

BOOK REVIEW WITH A FOCUS

Environmental restorative justice: towards public forums for truth-telling and restoration?

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1 Introduction

In recent years, numerous publications have appeared on environmental damage, pollution and the potential role of restorative justice in addressing those. Many researchers and theorists advocate for expanding the scope of restorative justice in this direction, with the unfolding climate crisis playing a significant role in driving this discussion. In this 'Book reviews with a focus', we examine three recent publications on environmental restorative justice. First, I focus extensively on *The Palgrave handbook of environmental restorative Justice* (Pali, Forsyth & Tepper, 2022), with the following sections functioning more as a discussion paper than a traditional book review. This is followed by two additional book reviews written by colleagues from Brazil and Spain. The first discusses *Restorative justice and the environment*, edited by Carla Zamith Boin Aguiar, João Salm and Katia Herminia Martins Lazarano Roncada – a collection of essays that can be seen as an extension of the *handbook*. Finally, a Basque study by Gema Varona Martínez is reviewed, which explains why criminal justice approaches to animal cruelty and environmental crimes are often inadequate and why the use of restorative circles offers greater potential. We recognise that new publications on this theme continue to emerge. For instance, as we were finalising these three book reviews, another relevant work came to our attention: 'Strategies for building socio-environmental peace: restorative justice',¹ by Brazilian authors da Silva Neto and Medeiros (2023), further underscoring the growing body of literature on environmental restorative justice.

2 The handbook

Things have moved quickly. A workshop in Leuven may have kicked things off (Biffi & Pali, 2019), and two years later, *The International Journal of Restorative Justice* devoted an entire special issue to the topic (Pali & Aertsen, 2021). Some initiatives preceded these, including the European Victims and Corporations project (Aertsen,

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1 The original title in Portuguese is 'Estratégias para a construção da paz socioambiental: justiça restaurativa'.

2018) and a study of environmental crime in New Zealand (Hamilton, 2021). Then, in 2022, *The Palgrave handbook of environmental restorative justice* was published, to which this essay is dedicated. This handbook contains 26 chapters and offers extensive insights into the possibilities and limitations of this emerging offshoot of restorative justice. It has been a real *tour de force* to bring together 47 committed authors, outlining diverse perspectives, ranging from green-criminological reflections and legal-theoretical contributions to accounts of restorative justice practices related to environmental crime. The book also devotes considerable attention to neocolonial political-economic practices in the 'Global South'. The increasing demand for raw materials in the Global North, such as lithium, cobalt and nickel, has triggered a wave of risky mining activities in the southern hemisphere. Other extractive activities, such as industrial fish farming, large-scale forestry and monocultural agriculture, also produce many negative impacts on rural communities and Indigenous peoples. Their struggles often go unnoticed and unexposed, and some of this is illustratively brought to light in this book.

The handbook opens up entirely new areas of work for restorative justice, immediately raising the question of whether the restorative justice movement should focus on fighting environmental pollution or countering the climate crisis. Recently, Lode Walgrave (2023) commented extensively on the ambitions to stretch the contours of restorative justice, questioning whether it risks diluting its core aims and principles.

In the context of this handbook, some authors advocate for negotiating with CEOs of mega-corporations, even if their reputations are questionable. This, too, raises questions: Does this risk sidelining the need for recognition among victim groups? Do large corporations fit within the moral framework of restorative justice, in which perpetrators are expected to admit guilt and apologise? I will argue that restorative justice is quickly rendered powerless in this context and that 'negotiation' sometimes becomes a parody of true restorative justice. In addition, mega-corporations often operate as quasi-sovereign superpowers, continuing harmful actions with impunity. In this light, we may be more reliant on civil disobedience, with Extinction Rebellion serving as a model (van Stokkom, 2023). For now, though, civil disobedience seems to be a blind spot in restorative justice thinking, perhaps because many view the use of pressure and coercive methods – such as occupying buildings – as objectionable.

The handbook also offers innovative impulses to the restorative justice movement. Some authors note that, due to the confidentiality of discussions, mediation often has little public impact, while many victims – and sometimes entire communities – have experienced environmental damage. It therefore seems useful to explore public venues where victims can openly recount their painful experiences, perhaps without (immediately) entering into dialogue with representatives of the offending organisation. In cases of ongoing and massive damage, where the company is reluctant to disclose information, this approach could offer many opportunities. How might we further shape this? Perhaps forums focused on truth-telling could provide a solution.

I begin by outlining the possibilities and limitations of environmental restorative justice and address some criticisms, including those from criminologist

Rob White (section 3). In the fourth section, I discuss the proposal to negotiate with executives of large polluting companies, arguing that it may be more appropriate to first denounce the climate obstruction caused by many multinationals and then develop countervailing power. In doing so, I highlight the differences between restorative justice and civil disobedience. In section 5, I explore possibilities for an alternative format of restorative justice: a public forum focused on truth-telling and restoration.

3 Environmental restorative justice: opportunities and limitations

3.1 *Prevention and restoration*

In their introductory contribution, Miranda Forsyth, Brunilda Pali and Felicity Tepper point out that a justice-as-usual approach to environmental crime is seriously flawed. Enforcement actions against serious environmental pollution rarely lead to positive outcomes, with little attention given to prevention and restoration.

Even if compensation for harm is finally paid (on the assumption that money somehow fixes dead fish, polluted land, or cancer), often it is delayed for years, fails to account for trauma to people, communities and other species, and lacks genuine apologies or evidence of a true understanding of the harm done (2).

According to the authors, environmental restorative justice has more to offer. Its core purpose is to prevent environmental damage and restore habitats and ecosystems. That approach is based on 'relationality', with great attention to the interests of non-human nature and future generations. The authors link massive environmental damage to the systematic exploitation of land, water and forests, and an excessive reliance on the inevitability of technological progress. Such expansionism is detrimental to the life-world and culture of local communities. Epistemic injustice occurs when local ways of knowing, perceiving and experiencing are disregarded. It is therefore important to address power and knowledge inequalities.

According to Forsyth, Pali and Tepper, companies are unlikely to readily accept accusations from victims groups that they are responsible for the damage done:

Many companies still fail to perceive themselves as offenders or refuse to do so, especially when their actions do not strictly speaking violate the law, and when they can budget for or pay their way out of offending (17).

The authors question how to bring these companies to the table. What should be done if they are not legally liable? And what happens when a company relocates abroad or merges with another company or conglomerate? An important consideration is the type of companies involved, in terms of scale, assets and reserves, viability, organisational form and connection to the local community.

Despite these challenges, the authors believe that even in the context of ‘crimes of the powerful’, restoration and prevention can offer solutions.

Mark Hamilton’s contribution perhaps provides the clearest understanding of what environmental restorative justice seeks to achieve (see also Hamilton, 2021). He describes the state of affairs in New Zealand, where policy and legislation create opportunities for restorative justice approaches to address environmental damage. In the cases he discusses, the companies involved were willing to take responsibility, engage with the local community and remedy the harm caused. These were typically small and medium-sized businesses, including waste handlers and construction companies. However, if during preliminary discussions these companies insist on soft options – such as cooperating only to avoid conviction or keeping reparations and compensation minimal – no meeting will take place.

3.2 Power inequality

Criminologist Rob White agrees that there is an important role for environmental restorative justice in bringing about behaviour change among individual offenders and smaller businesses that are approachable and that do not see themselves as victims of the system. There are opportunities here to provide tailored solutions for the prevention of environmental damage. However, according to White, power imbalances between large companies and victim groups, along with the lack of regular oversight of polluting companies, are major obstacles. Large international corporations focus on profit maximisation, which makes them inherently criminogenic. They employ their own lawyers to avoid prosecution and trial, often escaping with a large fine or settlement. In effect, they manipulate the legal system, and many companies manage to operate with impunity throughout.

According to White, in this context, deterrence strategies are necessary to achieve reparation. Repairing harm can be imposed on corporate offenders without necessarily requiring consensual agreement or conferencing (White, 2017). He refers to this as ‘reparative justice’ for large corporations and conglomerates:

Reparative justice ... addresses this key issue of power by deploying measures designed to hurt the reputation, economic bottom line and/or resource allocations of these entities, such as publication orders, enforced remediation plans, stop-work injunctions and fines scaled to the size of the organization (40).

Many supporters of restorative justice may interpret this as a tougher criminal justice approach. But according to White, the priority should be to stop the trivialisation of environmental damage. He thinks confronting large corporations and government organisations is too low on environmental restorative justice’s agenda. For repeat offending companies, a specialised court with extensive knowledge, expertise and experience could be the answer. Such a court could impose sanctions tailored to the size and activities of the corporation. Environmental restorative justice, therefore, has its limitations (for an interview with Rob White, see Dzur, 2021).

Other authors are also sceptical about environmental restorative justice's ambitions, especially in contexts of neocolonial exploitation and the (often corrupt) intertwining of state and corporate interests. This includes cases related to mining disasters and the subsequent (typically unsuccessful) attempts to restore ecosystems and compensate affected populations. Angèle Minguet's study of two emblematic conflicts involving severe and far-reaching environmental damage in Nigeria and Ecuador reveals that both mega-corporations and governments refuse to take responsibility. Chevron-Texaco, for instance, has no intention of acknowledging the environmental damage it caused in Ecuador. Similarly, the Nigerian government fails to take responsibility for its role in Ogoniland, despite Shell's blatant complicity.

For their part, Jennifer Amparo and co-authors conclude – based on their study of heavily polluted rivers in the Philippines – that environmental restorative justice makes little sense if there is no legal liability for mining companies. Those companies simply ignore the damage caused:

We can have strong frameworks and principles, but without reorganizing power and control, environmental restorative justice may remain better in theory than in practice.... Though filled with optimistic ideals, realities show that environmental restorative justice cannot bank on the altruism of the perpetrators of harm, particularly when regulatory mechanisms and corporate actors circumvent rather than acknowledge culpability (496).

That said, they continue, exposing the misery experienced by the victims and affected communities provides valuable opportunities to overturn public opinion and put further pressure on vested interests. It is crucial that victims continue to share their experiences and stories.

These chapters demonstrate that environmental restorative justice has little to offer when pollution and ecological degradation result from the expansionism and exploitative methods of mega-corporations. These multinationals typically have untrustworthy reputations, spread disinformation and are rarely accountable. A confessing CEO is a one-off. Clearly, the power imbalance between large companies and victim groups is at odds with key restorative justice principles, which require participants not to appear intimidating and to avoid strategic manipulation. However, other chapters – particularly Hamilton's – show that the conference model can be effective, provided the business owner assumes responsibility. In these cases, the business leader has connections to the local community and has the courage to sit down with victims.

4 Dialogue or formation of countervailing power?

4.1 *A parody of restorative justice*

Nevertheless, some authors are convinced that environmental restorative justice can succeed when CEOs of large corporations are brought to the table. An illustrative example is the contribution of Martin Wright and Ulrike Tabbart on

the Bhopal disaster in India. They point out that Dow Chemical Company (DCC) continues to deny all responsibility. This is unsurprising, as DCC is a notorious chemical multinational, known not only for its production of napalm and the defoliant Agent Orange for the U.S. military during the Vietnam War but also for toxic spills, asbestos-related lawsuits, price-fixing, tax evasion and an endless series of settlements and fines. DCC is a recidivist conglomerate operating ruthlessly worldwide. Thus, it seems curious to invite DCC's subsidiary in India to a restorative justice meeting with representatives of thousands of victims. Yet Wright and Tabbert see opportunities, reasoning that Dow's reputation is virtually destroyed and a restorative justice meeting could offer corporate executives a 'way out' to demonstrate their good intentions, avoid further loss of face and rebuild their reputation. They believe that restorative justice could bring benefits in this deeply troubling context, including the prevention of similar disasters. The principles of corporate social responsibility would be instrumental in this regard.

Interestingly, Wright and Tabbert draw connections with William Ury's conflict management theory. In his book *Getting past no: negotiating with difficult people* (1991), Ury explains how we can turn unwilling opponents into partners by building a 'golden bridge' to a new beginning. The idea is to negotiate in a way that encourages 'difficult people' to leave their old positions without losing face. While this approach might seem feasible, it feels quite light-hearted, particularly in the context of the Bhopal drama. After all, Dow's management consists of 'repeat players' who have little connection to the region they exploit, where they call the shots for a time. In this case, restorative justice risks becoming a parody: a CEO is invited to apologise merely to restore the company's reputation or reinforce its greenwashing campaign.²

Other restorative justice thinkers also believe that dialogue and moral learning can occur even in the thorny context of dealing with mega-companies. 'Multinational companies can contribute "to heal social wounds"'. Corporations may prefer restorative outcomes 'to restore their relationship to the community to its pre-crime state' (for an overview, see Aertsen, 2023: 222). However, the question remains whether prioritising negotiation and dialogue with repeat players who persistently undermine natural habitat is the right approach. If these recidivist companies are unwilling to truly change their actions, and enforcement bodies remain incapable, we should consider other strategies: protest, resistance or civil disobedience.

4.2 The problem of impunity

In some chapters, punishment and deterrence are easily brushed aside. These means would almost by definition be ineffective, inefficient and harmful. For

- 2 Curiously, the handbook also includes a chapter in which the authors report on mediation with civil disobedient eco-activists who were referred to a Community Justice Centre by the local district attorney after an occupation action. The activists were expected to apologise (see contribution by Rachel Jolly and colleagues). This presents another kind of parody of restorative justice: apologising for fighting against injustice. In this case, restorative justice is being used by the Department of Justice to divert attention from the real issue – environmental damage. In such situations, what is actually being remedied? (See also Kershen, 2021)

example, Forsyth, Pali and Tepper question the tendency of environmental and animal rights activists to pursue criminal prosecution and punishment of corporations.

It is often the risk of impunity for corporations that leads many emancipatory movements to fall into the temptation of claiming the use of symbolic punitivism through criminal law, which runs counter to the restorative ethos (18-19).

Undoubtedly, repressive and punitive interventions bring many negative consequences and should be avoided in many contexts. However, the situation is different when recidivist companies cause persistent environmental damage. These companies are in many ways immune to government sanctions and often cannot be held legally liable. What is the impact of this impunity? Let me clarify that by taking a roundabout approach.

Transitional justice studies show that in post-violence societies – when tyrannical leaders have been deposed – impunity often persists, partly because the oppressor's narrative remains influential even after regime change. This narrative frequently serves to justify or deny the crimes committed and can incite future violence. Therefore, to safeguard the rights of all citizens, the political project of that party must be fought. In such contexts, the punishment of former rulers or military leaders may be both justified and necessary, especially because the urgent demands for justice cannot simply be ignored. For these reasons (premature) restorative justice initiatives are often viewed critically in such settings (Memisovic, 2017; Uprimny & Saffon, 2006; for arguments for and against prosecution and punishment in the context of post-violence societies, see Huyse, 1998; Parmentier, 2019).

In the global economic system, where quasi-sovereign mega-corporations often succeed in securing lenient (tax) rules and evading regulation with relative ease, impunity has taken on new forms and meanings (Porfido, 2023). These mega-corporations frequently take irresponsible risks, refuse to disclose information, and flatly deny responsibility for environmental damage. Their obstructionist policies are characterised by greenwashing, climate denial, misinformation and fighting new legislation (Ekberg, Forchtner, Hultman & Jylhä, 2023; White, 2013). The abdication of responsibility by Dow after the Bhopal disaster and Shell after the oil spills in Nigeria is illustrative of this obstructionism.

When a chemical giant persists in emitting toxic substances and enforcement measures fail or are not possible, informal means of coercion and punishment come into play. This leads us into the realm of civil resistance and civil disobedience, including fights against governments and large corporations through occupations, consumer boycotts or public shaming (van Stokkom, 2023). Exemplary are the non-violent interventions of Greenpeace and similar environmental and climate organisations that oppose mega-corporations threatening the living conditions of humans and animals. An NGO campaign denouncing the environmental degradation caused by a recidivist company makes it clear that public standards have been violated and that continued environmental harm is intolerable. Such a

company may not get away with just a settlement or fine, as these do not bring about real behavioural change. Instead, those payments signal that public standards may be disregarded. The key, then, is to challenge the recidivist's propaganda machine and bring down its reputation.

4.3 *Civil disobedience*

Restorative justice thinkers generally have little affinity with civil disobedience and its pressure and coercion methods. The handbook authors also devote relatively few words to 'saying no' and the need to build countervailing power. Dialogue and cooperation are paramount. This is curious, as both restorative justice and civil disobedience have roots in the philosophies of Mahatma Gandhi, Martin Luther King and Nelson Mandela. These renowned champions of non-violent action, frequently cited with approval by restorative justice thinkers, sought to confront powerful opponents and generate creative tensions through their actions. They held a positive vision of conflict, viewing it as an opportunity to pressure opponents, build understanding for the cause of the disenfranchised and change society. Civil disobedient activists break the law to draw attention to injustice and raise awareness among the wider public. The intention is to intensify the conflict – pressuring the opponent, not seeking rapprochement – to make the harmful and destructive actions of the powerful more visible. At the same time, this intensification of conflict must be kept within acceptable limits (Dudouet, 2008).

Thus, within the spectrum of conflict intervention strategies, restorative justice and civil disobedience occupy different positions. While both share a focus on participation from a bottom-up perspective, the tendency to put pressure on powerful opponents seems to be absent in the restorative justice tradition. Basically, the focus is on conflict mitigation, not conflict intensification. However, this does not mean that civil disobedience is more important than restorative justice. One mode of action does not exclude the other. The 'warrior' and the 'healer' often depend on each other and, at times, desperately need one another.

5 Public forums for truth-telling and restoration

Many chapters show that the outcomes of environmental restorative justice often have little public impact because the dialogues occur in private settings and are confidential in nature. As a result, broad public recognition of the harm done to victims often fails to materialise. For this reason, many authors advocate for public procedures that can help restore dignity to the affected groups. In cases of mass damage where the responsible organisations make little effort to engage in dialogue with injured parties, this becomes even more apparent. How could we further shape this?

In the last chapter, Ivo Aertsen highlights alternative processes to broaden the scope of restorative justice, such as community impact panels and truth commissions. Truth commissions offer several advantages over victim-offender encounters: they allow for the participation of large(r) numbers of victims and their supporters, provide transparency and enable public condemnation of what

happened. In other processes, victims are given the opportunity to speak freely about their experiences without the presence of the accused organisation. This approach allows for a thorough assessment of the nature, extent and impact of the damage. Aertsen recognises that these alternatives blur the boundaries between victim-offender dialogues and other forms of conflict resolution. However, they clearly expand the possibilities for justice and reparation in cases of extensive environmental damage.

Daniela Bolívar and colleagues, in their chapter on Chile, also refer to truth commissions where victims' statements are taken seriously. The challenge, however, is to ensure that nature's voice is also heard. Forsyth talks about 'community reference groups' and 'open houses', where green experts represent species, rivers and forests affected by pollution. Tepper introduces a 'restorative enquiry process', where structural pollution is discussed with affected groups. In essence, all these authors advocate for restorative hearings that allow large numbers of victims the opportunity to articulate their negative experiences and express their visions for restoration. The focus is on investigation and truth-telling, without judicial prosecution or trial.

Of course, restorative inquiries need not be limited to the context of environmental crime and harm. For example, Keenan and Marder (2023) recently suggested that restorative inquiry could be an appropriate response to the damage caused by institutional abuse. This was prompted by the widespread abuse of young people in Catholic institutions in Ireland. In such inquiries, victims and relevant representatives can openly share their painful experiences and their impact. An authoritative figure chairs the discussions, which are open and transparent but also include confidential round-table sessions. Victims can choose to interact with perpetrators, agency representatives, experts and confidants after the final report is presented (for a general overview of institutional child abuse, see Daly 2017).

The question is whether restorative inquiries should always proceed 'non-antagonistically', as Keenan and Marder suggest. This approach might exclude groups of victims who are outraged and seek to teach those responsible a lesson. Confronting, blaming and holding accountable are legitimate forms of responses and can contribute to mental processing and a more positive self-image. Another question is whether the term 'restorative inquiry' is the most appropriate. I believe the term 'forum for truth-telling and restoration' better reflects the public nature of the body and its procedures.

That concept could be broadened to include all types of harm in the private and (semi-)public sectors, where citizens are consciously or unconsciously treated unequally – often due to the 'power of habit'. Issues potentially interesting to investigate could include sexual abuse, forced labour, discrimination, racism and the ongoing impact of a violent past. The goal is always to identify harm and its impact and to gain recognition for the narrative of victims. At a later stage, the agency responsible for the harm could also present its perspective, provided it acknowledges the charges. Clearly, victim organisations and restorative justice organisations cannot handle this demanding process of truth-telling alone. Cooperation with professional groups, research institutes, expert organisations and NGOs, among others, is essential.

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It seems to me that these public forums can safely sail under the banner of restorative justice, even if they do not always result in a dialogue where victims receive an apology. After all, the basic principles of victim recognition and empowerment remain paramount. Moreover, restorative justice could more prominently manifest itself as a ‘weapon of the weak’.

6 Delving into more publications

As mentioned, two separate book reviews will follow this essay. The collection of essays in *Restorative justice and the environment*, edited by Carla Aguiar, João Salm and Katia Roncada, is the result of a round-table discussion in Salvador, Brazil, that included many civil society activists, among whom were representatives of Indigenous groups and agricultural sectors. Like *The Palgrave handbook*, this study closely examines environmental damage in rural areas, particularly the challenges faced in the Amazon region. Some chapters highlight how investors in large-scale agriculture and mining engage in ruthless practices, such as deforestation and toxic discharges. The second book review focuses on several cases of animal cruelty and environmental crimes in the Basque Country. The author, Gema Varona Martínez, argues that a restorative justice approach to these cases would have offered greater perspective.

Like the handbook, these studies are closely related to green criminology. In both fields, researchers share a responsibility to preserve a liveable earth, although green criminology tends to focus more on the ‘crimes of the rich and powerful’. These studies also demonstrate that environmental restorative justice is evolving into a very international social movement, where engaged individuals and victim groups unite to counter environmental damage and pollution. Activists are forging alliances with local groups and their spokespersons. Against the backdrop of the climate crisis, an interesting question is whether the restorative justice movement will continue to spread its wings and become more involved – in addition to mediation and conferencing – with NGOs and victim groups seeking public recognition for the violence inflicted on animals and the natural environment.

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