

European Forum for Restorative Justice



# ENVIRONMENTAL JUSTICE: RESTORING THE FUTURE

**Towards a restorative  
environmental justice praxis**

# **Environmental Justice Restoring the future**

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**Towards a restorative  
environmental justice praxis**

**Editors**

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**EFRJ Newsletter**

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*Coverphoto: Voice of nature: the trial - Maria Lucia Cruz Correia.*

*Photographer: Mladilevi@NadaZgank*



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*Youth climate protest in Leuven, Belgium*

# Intro- duction

The international Restorative Justice Week (#RJWeek), which takes place every year at the end of November, is a time to celebrate our annual achievements in the field of restorative justice, as well as to explore new horizons. This year the European Forum for Restorative Justice has explored the intersection of restorative and environmental justice.

We contacted practitioners, activists, artists, young people, scholars and scientists committed to restorative principles and practices as ways to do justice in harmed environments and communities affected by environmental harm and gathered innovative and inspiring practices that use restorative justice to understand and respond to environmental harm.

This booklet consists of three parts. In part one, we have given space to reflections on how restorative justice can contribute to environmental justice. Part two contains pioneering experiences in restorative environmental justice, which aim primarily to give a voice to all parties affected by or involved in environmental harm. In part three we include inspiring projects from activists and artists around environmental justice. By giving space to these ideas and initiatives, we hope to nourish the restorative imagination and create connections between different actors in order to collectively mobilise the restorative power (philosophy, principles and praxis) in the service of environmental justice.



A restorative contract in "Voice of nature: the trial" by Maria Lucia Cruz Correia.  
Photo: Mladilevi@NadaZgank

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# **Restorative environmental justice**

# Restorative environmental justice: An introduction

John Braithwaite  
Miranda Forsyth  
Deborah Cleland

We live in the Anthropocene, the era of history when humankind dominates nature, when human kindness to nature withers, especially as machine bureaucracies of production lines, commodified institutions and blitzkriegs of war machines displace organic organisations that flourished relationally through interconnections among and between human worlds and the worlds of the land and the sea.

Climate change, species loss, growing and urbanising populations, diffuse sources of pollution and predatory capitalism are all placing increased pressures on our natural and built environment, often leaving the most marginalised communities to bear the worst of the burden of environmental pollution.

## Repairing harm

*Restorative environmental justice* is philosophically much more than a set of techniques for doing justice for the environment in a more relational and emotionally intelligent fashion, though it is that as well.

It is about repairing the harm of the Anthropocene. It is about healing earth systems and healing the relationship of humans with nature and with each other. Because the relationship of human domination developed during the Anthropocene, restorative environmental justice should also be about humbling humans' domination of nature. It is about tempering human power over earth systems and domination of the powerful over the less powerful. It seeks to advance the imperative to harness collective human power to forge a new vision of humankind as bearing a harmonious, restorative relationship with nature and with each other. It is about a humanly articulated future that is healing and relational.

This must involve a transformative mobilisation of the restorative power and the restorative imagination of humankind. It involves the insight that, by being active citizens of the planet, by participating in the project of healing our natural world, we heal ourselves as humans who only have meaning and identity as part of that natural world.

*Restorative environmental justice* means, for example, a massive human-led reforestation of the planet and investment of human resources in seeding those renewed forests with species that have become endangered thanks to human domination. It means following the Chinese example of building 'sponge cities' that capture and clean every bit of run-off from the city's paths, roads, buildings and gutters and returning some of that city water to river systems that need more water to survive. It means more circular systems of using water in agriculture that take less water from those same endangered river systems. It means more circular re-use of waste so it does not find its way into rivers. It means restorative human steering the circle of warming that links the sun to the earth — steering some of the sun's heat to human projects of cooling the earth system.

## Transformation

*Restorative environmental justice* requires a human-led transformation of the shape of our economy, so we grow our well-being and continuously grow non-exploitative employment — not by increasing the consumption of goods, but by increasing the consumption of services. Increased consumption of health, education, care and disability services is structurally critical to shape-shifting. More teachers, nurses, child care, aged care and environmental care workers do not carbonise the atmosphere in the way more cars, coal, houses and plastic straws do.

By restoring nature through economic shape-shifting that favours growth in services over growth in goods, we can better restore ourselves with enriched human services. The type of linking of guarantees of universal human welfare with environmental goals by leaders such as those developing the Green New Deal demonstrates a commitment to the entanglement of human and planet well-being that is at the centre of restorative environmental justice.

When it comes to environmental regulation, *restorative environmental justice* is about strategies that motivate businesses with this ethics of care for the environment. It invites business to a cultural transformation at the restorative base of responsive environmental regulatory pyramids, where whole workforces commit to environmental stewardship, to healing the hurts of business domination of nature. That in turn requires conversational regulation as the preferred initial modality of regulation, over hectoring or punitive harassment of business.

This means that when environmental harm occurs, the environmental regulator harnesses the power of motivational interviewing with questions like: '*Why do you think you would want to commit as a workforce to this form of environmental stewardship?*', '*What would be your preferred pathway to that stewardship?*' Of course, when firms are ruthlessly committed to a trajectory that fails to come up with credible answers to these questions, as coal-fired power-plants are bound to do, then environmental regulation must shut them down at the peak of its enforcement pyramid.

Enforced corporate capital punishment is something the restorative environmental regulator hopes will be averted by the ethical choices of corporations to steer their investments away from carbon to renewables, and through leadership with green innovation that takes the economy up through new ceilings of environmental excellence. Corporate leaders might then become moral exemplars of the rewards of the shape-shifting economy that eventually drags corporate laggards up through those same ceilings.

The motivational interviewing approach to restorative regulation is about seeing the inferiority of dragging business kicking and screaming to environmental compliance compared with the superiority of business commitment to the virtue of being custodians of the earth. As more businesses make that commitment shift, laggards eventually become dinosaurs, outliers of an old economy that renewable markets eventually drive to extinction.

## Regulation

Regulation is imperative, however, because the markets adapt to looming crises too slowly to avert them, whether they are environmental or economic crises, and those harmed first are the most marginalised and leading the most precarious lives. While *restorative environmental justice* is about the idea that steering markets is imperative, its key hypothesis is that a presumption in favour of relational steering works better, but only if it projects the inexorability of regulatory pressure that will get more and more relentless until a stewardship shift occurs. It also creates space to question and challenge our regulatory institutions to respond to new challenges in courageous and impactful ways, rather than to rely on risk management strategies that lose sight of the overall goals.

## Fertilised

*Restorative environmental justice* sprouts from soil tended and fertilised by generations of indigenous communities, community activists, creative judges and lawyers, visionary corporations and committed conservationists. Those seeking to expand *restorative environmental justice* would do well to heed the successes and failures of these groups in their experiments with restorative values such as meaningful participation in decision-making, inclusion, respect, dialogue, trust and seeking accountability. These histories are documented by scholars in the fields of environmental justice, participatory conservation, green criminology, new environmental governance and social license to operate.

They have shone the spotlight on the tentacles of power and privilege and social injustice entrenched in existing political and economic structures and highlighted the re-distributive imperatives associated with sustainable climate action. Aiding these diverse actors toiling towards the ultimate goal of restoration of the planet is one of the greatest tasks for *restorative environmental justice*.

*Restorative environmental justice* is a richly hybridised and pluralised endeavour in which new ways to think about scale and complexity require interdisciplinary flexibility and drawing from ancient Indigenous traditions as well as cutting edge scientific developments.



## New questions

The context of the environment poses particular new conceptual considerations for restorative justice. These include questions such as:

- *Who are the victims of environmental harm?*
- *Who should have a voice in restorative processes?*
- *Who can speak on behalf of future or past generations and of nature/ more-than-human (animals, plants, rivers, land, places)?*
- *How is harm measured, and what account can be made of future harm?*
- *Can irreversible environmental degradation be healed, and if so, how?*
- *Can restorative justice simultaneously safeguard communities and the environment when their interests seemingly diverge and even collide?*

Many of these questions are addressed by others who came together at KU Leuven in April 2019 for an inspiring meeting of many thoughtful minds. They sought to share in the project of building a restorative environmental justice. That project is being further developed both in the scholarly context and in real-world practices where innovation and the seemingly impossible are always, magnificently, present.

**John Braithwaite, Miranda Forsyth and Deborah Cleland**  
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# Restorative responses to environmental harm?

## Yes, we must!

**Brunilda Pali**

In April 2019, the Leuven Institute of Criminology at KU Leuven celebrated 90 years of existence. On that occasion, John Braithwaite, who is an honorary doctor of KU Leuven, joined the Institute. Together with Ivo Aertsen, we took this wonderful opportunity to organise a unique international seminar on restorative responses to environmental harm. John Braithwaite's work has always been both foundational and pioneering, and in that regard he and his team in Australia are among the first to have engaged in cases of *restorative environmental justice*.

This seminar brought together scholars, activists and practitioners to delve in the depths of the intersection of environmental harm and restorative justice. Whereas communities, activists, scholars and scientists have primarily focused most of their energies on developing laws and policymaking that identify, recognise, regulate, condemn or punish actors of ecocide and corporations or other authors that perpetuate environmental crime and harms, many have started recognising the value and potential of restorative responses to these problems, especially the alignment of a restorative philosophy that is embedded in indigenous justice and environmental justice. In whatever version, the restorative justice perspective is driven essentially by the principles of participation, harm reparation and healing, which are principles that must be central in conceiving environmental justice.



*Seminar participants, Leuven April 2019*

Despite its potential, environmental harm also raises several challenges to restorative justice, which were explored in depth at the seminar.

- *Who are the victims of environmental harm, how are their rights ensured and how can they have a voice in restorative processes?*
- *Who speaks on behalf of future or past generations and nature (animals, plants, rivers, land, climate)?*
- *What kind of expertise is required to speak adequately for the non-human?*
- *What are the criteria by which judgements around harm or victimisation are to be made?*
- *What are the criteria by which judgements around repair and restoration are to be made?*
- *How can we repair the irreparable?*
- *How can we assess who the perpetrators are and how can we ensure their participation in restorative processes?*

The seminar started with a brief welcoming talk and introduction by me and continued with a compelling talk by John Braithwaite on the importance of restorative responses and their potential in the area of environmental harm, illustrating with examples of restorative innovation by Victoria's Environmental Protection Authority. He highlighted both the incredible potential of restorative principles and practices for environmental harm, but also some important limitations, inviting us to look at restorative justice as one step on a protracted journey towards environmental justice.

His talk was followed by a presentation by Femke Wijdekop, a scholar and activist on Environmental Justice at the International Union for Conservation of Nature — The Netherlands (IUCN NL), and Anneke van Hoek, a criminologist at Restorative Justice Nederland. They explored, from different perspectives, whether restorative approaches to environmental conflicts from Australia and New Zealand can be adapted to the Dutch context. Femke Wijdekop took us into deep philosophical reflections, which traced the commodification of nature as the heart of the problem, arguing that we need to move from a right to exploit to a duty of care. Anneke van Hoek brought insights from a criminological and philosophical perspective to the debate by referring to an intersection of positive and green criminology.

The discussion went on with Carolin Hillemanns, a senior researcher at the Max Planck Institute for Foreign and International Criminal Law, who considered the potential of restorative justice to address environmental crimes, basing her

reflections on Germany. Offering a legal perspective, her talk focused on the importance of national and international legislation and their scarce application to environmental crimes, further reflecting on the (potential) application of restorative justice to these cases while highlighting important limits.

In the afternoon, the seminar continued with two presentations based on the EU-funded research project *Needs of victims of corporate violence*, implemented in 2016-2017 by Leuven Institute of Criminology, Catholic University of Leuven and the Max-Planck-Institut. Claudia Mazzucato, professor at the Università Cattolica del Sacro Cuore (Italy), presented some key findings of the project and reflected on the needs and rights of victims of environmental and corporate harm, invoking real examples. Her main recommendation is to increase as much as possible cooperative and participatory strategies and networks, even at the cost of demanding the impossible. According to her, the strength of the restorative approach is that it can bring around the table tough actors and can create seemingly improbable and unlikely alliances and responsibilities.

Katrien Lauwaert, policy coordinator at the Moderator Forum for restorative justice and mediation (Belgium), continued the presentation of that project, making the bridge between victims' needs and restorative responses. She based her analysis on multiple interviews and focus groups with victims of corporate violence and organisations and professionals that are in contact with them to identify the features of the cases and assessed the views of the mediators and of the organisation Moderator about the possibility of handling these types of cases in the future.

The next talk was by Maria Lucia Cruz Correia. Maria Lucia is an artist/environmental researcher, who presented her artistic quest for restorative interventions in cases of ecocide: a quest that culminated in the participatory theatre called the *Voice of nature*. For this piece, I have collaborated together with the artist and we will continue our collaborations in the future. Her work has already been presented in Belgium and is currently travelling across Europe.

The last presentation was by Bas van Stokkom, professor at the Radboud University (The Netherlands), who presented on corporate behaviour and responsive regulation, drawing sobering lessons for environmental restorative justice. Despite all the cautious insights that result from studying corporations critically, in his conclusion Bas Van Stokkom urged for restorative forms of responsive regulation whenever possible and as a first option.



*Maria Lucia Cruz Correia during one of her environmental art performances*

The seminar was concluded by Ivo Aertsen, professor at the Leuven Institute of Criminology. According to him, restorative justice theory and principles can be applied to environmental harms, and promising and creative practices already exist. Nevertheless, what is needed are more advanced test cases, accompanied by evaluation, where victims and their organisations, together with public authorities and corporations, courageously explore new restorative avenues.

Each presentation was followed by in-depth discussions. We were very fortunate to have with us, among others, restorative justice advocates Martin Wright (involved in *Action for Bhopal*) and Lode Walgrave, together with engaged and committed students and researchers from all over the world.

Videos of the presentations and discussions from the seminar are posted on the Vimeo site of the EFRJ. The seminar aimed to create a path for future research, commitments and engagements, and has already led to several additional initiatives. First of all, a network has been created, where not only the seminar participants but also other interested researchers and practitioners have joined forces. The network is maintained and updated conjointly by me and Ivo Aertsen, and we will collaborate in future to organise other events and launch common (action) research projects. The EFRJ has also taken a few concrete steps on the matter, such as the launching of this booklet for the #RJWeek 2019. The EFRJ will also launch a Working Group on the topic in 2020. Furthermore, I plan to coordinate and edit a special issue for the International Journal of Restorative Justice and edit a book collection on the topic.

Interested in the topic? Please get in touch and become part of our network (or any of the other initiatives): our planet needs all the restorative power there is!

**Brunilda Pali**

KU Leuven Institute of Criminology, Belgium

# Green criminology and restorative justice: Natural allies?

Femke Wijdekop  
Anneke van Hoek

*"We are so good at causing harm.  
But history is asking us to become healers,  
so we will have future for the seven generations to come."*

**Fania Davis**

Green criminology is a fairly new criminological field that has developed as a response to the fact that mainstream criminology has been neglecting ecological issues, while at the same time manmade pollution of the environment more and more dominates the political and public debate. In legal practice, the contours of a developing duty of care for the environment are emerging. The question is, however, how can care for the environment be stimulated?

The implementation of restorative justice in cases of environmental harm is still in the developing stages, but examples from Canada, Australia and New Zealand are promising. Applications from ecopsychology ('ecotherapy') could support an attitude of environmental care as well. We feel it is crucial to start using the knowledge and experience from disciplines like Positive Psychology and Positive Criminology to find better ways of coping with, preventing and restoring environmental harm. Such a multi-disciplinary approach to environmental harm can be called 'Positive Green Criminology', a term that is coined and further described by the authors.

## Green criminology

Mankind is more and more confronted with the grim reality of climate change and extreme weather events<sup>1</sup>, mass extinction of species, wildfires in the Amazon, melting glaciers and plastics polluting even the North Pole. In response to these environmental and climate disasters, most of which are caused by human behaviour, we see the emergence of a fairly new criminological field: green criminology.

Green criminology is an umbrella term for a criminology concerned with the general neglect of ecological issues within criminology<sup>2</sup>. The International Green Criminology Working Group uses the following definition:

“Green Criminology is the analysis of environmental harms from a criminological perspective, or the application of criminological thought to environmental issues. As elsewhere in criminology, this means thinking about offences (what crimes or harms are inflicted on the environment, and how), offenders (who commits crime against the environment, and why) and victims (who suffers as a result of environmental damage, and how), and also about responses to environmental crimes: policing, punishment and crime prevention. On a more theoretical level, green criminology is interested in the social, economic and political conditions that lead to environmental crimes; on a philosophical level it is concerned with which types of harms should be considered as ‘crimes’ and therefore fall within the remit of a green criminology”<sup>3</sup>.

A central discussion within green criminology is whether its focus should be on environmental harm rather than environmental crime, with the environmental harm-perspective currently dominating green criminological discourse. In essence, there is ongoing fundamental debate on whether green crimes should be seen as the focus of mainstream criminal justice and dealt with by core criminal justice agencies such as the police, or whether they should be considered as being beyond the mainstream<sup>4</sup>. Moving beyond mainstream criminology’s focus on individual

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<sup>1</sup> This concern was already voiced in 1972 by the Club of Rome in their first ground-breaking report *The Limits to Growth*. Currently climate change is a politically much debated topic (with climate deniers on one end and environmental activists on the other) and it is more frequently than ever covered in the daily news.

<sup>2</sup> Exploring green criminology: Toward a green criminological revolution, Lynch, Michael J. and Stretesky, Paul B., Ashgate, Farnham 2014.

<sup>3</sup> <http://greencriminology.org/about-green-criminology/>.

<sup>4</sup> Green criminology: shining a critical lens on environmental harm, Nurse, Angus, Palgrave Communications volume 3, Article number: 10 (2017), p. 3.



offenders, green criminology also explores state failure in environmental protection, corporate offending and environmentally harmful business practices. Whether environmental crimes are best addressed through criminal justice systems or via civil or administrative mechanisms is another topic of ongoing debate.

## **Legal tools to stimulate a duty of care for the environment**

In legal practice we see the contours of a developing legal duty of care for the environment. In law, a duty of care is the legal responsibility to avoid any behaviours or omissions that could reasonably be foreseen to cause harm to others. Different legal tools are used to stimulate and enforce a legal duty of care for the environment of both citizens, corporations and states: ecocide law, tort law, climate litigation and the institutionalization of a duty of care. Advocates of ecocide law, such as Polly Higgins and Valerie Cabanes, define the duty of care towards nature as a matter of criminal justice<sup>5</sup>.

In tort law, which addresses disputes between private parties (citizens; corporations; NGOs), we see a developing duty of care for corporations with regards to (environmental) human rights. Corporations are under a duty to prevent their actions, or the actions of their subsidiaries and suppliers, from violating human rights through environmental damage and destruction.<sup>6</sup>

Regarding climate litigation, the Dutch Urgenda Case brought the first victory in 2015 when the The Hague District Court ruled that the Dutch State has a duty of care, under Dutch tort law, to reduce its Co2 emission to 25% in 2020. In October 2018, The Hague Court of Appeal affirmed the 2015 decision of the Hague District Court, and even took it one step further by basing this duty of care on the human rights provision of article 2 (the right to life) and 8 (the right to family and private life) of the European Convention of Human Rights.

The institutionalization of a duty of care towards nature and future generations is taking shape through the installation of Ombudsmen and Parliamentary Commissions for Future Generations in countries such as Hungary, Wales, Finland, Germany and Canada.<sup>7</sup>

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<sup>5</sup> For more information about Ecocide law, see: <https://newint.org/features/2016/05/01/make-ecocide-a-crime/>.

<sup>6</sup> See Human Rights Obligations of Transnational Corporations under Domestic Tort Law, Van Dam, Cees: <http://www.ceesvandam.info/default.asp?fileid=654>.

<sup>7</sup> For more information, see: <https://www.scribd.com/document/133982864/Ombudsperson-Future-Generations-in-the-Netherlands-Legal-Background-Paper>.

A justice system which deserves more discussion within the field of green criminology and has promising potential to provide protection and redress for victims of environmental harm, as well as stimulate care for the natural environment, is restorative justice.

## Restorative Justice

Restorative justice's emphasis on restoring harm and the healing of damaged relationships, its search for the roots of harmful behaviour and its community- and forward-looking orientation seem to make it well-positioned to address environmental harms. In most parts of the world, restorative justice is not yet implemented in these cases. However, in New Zealand, Australia, and Canada restorative justice has been successfully applied to environmental offenses<sup>8</sup>.

The Australian case *Garrett v Williams* (2007)<sup>9</sup> is a good example of environmental (and cultural) education of the environmental offender in a restorative setting. In this case, several Aboriginal artefacts were destroyed and an Aboriginal sacred place was damaged by mining operations. Ms. Maureen O'Donnell, a traditional owner and Aboriginal elder of the affected land who participated in the restorative justice conference, expressed her distress at seeing the damage to the Aboriginal place as follows: "I was very upset with what I saw, because the drains had been dug at a sacred place. (...) I remember saying "Isn't it terrible that they put in these drains. Feels like they put a big hole in my body". Craig Williams, the defendant in *Garrett vs Williams*, asked Maureen O'Donnell for forgiveness for destroying her cultural heritage. In the conference, he expressed his remorse as follows: "I regret that I committed the offenses and I am sorry for the harm it has caused. (...) During the course of these proceedings I have learnt a significant amount about Aboriginal archaeology and the importance of the Aboriginal place. I have also realised how both Aboriginal objects and the Aboriginal place are more important to Aboriginal people than I had previously appreciated. I am seriously remorseful about what has occurred."<sup>10</sup> The outcome agreement in *Garrett vs Williams* included financial contributions for the victims, future training and employment opportunities for the local community, and a guarantee that the traditional owners would be involved in any salvage operations of Aboriginal artefacts. Restorative outcomes in other

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<sup>8</sup> Restorative justice and environmental harm in New Zealand, Australia and Canada, Wijdekop, Femke, IUCN National Committee of the Netherlands, Amsterdam, 2019. See: [www.restorativejustice.nl/nl/eigen-publicaties/](http://www.restorativejustice.nl/nl/eigen-publicaties/)

<sup>9</sup> *Garrett v Williams* (2007) 151 LGERA 92; [2007] NSWLEC 96, p. 76 and 110.

<sup>10</sup> *Ibidem*, p. 110

environmental and land-related cases from New Zealand, Australia and Canada include: apologies, restoration of environmental harm and prevention of future harm through environmental training and education of the offender; environmental audits of the activities of the offending company, compensatory restoration of environments elsewhere and community service work.

In New Zealand and Canada, trees and rivers have been recognized as victims of environmental crime in their own right and have been represented by indigenous organizations in the restorative process. This has been possible because restorative justice processes allow a wide range of cultural, emotional and spiritual values to be expressed and acknowledged. Thanks to this 'open' character, restorative justice might be well-suited to create space for eco-centric and indigenous approaches to what constitutes an environmental offense, who can be a victim of such a violation, and what restoration looks like.

Recognizing the environment as a victim of environmental harm and representing it in the restorative justice process can contribute to transforming humanity's relationship with the natural world from one of exploitation towards a duty of care. More specifically, the confrontation with human and non-human victims during a conference can educate the offender about the harmful environmental effects of his/her behaviour and create environmental awareness. Engaging in environmental restoration work following a conference can also foster in the offender a sense of belonging and connectedness to the natural world, as we will see in the next paragraph.

## **Ecopsychology: how to stimulate an attitude of care for the environment**

Ecopsychology, coined in 1992 by Theodore Roszak in his book *The Voice of the Earth*, studies the relationship between human beings and the natural world through ecological and psychological principles.<sup>11</sup> It seeks to develop and understand ways of expanding the emotional connection between individuals and the natural world, thereby assisting individuals with developing sustainable lifestyles and remedying alienation from nature. A central premise of ecopsychology is that while today the human mind is affected and shaped by the modern social world, its deep structure is inevitably adapted to, and informed by, the more-than-human natural environment in which it evolved. According to the

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<sup>11</sup> [http://www.eco-psychology.com/pages/about\\_ecopsychology.asp](http://www.eco-psychology.com/pages/about_ecopsychology.asp).

biophilia-hypothesis of biologist E.O. Wilson, human beings have an innate instinct to care about and connect emotionally with nature.<sup>12</sup>

Ecopsychology examines why people continue environmentally damaging behaviour and evidence suggests that many environmentally damaging behaviours are addictive at some level, and thus more effectively addressed through positive emotional fulfilment rather than by inflicting shame.<sup>13</sup> It has developed various methods of positive motivation for adopting sustainable practices, called ecotherapy. These methods include outdoor psychotherapy, bringing ecological issues into the therapy room, forest bathing, horticultural therapy, wilderness therapy, green mindfulness (a combination of the practice of centring with walking meditation in nature), and involvement in conservation activities.<sup>14</sup>

There are many studies that show that time spent in nature can improve your (mental) health.<sup>15</sup> The act of restoring or conserving the natural environment also assists in creating a sense of purpose and hopefulness. Since this activity is usually done in groups, it may help foster a sense of belonging and connectedness.<sup>16</sup> When an environmental offender does environmental restoration work as part of the outcome agreement of a restorative conference, this therefore benefits not only the environment, but contributes to psychological healing and development of the offender as well.<sup>17</sup> Ecotherapy is also used in Offenders & Nature Schemes, a program in the United Kingdom that involves prisoners and probationers in forest maintenance activities in order to gain skills, work experience and increase confidence in securing future employment.<sup>18</sup>

This short overview suggests that interventions from ecotherapy could assist in developing an attitude of care towards the environment. Care for the environment is also central in the efforts of the United Nations to further the implementation of the Agenda for Sustainable Development. In the words of the 2019 UN Report of the Secretary General on Harmony with Nature (A/74/236): "This commemorative<sup>19</sup>

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<sup>12</sup> *The Biophilia Hypothesis*, Wilson, E. O., Island Press, 1995.

<sup>13</sup> [https://en.wikipedia.org/wiki/Ecopsychology#cite\\_note-And-1](https://en.wikipedia.org/wiki/Ecopsychology#cite_note-And-1).

<sup>14</sup> <https://www.goodtherapy.org/learn-about-therapy/types/econature-therapy>.

<sup>15</sup> <https://mensline.org.au/deal-with-anxiety/nature-healing-anxiety-depression-stress/>.

<sup>16</sup> Ibidem.

<sup>17</sup> Ecopsychology and Transpersonal Psychology, Davis, John V. and Canty, Jeanine M. in: Friedman, H. L., & Hartelius, G. (Eds.). *Handbook of Transpersonal Psychology*. New York: Wiley-Blackwell. Pp 597 – 611, on p. 608, 2013.

<sup>18</sup> <https://www.forestresearch.gov.uk/research/evaluation-of-forestry-commission-offenders-and-nature-on-schemes/evidence-base-for-offenders-and-nature-schemes/>.

<sup>19</sup> The year 2019 commemorates General Assembly resolutions adopted 10 years ago, for declaring 22 April International Mother Earth Day (63/278) and articulating the need for Harmony with Nature (64/196). These

report highlights humankind's evolving consciousness of our relationship with Mother Earth manifested worldwide through legislation, policy, education and public engagement, all guided by the urgency to protect Mother Earth and to transition to an Earth-centered paradigm in furthering implementation of the 2030 Agenda for Sustainable Development"<sup>20</sup>.

## Positive Green Criminology: a new movement?

Ecopsychology can be positioned as a part of Positive Psychology, like restorative justice is seen as belonging to the movement of Positive Criminology, a term coined in the Netherlands by Marc Schuilenburg<sup>21</sup>. Schuilenburg defines it<sup>22</sup> as creating safety by strengthening positive feelings such as connection and security<sup>23</sup>, care and belonging.

We feel it is crucial to start using the knowledge and experience from these related disciplines to find better ways of coping with, preventing and restoring manmade environmental harm. Such a positive multi-disciplinary approach to environmental harm could be called 'Positive Green Criminology', a term we would like to coin here.

Characteristics of such a positive green criminology are:

- Adoption of a more positive view on the relation between man and nature (moving from a paradigm in which nature can be controlled, owned and exploited by man towards a more eco-centric worldview that is based on interconnectedness);
- To engage with and stimulate positive characteristics of people (their inclination to care for the environment and future generations, and to act accordingly);
- To raise awareness about the consequences of our behaviour on the natural world;
- To give all victims of environmental harm a voice, including future generations and nature itself; and

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resolutions acknowledge that the current model of destructive development is equally damaging for Nature and human dignity alike. They have contributed to the global trend of granting legal rights or personhood to Nature.

<sup>20</sup> [www.harmonywithnatureun.org/unDocs/Femke Wijdekop](http://www.harmonywithnatureun.org/unDocs/Femke%20Wijdekop) has provided input for this UN Report on behalf of the Netherlands, together with two other Dutch experts:

<http://www.harmonywithnatureun.org/profile/OeqgnlzKwKSVWYD5cj9hQQ9X2fwnYFYENI7jsmgKoVqpnlbqbtibpzgj4O1gCQn!snKgonDR6CtOjjhZS6Q==>

<sup>21</sup> Positive Criminology, Reflections on Care, Belonging and Security. Schuilenburg, Marc, Van Steden, Ronald and Oude Breuil, Brenda (ed.), Eleven International Publishing, 2014.

<sup>22</sup> In Dutch he calls it "positieve veiligheid".

<sup>23</sup> <https://www.sociale vraagstukken.nl/pleidooi-voor-positieve-veiligheid/>

- To facilitate and stimulate the restoration of environmental harm by the people who have caused this harm.

We expect that there is quite some room for restorative justice and other positive interventions in 'green' cases especially when people or organisations are willing to take responsibility for the social<sup>24</sup> and environmental harm they caused. We feel that green criminology and restorative justice are natural allies in those circumstances. It is important to gain more experience with the implementation of restorative justice in these cases, also outside of Canada, New Zealand and Australia. International cooperation and exchange can help expand our knowledge and practice in this domain. With this aim, the European Forum for Restorative Justice recently initiated an international think-tank on the topic of restorative justice responses to environmental harm and ecocide<sup>25</sup>: a promising new branch in what might hopefully become a flourishing new movement.

**Femke Wijdekop and Anneke van Hoek**  
Restorative Justice Nederland, The Netherlands

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<sup>24</sup> Corporations can be motivated to restore the social relations with people who live in the vicinity of their company, since they appreciate a 'social licence to operate', which can be harmed by polluting the environment.

<sup>25</sup> See for more information on this think-tank that assembled for the first time on April 26, 2019 in Leuven and in which the authors are participating: [http://www.euforumrj.org/euforum\\_event/seminar-rj-environmental-harm/](http://www.euforumrj.org/euforum_event/seminar-rj-environmental-harm/)

# **Restorative Justice for nature? A tribute to Polly Higgins and the power of a law of ecocide**

**Jojo Mehta**

At present, in all but a handful of countries, destroying the Earth is legally permitted. This struck at the heart of UK barrister Polly Higgins (1968-2019) who, on the cusp of a lucrative career as a corporate lawyer, stepped out of the courtroom in order to represent just one client – the Earth. She saw that the Earth needed a good lawyer; and the decision to become that lawyer became her life's work.



*Polly Higgins*

Polly's vision was of a world based on the principle "First Do No Harm", and the question she asked was "How do we create a legal duty of care for the Earth?" She realised that there was missing law and proposed that the crime of Ecocide be added as an amendment to the Rome Statute (the governing document for the International Criminal Court). If adopted, it would become the fifth atrocity crime alongside Genocide, Crimes against Humanity, War Crimes and Crimes of Aggression. These existing international crimes do not address:

- the protection of ecology (non-human inhabitants of a territory)
- the protection of indigenous and cultural rights (for example when there is destruction of a traditional way of life)
- loss, damage and destruction that occurs in peacetime.

Ecocide crime would address all the above. A definition of Ecocide was submitted by Polly in April 2010 into the United Nations Law Commission: *"extensive loss or damage to, or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished."*

Polly's draft Ecocide Act was tested in the UK Supreme Court in a mock trial in 2011 which proved the crime was viable. Polly became globally acknowledged and spoke in many world forums over the following years. In 2017 she created the Earth Protectors Trust Fund and co-founded the campaign Stop Ecocide: Change the Law to support establishing an international criminal law of Ecocide. Tragically, Polly passed away on 21 April, 2019 after a rapid and aggressive cancer, but she lived to see her message taken up by environmental activists and youth strikers.

The campaign meanwhile gets stronger, as leading commentators and even Heads of State have begun to reference ecocide in relation to the Amazon fires, and climate mobilisation actions have taken up the call to Stop Ecocide.

The element of restorative justice was an aspect Polly was greatly interested in, and the current working draft of the amendment to the Rome Statute incorporates specific restorative provisions as part of sentencing for ecocide crime.

In the more usual sense of restorative justice, Polly envisaged the possibility, in the case of human victims of ecocide (e.g. those forced to migrate due to ecosystem destruction) of perpetrator (which could include e.g. a corporation the perpetrator acted for) and victims entering into dialogue to facilitate this provision, although there are considerations regarding atrocity crimes which pose correspondingly greater hurdles than crimes of smaller scale.

However, perhaps the most intriguing discussion around restorative justice and ecocide arises from the fact that victims are often non-human.



The Statute already provides for reparations to victims that can be ordered by the court. In the case of a crime of ecocide, Polly's intention was always to include ecological and cultural restoration. With ecocide, the term "restorative" is likely to concern the literal restoration of ecosystems. There are interesting possibilities for how this could emerge with regard to individual perpetrators directly contributing to the rehabilitation of nature – it's hard to envisage a more direct way of bringing our inescapable connection to the land into consciousness for those who have ignored its living value and integrity.



This aspect highlights how establishing ecocide law means a great deal more than defining a criminal act. It has the power to catalyse a profound cultural change in perspective due to the moral equivalence it draws between harming the bodies of people and harming the body of the Earth. It has the potential to reconnect our heavily anthropocentric jurisprudence to the wider Earth community of which humanity forms part, something we have the - increasingly dangerous - tendency to forget.

The law Polly Higgins<sup>26</sup> tirelessly promoted for the last decade of her life may for this reason initiate a seismic shift not only in our global legal framework but also in our cultural and moral one – by, as Polly put it: “realigning law with a higher moral code” and a broader understanding of our place and responsibilities in the wider web of life.

**Jojo Mehta**

Director, Ecological Defence Integrity and Co-Founder, Stop Ecocide

<sup>26</sup> For more information on Polly and ecocide law please visit [www.StopEcocide.earth](http://www.StopEcocide.earth) (campaign) and [www.EcocideLaw.com](http://www.EcocideLaw.com) (legal and historical).

# Interview to Angèle Minguet

Silvia Randazzo

In this interview, Angèle Minguet\*, an historian and political scientist specialized in environmental conflicts, reflects on theories of environmental justice and how these relate to the reality of people.

## Can you tell us about your work as researcher and activist on environmental justice?

I started to focus on environmental issues in 2012, when I joined an ecological (and Gramscian) NGO in Rome called "*A Sud, ecologia e sviluppo*". This grassroots organization, which was by coincidence composed almost exclusively of women, approached environmental issues through a societal lens. It was then part of an EU funded programme called "Environmental Justice Organisations, Liabilities and Trade" (2010-2015), whose aim was to enable environmental justice organizations around the world to exchange good practices. In this context, I co-authored "A legal guide for communities seeking environmental justice"<sup>27</sup>, wherever they may be on the globe. In 2015, I decided to deal with the issue from a scientific point of view. I began a PhD in political sciences with the intention to answer the questions "what is environmental justice?", "what does it mean to those who ask for it?", "what can we say about it, philosophically speaking?", and "how does this translate into litigation in the courts?"

## What are environmental conflicts and harms?

An "environmental harm" is a material damage inflicted to a component of nature (natural resources, biodiversity, climate, etc.), which results from an anthropogenic action. The expression "environmental conflict" refers to any conflictive manifestation of discontent expressed by the inhabitants of sites that have been deteriorated. This ranges from conflicts over resource extraction, which entail pollution and contamination, to struggles related to climate change. This manifestation of discontent may take various forms: petitions, civil lawsuits, demonstrations, occupations of the concerned site or even armed attacks against

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<sup>27</sup> <http://www.ejolt.org/2014/11/legal-guide-communities-seeking-environmental-justice-2/>

the perpetrators of the environmental degradation. In the vast majority of cases, the perpetrators are corporations (especially multinational and transnational corporations) and sometimes national administrations. The inhabitants denounce what they believe are injustices related to the environment, or environmental injustices. They demand “environmental justice”.

“Environmental justice” refers to just behaviours or treatments in connection with the environment. It can imply, for instance, giving consideration to the duties that individuals and societies have towards nature. My approach is more anthropocentric. In my view, the aspect of “environmental justice” that urgently needs to be addressed falls both under “social justice” and “global justice”. Social, because environmental degradation is very often the result of social inequalities, which it contributes to exacerbate. It is also global, insofar as the fact that natural resources do not have national borders. Furthermore, similarities between cases of environmental degradation occurring all over the world suggest that we are facing a global phenomenon, which, according to the experts, is inherent to the development of a global economy.

### **Your PhD was about “environmental justice”. Can you tell us more about the two cases you have studied, Nigeria and Ecuador?**

I chose the two environmental conflicts that are considered to be the most emblematic by the environmental justice movements. Both cases have caught the international media’s attention. Both have conducted two major multinational corporations before the courts. Both are related to oil extraction.

The first case-study concerns Shell’s activities on the territory of the Ogoni people, in Nigeria. Shell has been exploiting oil in Nigeria since 1956. Between 1976 and 1996, 4,647 spill incidents occurred. The overall extent of the damage was evaluated at 2,369,470 barrels of oil lost in nature, of which only 23% were recovered. The situation worsened in the following years (1997-2001), as an average of 419 oil spills occurred every year. Between 1993 and 1995, the government violently repressed Ogoni movements peacefully calling for environmental justice. Shell was accused of complicity. The UN, the Supreme Court of the United States, the African Commission for the Human and People’s Rights, Friends of the Earth International, Amnesty International, and Nigerians intellectuals have taken part in the massive debate raised by the environmental destruction and human rights abuses related to

Shell's activities. The company has been brought to trial in Africa<sup>28</sup>, the US, the UK and in the Netherlands. Some of the courts' decisions are still pending; others have had an impact on the judicial and political system not only in Africa, but also in Western countries. This environmental conflict not only raises crucial issues that urgently need to be addressed globally, but also shows how the legacy of the Westphalian international order is holding back the resolution of conflicts with a transnational aspect.

The second case is about the responsibility of Texaco (which has since merged with Chevron) in the contamination of soil and waters in the Amazonian region of Ecuador, El Oriente. Between 1967 and 1990, Texaco is believed to have caused the spill of over 60 billion litres of toxic waste and approximately 650,000 barrels of oil in an area occupied by indigenous peoples. It has generated a dozen trials in Ecuador, the US, Canada and Brazil. The plaintiff's lawyer has been accused of corruption and fraud. Unlike the Ogoni's case, its outcome, while far from being entirely successful, is still a source of hope for environmental justice defenders of all over the world. Moreover, it has contributed to deep political changes in Ecuadorian society and its political system.

**In your research you explain that the current theories and principles relating to environmental issues do not respond to the real demands of civil society movements defending victims of injustice. Can you say something more about that?**

The initial problem with environmental justice theories is quite simply that we do not really have such theories. The question of how to respond to environmental injustices has not been the subject of much philosophical analysis. When it has, it is through the lens of traditional theories, which appear unsatisfactory when it comes to the environment. For instance, the principles of distributive justice are certainly crucial, but they are based on the traditional liberal approach, whose conception of the environment as marketable, divisible and therefore distributable, is problematic.

Also, in order to be consistent, a theory of environmental justice has to take into account the adapted temporal scope, i.e. including future generations as subjects of justice, as well as a timely spatial scope, i.e. necessarily transnational, since the

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<sup>28</sup> In Africa, the most emblematic trials related to the Ogoni case were brought before the Court of Justice of the Economic Community of West African States and before the African Commission on Human and People's Rights.

environment is not limited to borders established by human beings. It also has to take into account other previously excluded subjects of justice, such as communities (as opposed to only individuals), and even non-human subjects: plants, animals, biodiversity, etc. Last but not least, the fundamental concepts of a theory of global environmental justice, such as 'nature', as well as the causes of the social and cultural inequalities that lead to environmental deterioration, must be approached from a point of view of decolonization.

**The discrepancy between Western and indigenous concepts of nature, as well as the power struggle between groups in power and minorities, who are often victims of environmental harms are crucial to implement restorative actions that respond to the needs of victims (nature included). What restorative action/s – if any – have been taken or attempted with regards to your two cases?**

Confronting these is indeed crucial, since victims are rarely enabled to express their true needs. It is surprising to see that the way communities understand and explain an environmental conflict does not correspond to the way they present it to the media, or to judges. The victims know that their own version will not convince them, and they know that the courts will likely never issue a sentence they think is truly fair. Their strategy, therefore, is to use the narrative that will allow them to get as much as possible. In doing so, they censor themselves and prevent themselves from obtaining the justice they want. A space in which communities can express themselves freely, in their own words and interpretations of the world, is fundamental, although it almost never happens. Without taking this into account, adequate restorative actions cannot be designed.

With regard to our two case-studies, there was no desire from the authorities to create common spaces of expression for both the victims of the environmental harms and the perpetrators. In Ecuador, no action towards restorative justice has been initiated at all. In Nigeria, Shell has decided to fund the Niger Delta Development Commission (NDCC) that was established by the Nigerian government in 2000 to tackle poverty in the region. It has also sought to finance projects managed by and in favour of the impacted communities. However, the latter are essentially built on the basis of a Western approach (scientific, aiming at measurable effectiveness), and are not intended to meet the communities' genuine requests. Furthermore, only the communities' leaders have been involved in the

process. The rest of the communities, especially women, youth organisations and political opponents, feel overlooked.

**This brings us to what your research shows: “theories of environmental justice are not adequate to solve environmental conflicts as long as they do not take into account other conceptions of the environment and the social discriminations, of which these conflicts are a result”. What should - in your view- *justice* look like for environmental harms?**

The main obstacle to the achievement of environmental justice is the misperception of the phenomenon. Most environmental conflicts are caused by pre-existing socio-political tensions, whose origins are well rooted in time. They are more ‘structural’ than they appear at first sight. Consequently, stopping the environmental harm alone will not fully resolve the problem, whose social and political causes must be addressed. It is indispensable to pinpoint all the actors, their degree of involvement, and their point of view. Doing so necessitates an in-depth analysis of each conflict. Furthermore, the complexity of the environmental conflicts requires going beyond the traditional approach to justice, for it shows at least two shortcomings. In the event of a judicial victory, a compensation is paid by the defendant to the instigators of the trials. Yet, the victims who did not take part in the legal proceedings (usually for a lack of know-how, time, money or hope) are left aside. Also, the compensation is most of the time only financial, even though the problem will not go away until the environment is restored, and until structures are put in place to prevent it from further harm.

A restorative approach is of the utmost importance in dealing with environmental conflicts, especially since it is about allowing all the stakeholders who are affected by a harm decide how to repair it. In the Ogoni case study, we cannot claim to resolve the conflict if we do not listen to the Ogoni people, who explain how environmental degradation is part of a dynamic of internal colonialism, set up by the federal government. In Ecuador, one cannot comprehend what is at stake in the Chevron-Texaco litigation without first understanding the nature of the indigenous communities’ relations with the Ecuadorian government. Similarly, we cannot pretend to resolve these conflicts without taking into account the market pressures to which companies are subject, the state of international law, and the internal and international political conditions of the countries in which environmental conflicts take place.

## **What else do you think could be done to respond to those harms and to prevent further to happen?**

It is essential to get rid of our conception of the environment as distinct from culture. We should learn to listen to what those who feel victimized have to say to us, without bias. We must go beyond a paternalistic and medicalized approach and open up to cosmologies that are not our own.

## **In conclusion, from your experience as researcher and activist, what would you encourage people to do to prevent further harm?**

Our consumption patterns can create, or exacerbate, environmental conflicts, even on the other side of the world. It is important to be careful about what we buy, because the purchase (or not) of a product corresponds to the validation (or not) of the producer's practices. More than lawsuits, big polluters are afraid of public opinion, for fear of losing their buyers. By choosing to consume only products whose production does not negatively affect the lives of other people, we are indirectly contributing to environmental justice. The first thing to do is to question the origin of the commodity, and its cost, if it is particularly low. The second is to remain attentive to the reputation of the producers. Finally, when it is possible, the best thing to do is to favour merchandises that are local, bio, seasonal, and manufactured in an environmentally friendly way.

**Silvia Randazzo**

PhD researcher at KU Leuven

*\* **Angèle Minguet** is an historian and political scientist specialized in environmental conflicts, research fellow at CRESPO, the Center for Political Science at the University Saint-Louis in Brussels. Working in both political thought and empirical social sciences, she dedicated her PhD to the concept of 'environmental justice', the narratives of civil society organisations denouncing environmental conflicts, and the transnational trials that have, so far, ensued the most emblematic cases of such conflicts.*

# Book review: Restorative and responsive human services

Branka Peurača

*Burford, Gale and Braithwaite, John and Braithwaite, Valerie (Eds) (2019). Restorative and responsive human services. London: Routledge*

Has it occurred to you that as soon as they connect you with restorative justice, people start pointing out to this or that example of restorative justice gone wrong: victims with bad experiences from the restorative meeting, teachers feeling their authority is undermined by the circles, projects that were started and died out as soon as initial funding ended or as an enthusiastic leader moved on to a new phase in her life? Next time when it happens to me, I will just recommend this book.



The editors and authors of several chapters — Gale Burford, John Braithwaite and Valerie Braithwaite — conceived this book with a very clear vision of justice in mind: it should be restorative and responsive and it should work to open new spaces for the law and social sciences to complement one another, for disciplines to set aside differences and work together to solve complex problems while supporting the leadership of locally affected relational networks.

The editors/authors are aware of many cases when restorative justice did not fulfil its promises. In their view, restorative justice has little chance of resilience and scale of transformative potential when it stands alone on the margins, either as an alternative or as an add-on to criminal justice; the battle for its core values will be lost unless there is a strategy for putting families, parenting and other primary group relationships at its core and at its front door across justice, health, education and other social welfare and social service settings.



The editors/authors advocate responsive regulation — a concept mostly used in business, developed as an integrated approach to diminish threats to freedom posed by over-regulation or under-regulation — as a way of creating and implementing such a broad-range policy. They stress the importance of including various approaches in regulation that start with information and restorative justice and move on to deterrence and incapacitation only if previous steps did not result in changed behaviour. In their view, strengths-based approaches complement responsive regulation; while the former pulls standards up through a ceiling, the latter pushes standards above the floor.

Far from being naïve, the editors point out the 'ugly side of responsive regulation':

*"It is possible for a restorative justice person to be a pacifist, an abolitionist on criminalization, who eschews institutionalized state politics. We deeply respect the positions of many of our restorative friends who defend those standpoints. But it is not possible for a responsive regulatory thinker to be like that (...) The responsive regulatory theorist must not be timid in saying that it is a good thing that the state has the power to remove children from families, even as these authors believe, because of their restorative values, that the overwhelming majority of children that are being removed from our families by the state in our societies should not be so removed."*

(Burford, Braithwaite and Braithwaite, 2019:224)

With their diverse experience, expertise and focus, the authors of the chapters support the editors' views by providing insights into what was done and what could be done: from a comparison of family meeting programmes implemented in New Zealand and in North Carolina to exploration of the — so far unused — potential of restorative justice in tackling complex issues of disproportional representation of black women who are children's primary caregivers and who are affected by imprisonment and foster care placements.

The authors reflect on successes and struggles in responding restoratively to different problems, including bullying in schools, the struggle of farmworkers to get a decent working conditions and wages, urban riots, student misconduct and sexual assaults on campuses, intimate partner violence, addiction treatment and the desistance of sex offenders. The style and length of the chapters reflect the authors' diversity, but a common thread clearly connects them. They go beyond case studies and, to various degrees, they expand their texts with the theoretical background. They point out the concepts and themes necessary for gaining a deeper

understanding of context and of the complex issues one needs to master when imagining the best possible way to put restorative principles into action and to make this action sustainable and continuously improving.

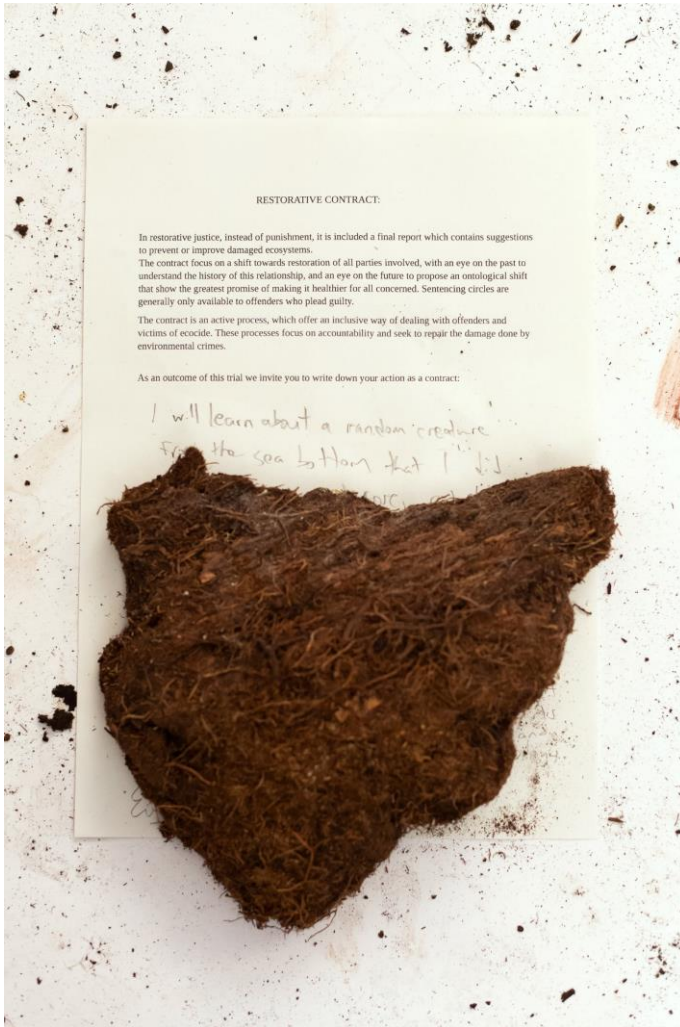
I will highlight only one example that significantly expanded my horizon: the chapter written by Elisabetta Carrà on the concept of *familiarietà* in Italian, or familiness, on the framework of relational sociology — as conceived by Pierpaolo Donati — and on civic, legal and policy developments in Italy that built upon relational approaches. In recent years, studies within the relational sociology framework have increasingly revealed the strengths of family focused policies and of family associations, and families have become a distinctive relational genre in the study of welfare systems and human services. This chapter also shows that the road less travelled can and should be taken, as regards to the direction of exchange and influence. Contrary to the usual pattern, in this case the new approach is conceived outside the Anglo-Saxon linguistic area and spreads from there to the rest of the world.

I would be curious to read a sequel to this book, exploring the possibilities of restorative and responsive human services outside the Anglo-Saxon world, especially in those countries where lack of a democratic tradition and unfortunate historic circumstances have left people with poor devices for confronting increasing demands for dominance and over-regulation and policies enforcing deterrence and control.

I find this book relevant for all of us trying to understand how to fulfil the potentials of restorative justice, regardless of how supportive or hostile our surroundings are towards the relational approaches and towards the wider application of restorative justice outside the narrow area of criminal justice. In my view, understanding responsive regulation and its context is important for all restorative justice enthusiasts and sceptics, even for those who eschew institutionalised state politics, if not for any other purpose than just being better prepared for dialogue next time when concerns about restorative justice are being raised.

**Branka Peurača**

Association for Creative Social Work, Croatia



A restorative contract in "Voice of nature: the trial" by Maria Lucia Cruz Correia.  
 Photo: Mladilevi@NadaZgank

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# **Pioneering experiences in environmental restorative justice**

# Implementing restorative justice to environmental harm

Lawrence Kershen

## A Case Study

In June 2019, one of the UK's largest water companies was fined £37.7m for dumping raw sewage into the rivers, streams and beaches of Southern England. The pollution, between 2007 and 2017, was said to have been caused by defective equipment and lack of necessary investment by the Southern Water (SW) company.



*Polluted waterway*

In addition, senior managers took 'widespread and deliberate' steps to hide and misreport data about the thousands of spills from some of its wastewater treatment works. The co-ordinated efforts to prevent accurate sampling included routinely driving tankers loaded with sewage from one treatment plant to another to dodge inspections.

Exceptionally, however, Ofwat (the Water Services Regulation Authority) reduced this fine to £3m, on the basis that SW undertook to pay £123m to its customers. This

sum represented penalties for underperformance that the company evaded in the relevant period. The £123m will be 'paid' by way of a rebate on customers' bills, spread over the next 5 years. The Environment Agency (EA) is investigating SW and expects to start court proceedings soon.

Ten environmental groups are demanding that SW pay for the restoration of damage. A representative of The Angling Trust said: *"...None of this money will address the long-term environmental damage Southern Water have visited on our rivers and the fish populations they support. Instead, customers are being bribed with rebates on their bills with the support of the water regulator...the rivers and environments that have been affected will not be receiving a penny piece to help repair the damage to the habitat for fish and other wildlife."*

## Some possible responses

For anyone who cares about the environment the situation begs a stark question. *What would it take to repair and restore the harm done?*

In suggesting some answers I should say that I have no special expertise, only practical experience of mediating over 25 years and latterly as a restorative facilitator and as a chair of the UK Restorative Justice Council. Nor is this an attempt to make an in-depth legal analysis, just to highlight some key features.

There is undoubtedly a role here for some form of reparative justice – paying restitution to the victims to make good loss, damage or injury. As well as or instead of a fine, a prosecuting authority might order SW to make good the damage caused e.g. cleaning up the pollution, restocking fish stocks, rewilding the environment.

The EA in the UK has considerable powers in relation to environmental damage. It can apply for a remediation order as well as any financial or other penalties. It can issue a restoration notice requiring an offender to put right any environmental harm or damage caused by the offence, to repair the harm done. And it has the power to take action against a corporate body, an individual or both.

## What can restorative justice add?

What, if anything, could a restorative process add to such reparative action? Traditional criminal and civil justice does not aim to restore nature, perhaps due to our anthropocentric worldview. Because restorative justice starts from a different

set of questions, it presents an opportunity to bring into the picture a wider set of concerns and to ensure environmental harm is more effectively addressed.

Necessarily a prosecution such as the EA's will be penal, imposed on the offender by the State. The prosecutor will decide what damage has been done, and how it is to be measured. It will also require the prosecuting authority to decide who are to be treated as the victims.

In any restorative justice process 'What harm has been done?' and 'Who has been harmed?' are key questions, often a central part of the exchange between those harmed and those responsible for it. The circumstances of the relevant acts and their consequences can be explored. And a restorative process places responsibility and power with the parties to agree how best to put right the harm done and restore the status quo.

As important as any other element is that the process of dialogue empowers the parties. The fact that 'victims' gain a sense of closure, and that 'offenders' are discouraged from repeating their offending behaviour is perhaps the best evidence that RJ offers a more appropriate, effective and enduring resolution in the case of environmental harm.

## **Engagement**

So how can we, both the restorative justice community and wider society, promote and enhance the implementation of restorative justice in cases such as the case study? What would persuade the directing mind(s) of a corporation to engage with a restorative process? The answer I suggest is three-fold – Litigation, Motivation and Education.

### **1. Litigation**

The voluntary nature of restorative justice is a fundamental principle, so this is not a suggestion of litigation to compel the use of restorative justice. But once court action such as a criminal prosecution compels a party to engage in a legal process, restorative justice may then be offered either before sentencing or as a diversion from the criminal justice system altogether.

(a) This is what the draft law of Ecocide envisages if it is adopted as the fifth Crime against Peace. The draft law, as championed by the late and much-admired Polly

Higgins, provides for voluntary engagement in a restorative process, the outcome of which may be taken into account in the following sentencing:

In 2011 in the Supreme Court in London two oil company executives were tried under the law of Ecocide. The trial was simulated and the defendants were actors, but the issues were real – involving extraction operations in the Athabasca Tar Sands in Canada – and the jury's verdicts unscripted.

The defendants were convicted and given the opportunity to participate in a restorative justice conference. One, the Chief Executive of the fictitious Global Petroleum Company ('GPC'), accepted and the other did not. In the course of the day-long restorative justice meeting that followed, an action plan was developed by the participants, and the judge incorporated its principles in the sentence that followed.



*Ecocide Trial restorative justice meeting*

In this way the criminal law acted as a 'stick' that drove the perpetrator to an awareness of restorative justice and encouraged him to engage in a restorative process.

(b) In real life such an outcome is possible right now in England and Wales. In any adult crime the Crime and Courts Act 2013 gives the court power to defer sentencing for restorative justice to take place (always subject to the victim and offender agreeing). If the prosecution anticipated in the case study goes ahead, the EA could instigate a restorative justice process with the agreement of the parties, the outcome of which could legitimately be taken into account in mitigating sentencing. Equally in other prosecutions around environmental harm e.g. Health and Safety,



regulatory and planning offences, the offer of an RJ process could be incorporated in existing procedure.

(c) In Australia, New Zealand and Canada there are other examples of existing legislation supporting the implementation of restorative justice in environmental offences.

A familiar example is in New South Wales in 2006,<sup>29</sup> in which the director of a mining company was prosecuted for carrying out unlicensed works causing damage to a designated Aboriginal Place and destroying Aboriginal objects. Following a recommendation from the Chief Judge of the Land and Environment Court an RJ process took place before sentencing. Participants included the director of the company and his family, representatives of the Aboriginal people and their families and of various state government departments.

Outcomes included both formal and informal ongoing contact between the parties, consultation with the Wilyakali people before further works were undertaken, and agreement to foster indigenous employment opportunities at the mine. The judge found evidence of genuine contrition and remorse on the part of the defendant, and a financial penalty was imposed.

(d) In a wider context, the International Criminal Court has declared its intention to include environmental crimes in its remit. It was reported<sup>30</sup> that: The ICC said on Thursday it would prioritise crimes that result in the “destruction of the environment”, “exploitation of natural resources” and the “illegal dispossession” of land. It also included an explicit reference to land-grabbing.

The ICC can take action if the crime happens in any of the 124 countries that have ratified the Rome statute, if the perpetrator originates from one of these countries, or if the UN security council refers a case to it. Crimes must have taken place after the Rome statute came into force on 1 July 2002. Reinhold Gallmetzer, a member of the ICC working group who drew up the policy document, said: *“We are exercising our jurisdiction by looking at the broader context in which crimes are committed. We are extending the focus to include Rome statute crimes already in our jurisdiction.”*

While restorative justice processes don’t appear to sit naturally with crimes of genocide and war crimes, the ICC has power to order reparations. Part of the

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<sup>29</sup> Garrett v Williams [2007] NSWLEC 96

<sup>30</sup> Guardian newspaper, 15 Sept 2016

mandate of its Trust Fund for Victims is to implement those reparations. The TFV may provide 'physical and psychosocial rehabilitation or material support' to victims of crimes within the Court's jurisdiction. This assistance may be awarded to a range of victims, whether or not they result from a particular crime, and even if there has not been a conviction by the Court, *in the light of the rights and wishes of the victims and their communities, to help promote reconciliation within divided communities* (emphasis added).

Taken with the Court's approach to environmental crime, the TFV's assistance programme could encompass restorative justice processes as a way of addressing harm to individuals and property resulting from crimes over which the court has jurisdiction – and beyond.

(e) Even in civil litigation involving environmental harm there may be opportunities to implement restorative elements.

In a recent case a purchaser of land that included a former petrol filling station sued its previous owner (an oil company) for undisclosed environmental damage, namely hydrocarbon contamination of the land. A chain of prior owners was joined as defendants. Following mediation the parties arrived at a resolution which as well as financial compensation included a undertaking to restore the land to a healthy condition.

## 2. Motivation

Nevertheless one should not underestimate the resistance that individuals or a company might have to engaging with restorative justice. It is axiomatic that participation requires an admission of guilt, or at least responsibility. Many directors and executives will be reluctant in the extreme to make such admissions or accept such responsibility, not least because it may impinge on their employment. So in addition to the 'stick' of court action, what carrots might motivate a company or individual to engage in restorative justice?

(a) Some corporate officers might of course participate out of a genuine concern for the environment – provided they know what restorative justice has to offer. Others might be encouraged to be consistent with the terms in which they describe themselves. In the case study Southern Water describes itself as "*looking for new ways ... to protect and enhance the environment*". It is conceivable that the new Chief

Executive might appreciate the opportunity offered by restorative justice in this regard.

There may also be a Corporate Social Responsibility (CSR) policy, or 'corporate conscience'. Under such a CSR policy, the firm aims to further some social good beyond the interests of the firm. Conceivably this could encourage it to use restorative justice to make a positive impact on the environment.

SW's CSR claims that "*meeting social, economic and environmental responsibilities...is integral to our business*". Invoking that policy might well help encourage engagement with victims of environmental damage, whether for higher ethical reasons or a need for more positive public relations.

## **An obstacle**

But the issue of corporate image raises an inhibiting factor that might discourage corporate engagement in restorative justice – that is the name 'Restorative Justice'. Antoine Brossier, with more than 30 years' experience in the chemical industry and a mediator, points out that to those in business, the word "justice" is "quickly associated with court/tribunal/lawyer/penalty/sentence". To promote a more cooperative response from industry, he suggests instead the use of terms such as Restorative Social Responsibility, Restorative Environmental Care or Responsible Care, a well-established concept within the chemical industry.

For example, in 2010 a local council was intending to hold Britain's largest Air Festival for the third year running. The council argued strongly for the financial and marketing benefits to the town and its residents, but was concerned that many of its residents and local environmental groups were opposed to it on the grounds of the environmental damage from pollution, traffic, noise etc. In addition, it had made a commitment to sustainable development.

A process was facilitated to give all stakeholders an opportunity to be heard. In effect it was a restorative dialogue, but it seemed crucial in gaining buy-in that it was described not as Restorative or Justice but as a 'symposium'. A consensus was reached as to how to manage this and similar future events, including practical steps to reduce the environmental footprint of the Air Show, and an improvement fund to help offset its environmental impact.



*Air festival. Photo: Daily Echo*

(b) More influential, however, than the CSR department – and better funded - is a firm's marketing department, which is inherently concerned with public image and perception. If a Director of Marketing believes that an environmental issue is affecting the corporation's image, s/he is usually quick to act. In the case study the most effective way to secure SW's engagement in restorative justice might be to highlight the reputational damage to its public image.

(c) In the corporate world the most potent public pressure seems to be corporate profitability, and its reflection in its share price.<sup>31</sup> If public concern about environmental harm is mobilised and grows, pressure to engage with a restorative process is increased because it affects the bottom line, profits and the share price – and also impacts on directors' bonuses.

In 1995 Shell UK, supported by the British Government, proposed to dispose of a redundant oil platform, the 'Brent Spar', by sinking it the North Sea<sup>32</sup>. An energetic media campaign, accompanied by boycotts, led to a mediation where Shell withdrew their plan. They later had the Spar dismantled (some of it being recycled by the Stavanger Port Authority).

<sup>31</sup> Court rulings that Bayer Pharmaceuticals were liable for cancers caused by glyphosate caused its share price to drop by 40% in the last year. 5000 more cases are anticipated.

<sup>32</sup> [https://en.wikipedia.org/wiki/Brent\\_Spar](https://en.wikipedia.org/wiki/Brent_Spar)



*Oil rig. Photo: Kevin Harris*

A poll of the British public showed that a majority were opposed to Shell's dumping plan. Shell's choice to engage in the mediation must have been based to some degree on the effect of the adverse publicity on their share price, perhaps an object lesson in 'shareholder power'. By way of postscript, Shell's advertising in the UK has now started to declare how much of its energy is 'green'.

Indeed, it was for this reason that one of the participants in the Ecocide Restorative Justice, the Chair of the GPC Pension Fund (in real life a Pension Fund trustee), was persuaded to support a restorative solution, since the company's pension fund, a significant shareholder in the company, would be directly impacted by a dip in its share price.

And any attempt by a multi-national to avoid responsibility for the actions of its foreign subsidiary is likely to be defeated by the recent UK Supreme Court decision in *Vedanta Resources v Lungowe*<sup>33</sup>. A UK company carrying out open-cast mining through its subsidiary in Zambia was found to be responsible for acid spills polluting rivers, particularly where the claimants were unlikely to obtain justice locally because they had no access to funding or suitable legal expertise.

(d) The ultimate expression of shareholder power is a divestment strategy, where public and institutions start to divest themselves of investments in 'offending' corporations e.g. the Australian National University which has been a leader in fossil fuel divestment. It is not fanciful to suggest that such manifestations of shareholder

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<sup>33</sup>[2019] UKSC 20

power have great potential – as both stick and carrot - for influencing corporate participation in a restorative justice process.

Linked with this is the growth in litigation based on the failure of companies, particularly in the industrial and financial sectors, to disclose physical or liability risks. This growth parallels the development of attribution science linking environmental harm with climate change.

(e) The opportunity to influence is even greater if the corporate has a culture of consultation with its share- and other stake-holders. The International Atomic Energy Agency (IAEA) increasingly sees stakeholder involvement as fundamental in managing nuclear power programmes.

To prepare for decommissioning a nuclear power station in Southern England, the regulatory body initiated a facilitated 'stakeholder dialogue'. The process was in essence restorative, seeking consensus on how to pre-empt the human and environmental harm that might result from the decommissioning process. Participants in the dialogue included local individuals, community and interest groups, environmental activists, the industry itself, scientific bodies and government agencies.

The IAEA definition of stakeholders also includes the media, the public at large, other States (particularly neighbouring States) and, significantly, 'future generations'.

## **Who Speaks for the Victims?**

A further challenge in engaging restorative justice in environmental harm is the delicate question - as in any restorative process - of identifying the participants. Precisely because animals, plants and the natural world are not perceived as having a voice, who speaks for them? How would a court for example decide who speaks with authenticity for nature? Should they go to big organisations like the RSPB, World Wildlife Fund - or scientists and researchers - or species by species advocacy groups - or local wildlife and conservation organisations? In the case study are the quoted environmental groups the appropriate representatives of other interests not present?

This is particularly relevant when we know that restorative justice works best when the real and direct victims speak for themselves. The challenge to move restorative

justice forward in this area may be to identify *how to build consensus* around the legitimacy of different actors to speak for the victimised environment, and thus to be included in the process. And then to find individuals who can speak for nature with authenticity and credibility. Perhaps different models need to be tested out to see if they deliver different outcomes.

An example at one end of the scale is the finding of the North Indian Uttarakhand court in March 2017 that the Ganges and Yamuna Rivers should be accorded the status of living human entities. There the court ordered that a management board be set up, and appointed three officials as legal custodians to conserve and protect the rivers. Earlier that month a New Zealand court granted the Whanganui River the same legal status. In this model the court ordered the appointment of two guardians to act on behalf of the river, one from the Crown and the other from the Whanganui iwi. At the other end of the scale might be the role of inter-species communicators. Whether through electronic, non-verbal or intuitive means, individuals are able to communicate directly with animals, plants and other living beings, as indigenous peoples have long asserted. Potentially they could articulate directly on behalf of other species.

In the Ecocide Restorative Justice conference referred to above, role-players were chosen to try to give voice to all those elements that had been harmed directly or indirectly. In addition to the facilitators, the participants included representatives of GPC - namely its CEO, its Chief Sustainability Officer and the Chairman of its Pensions Trust. There were also representatives of Indigenous Peoples, Wild Birds, Future Generations, Wider Humanity, and a Guardian *ad litem* on behalf of the Earth.

It seemed obvious that the first choice of participants should be a representative of those indigenous people who had been harmed. By a stroke of Providence, Gerald Amos, a First Nations leader, was passing through London when the restorative justice conference took place, and he spoke compellingly and from first-hand experience. At the same time, one should not assume that all individuals harmed share the same interests and objectives.

Although it was a role-play, most participants spoke with passion and conviction. The selection of participants, which naturally depends on context, would probably be refined in a real-life setting. For instance, Government was not represented in the circle. Yet as has been pointed out by Liz Rivers, "it is clearly a key element in

the wider system as the creator of the policy and regulatory framework which licenses the extraction activity.”<sup>34</sup>

### 3. Education

The challenge for restorative justice has long been to raise awareness of its existence and what it can offer. In the context of environmental harm, a pre-requisite of engagement is that the ‘directing minds’ of companies are made aware of the principles and potential benefits for them of restorative justice. Developing that awareness seems to need a multi-faceted approach, through familiar means such as publications, news items, articles in visual, social and print media, talks, presentations, lectures and seminars.

One role of vital initiatives like that of the EFRJ may be to gather evidence of the value of restorative justice in the specific context of environmental harm, and to disseminate it. And that awareness has to reach both decisionmakers, e.g. Government and legislators, and the grassroots, the public at large. As well as top-down encouragement and bottom-up initiatives there is also a need for what John Braithwaite has characterised as ‘middle-out’ pressure, the support of business people, journalists, lawyers and others.

Then there is the need to encourage its take-up. Experience suggests that a key strategy in achieving this is the personal approach to those involved where environmental harm has taken place, to encourage them to engage in restorative justice.

The collapse of Samarco’s iron ore tailings dam in 2015 was Brazil’s worst environmental disaster, killing 19 people and displacing many more, and fatally contaminating the Doce river. The wave of toxic mud destroyed 650km of flora and fauna. Vale and BHP Billiton, the owners of Samarco, agreed with the Government to set up and fund the Renova Foundation for ‘remediation and compensation’. The companies have committed hundreds of millions in funding (while the government dropped a \$5.3bn law suit) and created a number of programs.

Renova’s process, however, is explicitly reparative. The mandate does not require either consultation or dialogue, stating only that *“It is also [the] function of the*

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<sup>34</sup> ‘Shareholder Return – a Nuremberg Defence?’ (2012) 24 Environmental Law and Management



*Committee to establish channels of participation of civil society and may, for this, call specific meetings and listen to interested organizations."*

Significant numbers of victims have expressed frustration and anger – that homes are slow to be rebuilt, compensation not paid, health issues not acknowledged. As the President of the Renova Foundation said recently: *"Perhaps the greatest challenge lies in the design of compensation for the victims, including those in the informal economy... Meanwhile whether inside or outside the governance structure, people affected by the disaster continue to vocalise their pleas in different ways."*<sup>35</sup>



*Minas Gerais dam collapse. Photo: Senado Federal*

Happily, however, Renova engaged Dominic Barter, who has worked extensively with restorative justice in Latin America and elsewhere, to design restorative processes for different aspects of their work. One aspect looks at the organisation as a whole, creating dialogue spaces for people in decision-making roles.

The work has also been to design specific restorative practices for responding to the many moments of conflict that were arising in the local communities. Part of this has been to empower and strengthen the dialogue teams who go into the communities to work on dialogue and learn from the community.

Renova has been open-minded enough to look for other forms of resolution, and has had the vision and fortitude to take on restorative approaches. Equally this cultural shift could not have happened without Dominic's work and persistence over a period of years. It seems an abject lesson in the effectiveness of a personal

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<sup>35</sup> <https://blogs.lse.ac.uk/businessreview/2019/07/22/how-do-you-clean-up-brazils-worst-environmental-disaster/>

approach, building relationships and trust over time so the principles of restorative justice can be understood and adopted.

## Climate change litigation - a restorative approach

Increasingly citizens are calling Governments and companies to account for their inaction on climate change. There seems to be a real shift in awareness of our relationship and interdependence with the natural world – that it is a living organism rather than a mere resource. Of course this awareness has long been a part of the wisdom traditions of many indigenous peoples. The impact of movements like Extinction Rebellion demonstrates these growing concerns.

Climate change litigation as a tool to strengthen climate action continues to expand, principally led by NGOs. By July this year climate change cases had been brought in at least 28 jurisdictions around the world, as well as the European Court of Justice and other international courts<sup>36</sup>.

Some of the issues necessitate a court ruling e.g. *Urgenda Foundation v. State of the Netherlands*, requiring the government to adopt stricter emissions reduction targets, and *Future Generations v. Ministry of the Environment and Others* recognising the Colombian Amazon as a “subject of rights”. Increasingly, however, these lawsuits are targeting fossil fuel companies and other sources of climate-related harm.

What if restorative justice were to be introduced and implemented in these cases? What would it take for litigation, even where the defendants are governments, to incorporate the option of restorative justice? There is a real opportunity for the restorative justice movement to be at the forefront of this global shift. That pressure is not only for action on climate change, and compulsory or punitive solutions for states and corporations, but for a restorative lens to be applied - one that allows citizens and future generations, other species and the natural world to be understood as real stakeholders in decision-making, and invites corporations and institutions to become part of the solution.

**Lawrence Kershen**  
Mediator, UK

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<sup>36</sup> Global trends in climate change litigation: 2019 snapshot - Setzer & Byrnes, Centre for Climate Change Economics and Policy

# Interview with Dominic Barter

Femke Wijdekop

In 2015 the world was shocked by the Mariana disaster: the collapse of Samarco's iron ore tailings dam in Minas Gerais, Brazil, which killed 19 people, displaced hundreds more and destroyed the Doce river ecosystem. The owners of Samarco and the Government together set up the Renova Foundation to remediate and compensate the immense material, social and environmental harm caused by the dam collapse. In this interview, Dominic Barter\* tells how his work with Restorative Circles supports Renova in the aftermath of the Mariana disaster.

## **Dominic, how did you get involved with Renova's work?**

Since our journey with restorative work is rather different from that of some other practitioners, it might be useful to provide some context first. We have been building restorative justice systems with communities and organisations since the mid-1990s. The work began by listening to children in favela shanty towns under gang control, so its origin is intimately related to ecological questions around land and ownership, around territory and the tense relationship between marginalised communities and the State. In other words, the origin of restorative justice here is not in the judicial system: its origin is in the context of an historically antagonistic relationship with the State and the formal justice system.

So although we have a long relationship with the Ministry of Justice and public prosecutors, and designed the first restorative justice pilot projects in the formal justice system, people think of our work as being strongly related to community self-empowerment and determination. It was therefore, not surprising that the organisation set up to respond to the disaster, Renova, would consult us as part of their work.

## **What is so special about Renova's set up and mandate?**

The way the organisation was set up is quite a unique thing in Brazil and in the world. As would be expected with a crime of such magnitude, a judicial case is launched against the mining companies. Given the complexity of the issues, the economic and political stakes and how slowly the justice system moves, it would not be strange to expect that the hundreds of thousands of people who were impacted by

what happened - who lost their homes, livelihoods, work, land, or who lost their lives – might wait as much as 20 years before they receive any kind of material compensation.

But in response to the Mariana disaster, the mining companies and the Government, through the Environment Ministry and other agencies, founded Renova. The idea is that this organisation, funded by the mining companies, will organise a much more agile response to what happened. The founding document of Renova is already quite extraordinary, because instead of setting a financial limit on compensation it sets a regenerative limit. The focus is the complete regeneration of the river and the surrounding communities: a quite exceptional environmental response.

### **Why did the companies agree to this?**

Civil society is increasingly conscious of itself and strong. There was outrage at what these companies had allowed to happen. Local footage put shocking images of the destruction on everyone's screens. This disaster was not described simply by the number of deaths, or by the number of houses that were destroyed, it was defined as being 'the death of a river', of a being that was experienced as kin. Companies connected to such impacts are in increasingly weak positions, given the history of the damage, the decades of warnings, the flouting of established regulations. Local activist groups have been sounding the alarm for decades. Governments are also increasingly pressured to respond.

From all these angles, it was clear that this time they had to do something very large and very fast. Renova asked us to design restorative interventions for different aspects of the work they are doing. Interventions that could be used from the level of the executive council right to the level of the communities that were overwhelmed by the death of the river. Renova's role is to mediate, and they wanted dialogical processes as a meta-principle throughout all they do.

### **What has been contributed so far?**

One stage of this work is to create dialogue spaces for people in decision-making roles to be able to register and mourn what has happened, in order to recover the ability to act. In our Restorative Circles, we observe a key sequence running from mutual understanding, through self-responsibility to agreed, restorative action. This is a dialogical, not a scripted, process. We look for any point at which this

dynamic might be blocked in the way an organisation is functioning. This then helps create specific restorative practices for responding to the many moments of conflict that can arise in local communities due to the immense pressure they are under and frustration with the complexity of implementing change.

As part of Renova's process, dialogue teams research and learn from the community, to find out what information they need in order to be sure that where there is rebuilding, it happens in the right way and place, and where there is compensation, it reaches the right people. It's crucial to strengthen those teams so they can do their work effectively. In contexts such as these, those doing such work are often under immense pressure, sometimes needing physical protection.

For instance, a situation might arise in which criteria for evaluating impact include some and not others. Say toxic mud went up 15 streets beyond the river – what happens to the people in the 16<sup>th</sup> street? A lot of dialogue in such a scenario has to do with helping people deal emotionally with what occurred. At other times it's needed to respond effectively to the anger and despair that emerges when things were not immediately getting better.

Another challenge in such a context is how to help people deal with the news that some will be compensated, and some will not. Disasters at a huge scale, such as the recent Amazon fires or coastal oil spills, might involve hundreds of thousands of people who suffer and yet are not considered 'directly impacted'. Even if huge sums are invested in the communities they live in, many might not receive direct material compensation. With numbers like that, it's complex to predict how many people may be evaluated inaccurately. Dialogical processes are required to receive objections and to allow such decisions to be contested and mistakes remedied.

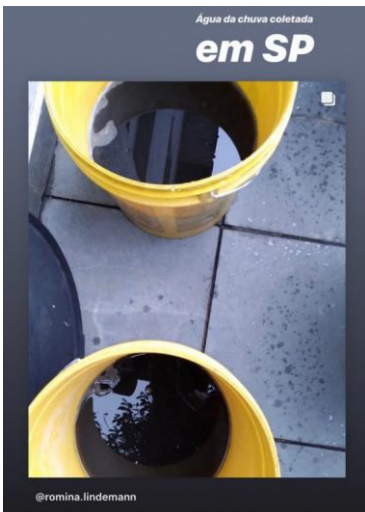
In other words, the task is to identify the different unmet needs, and create interventions so that they can be met. The danger is doing this with the colonial mentality of control and dependence, coming in like 'great external saviours'. So the foundation of such a response involves the ongoing interplay between offering technical knowledge which might be effective and listening to the local intelligence of those on the ground, so that whatever happens supports the communities' resilience and ability to regenerate.

## What kind of reparation has taken place aside from financial compensation?

There has been a lot of work done on restoring community housing and building community infrastructure. There is a lot of work on the ecological recovery of the river which is a quite technical matter, having to do with the chemical balance and the right conditions for life to regenerate, and with thinking about the aspects of wildlife that are particularly powerful in restoring the river from the specific damage it received and toxins it was exposed to.

It's very much an area of research and experimentation and all of this leads to the sense that the river is an entity which needs to be restored to health. And though the idea that the river is a living being with its own rights is not yet part of any formal legal recognition in Brazil, as is the case in some of our neighbouring countries, a lot of what is going on results in the river being treated with the same seriousness. It's part of a more general re-awakening that our lives are not made up of money, but of trees, of air, and running water.

Just recently, due to the fires in the Amazon, São Paulo went dark at three in the afternoon. The smoke had travelled thousands of kilometres and completely covered the sky. When it rained the next morning it was as black as black paint.



*Black rainwater collected in buckets by a citizen of São Paulo*

So these natural crises, created by humans, can result in an awakening that the forest is a living participant in our community of existence, in the same way that the river Doce is. It is a relevant participant in the process of responding to damage and we have to think about how to reorient the justice system to recognize this. This process is aligned in a very deep way to restorative justice, and our work has been on how to make that visible.

This shift is a huge challenge and we are not there yet. At the same time, there is a potential that is still untapped in our ability to recognize that we live together. Restorative solutions are sustainable in terms of relationships on a level that punitive systems can't reach.

The affected communities in many ways continue to depend on the mining companies for their livelihood. When disaster happens, we are reminded that we live in community. The more this consciousness of community and care for sustainable relations becomes part of the way of thinking within a society, the less we have to wait for a disaster for it to happen. That's when restorative work becomes preventative.

### **Many people feel powerless over the destructive actions of those in political or corporate power. What hope can Restorative Circles offer in this regard?**

I think this has a lot to do with self-responsiveness. When we build restorative systems for our own communities, we learn to diminish our fear of conflict, and we discover that engaging fully with conflict and creating spaces where conflict can fully express itself, be heard and be transformed into specific action, increases community cohesion. So we are less frightened by the awful things we do to each other. Then, when we get a political moment like this, which is devastating in many ways, we are not immediately put into a reactive mode. Of course we need to strengthen our support systems. Of course we get into despair, or pass through a superficial level of just being angry or frightened, but we tend not to stay there.

### **Because you've built resilience on the individual and community level.**

Yes, especially on the community level. We try to de-individualise things as much as possible. When one of us loses it and engages in de-humanising behaviour to

themselves or other people as a response, for example, to actions of the current government, collectively we view that as feedback that this persons' support system (which means us) is not strong enough for the challenges this person is dealing with. Why are they challenged? Because they care. If they didn't care, they would just go to the beach and relax. But if they are at home, sending angry messages on Facebook, this means their support system was insufficient.

It takes away individual blame for moments of danger. That is hugely supportive of our resilience. It makes the journey between shock and harm, between that and a creative response that engages with the situation transformatively, much shorter.

### **Where do you personally draw from to be able to respond to this enormous crisis?**

A key element in doing my restorative work is making sure I also build strong support systems for myself. The listening that I require in order to be able to do what I do, is similar to the listening we are trying to promote in a Restorative Circle. It's the same quality of empathic attention. We have not dealt with anything of this scale before, but because of the social reality here, we've dealt with huge tragedies and many losses of life for almost two and a half decades. I've been in civil war zones and situations where people have done the most horrific things to each other. So unfortunately, we are somewhat warmed up in dealing with intense suffering.

### **Which personal stories have touched you the most in your restorative work for the Mariana disaster?**

One story that impacted me I heard in Mariana, the first of the larger towns that was majorly impacted. An older man who I met in the street said to me: *'Can you bring back my peace of mind?'* He said that his marriage had become intolerable, because he used to wake up at 5 a.m. and spend all morning and the beginning of the afternoon fishing. When he came back, his wife would have gone into town, and they would see each other in the evening, when they both had a full day of life to share with each other. He said: *'Now I wake up late, there is nothing to do, nowhere to go, it's difficult to find food, and me and my wife squabble. The river is my way of living, and when the river is taken, everything falls apart.'*

That has stayed with me since then. It is a strong reminder of the limits of what reparation can do and that restoration does not mean going back to how things



were. Rather, it means an understanding of what creates the conditions for people to organise, to regenerate, their own life.

Impactful too were the stories of the people who were putting the things we are teaching into practice, going all the way from the head of the organisation to members of the dialogue team who are at the point of contact with the impacted populations. The many stories of anger, antagonism and even threats of physical attacks, which transformed through very simple and very persistent deep listening. Transformed into a recognition that below that anger is pain and sadness, despair and fear. And that a lot of what otherwise might be expressed as violence, is in fact grief. It has been very strengthening for me to see how people working for the organisation who build systems of support for themselves, are fortified in their ability to see the humanity of people behind often very tense disagreements.

**Femke Wijdekop**  
Earth Restorative Justice

*\***Dominic Barter** is a world-renowned leading thinker and practitioner in the fields of education, justice, culture and social change. He has collaborated in the development of Restorative Circles<sup>37</sup>, a community-based and -owned practice for dynamic engagement with conflict that grew from conversations with residents in gang-controlled shantytown favelas in Rio de Janeiro. He adapted the practice for the Brazilian Ministry of Justice's award-winning national projects in restorative justice and supports its application in a further 25 countries. In the last years Dominic has supported the Renova Foundation, which was established in the aftermath of the Mariana disaster: the collapse of Samarco's iron ore tailings dam in Minas Gerais, Brazil.*

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<sup>37</sup> <http://restorativecircles.org/>

# **Re-establishing human links in communities affected by disseminated pesticide pollution**

**Jordi Recordà Cos**

The social alarm bell on the use of pesticides is ringing on a global scale, in all countries where agriculture is developing. Who is responsible for this pollution? Multinationals producing pesticides, farmers, the consumer society?

In May 2019, one of the leading producers of herbicide based on glyphosate had already been sentenced for the third time by a court in the United States. In France, mayors wish to approve a municipal decree prohibiting the use of pesticides whether in residential or public areas in line with the precautionary principle. The judicial approach is gaining some traction and at the same time, will that be enough to repair the damage to affected people and the environment?

## Phytosanitary victims

One of the most famous French products is wine. Bordeaux, Burgundy, Champagne are already part of the vocabulary of gastronomy lovers. This wealth is increasingly challenged by citizens concerned about protection of the environment and public health, because of the use of pesticides. France is the second European consumer of chemical plant protection products (2014)<sup>38</sup>. With nearly 800 000 hectares, the vine represents 3.7% of the surface but it alone consumes about 20% of the pesticides.

*"I really do not feel polluted"* says a winegrower, who adds *"we cannot do without, we must defend a production, a harvest."* For some farmers, plant protection products are a crop insurance because they testify that without a pesticide, the yield is considerably reduced.

NGOs, like the organisation *Génération futures*, have joined forces to give voice to the progressive citizen concern, by collecting testimonials<sup>39</sup>: *"I live four meters from the orchards, the farmers treating the vines are wearing an astronaut's suit"* worries a local resident near Lunel (Hérault).

Regulations require growers to protect themselves with appropriate clothing, because the danger is proven and diseases associated with pesticides are becoming more frequent. Thus, the organisation *Alerte Médecins Pesticides* brings together doctors who ensure they see in their practices more and more diseases related to pesticides used massively in agriculture. In addition, according to the INSERM<sup>40</sup> *"there is 80% certainty that there is a causal link between certain cancers and exposure to plant protection products for professionals"*. For example, they found a link between Parkinson's disease and vine treatments. The organisation *Montpellier Génération Futures* is already talking about "phytosanitary victims".

## The concrete case of water pollution

The impact of pesticides goes far beyond the users' health: it reaches the entire community and its environment. For example, the *Centre National de la Recherche*

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<sup>38</sup> Ecophyto 2 plan

<sup>39</sup> <https://victimes-pesticides.fr/>

<sup>40</sup> Public institution of a scientific and technological nature, under the double supervision of Ministry of Health and the Ministry of Research

*Scientifique* (CNRS) demonstrated the impact of pesticides: a decline of 80% of terrestrial invertebrates and 30% of the farmland birds on the studied sites.

In addition, experts find that pesticide levels exceed regulatory limits in water captured in aquifers and surface waters. The inhabitants are therefore exposed to pesticides, and water becomes a polluted common good, essential for life and at the same time a danger to health.

The French government has implemented several plans and measures to act on the agricultural activity, on the management of green spaces of the community and on the private owners of gardens (also consumers of pesticides). For example, it has implemented a specific approach in catchments polluted by pesticides in order to regain the quality of water. Among the 2000 priority catchments identified in France, I will present a practice of restorative justice carried out on a territory around one of these catchments, in Puisserguier (Hérault).

## **Social tensions in the application of environmental protection measures**

The water intake "Manière and Fichoux", located in the south of France, had too-high pesticide levels and the commune was afraid to abandon the well and be obliged to transfer water from another watershed more than 400 km away. The environmental impact of the project was very important and in addition, the price of water would increase.

In this territory water is a rare resource, and this situation has created a very intense social debate. Farmers felt accused and criminalised. According to them, the process did not provide enough tools for dialogue to find solutions together, and they felt that the actions were imposed on them. *"The worst was the tone and the way we were spoken to. I felt assaulted, and I did not want to attend other meetings,"* said a winegrower.

The work done by administrations focused on the restoration of water quality, which has improved significantly. On the other hand, social tensions remained latent, and the commitment of the actors on more ambitious measures slowed down. *"I also drink this water, and of course, I wish it to be of good quality [...] I take my share of responsibility, but others should take theirs too!"* demanded a winegrower.

In 2018, I arrived on the territory as a facilitator of the approach of priority catchments. I realised that pesticides had affected water quality as well as human relations between the inhabitants. I proposed to restore social ties to move the project forward. Trained in restorative practices by the organisation "Service de Pratiques Restauratives", I observed the positive effects of these tools in family cases and in schools but I was not aware of any concrete case in the field of protection of the environment. I therefore took up this challenge, and took advantage of the context of renewing the "priority catchments" action plan to create a work space, and offer a new opportunity to work together based on the values of restorative justice.

## **The project: restoring water quality and human links**

### ***Another perspective is necessary***

Conscious of the need to go beyond the traditional measures of the old action plan (training, awareness...), we sought new solutions by inviting other actors of the territory to express themselves: women in connection with viticulture (conventional or organic farming), or in connection with the water theme (a member of the French water agency), as well as other women living in the territory of the water intake "Manière and Fichoux". In total there were 7 women.

The innovation is twofold. In the first place, the choice to prioritise women was a response to the desire to value their opinion, often hidden in a sector dominated by men, and their role in galvanizing the territory. And secondly, for the first time in this territory, we convened the different representatives of the community affected by pesticide pollution. This way, we introduced a fundamental ingredient: people affected by a problem are best placed to find solutions. We also chose to invite citizens without specific technical training on the subject, in order to broaden participation to all concerned groups regardless of their level of technical knowledge on the subject.

### ***The talking circle***

Then, we concretised the intention of our approach, that is to say to create a connection between the actors and thus to facilitate their responsibility and their implication in the approach. To achieve this goal, the most appropriate restorative practice for us was the talking circle. The methodology is simple and easily reproducible and, at the same time, there are red lines to respect as one of the participants testifies: *"I discovered the importance of really listening, of letting everyone say what they had to say"*.

A key point was the choice of the central question. We preferred not to focus on pesticides because farmers were too sensitive about it. So, we focused the question: *How can we contribute to improving the water quality on the territory?* The participants felt concerned by this subject and they readily accepted the invitation. Some were touched and surprised by the invitation because it was the first time someone asked them for their point of view on this subject.

### ***Surprising results***

Participants debated the issue for 2.5 hours and agreed to respect each other, pay attention to judgments, and ensure confidentiality. At the end, they agreed on a shared action plan: 27 actions concerning 15 different themes! *"This circle gave me the opportunity to talk more, to explain more things [...] and to come up with new ideas that I did not say before"* says one of the participants. For example, beside the most traditional actions, they proposed to support the facilitators in order to co-empower themselves, and also to implement actions on their own without waiting for the administration's action (for example, reducing the use of toxic household products at home). In short, two new tracks that were not yet explored in this type of action plan.

### ***Sowing seeds of the future***

In addition, this activity helped mitigate some guilt-laden comments: *"It was important for me to explain to other women that water pollution does not come only from agriculture and that everyone can contribute,"* said a participant. And to open doors to strengthen links: *"I realized that even if we have different cultural practices (in conventional or organic farming) we have common opinions on other subjects,"* added another participant.

### **The first stone of a new project for this territory**

This first talking circle has become a small step, an inspiring tool to help progressively transform victimization and guilt into empowerment of the different actors. *"At first, I did not feel very reassured, but while listening to the others, I realized that there were other points of view than mine [...] I felt surprised [...] and gradually, I felt that my point of view changed [...] I shared certain needs with them [...] and I began to feel like doing things with others [...] I forgot who polluted or not ... "*

The participants left appeased and satisfied with this action, and also curious and worried about whether their actions would be taken into account. To reassure them, we accomplished two of the 27 actions in the following weeks.

## **An uncertain future**

It would be extraordinary to finish this article by explaining that we have continued the process and that the affected community is undergoing a transformation. Unfortunately, this action stopped suddenly because of political problems.

At the same time, the project is still alive, because I continue my activity in another territory where I will apply these tools to restore the human links affected by the pollution of the pesticides: this time to involve the schools, and thus to create a restorative community with future generations.

Regarding the participants, I kept in touch with one of the winemakers (doing conventional farming) who told me that she had cancer. I was shocked to hear this. She was sad and serene. According to her, the disease was associated with her agricultural activity because she confessed she was vomiting and having headaches when she used certain pesticides.

She asked me, despite everything, to continue this beautiful project... and I dedicate this article to her: with all my heart, Anne, I hope your experience contributes to changing future generations.

**Jordi Recordà Cos**

Environmental engineer trained in restorative practices, France

Translator: John Holliday, Service de Pratiques Restauratives

# **Restorative justice and environmental crime: the case of Minamata disease in Japan in 1970**

**Orika Komatsubara**

## **Introduction**

This article focuses on the possibility of dialogue between victims and offenders of environmental crime. I will analyse the case of Minamata disease – a neurological disease caused by mercury poisoning – in 1970 via a restorative justice approach. The case is not typical of restorative justice practice, but it provides a useful opening for us to consider the applications of restorative justice principles to environmental crimes.

## **What is restorative justice?**

Restorative justice originates in critiques of criminal justice. These critiques argue that victims do not speak freely in court because the modern criminal justice system excludes victims and is ruled by professionals – in other words, it offers little or no opportunity for victims and offenders to confront one another and seek reconciliation. This is especially true in the case of environmental crimes, because the offenders in these cases are often corporations who choose to ignore confrontation and reconciliation through the court system. Furthermore, victims can only receive financial compensation through the criminal justice system, and victims of environmental crimes often desire a broader, farther-reaching compensation.



In contrast, restorative justice is victim-centred. Advocates of restorative justice develop programs for dialogue between victims and offenders. Through restorative justice, victims and offenders discuss crimes and compensation directly.

## Restorative justice for environmental crime

The principles of restorative justice have recently been applied to the study of environmental crimes (e.g. Boyd, 2008; Stark, 2016; White, 2017<sup>41</sup>). Additionally, in 2019, an international seminar titled *Restorative Justice Response to Environmental Harm* was organised in Leuven. However, there are few practical cases of restorative justice being applied to environmental crimes.

It is urgently necessary to begin applying restorative justice frameworks to environmental crimes because such crimes are suitable for restorative justice. Environmental crime affects not only human bodies and financial assets but also non-human beings (plants, animals, ecosystems, etc.). Victims of environmental crime are often physically injured (e.g., illness) and face psychological injuries as well, including the loss of intimate relationships with non-human beings; violence toward indigenous faiths; and loss of habitat, culture, and community.

In the case of Minamata disease in 1970, although the concept of restorative justice was not well-known then, the actions of victims and the results they obtained could potentially inspire further application of restorative justice principles to environmental crimes.

## What are the victims of Minamata disease enduring?

Minamata, located in the southern area of Japan, had been exploited by Japan's central government during the Edo period. In 1906, a large company, Chisso Co., Ltd., launched a fertilizer plant in this area. Chisso worked with the Japanese government to develop the country's economy because Japan was a poor nation at that time.

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<sup>41</sup> Boyd, C.C. (2008). "Expanding the Arsenal for Sentencing Environmental Crimes: Would Therapeutic Jurisprudence and Restorative Justice Work", *William & Mary Environmental Law and Policy Review*, 32, 483-512; Stark, A. (2016) "Environmental restorative justice", *Pepperdine Dispute Resolution Law Journal*, 16(3), 435-462; White, R. (2017). "Reparative Justice, Environmental crime and Penalties for the Powerful", *Crime Law Social Change*, 67, 117-132.

By the 1950s, Chisso had released industrial run-off, including mercury, into the sea. Local fish and shellfish were poisoned. Birds, cats, and humans thus ate toxic seafood and the latter suffered from Minamata disease. To this day there is no cure for this condition. In severe cases, victims die. New-born babies had Minamata disease if their mothers ate too much toxic seafood during pregnancy. However, unaware of the contamination, the people of Minamata consumed the food. There are now about 100,000 cases of the disease in Minamata, including the mild ones.

Chisso continued to release harmful water into the sea, although they, and the Japanese government, were aware that it was dangerous. They prioritised Japan's economic development country over the needs of the Minamata disease victims.

A group of victims sued Chisso in 1969. They won their case in 1973 and received high compensation. A second group of victims sued in 1973 and won their case in 1979. Other victims have continued to sue up to the present day.

## Complaints of the victims

The victims were unsatisfied with the court's ruling. The pollution caused by Chisso had continued to affect their daily life. Furthermore, they wanted an apology from Chisso. They sued the company in order to forcibly draw the company into dialogue in the hopes of receiving an apology. However, only the company's lawyers attended the hearing, so the victims remained disappointed, without the apology they sought because the victims' reasoning and concepts were based not on modernized legal procedures but their local community (Watanabe, 1972<sup>42</sup>: 172).

At that time, lawyer Takanori Goto suggested the social movement *Hitokabu Undo* (One is One-share-movement), which meant the victims and their supporters attended the general meeting of Chisso's stockholders, which the president was legally obligated to attend. "*Many victims and supporters welcomed the chance to confront Chisso's executives directly*" (Timothy, 2001: 217). On November 28, 1970, the victims and their supporters burst into the meeting to express their anger and grief in front of the company's president.

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<sup>42</sup> Watanabe, K. (1972). Genjitsu to Maboroshi no Hazamade. In Ishimure(ed.), *Minamatabyo Toso: Waga Shimin* (pp.168-178). Gendai hyoron sha.

## 1) Self-performance by the victims

For their confrontation with the company presidents, the victims wore matching white clothes and sedge-woven hats and held hand bells. They selected the costumes which made them look like pilgrims, because for them this moment also represented a memorial service for victims of the disease. Some of their supporters raised black flags with the “*Chinese character meaning 'rancour' or 'bitterness' in white on a black background*” (Timothy, 2001: 219). They did this to attract attention to their cause while they travelled in Osaka.

## 2) Training to sing a requiem

Before the meeting, the victims and their supporters were trained to sing a requiem. The female victims learned to express their feeling through a song.

*"Though we think this world  
One long spring,  
It is really only a fleeting dream.  
Sincere and scalding tears  
And remember you in sorrow"  
(Mishima<sup>43</sup>, 1992, 124)*

They sang this song in the stockholders' meeting. Other people were moved by the song, and some supporters cried.

## 3) Performance as Oni (ogre)

The victims surrounded the president of Chisso. One female victim, Fumiyo Hamamoto, shouted “*My parents, both of my parents!*” because her parents died from Minamata disease. She thrusted two mortuary tablets at the president’s chest, shouting “*How do you think they died? My brother, my brother is cripple! I want my parents! Do you know how children who have lost their parents feel?*” (Ishimure<sup>44</sup>, 2011: 444). Her style of shouting played that of an *Oni* (ogre) in Japanese Noh (Watanabe, 2017: 35<sup>45</sup>). In Noh, actors wear the persona of *oni* on stage – so,

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<sup>43</sup> Mishima, A. (1992). *Bitter Sea*, Kosei Publishing Co. (This book was originally published in Japanese under the title *Nake, Shiranui no Umi: Minamata ni Sasageta Chinkon no Tatakai*, 1997 by Akio Mishima).

<sup>44</sup> Ishimure, M. (2011). *Kugai-Jodo*, Kawade-Shobo-Shinsha.

<sup>45</sup> Watanabe, K. (2017). *Shimin to Nichijo*. Gen-Shobo.

although Fumiyo looked like she had gone crazy, it was only a performance. She vented her anger to the president of Chisso directly.

Mr. [The president] (...) was shocked by Fumiyo's fullness of spirit. He sat straight and nodded his head automatically: "*I know. I know well. I feel responsibility. So...*" Nobody else spoke in this atmosphere ... the students who had raged began to shed tears and embraced one another (Ishimure, 2011: 444). The president of Chisso was upset by the direct action and recognised his responsibility. He sat down and apologised (*dogeza*). He turned pale and trembled. However, after the event, he and his company continued, ignoring the victims.

## Conclusion

The case of Minamata disease in 1970 is not a typical restorative justice case. Nobody knew the concept of restorative justice then, and there were no trained mediators or facilitators for the application of RJ principles in this case. However, the dramatic dialogue between victims and offenders, while it did not lead to reconciliation, allowed the victims to express their feelings directly and freely. The movement did not lead to financial compensation and formal apologies, but it drew the attention of many Japanese people and formed a strong foundation for further attempts by the victims to gain redress and reconciliation. So, in this case, we can see the potential and possibility for the application of restorative justice to environmental crimes.

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# Early experiences of restorative practices for wildlife-people conflicts in Ecuador

Ruth Muñiz López

Thanks to Manel Ortega, a friend who specializes in restorative practices, a few months ago I received a training about how restorative practices could be applied in different fields, such as education, justice or community issues. This was a field totally new to me but curiosity made me attend this course. This training made me analyse how restorative practices might be applied in conflicts between humans and wildlife. As a field biologist, I do not usually relate to schools beyond a few talks to raise awareness about environmental issues, and, in terms of judicial topics, I don't have any links except the occasional complaints as an ordinary citizen.

After some readings, conversations and training, I saw a huge opportunity to apply restorative practices to understand in a deeper and more honest way the conflicts between people and wildlife, and thus better focus our conservation actions. Since these practices build community, encourage dialogue, and when it is necessary also prevent, detect, manage and resolve conflict situations, I thought that I could address an increasingly frequent conflict - as fauna-people conflicts are - in a more horizontal, democratic and participatory way. My specialty are birds of prey, which sometimes attack domestic animals or compete for food in remote areas where the indigenous nationalities consume the same prey that large eagles.

With this background, I decided to try one of the most important tools of restorative practices, restorative circles, as a strategy for dialogue with a small community of *kichwa* culture located in the Amazon basin of Ecuador. There they had located a new nest of a pair of the endangered harpy eagle (*Harpia harpyja*) in an area of forest that was recovered after more than eight years of not hunting nor cutting trees in it. The pair was still building a nest, but if people bothered them during that process, they were likely to leave their breeding area. Thus, I held a restorative circle with the objective of understanding how people felt living with a protected species, what their needs were, and what was the best and the worst (concerns, fears, etc.) of that coexistence.



*Juvenile Harpy Eagle (Harpia harpyja) in Ecuadorian Amazon Basin. Photo @ Ruth Muñiz-López*

For me the result was very rewarding, as the restorative circle gave to the community the opportunity to be heard and express their concerns. Thanks to this, I was able to see that the community did not have much information about the natural history of this species, leading to myths and resulting in the killing of eagles, because of fear, competition for resources, or desire for their claws or feathers as trophies. I knew that in a nearby community an eagle had already been killed. These eagles breed only every two and a half years and produce a unique chick, so that the loss of a single bird is particularly serious for the species.

The community thought that these raptors were competing seriously with them because they ate a large number of monkeys, also consumed by the people. Although they are part of their diet, it is not comparable to the amount of sloths that they eat, and sloths are not part of people's food. This affectation was more a myth as a product of popular tales than a reality. Thanks to this circle, we learned how to approach the next step, as the community showed the need for knowledge about this species as well as a recovery of the value of the harpy eagle as part of indigenous people's worldview, which had almost disappeared among the new generations.

The second experience with restorative circles was another conflict between humans and wildlife, this time with the Andean condor (*Vultur gryphus*). This is a huge scavenger bird that is threatened with extinction, and who reigns over the mountain range of the Andes. In a small community in the Ecuadorian Andes, a young Andean condor was captured and was handed over voluntarily to the environmental police. The condition that the community placed upon the authorities was that once it recovered from its injuries, it must be returned to the same valley from which it came. With two other colleagues, Johana Novillo and Gabriela Madrid, we devised a restorative circle with the aim of knowing what had happened with the young condor and what the community felt after the environmental police and the Environmental Ministry had taken the condor to a rescue centre.



*Ecuadorian Amazon Basin landscape. This is where harpy eagle lives. Photo @ Ruth Muñiz-López*

The result was surprising. Not only had the people felt alone and apart in the process of recovery and evolution of the condor, because no one informed them of what had happened after taking it away, but the villagers knew that the foreign institutions had already named the young bird without even consulting them.

The community had a considerable conflict between the condor and the cattle, because adult condors teach the young to harass and to feed themselves if necessary from the offspring of cows that graze freely in the mountains. The person who captured the condor wanted to release the bird in the same valley, because they considered it a species that may attract tourists, but he wanted to release the condor a little further away from where he had cows, not knowing that this species moves hundreds of miles in a day and that this was not going to be enough to keep

it away from his cattle. In addition, they asked if specialists could change the nest site so they could see condors flying but not breeding and feeding their chicks with cattle.



*Restorative circle with people from a community in Ecuadorian Andean Mountains. Photo @Ruth Muñiz-López*

As biologists we know that this is impossible, but thanks to the restorative circle we scheduled a second visit, because the community was demanding information about the natural history of the Andean condor. They also asked for a visit by the Environmental Ministry to prove the extent to which they are affected by the cattle-condor conflict and, together, seek solutions.

We still have a lot to learn about how to carry out these restorative circles and how restorative justice can really help biodiversity conservation, but these first two experiences have stimulated in us a growing interest in its application and an opportunity to get closer to other points of view that will certainly make our work much more efficient and inclusive.

**Ruth Muñiz López**  
PhD, Asociación Accipiter Ecuador





A restorative contract in "Voice of nature: the trial" by Maria Lucia Cruz Correia.  
Photo: Mladilevi@NadaZgank

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# **Environmental activism and arts**

# **Restorative justice in a time of climate and environmental emergency: what can we do as restorative practitioners?**

**Belinda Hopkins**

We are not only restorative practitioners and/or researchers. We are also human beings sharing our planet with all other living creatures, plants and organisms. And our shared existence is under imminent threat from climate change and environmental pollution. The quality of the air many people breathe is harmful; the water we drink and the food we eat is contaminated with micro-plastic, uncontrolled hormones and other toxins, and indeed the water itself is in ever decreasing supply. In some places it is becoming a scarce commodity. The climate is changing faster than anyone predicted, leading to catastrophic weather events, especially in the global south where poverty is an added issue. Climate change is also contributing to mass immigration, our current refugee crisis and the scandal of our detention camps and centres.

So, one cannot ask the question — what has this got to do with us, as restorative practitioners? It has got to do with us because Earth is our home. As someone once said — there is no Plan(et) B. I believe that as restorative practitioners, we also have some special things we can contribute, to help the situation and to help our fellow human beings.

## **First way to contribute: restorative practitioners using our skills**

Those of us trained in restorative facilitation have a wide range of transferable skills. We can help individuals resolve their conflicts using mediation; we can facilitate problem-solving circles and we can hold the space for difficult conversations to be shared in circle. All of these skills can help people in our community and also help the climate change movement.

In our communities, people need to start talking about climate change and environmental degradation, if they are not doing so already. Many people are worrying privately and do not know where, or to whom, they can talk. These conversations can be painful, heated and challenging as people face their fears. As Circle Keepers we can offer a safe space, with a framework within which everyone can perhaps say the things they dare not say and feel heard. Can we begin to offer these spaces to help raise awareness and offer support?

We can also offer mediation and problem-solving to those in the front line. Many of you will have heard about Extinction Rebellion (XR). XR is spreading across the world, inspiring people to get involved — people who have never previously thought of themselves as activists. In the UK there are some groups evolving to offer support and they are inspired by restorative practice<sup>46</sup> and Nonviolent Communication (NVC).

I am involved in two initiatives — one to offer help on the streets to de-escalate immediate hot spots where perhaps activists get involved in heated exchanges with members of the local community who do not agree with what is happening (roads being blocked, etc.). The other is to offer myself, along with others, as a circle holder and mediator when conflicts arise within XR groups.<sup>47</sup>

Gatherings of activists often need support. Inevitably within these organisations, conflicts emerge, people disagree and need support. I encourage restorative practitioners to make contact with your local activist groups and see what you can offer. Our skills are needed more than ever and will become ever more urgent as resources become scarcer. The next Climate Camp in Italy may be open to offers of help.

## **Second way to contribute: restorative interventions after arrests of activists**

This is, as far as I know, an unexplored area in the UK at least. I know people personally who have been arrested, tried, charged and either fined or incarcerated for their activist activities. The law is on the side of those destroying the planet with their activities — mining fossil fuels, fracking, drilling for oil etc. — and not on the side of those seeking to protect the planet.

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<sup>46</sup> Especially the Restorative Circles developed by Dominic Barter.

<sup>47</sup> There are also other climate organisations like Greenpeace; Ende Gelände in Germany, Code Rood in the Netherlands, Reclaim the Power and Wretched of the Earth in the UK, to name just a few.

But what can we offer as restorative justice practitioners in situations where individuals have been arrested for their activities? The case raises lots of uncomfortable questions. When activists lock themselves onto a concrete block to stop lorries entering a fracking site, on a public highway:

- *Who is the offender?*
- *Who is the victim?*
- *What about the wider community?*
- *What about the company whose profits are affected by the delay as activists are forcibly removed by the police?*
- *What about the wider community who may stand to benefit from lower fuel prices if fossil fuel extraction continues?*
- *What about those of us who continue to drive cars, take planes, use gas and electricity, consume fossil fuel products in endless ways?*

If there are no clear-cut answers, can restorative interventions be used? At the moment the conventional justice system is undoubtedly creating artificial barriers and hostility between human beings who all stand to suffer if life on this earth deteriorates much further. Currently, climate and environmental activists are viewed as offenders by the fossil fuel companies, the state-employed police and security guards, and there have even been attempts to charge them with anti-terrorist legislation. Worldwide we know that in many countries protest is suppressed and punished very harshly — up to and including death sentences. Meanwhile those who work for fossil fuels companies, the police and security firms, not to mention the government responsible for creating our legal system, are viewed as the ones responsible for causing or endorsing the harm being caused to the planet.

I ask a genuine question of my fellow restorative justice advocates and champions — what can we offer in this situation? We campaign for the use of restorative justice in other criminal cases; should we be standing by whilst those perhaps braver than us intentionally acquire a criminal record or go to prison on our behalf?

### **Third way to contribute: restorative practitioners as responsible citizens**

We all travel to and from our work and how we do this impacts on our planet. One way we can make a difference is to think hard before we take a car. Can the journey we make be done by public transport or by bicycle? If we live near fellow practitioners can we share the journey?

At work:

- *Can we encourage our colleagues to become plastic-aware?*
- *Can we ensure that all our plastic is re-cycled?*
- *Can we avoid purchasing that quick coffee on the way to work served in a cup with a plastic lid, and instead always have our eco-cup with us? (You do not own an eco-cup yet? Why not?)*
- *Can we take pre-prepared food for our lunch and avoid popping out to a nearby shop and buying snacks, which inevitably come in plastic wrapping?*
- *Can we raise awareness of why so many products come wrapped in plastic and maybe lead by example seeking out retailers who are making the effort to avoid such wrapping?*

And what about our meetings, gatherings and conferences? These are places we can certainly make more planet friendly. For a start — do we need to meet in person? Face-to-face is great — as we know from the car bumper stickers, restorative practitioners do it face-to-face! However, please think hard before arranging meetings which involve road or air travel.

In terms of reducing the damage to the planet, the two most significant steps you can take are to reduce or end your consumption of animal products and reduce or avoid flying. So, at our conferences let us make vegetarian and vegan food the default option and encourage alternatives to flying.

As for flying, I, for one, plan to travel to the 11th EFRJ Conference in Sassari over land, taking trains to Italy and then the ferry. I will post on the EFRJ forum my route once I have settled on it and I invite everyone who can to join me on the way. We will probably have gathering points in either Paris or Brussels and then again in Italy. It will be much more fun than travelling alone in a plane; so we hope many will join us. Perhaps the Forum can incentivise us by offering a discount on our conference fee?

For those who will choose to fly to Sassari, can the Forum please make information available about carbon off-setting and can you all persuade your employers to make this a real cost of your trip and not something you have to do out of your own personal pocket (check you have an environmental policy at work)? A recent article in a UK newspaper has some interesting things to say about carbon off-setting and some English-speaking links to companies who can help.

At the conference let us make plastic bottles a thing of the past. Perhaps the Forum can provide 'forever bottles' (or make them available for purchase at a discounted price) and make sure cold-water dispensers are available. Let us make sure that the re-cycling options are in place so we know that if we do throw away anything it will be sustainably dealt with.

These are just a few ideas. You may well have more. Together we can start to make our conferences as sustainable as possible — until such time as governments start taxing airlines as they should be doing to reflect the real harm flights are causing and make flights so expensive that we will need to think about local gatherings rather than international conferences.

This is an exploratory paper — asking more questions than I answer. However, let us continue the conversation. We have many skills and we all share a commitment to restorative justice and, by extension, social justice. Let us extend this concern for our fellow human beings to the planet we all share and stand up for climate and environmental justice too. After all — without a planet there will be no more life as we know it.

**Belinda Hopkins**

Transforming Conflict: National Centre for  
Restorative Approaches in Youth Settings (UK)

# Interview with Martin Wright

Heidi Jokinen

EFRJ member Martin Wright\* has a long-standing interest in restorative justice and non-violent communication. After having read John Braithwaite's *Restorative justice and responsive regulation* (2002), he wondered if a restorative approach might influence company policy.

## What harms are we talking about?

The big picture of how humans are destroying the planet is about climate change, but there are other ways to harm the environment, including the spread of plastics and the dumping of toxic substances, such as waste products from mining operations ('tailings'). Some activities that damage the environment do not cause direct conflict between people. Others, however, are caused by specific persons, often in commercial companies, and affect others, often local inhabitants. These conflicts need resolution.

## What could be done to prevent and respond to environmental harms?

One way was shown after the collapse of the Vale company's dam in Brumadinho, Minas Gerais, Brazil, in January 2019, with the tragic loss of lives and livelihoods as well as devastating environmental impact.

The Church of England Pensions Board, along with Sweden's Public Pension Funds Council on Ethics and other funds managing over £1 trillion in assets, jointly called for a global independent public system that monitors the safety risk of mining companies' tailings dams.

There should be annual audits of all such dams as well as verification that the highest safety standards are implemented. It remains to be seen how the companies will respond. By responding positively, the companies can avoid future conflict. But, even if they improve in future, that does not repair the harm suffered in the past.

## How can a company be persuaded to put things right?

When a company compounds the felony by trying to deny responsibility, shifting the blame on to a subsidiary company, minimising the harm caused, refusing to



appear in court to answer charges, and so on, it is tempting to resort to condemnation, but that is not necessarily the best way to persuade the company to put things right. The Bhopal case is an example of this.

### **Could you tell us more about the Bhopal case?**

It is the disaster in the city of Bhopal, India, in 1984, when faulty safety precautions at the Union Carbide Corporation (UCC) pesticide factory led to a massive leak of poisonous methyl isocyanate gas, killing up to 20,000 people in a short time and damaging lungs, kidneys and other organs of half a million more. Many children have been born with birth defects. Poisonous chemicals left at the abandoned site are leaking into the water supply, causing a second disaster.

In 2012, the Dow Chemical Company, which had meanwhile taken over UCC, offered a large sum in sponsorship for the London Olympics, and there was a big campaign against accepting their money (see Bhopal marathon, from Bhopal Medical Appeal). This reminded people that the issue still had not been resolved nearly 30 years later. Attempts to secure redress through the courts had been met by denials of responsibility, claims that the compensation already paid was adequate, and by simply refusing to appear in an Indian court. At the time of writing, a petition for increased compensation is before the Indian Supreme Court, but survivors' groups still consider this inadequate.

### **How could restorative justice support the conflict resolution?**

There was a suggestion that John Braithwaite's theory of 'reintegrative shaming' and a restorative approach might influence company policy. Confronting company directors with the victims of their malpractice and the effects on the reputation of the company might persuade them to put matters right, for both moral and commercial reasons.

The difficulty, however, as John Braithwaite has commented, is 'getting to hello': approaches to company directors have elicited no more than an official restatement of the company's denial of responsibility, and it has not so far been possible to enter a dialogue. For this, it seems, it is necessary for the approach to be made either by someone who knows a senior member of the company personally, or by a person or organisation of such standing that the company will reply. Major businesses are increasingly concerned with corporate social responsibility.

## What restorative action has been taken with regards to Bhopal?

A small group has been formed, *Action for Bhopal*<sup>48</sup> (AfB), to keep the issue alive. To raise awareness, it has arranged screenings of the film *Bhopali*.

## Is there anything more that could be done? Anything that any of us could do?

As a complement to legal action by survivors' groups, AfB is using the principles of William Ury's *Getting past no* (1991), encouraging supporters to write politely to directors of Dow Inc., the successor to the Dow Chemical Company. They may assume that despite the company's denials of responsibility, directors feel uneasy about the long suffering of innocent people and can point out that apart from considerations of humanity and human rights, the company's unpopularity is losing it business. Its recent restructuring is an opportunity to make a fresh start, by resourcing the clean-up of the toxic derelict site and payment of fair compensation.

**Heidi Jokinen**

Åbo Akademi university, Finland

**\*Martin Wright** has been director of the Howard League for Penal Reform and policy officer for Victim Support. His PhD at the London School of Economics was on the development of restorative justice, published as *Justice for victims and offenders* (2nd ed. 1996). He was a founder member of the European Forum for Restorative Justice, and the (UK) Restorative Justice Consortium. He has been a volunteer mediator in Lambeth, south London, and with CALM Mediation Service in west London. He is joint editor (with David Cornwell and John Blad) of *Civilising criminal justice: an international agenda for penal reform* (2013). In 2012 he received the European Forum's European Restorative Justice Award.

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<sup>48</sup> For more information about Action Bhopal see the slide-show on [www.youtube.com/watch?v=hh7zgKoS-qw&feature=youtu.be](http://www.youtube.com/watch?v=hh7zgKoS-qw&feature=youtu.be) and visit the website <https://actionforbhopal.org/#how-you-can-help>. People interested in Bhopal might also read the novel 'Mother and child' by Annie Murray (part of the story-line is about the gas tragedy).

# Environmental activism and social media: the #NOTAP protest

Anna Di Ronco

I was born and raised in a very small village on the Alps in the north east of Italy, at the border with Austria and Slovenia. Coming from the mountains, I have always loved going to the south of Italy for the better weather and the amazing food! Before starting to develop an interest in the NOTAP protest, however, I had never been to Puglia. Puglia is an extremely beautiful region in the south-east of Italy, right in front of Albania. This region is mostly famous for its olive trees landscape and the crystalline waters (and, of course, for the renowned hospitality of people, which I had the pleasure to experience myself most recently).

Since I have moved to England from Belgium three years ago after my PhD, I have started being more active on social media mainly for professional (and then research) purposes, and using Twitter in particular (although I would still consider myself a timid, and rather lazy, Twitter user). It is at this point that, for a number of fortunate circumstances, I started 'seeing' what was happening in Puglia—something that was not covered by mainstream national media. I am using the verb to 'see' here for a reason, as my interest at that time was sparked by the sight of a number of pictures on Twitter depicting clashes between police in riot gear and civil society.

These pictures stimulated my criminological imagination and interest. What was happening in Puglia? Why were people protesting and confronting the police? Why are the police being violent against protesters, as the pictures and other visual material on Twitter seemed to suggest? These questions marked the beginning of the research journey into the #NOTAP protest, which led to a project (still ongoing, funded by British Academy/Leverhulme Trust Small Research Grant) and to the publication of one journal article with my colleagues James Allen-Robertson and Nigel South from the University of Essex.

## What is going on in Puglia?

People in Puglia are protesting against the building of the so-called TAP pipeline—a pipeline that aims at bringing gas from Azerbaijan to Europe through Italy. To capture the reasons why people oppose the laying down of the pipeline, we collected #NOTAP tweets through the setting up of a 'Listener' tool, which utilized Twitter's streaming API, allowing the tool to monitor for and collect Tweets in real-time. Running 24 hours a day on a remote server, the Listener could ensure that we collected a comprehensive dataset of tweets during the collection period, which—at first at least—ran from June to August 2017.

We then extracted and analysed original tweets from the dataset, including all their embedded material (e.g., hashtags, text, images, videos, and links to YouTube Videos and newspaper articles). The results of the analysis illuminated some important points of the fight against the TAP pipeline, which are still quite neglected in Italian dominant media and public discourses. These findings were further corroborated and enriched by the many interviews I had with #NOTAP activists earlier this year, when I went to Melendugno at the pipeline's landing point in Puglia, and by the larger Twitter dataset we collected from October 2018 until June 2019. In the next paragraphs, I will summarise what activists think about the pipeline and their opposition to it as resulting from our two research projects.



*Image of olive trees in Puglia @Anna Di Ronco*

## Why #NOTAP?

As one of my interviewees put it, the pipeline is “useless, harmful and dangerous”. Among others, activists think that the pipeline is *useless* for it not going in the direction of reducing EU dependence on fossil fuels and of increasing the use and production of renewable energies (if anything, it also does not seem to provide enough gas to satisfy the EU annual demand for it).

They also consider the pipeline *harmful* to the environment, the local economy, and people’s health. In particular, the pipeline relies on the removal of thousands of olive trees (many of which are century-old) around the construction sites until the connection of the pipeline to the Italian gas grid (55 km north of Melendugno). This has negative repercussions on the local economy, which is very much based on the cultivation of olive trees and on the production of olive oil. Olive trees also bear a symbolic meaning to the locals: they are described as “our grandparents, our fathers”<sup>49</sup> and “our history” (interview).

Many of these trees are also affected by xylella, an untreatable bacterial disease which—many activists think—was “invented” by the TAP company and/or by Monsanto. Regardless of the culprit, the fact that many trees are affected by this disease facilitates the work of TAP, which can remove and dispose the diseased trees, instead of replanting them after the pipeline’s construction, as promised and required by law.

Activists also think that the pipeline will affect local tourism, which is another crucial source of income for the region, and impact on people’s health, not least because the Pipeline Receiving Terminal (PRT)—which experts consider at risk of explosions—will be located in the municipality of Melendugno and very close to its residential core. In general, the TAP pipeline is seen as a project that does not bring any benefit to the local community; it rather represents for activists the interests of a “criminal” and “shady” corporation allegedly colluding with the government, authoritarian regimes (Azerbaijan in particular), and Italian organized crime groups. People in the area (including local authorities on behalf of the citizens) have refused any compensation offered by the TAP company and the government. They are fighting for their children, their land, their future.

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<sup>49</sup>For the Italian speakers, see <https://www.youtube.com/watch?v=rwScwfZMlzl&feature=youtu.be&a=>

## What is #NOTAP?

NOTAP is a peaceful and inclusive protest. Families with children, old and young people, have all taken part to the many events and actions organised by the NOTAP Movement and other associations fighting the pipeline in the area. Events have included discussion meetings, 'resistant' lunches and breakfasts at the TAP construction sites, buskers' performances and concerts, flash mobs, info desks at events and along promenades attended by locals and tourists, and book presentations.

Activists also daily monitor the construction sites to oversee the company's activities and progress, and identify possible violations of laws and regulations, which are immediately uncovered by them through social media. Strategies adopted by activists have mostly relied on information dissemination through social media, but also on legal actions challenging the lawfulness of the pipeline and its construction.



*Image "symbol" of the protest<sup>50</sup>*

<sup>50</sup> This image depicts children pushing a TAP truck carrying uprooted olive trees away from San Foca (Melendugno). The image has been retrieved from: [https://bari.repubblica.it/cronaca/2017/04/08/news/salento\\_no\\_tap\\_la\\_marcia\\_delle\\_mamme\\_con\\_i\\_bambini-162480602/](https://bari.repubblica.it/cronaca/2017/04/08/news/salento_no_tap_la_marcia_delle_mamme_con_i_bambini-162480602/)

Since the start of the NOTAP protest, people feel they have become more aware of environmental issues and more united as a community. They feel much less confident about the state and its law enforcement apparatus, which has heavily criminalised them. In addition, they have come to deeply distrust politicians, especially the populist 5Star Movement who had promised them to stop the pipeline had they won the elections in March last year—they eventually won the elections, and have run the government ever since (in coalition with the Northern League at first, and most recently with the Democratic Party), but have given a green light to the pipeline.

## Harsh police repression

NOTAP activists have been harshly criminalised by the police since the start of the protest. They have received very high fines (up to EUR 3,500), have been beaten up and humiliated during arrests, have been charged for various ill-substantiated offences (including vandalism, traffic block, use of force against public officials, possession of dangerous weapons, or trespass) and have been banned from certain towns or areas mostly for having spoken at public gatherings.



*Militarised construction site in San Foca (Melendugno) @Anna Di Ronco*

Around militarised construction sites, police systematically check people's ID and videotapes everyone who gets close to them (including me!). Construction sites in

the countryside are indeed surrounded by high fences and are surveilled through CCTV cameras and police patrols (which are carried out both by public and private police).

Most of the activists I have talked to also said they are quite sure they are wiretapped, and have their social media accounts under the close surveillance of the police and the TAP company. Many activists have spotted police around their home and work places and feel insecure in their homes at night. Many also feel constrained in their movements as they have been banned from certain cities (like Melendugno and San Foca, and Lecce, which is the provincial capital), or are constantly stopped by the police in every part of Italy they go. Many young people have pending criminal charges, which also reduces their employability in a region where unemployment levels among young people are already very high.

## The way forward

“Our greatest weapon is definitely information,” is what one NOTAP activist told me during my fieldwork. Since I have been interested in the NOTAP protest, I have frequently asked myself what I can do to help NOTAP activists in their fight against this unwanted pipeline. I still haven’t answered this question, and struggle every day negotiating my academic and activist identities. My most sincere hope is that our research contributes to informing the public about what is currently happening in this beautiful part of Italy, and helps uncovering state and police abuses and violence.

I invite everyone to follow this protest more closely on social media: Twitter (@PresidioNoTap) and Facebook (Movimento NO TAP)<sup>51</sup>! I also recommend these 2 videos<sup>52</sup>: one summarises the reasons why activists say NO to TAP; the other is a song that addresses the meanings of ‘land’ and ‘earth’—two concepts that have helped activists connecting with many environmental struggles around the world, including that of the Sioux tribe against the DAPL pipeline in North Dakota (US) (the song’s title is ‘We are all Sioux’ )! Enjoy them and please share them with your friends!

**Anna Di Ronco**

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<sup>51</sup> [https://www.facebook.com/MovimentoNoTAP/?ref=br\\_rs](https://www.facebook.com/MovimentoNoTAP/?ref=br_rs)

<sup>52</sup> <https://www.youtube.com/watch?v=cSEZ1yn4iGo&feature=youtu.be> (in English)  
<https://www.youtube.com/watch?v=K0jsArLUAAo> (English subtitles)



# Voice of Nature: the trial

## Re-storying environmental justice

Maria Lucia Cruz Correia

This research for *Voice of nature: the trial* started in 2016, when many countries in Europe started to question their willingness to honour the Paris Agreement, formulated during the Climate Change Conference in 2015. Most of the countries accepted and signed this protocol; however, there was no strategy that could ensure international compromises to provide a clear framework to reduce fossil emissions to counteract the effects of climate change.

At that time, it was clear to me that we need new tools to prevent more harm and destruction of the ecosystem, to reinvent the current environmental legal system. Despite a few movements to hold governments accountable, such as Urgenda, Klimaatzaak and Eradicate Ecocide by Polly Higgins; yet, back then, there was only one country in the world with the rights of nature in the constitution — Ecuador, and no country in the world has declared ecocide as the fifth missing crime in the Roman Statute.

As a citizen I couldn't interfere directly. Some important questions I asked were:

- *Who is there to blame or even to restore? Governments, corporations, consumers?*
- *Is there a legal framework to hold perpetrators accountable for environmental crimes?*
- *How can we repair or prevent more harm?*
- *And how can non-human entities such as a mountain or a river stand legally in court?*

Thus, this research was an attempt not only to unveil the layers behind environmental colonialism, extractivism and violent occupations of territories that leave entire communities without a home, but also to propose a new type of justice, a justice where the ecosystem is central.

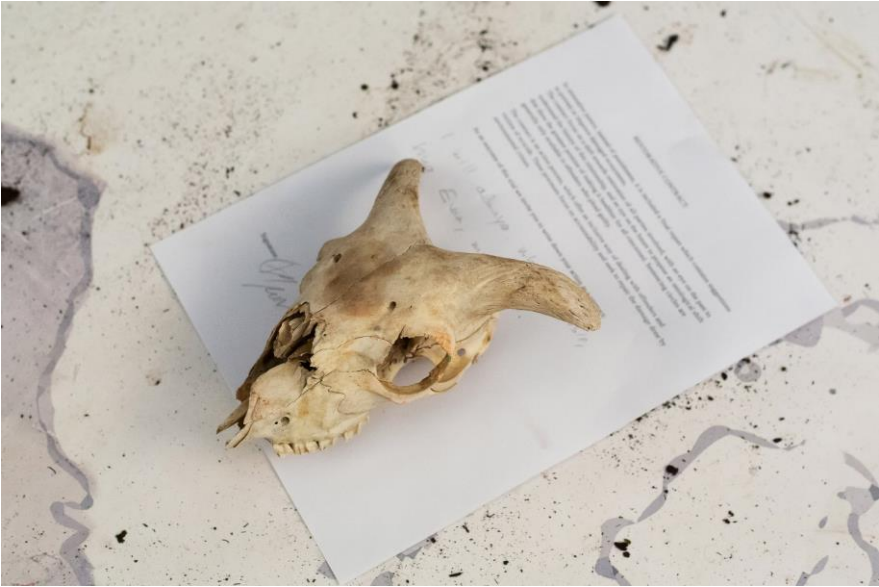
As an answer, I have initiated the project *Voice of nature: the trial*, a site-specific court piece, shown for the first time in the old court of Ghent in the context of the Same Same But Different festival with the support of the Vooruit Kunstcentrum.

This performative trial is an attempt to rethink environmental justice in which we investigate ecocide and the possibilities of creating a new proposal for western views on the justice system as a form of juridical innovation. We experiment with the interconnectedness of a conventional court and restorative justice systems and how it can serve the ecosystem by proposing a new type of 'restorative contract,' in which humans and non-humans could eventually come to a collective reconciliation.

Back then, when I discovered restorative justice as one of the most inspiring processes to help us dealing with the harm of such a complex concept as ecocide, I felt hopeful again.

Together with Ingrid Vranken as dramaturge, and Brunilda Pali, a postdoctoral researcher at the Leuven Institute of Criminology, we designed a Restorative Contract where we try to offer the audience a 'level of agency' by creatively contributing to the resolution of the case by restoring the unbalanced relationship with non-humans. The contract aims to inspire political action and restoration as a form of reconciliation and duty.

The public is invited into a restorative ritual where together we make a contract to repair the harm between "us" as nature and perpetrators and others than human entities. The selection of natural objects which are circulating around are appealing to an emotional materialism which evoke memories and provokes political actions.



*Entering into a restorative contract. Photo: Mladilevi@NadaZgank*

The difference in this type of sentence relies on the relocation of agency and therefore empowerment from other than humans to the spectator. This somehow prepares the audience to step into a council of all beings by opening their hearts to hear the voice of nature in them. The contract resulted in personal commitments, from small actions to long-term statements, from planting trees to not having a child; from civil disobedience to stop taking planes as a life commitment; from gathering with wolves to lobbying against corporations; from being nude more often to political protests.

But how can we as individuals keep our promises? To anchor this shift the legal system must grant non-humans legal rights as equality to humans, which is a profound cultural and legal shift in terms of how we relate to and interact with our habitats. However do we know enough about the realm of other than humans and can we speak on behalf of a river?

The legal procedures to become a guardian of nature are still non-existent and, so far, only two countries (New Zealand and Ecuador) have adopted legal measures to ensure protection of non-human entities.

In legal terms, a guardian of nature corresponds to representing entities that cannot speak for themselves. Between humans, a guardian may represent a child or a mentally disabled person in court. For other than human beings, an expert could be talking in their interests as a guardian.

To be a guardian means to ensure a cosmological view of people as part of nature, not separate nor above it. The legal recognition, includes jurisprudence and earth law but recognizing the cosmology of ancestral nature and the invisibility of the physical and metaphysical elements of the natural world. The appointment of a human to be an official guardian recognizes “the inseparability” of the people, the mountains, the rivers, the sea or forest, respectively, as well as the responsibilities inherent in that relationship for taking care of them as part of their kin. In this sense, these examples emphasize the responsibilities to nature more than nature’s rights.

Custodianship is living from a place of reciprocity and equality with ecosystems community human or non-human therefore a guardian should be able to articulate a relational jurisprudence, and formulate arguments to defend laws for equitable, reciprocal and balanced relationships with non-humans<sup>53</sup>.

**Maria Lucia Cruz Correia**

Artist and Environmental Researcher, Portugal/ Belgium

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<sup>53</sup> [http://voiceofnatureinstitute.org/environmental\\_justice/legal-procedures](http://voiceofnatureinstitute.org/environmental_justice/legal-procedures)

# Anthropocene: What could art do for the environment?

Alice Trioschi  
Nicolo Cermenati

Restorative justice is an approach oriented to repair, as far as possible, the harm caused by a crime or another relevant transgression. From its birth, this method has changed greatly and it has been applied in other fields such as family disputes and environmental conflicts.

Restorative practice has found a very fertile ground in environmental matters, since they encompass the concept of restoration and damage reparation. The E.U. has also demonstrated its sensitivity to this subject: the European directive 2004/35/CE<sup>54</sup> disposes some actions and specific previsions to prevent and remedy environmental damage.

However, it is still difficult to share a common definition of “environment” and to detect its main interests. Indeed, the environment could be identified as a non-physical and speechless entity. Therefore, it may be hard to establish its interests, represent them and find who is liable for damaging them. Furthermore, are we sure that those recognised guilty by the law are the only ones responsible? Are we convinced that damages such as the ozone hole or climate change can be repaired?

Environment speaks through facts: pollution, natural catastrophes and extinction. Some of us are unfortunate enough to experience them directly, while others might need to be informed of their existence. Common sensibility is unstable and subject to change: it is often interested in scandalous news catching its attention and reaching its conscience. Therefore, media play a big role by photographing environmental degradation and amplifying the shock effect for their spectators and

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<sup>54</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

readers. They take a side on controversial disputes and influence people's viewpoint while fostering the spread of fear and concern.

What can art do for the environment? It can be a different and efficient way to give it a non-filtered voice taking the opposite path and slowing the information system down. It could act as a mediator, speaking through metaphors and allegorical language to give people objective information. Art can help the population to think about a specific subject, while offering a variety of pictures, videos, and high-resolution images. Sometimes art can hurt people's feelings; sometimes it can provoke them; and sometimes it can raise their awareness, altering their perception and pushing them to action. These goals are similar to the ones of mediation.

A recent example of this practice is "Anthropocene"<sup>55</sup>, an exhibition organized by the MAST Foundation<sup>56</sup> in Bologna. Here, the artists Ed Burtynsky, Jennifer Baichwal and Nicholas de Pencier make the spectators reflect on the concept of "Anthropocene", a term derived by the Greek word "ἄνθρωπος"<sup>57</sup> and introduced in the 2000s by the Dutch chemist Paul J. Crutzen. The project was created on the researches of the Anthropocene Working Group (AWG).

According to their theory, the geological era in which we are living is influenced by the exploitation of natural sources by the humankind. The unnatural development of our lands, the pollution of water and death of species would be a consequence of the human footprint on Earth. Therefore, the artists decided to investigate different kinds of exploitation, such as extraction, climate change, extinction and techno-fossils, gifting the spectators with a variety of photography and videos.

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<sup>55</sup> The term "Anthropocene" could be defined as the current geological age, in which human activity has a dominant impact on climate and the environment.

<sup>56</sup> Further information about "Anthropocene" can be found here: <https://anthropocene.mast.org/en/exhibition/>.

<sup>57</sup> The ancient Greek term "ἄνθρωπος" (andrōs) means "man".



*Edward Burtynsky, Oil Bunkering #4, Niger Delta, Nigeria, 2016. Courtesy of MAST Foundation*

The result is a worrying picture of the current environmental situation, globally widespread. From Asia to Europe, from Africa to the Americas, only a few places still look untouched, such as the coral gardens of Komodo archipelago and the forests in Vancouver Island. Here, the artists help us to understand these damaged realities both mentally and emotionally to make us reach our own opinion.

A second example of the relationship between art and the environment can be found in the work of Olafur Eliasson<sup>58</sup>. In 2003, the Danish artist created "The Weather Project"<sup>59</sup>, transforming Tate Modern Turbine Hall into a huge, misty indoor solarium with an urgent ecological message about global warming. "I don't want to use a fear-based narrative", confessed the artist, "but we are living in a climate emergency. A lot of the work deals with the experience of nature, the atmosphere, or ecology, and now these things have been weaponized"<sup>60</sup>. His message is clear: "We need to re-imagine and re-engineer the systems that brought us to where we are. We need to take risks. We don't have a choice. The future has to be different from the past."

<sup>58</sup> <https://olafureliasson.net/archive/artwork/WEK101003/the-weather-project>

<sup>59</sup> "The Weather Project" is an exhibition created in 2003 by Olafur Eliasson for Tate Modern. The artist created a site-specific installation using a semi-circular screen, a ceiling of mirrors and artificial mist to create the illusion of a sun.

<sup>60</sup> Javier Pes, *We are living in a climate emergency : Olafur Eliasson on How He's Using His Tate Modern Show to Combat Earth's Greatest Crisis*, on Artnet, July 9, 2019.



Olafur Eliasson, *The Weather Project*, 2003 Courtesy of Olafur Eliasson

Going back in time, *Land Art*, an artistic current born in the US at the end of the sixties, is another interesting example of art acting as “mediator” for the environment. The movement was inspired by a futuristic novel by Bryan W. Aldiss. In the book, natural resources are extremely rare because of human pollution. Land artists seek a reconnection with nature in opposition to our cold and artificial metropolis. They often use elements taken from Earth, such as rocks, sand or gravel to create installations directly integrated with the environment that develop and change in time. One of the key concepts is that the nature is the real subject of their work: mankind is only a temporary inhabitant of our environment.

Examples can be found in the work of Richard Long. “*A line made by walking*” (St. Martin, 1967), a picture of a line created by the artist while walking in a grass field, represents one of the first land artworks. Similarly, the artists Christo and Jeanne Claude offer a number of different projects, such as “*The Floating Piers*” (Lake Iseo, 2016)<sup>61</sup>, wrapping elements of nature and the city. Once again, the attention of the observer is taken to the environment and its exploitation.

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<sup>61</sup> “*The Floating Piers*” is a site-specific installation created in 2016 by Christo and Jeanne Claude on Lake Iseo. The artists used 70.000 sq. Meters of nylon fabric to build piers floating on the lake, which allowed visitors to “walk on water”.





*Richard Long, A line made by walking, 1967. Courtesy of Tate Liverpool*

Finally, a different use of art for the environment can be found in *eL Seed*. The French-Tunisian Artist is famous for using Arabic calligraphy to spread messages of peace, unity and find common threads between different cultures. In 2016 the artist chose the *Manshiyat Nasr* district in Cairo to realize one of his most ambitious projects: “*Perception*”<sup>62</sup>. The neighbourhood is known for being home of the Coptic community of Zareeb, which collects the garbage of the city but is still neglected by most of its inhabitants. eL Seed created an artwork covering fifty buildings and visible from the highest part of town. The piece uses the words of Saint Anathasius of Alexandria: “Anyone who wants to see the sunlight clearly needs to wipe his eye first”. In this case, the artist shed a light on the district, not only bringing “art” and “beauty” but mainly altering the perception people had of that community. Here, art should question our assumptions and judgements of a specific social environment, leading us to accept differences.

<sup>62</sup> For further information about the projects, please see <https://elseed-art.com/projects/perception-cairo>.



*eL Seed, Perception, 2016 Courtesy of eL Seed*

In conclusion, we could say that restorative justice has gone far beyond the instrument of mediation, extending its definition, including new methods and field of interests. As seen in this article, art can facilitate a specific message, stimulating emotions and an introspective dialogue, awareness of facts and accountability on what we can do to improve a damaging situation. Therefore art has become a strong vehicle, and can be defined a “proper mediator”, used to promote awareness and responsibilities in the environmental field.

**Alice Trioschi and Nicolo Cermenati**

ADR Art and ADR Environment Projects of Milan  
Chamber of Arbitration, Italy

# Interview with Luca Berardi

Silvia Randazzo

In this interview, Luca Berardi\*, a young conservationist active for almost a decade in combating climate change, makes us reflect upon the importance of this battle and calls us all to immediate action.

## Hi Luca! Can you tell us about your role in the movement for the climate?

My name is Luca Berardi, I am 16 years old, born in Italy but I live in Sweden. I love music, acting in film, writing, and wildlife. When I was 8 years old, I started an organisation that aimed to raise awareness about the importance of biodiversity and wildlife issues. I've done this for a number of years now, by using different platforms, such as workshops in schools, TEDx Youth Talks<sup>63</sup>, my own books that I write about these issues and also as a speaker at climate-related conferences. For two years, now, I've also been a member of the jury for the Children's Climate Prize<sup>64</sup> which seeks to reward those young individuals that are really making a big difference in communities. So, it mainly has to do with raising awareness about biodiversity, which is my passion!

That is why I have always called myself a "conservationist". I love wildlife and animals, and so over the last few years I realised that if I wanted to do anything related to wildlife I had to go into conservationism: wildlife and biodiversity as a whole need protection from all the pressure that humanity is posing on the planet. So yes, I would define myself a conservationist, because I love wildlife and I want to see it protected!

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<sup>63</sup> <https://www.youtube.com/watch?v=957X1CY1fPM>

<sup>64</sup> <https://ccprize.org/>

## **How did your interest in environmental issues arise, do you remember what made you have the “click”?**

I was 8 and we had just moved to Kenya, and of course that opened a whole new world for me as I was now close to the wildlife that I had for a long time only seen in books and documentaries. I started reading a lot of books, learning about all the problems that animals face, and there was one specific book about endangered mammals. That really made me “click”! I realised I didn’t want to live in a world where there wouldn’t be wildlife anymore to admire or where some animal species wouldn’t be able to survive, so I decided to do something. I kind of drafted my plan of action and set up an organisation, and I have still been trying to go back to the idea that I had when I was 8 years old: I want to preserve the natural heritage that we have. The organisation, called Young Animals Rescue Heroes (Y.A.R.H.)<sup>65</sup> unfortunately is not as active as it was when we lived in Kenya, but I’m trying to set up one here, in Sweden, so that we can continue working on these issues.

## **Why do you believe it is so important to keep this action alive?**

Well, if we are searching for victims of climate change, we really do not have to look far. My grandmother in Kenya, for example, told us recently that for the first time in living memory, the rivers fed by Mt Kenya’s glaciers were getting dry, putting additional pressure on populations that are heavily dependent on agriculture and – as a result – on water for crop irrigation. Now the rain has come back, but there are so many people who live in poor areas of the world whose basic needs, such as water, are endangered and who are and will be greatly affected by climate change. Marginalised communities and indigenous people are the victims now and of what is to come. And of course, animals, coral reefs... we are getting so many signs from nature that we have to do something. After all, as humans, we are the only species that can actually do anything about this problem, so we should. That’s why it is worth keep fighting: we simply have no other options.

## **What would you think would work as a “reparation” of environmental harms?**

I still believe there is time to change and to repair the harm done. It is not going to change overnight; it will be a gradual change and the environment is going to need time to recuperate all we have done. But everybody, companies and individuals, has

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<sup>65</sup> <http://yarahkenya.blogspot.com/>

a crucial role and we all have to make drastic changes to avoid the most devastating impact of climate change. Options are changing business models for companies, shifting them to be more sustainability-centred instead of profit-centred. All the choices that individuals make are all things that can change. We still have time, but the window of opportunity is closing. We have to act fast.

### **Since you mention companies and individuals' actions, what concrete initiatives do you think should be taken?**

The first key thing that I think is crucial is collaboration, between companies, individuals and governments. To give you an example, in my community, in Lund, the municipality recently set up a Council for carbon and green-house gas emissions. They are trying to understand how much, over time, is emitted by the city and how they can find different ways to reduce the current amounts, e.g. by collaborating with Lund University<sup>66</sup> to find innovative solutions. This is a model that can be replicated in different places. As I said earlier, shifting business models is crucial, as well as the choices we, as individuals, constantly make: food, transportation, where we get our energy from... all these really go a long way towards creating the world of tomorrow.

### **Do you feel like these actions would do justice to the victims of environmental harm?**

Well, when you think about justice, you need to think of the huge number of people and beings that are affected by climate change. There are certainly people who deserve justice more than others, because of the difference in the impact of climate change and the huge divide between so-called developed countries and developing countries. Poor nations are in fact often affected disproportionately by climate change in comparison to richer countries: poor nations are going to be affected massively by warming temperatures and rising oceans levels, and they won't be able to adapt as effectively as richer countries. I was looking just yesterday at the Climate Watch Data website<sup>67</sup> and it really strikes me to see how a country like Bhutan, for example, is carbon-negative in their emissions, and other very small and poor countries are on the frontline when it comes to the effects of climate change. But then you ask yourself: what could they offer more? Should we really ask them to do

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<sup>66</sup> <https://www.cec.lu.se/>

<sup>67</sup> <https://www.climatewatchdata.org/>

more? What I think we need for justice to prevail is instead for the biggest emitters of carbon dioxide and other green-house gases to do much more.

On the other hand, there is certainly a kind of philosophical component to this question about justice. If we do change the world for the better and in the long run we make the world a better place for future generations, at the cost of the suffering of people today, then whose justice is that? Is it justice for the people of tomorrow? Who deserves "more" justice, really? It is indeed a very complex matter, and maybe we can leave it to the reader for further reflection.

### **On a different note, as a young activist, do you think that you and the whole movement are taken seriously enough?**

When I was starting up my organisation in Kenya it was very hard to get partners to work with us. Initially, it was mostly me and my family. We were just trying to go around sensitising people about recycling projects and something of this sort. At first it was really, really hard to get any interest, and of course, because I was a child, "what would I know?". But as time went on and I did more and more projects and I got more and more visibility, people learned what I was doing, and I think they started being a little bit more approachable. I think that is the thing: at first, adults have the tendency to underestimate young people and what they can actually do, but if you surprise them, if you are able to get them on your side, then adults can be very supportive and they actually become a driving force. For example, look no further than the past year to the climate strikes, which now involve not just young people but also their families and other adults, including in my city, Lund. So yes, adults are not just being more supportive, but they are joining us in this action, they are becoming more and more involved, which is great!

### **Can you tell us what are your plans, commitment and future steps?**

I plan to continue writing books on these themes, I have the idea for writing six more! The first one was "The Breakout"<sup>68</sup>; it is the first in a series, so the next six books are going to be a continuation of the adventures of the main characters, two brothers, who are engaged in saving endangered species and combat poaching. Of course, I plan to continue to talk in schools and hopefully inspire other young people by saying "yes, hope is important, but action is far more crucial now"! I also plan to

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<sup>68</sup> [https://books.google.be/books/about/The\\_Breakout.html?id=i33DugEACAAJ&redir\\_esc=y](https://books.google.be/books/about/The_Breakout.html?id=i33DugEACAAJ&redir_esc=y)

partner with other young people; for example, with the help of the Children's Climate Prize I would like to support many young people I have seen from all over the world doing incredible things. I am actually working to create a platform to engage them and share ideas and innovative solutions. The platform will be called "Ecoskope" and it is hopefully going to be something that a world of young innovators and young change-makers can make use of.

But what I hope and intend to do: continue with this fight!

### **To conclude, in a few words, what is your message to the readers?**

We are all in the same boat, climate change affects us all: we must act now and do something, because no one else will. We are used to think that there is always going to be someone else to fix a crisis or a problem, but well... no, not for this one!

**Silvia Randazzo**

PhD researcher at KU Leuven

*\* **Luca Berardi** is the founder of Young Animal Rescue Heroes (Y.A.R.H.), an organisation that raises awareness of endangered wildlife and environmental conservation and is the winner of the 2018 Environmental Award of Lund Municipality (Sweden) and the 2018 WWF Sweden's Environmental Hero (Youth). He is the author of the book "The Breakout" (published on Amazon) and is a Jury Member of the Children's Climate Prize – Sweden (2018/2019).*

On the occasion of the international Restorative Justice Week, which takes place every year at the end of November, the European Forum for Restorative Justice always celebrates the annual achievements and explores new horizons in the field of restorative justice. In 2019 the EFRJ has explored the intersection of restorative and environmental justice. It contacted practitioners, activists, artists, young people, scholars and scientists committed to restorative principles and practices as ways to do justice in harmed environments and communities affected by environmental harm and gathered innovative and inspiring practices that use restorative justice to understand and respond to environmental harm.

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