements to defend ancient redwood groves against loggers (Speece 4). In the novel, this organisation becomes the Life Defence Force (LDF) who similarly to Earth First! occupies private forests and commits property crimes (Taylor 45). In the eyes of the activists, the illegal sabotage of repairable machinery does not compare to the crimes of destroying millions of trees. As one activist states: “No valuable property has been destroyed except these forests” (Powers 215). They justify breaking the law by claiming that they are “in a war” (215) and cannot wait for new legislation as the logging companies “will have killed all the giant [trees] by the time the law catches up with them” (214). This refers to the temporal disjunction between the slow bureaucratic movements of the law and the fast and efficient methods with which timber is being cut. Moreover, during one of the tree-sitting protests, someone points out that “if nobody’s losing money or getting hurt, the law doesn’t give a fuck” (260). Ironically, there is a lot of hurt in the novel. Logging disrupts arboreal ecosystems beyond repair and the activists are so severely assaulted by the police that they end up in trauma centres. But their pain is ignored since the forest is not legally recognized as a living entity and the activists are perpetrators before the law instead of victims.

Indeed, the law in *The Overstory* does not seriously care until money is involved. With the statement that either they “destroy a small amount of equipment or that equipment destroys a huge amount of life” (344), the main characters radicalize and burn down federal machinery with explosive devices until one of them accidentally dies in the process. As a result of destroying expensive federal property, two activists receive one hundred and forty years in prison on charges of domestic terrorism, property damage, and manslaughter. The harsh punishment shows the operations of a legal system that prioritizes capitalism and the lost property of the timber companies. This is also emphasized in the

novel through the deaths of the LDF's leaders who were murdered by a bomb in their office, an event that leads to the police accusing the LDF of domestic terrorism. This is a reference to how Earth First! activists Judi Bari and Darryl Cherney were accused of terrorism when a bomb exploded in their car. It was later proven that the bomb and the subsequent framing of domestic terrorism were actually instigated by the FBI and the North Coast timber companies to stop the activists (Speece 5). As Linda Hess points out in her analysis of the novel, "activism does not win the day" (202). The activists rely on the media to gather attention and disrupt the plant blindness of society, but without any success. They are removed from the forest on charges of trespassing and the ancient redwoods are still cut down. Thus, there is no way for the activists to succeed—either they break the law and are punished for their crimes while the forest is still being destroyed or they are murdered and unjustly framed as perpetrators.

Fixing the Law: Trees as Property

In addition to the activists' interactions with the law, *The Overstory* represents the difficulty of protecting the forest through legal and non-violent interventions. An important figure in the narrative, a renowned dendrologist named Patricia Westerford, is called as an expert witness in a court case to halt logging on sensitive federal land. Patricia has to convince the judge about the importance of older trees for the proliferation of various species, healthy soil, and pure water, while the opposition "asks whether preserving slightly larger forest tracts is worth the millions of dollars it costs people [...] [summing] up the opportunity loss – the crippling expense of not cutting down trees" (Powers 283). Knowing that she can never win against the argument of profit, Patricia instead attempts to shake the judge out of his blindness for the forest through emotions. She illuminates the "grace of [the forest]" (283) as a threatened living creature while the "love for trees pours out of her" (283). Her plea convinces the judge to issue an injunction on new timber sales of public lands until the impact of logging on endangered species is evaluated. However, this does not result in ecological justice—as the

opposition points out to Patricia, lumber will now become more expensive, which means that “every timber firm with private land or existing rights is going to cut as fast as they can” (285). Moreover, the injunction is later revoked by another court decision. Even if Patricia is able to work against plant blindness on an individual level in the court, the overarching ideologies of capitalism and anthropocentrism that result in the reversal of legal decisions remain in place.

The limitation of the law to protect nature is also commented upon by a character named Ray Brinkman, a property lawyer. Reading the aforementioned essay by Christopher Stone on the legal standing of nature, Ray becomes aware that his entire career protecting humanity’s claim on the environment is “like one long war crime, like something he’ll be imprisoned for, come the revolution” (250). While watching the news about several injustices done to trees, from Israeli forces destroying a Palestinian olive grove to the aforementioned activists being arrested, Ray realises that humankind should give back the nature they have stolen. This is what the novel describes as a moment of “enlightenment” (309) which Ray literally cannot process, inducing a stroke that leaves him in a severe paralyzed state. A second stroke occurs when Ray hears about the trial of the activists. He imagines that they could be pleaded free under the principle of self-defence as the law allows for necessary force against “imminent harm” (498). Yet the problem is that deforestation for the public and the law is not considered an imminent problem. The pace of the legal system focused on the lifespan of humans is not compatible with the slower and less visible workings of nature. With the final thought that “the law must judge imminent at the speed of trees” (498), Ray dies. Important to note here is that, although Ray’s comments illustrate the anthropocentric workings of the law, *The Overstory* also engages with the problematic literary discourse around disability that David Mitchell and Sharon Snyder identify, namely the reduction of the disabled body to a metaphor rather than a lived reality (48). By constantly linking Ray’s strokes to the limitations of the law, his paralysis only functions as a symbol for the inability of humans to change

legislation.² However, despite this critique, Ray's reflections as well as Patricia's interaction with the law both showcase how even with the best intentions, justice cannot be achieved by following a legal path.

Dehumanizing the Law: The Learners

Given that justice is unattainable through fixing or breaking the law, the novel proposes a different way to preserve the forest—namely through technology that can circumvent anthropocentrism. *The Overstory* ends with one of the main characters, a game developer with a passion for trees named Neelay Mehta, releasing self-learning algorithms called “learners” into the world (Powers 493). This artificial intelligence operates on levels beyond human capability by shaping “all the world’s data so quickly that the knowledge of humans stands still” (487). They are tasked to discover on how many levels the lives of trees and humans are connected and must find solutions for the environmental problems “that nothing alive yet knows how to solve” (496). In light of the discussed difficulty of preserving the forest through interaction with the law, one could read the novel’s ending as putting forward technology as the way to find ecological justice—a nonhuman code that can correct for all the injustices done to the environment because it understands nature on a level the human mind never will. As Alex Moltzau outlines, there are already implementations and discussions about the use of artificial intelligence to support forest preservation. These computational strategies range from locating sites for reforestation and monitoring plant health to calculating which parts of the forest are most vulnerable to wildfires. More specifically, David Rockman writes in *Bloomberg Law* that “in the world of environmental law, artificial intelligence is actually an emerging issue of great potential interest.” Taking the Clean Air Act as example, Rockman illustrates the potential of artificial intelligence by outlining how it could make decisions based on collected data about factories’ policies regarding polluting emissions. Simultaneously, Rockman also points towards the disadvantages. He describes how implementing

² For more information on the relationship between disability studies, ecocriticism, and literature, see Jaquette Ray and Sibara.

and producing the necessary technological equipment to increase the efficient enforcement of the law through artificial intelligence may actually burden the environment even more through the energy and materials needed. Moreover, human bias is not completely eroded from algorithms as the data used to train artificial intelligence may result in reinforcing those biases (Vinuesa et al. 6). These problems take a dystopian turn in *The Overstory* when Neelay comments that the algorithms are “willing to use even death to find [solutions]” (Powers 496), implying that the technology can become a lethal force that guarantees the survival of the trees, but not that of humans. The novel’s focus on technology is thus rather ambivalent, something which Marco Caracciolo interprets as an expression of the uncertainty about humanity’s fate during this ecological crisis (66). I would argue that not only artificial intelligence but also the discussed criticism on the anthropocentric and capitalist focus of the law portrays this uncertainty.

In light of the complexity and uncertainty about fixing, breaking, or even supplementing the law with technology, the question remains how to actually achieve ecological justice. As Caracciolo argues, uncertainty should be embraced by the reader “as a source of radical change” (67). Indeed, even though the novel does not present clear-cut solutions for the problem of deforestation, it constantly focuses on the need for change through the frequently repeated phrase: “The most wondrous products of four billion years of life need help” (Powers 165). On a meta-level, *The Overstory* itself has the ability to install this change by making the reader aware about deforestation. As the activist Maple points out during his trial, the law is “simply human will, written down [...] it must let every acre of living Earth be turned into tarmac, if such is the desire of the people” (471). This implies that when the desire of people is changed on a large enough scale, the law will eventually follow. In some way, *The Overstory* can influence this process as literature has the ability to work against the anthropocentric dismissal of vegetal beings by “foregrounding plants in their narratives” (White 90). Through activists and people like Patricia and Ray, the novel specifically emphasizes what Natasha Myers calls the “planthropocene” (300), namely a way of living that acknowledges the necessity of people becoming allies

with plants. In this way, despite the uncertainty about the future of both humans and the forest and the current discourses that prevent the law from protecting trees, *The Overstory* is making its own contribution to the establishment of ecological justice.

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