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INITIATING THE UTILIZATION OF RESTORATIVE JUSTICE IN COMPLETING OF THE ENVIRONMENTAL CRIME CASES

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Abstract

Restorative justice is a way to deal with crime by balancing the needs of the community, victims and perpetrators. This is a more holistic solution for trying to understand crime and overcome the dynamics of criminal behavior, its causes and consequences. The focus of restorative justice is empowerment, participation and healing of victims of crime. This paper discusses the possibility of utilizing the concept of restorative justice towards solving environmental crime. Identifying victims of environmental crimes and how they are able to participate in the restorative process. In particular, pay attention to the ideas of the wider community, the sustainability of future generations and a better environment. This article explores the types of restorative results available, including reparations, restitution and compensation for the occurrence of environmental damage. By implementing a restorative process for environmental crime, restorative justice can be transformative for victims, perpetrators, the community, the environment and the criminal justice system so as to enable a more equitable outcome for environmental crime cases.

Keywords: Restorative justice, environmental crimes.

Abstrak

Keadilan restoratif adalah cara menangani kejahatan dengan menyeimbangkan kebutuhan masyarakat, korban dan pelaku. Hal tersebut merupakan solusi yang lebih holistik untuk berusaha memahami kejahatan dan mengatasi dinamika perilaku kriminal, penyebab dan konsekuensinya. Pusat perhatian keadilan restoratif adalah pemberdayaan, partisipasi dan penyembuhan korban kejahatan. Makalah ini membahas kemungkinan pemanfaatan konsep *restorative justice* terhadap penyelesaian kejahatan lingkungan. Mengidentifikasi korban kejahatan lingkungan dan cara mereka mampu berpartisipasi dalam proses restoratif. Secara khusus, memperhatikan ide-ide masyarakat yang lebih luas, keberlangsungan generasi masa depan dan lingkungan hidup yang lebih baik. Artikel ini mengeksplorasi jenis-jenis hasil restoratif yang tersedia, termasuk reparasi, restitusi dan kompensasi atas terjadinya kerusakan lingkungan. Dengan menerapkan proses restoratif terhadap kejahatan lingkungan, *restorative justice* dapat bersifat transformatif bagi korban, pelaku, masyarakat, lingkungan dan sistem peradilan pidana sehingga memungkinkan hasil yang lebih adil untuk kasus kejahatan lingkungan.

Kata Kunci: *Restorative justice*, kejahatan lingkungan.

I. BACKGROUND

This paper discusses the possibility of utilizing the concept of restorative justice to resolve environmental crimes. At present, restorative justice is only used for crimes of a conventional nature or minor crime. But rarely, it is used for environmental crime. Though the approach and benefits of restorative justice have the potential to be more often used in dealing with environmental crimes by empowering, participating and healing victims of crime.

Environmental crime is one of the most profitable and fastest growing areas of international criminal activity. Often perceived as “victimless”, there has been little attempt to describe the actual prevalence and consequences of victimization as a result of environmental crime. The complexity of victimization – in terms of time, space, impact, and who or what is victimized – is one of the reasons why governments and the enforcement community have trouble in finding proper responses. This paper seeks to advance the discussion on this matter by looking at emerging forms of crime that have a significant impact on the environment and identifying the key issues and challenges from the perspective of the victims that require further study and action.¹

Environmental crime is at least as serious as any other crime affecting society today. In contravention of numerous international treaties, the principal motive for environmental crime is, with rare exception, financial gain and its characteristics are all too familiar: organised networks, porous borders, irregular migration, money laundering, corruption and the exploitation of disadvantaged communities. Wildlife felons are just as ruthless as any other, with intimidation, human rights abuses, impunity, murder and violence the tools of their trade.

Environmental crime is currently one of the most profitable forms of criminal activity and it is no surprise that organised criminal groups are attracted to its high profit margins. Estimating the scale of environmental crime is problematic but Interpol estimates that global wildlife crime is worth billions of dollars a year; the World Bank states that illegal logging costs developing countries \$15 billion in lost revenue and taxes. In the mid-1990s around 38,000 tonnes of CFCs were traded illegally every year – equivalent to 20 per cent of global trade in CFCs and worth \$500 million; and in 2006 up to 14,000 tonnes of CFCs were smuggled into developing countries.²

Whilst Green Criminology as a subject area has continued to development since at least the early 1990s, there has been a surprising lack of engagement within this literature with environmental victimisation or the victims of environmental harm. Hall written, this may be partly based on the assumption that environmental crime (or wider notions of environmental harm) is largely victimless, or at best, such victimisation is relatively equally shared amongst the population of a given area, country or the world as a whole. More recent studies have begun to unpick such assumptions. For example, there is now growing evidence to the effect that the impacts of environmental crime (like most other forms of crime) in fact fall disproportionately on the weak, the marginalised and the powerless at a national and international level. Furthermore, the impacts of environmental crime are becoming increasingly understood and are now

¹ Eileen Skinnider, *Effect, Issues and Challenges for Victims of Crimes that have a Significant Impact on the Environment*, International Centre for Criminal Law Reform and Criminal Justice Policy, This paper is an update of the paper published by the International Centre for Criminal Law Reform and Criminal Justice Policy, March 2013.

² Matthew Hall, *Victims of Environmental Crime: Routes for Recognition, Restitution and Redress*, in Toine Spapens, Rob White, and Marieke Kluin, *Environmental Crime and its victims Perspectives within Green Criminology*, ashgate Publishing limited, 2014, p.103

known to be multi-faceted and complex, including health-related, social, economic, cultural and security impacts. It has also been noted that environmental victimisation may be criminogenic with clear implications for wider criminology.

II. ENVIRONMENTAL CRIME

What is environmental crime? The definition of “environmental crime” has implications as to the identification of the range of victims. According to the thematic discussion guide, from a criminal law perspective, environmental crimes are contraventions of pre-existing laws sanctioning illegal conduct with criminal penalties, typically based on environmental management regulations.

In the literature, we see a range of approaches taken in defining “environmental crime”:

- a. A narrow interpretation of environmental crime is that it covers only activities prohibited by current criminal law.
- b. Others suggest that the definition should also include any illegal activities or formal rulebreaking, whatever form the rule might be, so would include administrative and regulatory sanctions. This recognizes that given the influence of business interests over law and regulation, conduct that might be criminal in one jurisdiction might be dealt with lesser sanctions in others.
- c. Still others suggest that the definition should include activities which are “lawful but awful”. This one recognizes the fact that many environmental disruptions are actually legal and take place with the consent of society.³

According to the Michigan Department of Environmental Quality (MDEQ), environmental crime is “the intentional, knowing, reckless, or criminally negligent violation of our environmental laws and regulations” (n.p.). In committing these crimes, corporations appear to value profit over the lives of citizens, who may become victims in large numbers. An example of corporate environmental crime in which a corporation made the decision to cut costs by dumping waste, saving them money but damaging the ecosystem and the health of nearby citizens occurred in the Love Canal case in Niagra Falls, N.Y. In this case, the Hooker Chemical Company chose to bury chemicals instead of disposing them properly, leading to severe health problems for local residents (Environmental Protection Agency, 2016).⁴

‘An environmental crime is an act committed with the intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage.’⁵ ‘An environmental crime is an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanction. This offence harms or endangers people’s physical safety or health as well as the environment itself. It serves the interests of either

³ Eileen Skinnider, *Effect, Issues and Challenges for Victims of Crimes that have a Significant Impact on the Environment*, International Centre for Criminal Law Reform and Criminal Justice Policy, This paper is an update of the paper published by the International Centre for Criminal Law Reform and Criminal Justice Policy, March 2013. Skinnider, E., “Victims of Environmental Crime – Mapping the Issues” (ICCLR: March 2011). Found on-line at www.icclr.law.ubc.ca/files/2011/Victims%20of%20Environmental%20Crime.pdf. p. 1.

⁴ Johnson, Demarco S. "The Status of Green Criminology in Victimology Research," *McNair Scholars Research Journal*: Vol. 10/2017 Issue. 1, Article 8. <http://commons.emich.edu/mcnair/vol10/iss1/8> P.92

⁵ M. Clifford, *Environmental Crime: Enforcement, Policy and Social Responsibility*, Gaithersburg: Aspen, 1998, p. 26.

organizations—typically corporations—or individuals.’⁶ ‘Environmental crime includes littering, abandoned vehicles, graffiti, fly posting, dog fouling, fly-tipping, dumped business waste, vandalism, abandoned shopping trolleys and noise nuisance.’⁷

For the *purposes of this article*, International Environmental Crime can be defined across five broad areas of offences which have been recognised by bodies such as the G8, Interpol, EU, UN Environment programme and the UN Interregional Crime and Justice Research Institute. These are:

1. Illegal trade in wildlife in contravention to the 1973 Washington Convention on International Trade in Endangered Species of fauna and Flora (CITES);
2. Illegal trade in ozone-depleting substances (ODS) in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer;
3. Dumping and illegal transport of various kinds of hazardous waste in contravention of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Other Wastes and their Disposal;
4. Illegal, unregulated and unreported (IUU) fishing in contravention to controls imposed by various regional fisheries management organisations (RMFOs);
5. Illegal logging and trade in timber when timber is harvested, transported, bought or sold in violation of national laws (There are currently no binding international controls on the international timber trade with the exception of an endangered species, which is covered by CITES).⁸

Environmental crime includes all offences either created by statute or developed under the common law that relate to the environment.’⁹ A primary task of criminal law is to stipulate the degree of seriousness of criminal conduct. This involves assessing such factors as the physical impact of the conduct on the victim, psychological trauma, the monetary value of property crimes and so forth. Social scientists who study crime argue that it is ‘harm’ that needs to be measured and assessed, but in doing so, the study of crime must go beyond existing legal definitions and criteria.¹⁰ This is so for several reasons.

Firstly, wrongdoing is perpetrated by states themselves, yet it is nation-states that define what is criminal, corrupt or unjust. There is therefore a need for the development of criteria and definitions of crime that are not restricted to specific states’ laws, but are more universal in nature (for example, that appeal to ‘human rights’ or ‘environmental rights’ or ‘animal rights’). Secondly, harms perpetrated by powerful groups and organisations, such as transnational corporations, are frequently dealt with by the state as civil rather than criminal matters. This reflects the capacity of the powerful to shape laws in ways that do not criminalise their activities, even when they are ecologically disastrous. Thirdly, there are extra-legal concepts and factors that need to be studied if we are to fully capture the nature of environmental harm, and this requires a different way of framing the issues. An ecologybased analysis of activity will provide quite a different picture of ‘harm’ than an economics based analysis.

⁶ Y. Situ and D. Emmons, *Environmental Crime: The Criminal Justice System’s Role in Protecting the Environment*, Thousand Oaks: Sage, 2000, p. 3.

⁷ *Tackling Environmental Crime Together* initiative at <www.together.gov.uk>.

⁸ Debbie Banks, Charlotte Davies, Justin Gosling, Julian Newman, Mary Rice, Jago Wadley and Fionnuala Walravens, *Environmental Crime: A Threat To Our Future*, London: Environmental Investigation Agency, 2008, p. 2.

⁹ Environmental Audit Committee: Session 2003–4, Sixth Report, *Environmental Crime*.

¹⁰ (Hillyard et al. 2004; Hillyard and Tombs 2007; Matthews and Kauzlarich 2007)

What is defined as criminal harm, and the measure of the seriousness of that harm, are contingent upon the social interests bound up with the definitional process.¹¹

This is also related to the aspect of transnationality of environmental crime. Combating its perpetration may only be possible in an international or supranational context, not the province of one state alone. The interests of states may differ, with one state reaping the profits of acts damaging another's environment.¹²

III. ENVIRONMENTAL CRIME VICTIMS

Environmental victimization is a far-reaching and widespread global problem: 'An estimated 40 percent of deaths around the world can now be attributed to various environmental factors, especially organic and chemical pollutants'.¹³ Growing field of green criminology has devoted much attention to the study of environmental crimes, the processes of victimization still remain little observed.¹⁴ Thinking about this issue was initiated by Christopher Williams, according to whom environmental victimology could be placed within a theoretical frame known as 'critical victimology' from Mawby and Walklate,¹⁵ which focuses on harms to the environment and to peoples' health – harms that may stem from acts and omissions that are not proscribed by law. In this sense, a radical green victimology approach complements the broader definition of environmental crime.

Environmental victimization poses a series of new questions that the systems of criminal justice find themselves unprepared to face.¹⁶ First, the harms suffered can involve an extended group or even a community of victims, sometimes representing rival interests. Second, the perpetrators are often corporations or states¹⁷ – and here we see the importance of developing a notion of 'crime' that encompasses those 'lawful, but awful' acts and omissions.¹⁸ Finally, the causality nexus is extremely complex to reconstruct, sometimes leading to a consideration of environmental crimes as 'crimes without victims'. The relevant scientific literature also clearly shows how the

¹¹ Rob White, *Eco-justice and Problem-solving Approaches to Environmental Crime and Victimisation*, in Toine Spapens, Rob White, And Marieke Kluin, *Environmental Crime And Its Victims : Perspectives Within Green Criminology*, ashgate Publishing limited, 2014, p. 88

¹² Antony Pemberton, *Environmental Victims and Criminal Justice: Proceed with Caution*, in Toine Spapens, Rob White, and Marieke Kluin, *Environmental Crime and its victims Perspectives within Green Criminology*, Ashgate Publishing limited, 2014. p.67

¹³ Bullard, R.D., Johnson, G.S., and Torres, A.O. 'Addressing Global Poverty, Pollution, and Human Rights,' in *The Quest for Environmental Justice: Human Rights and the Politics of Pollution*, edited by R.D. Bullard. San Francisco, CA: Sierra Club Books, 2009, 279–97, p. 286.

¹⁴ Matthew Hall, 'Victims Of Environmental Harms And Their Role In National And International Justice'. In Walters, R., Westerhuis, D. and Wyatt, T. (eds) *Emerging Issues in Green Criminology. Exploring Power, Justice and Harm*. Basingstoke: Palgrave Macmillan. 2013, p.218.

¹⁵ Lorenzo Natali, *A Critical Gaze on Environmental Victimization*, in Ragnhild Aslaug Sollund (ed), *Green Harms and Crimes Critical Criminology in a Changing World*, Palgrave Macmillan, 2015. p.64

¹⁶ Matthew Hall, 'Victims Of Environmental Harms And Their Role In National And International Justice'. In Walters, R., Westerhuis, D. and Wyatt, T. (eds) *Emerging Issues in Green Criminology. Exploring Power, Justice and Harm*. Basingstoke: Palgrave Macmillan. 2013, p. 219-220.

¹⁷ R. White, *Transnational Environmental Crime: Toward an Eco-global Criminology*, London and New York: Routledge, 2011, p. 103-104.

¹⁸ Lynch, M., Long, M., Barrett, K. and Stretesky, P. (2013) 'Why green criminology and political economy matter in the analysis of global ecological harms', *British Journal of Criminology*, 53: p. 999

difficulties that are encountered in establishing a causal relationship may offer an easy way of escape for the perpetrators. Systematic use of techniques of denial of harm and responsibility further undermine efforts to create causal connections between offenders and victims. In fact, the various strategies of neutralization of responsibility on the part of corporations or the state include denying the problem; neglecting to put into perspective what is seen as damaging (e.g. the long-term benefits); and reproaching, blaming, dividing and confusing the victims. For all of these reasons it is important to explore the nature of victimization as an active social process which implies relationships of power, control and resistance.¹⁹

According to Williams the term 'environmental victim' represents the idea of injury caused by a deliberate or reckless act or omission. Environmental victims are:

... those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or act of omission.²⁰

Environmental victimisation can be defined as specific forms of harm which are caused by acts or omissions leading to the presence or absence of environmental agents which are associated with human injury.²¹ Victims of environmental crimes have traditionally been excluded in victimology literature, but should be included due to their growing numbers. Noting the absence of green victimology, Mathew Hall has called for an awareness of the needs of environmental victims, as well as an increased awareness of green criminology. Some cases of environmental crime are not criminal, which may influence why victims are not represented in criminological research, and why green criminology is poorly represented in criminological literature. Measuring the degree of environmental crime and its true cost on ecosystems shows that environmental crimes are both extremely dangerous, due to the number of victims, and very expensive, due to the cost to clean up after disasters. Despite the high health costs and mortality rates of environmental crime, its underrepresentation ignores its magnitude and the harm experienced by its victims.²²

Victims of environmental crimes often suffer real harms, and are thus deserving of inclusion in the criminal process—much like victims of traditional crimes, such as robbery, rape, or murder. Just because the wrongdoer has (caused harm) by way of an environmental medium—such as air or water—does not make that conduct any less deserving of criminal sanction. The principal difficulty here lies in the apparent heterogeneous nature of environmental victimisation. In one of the few in-depth (literature-based) studies on this issue Skinnider, extrapolates the following broad characteristics of environmental victims:

- a. The victims are not always aware of the fact that they have been victimised;
- b. The victimisation is often delayed with the victim becoming aware of the victimisation much later after;

¹⁹ R. White, *Transnational Environmental Crime: Toward an Eco-global Criminology*, London and New York: Routledge, 2011, p. 106.

²⁰ Williams 1996, p.21

²¹ Rob White, *Transnational Environmental Crime: Toward An Eco-Global Criminology*, First published 2011 y Routledge 2 Park Square, Milton Park, Abingdon, Oxon, OX14 4RN p. 110.

²² Demarco S. Johnson, *The Status of Green Criminology in Victimology Research*, McNair Scholars Research Journal: Vol.10: Iss.1,2017. article 8. <http://commons.emich.edu/mcnair/vol10/iss1/8> p. 92.

- c. Victims are not sure about who victimised them or who exactly is responsible;
- d. The victimisation is often serious not so much because any individual victim was seriously affected, but because numerous victims were affected by the crime; and
- e. Victimisation can often include repeat offences.²³

Victims of this type of crime can be massive, if it comes to modern mass unlawful acts, constitute as offenses of endangering where beside traffic and property offenses delinquency it includes the Environmental crime also. But this crime it can be also individual, as well as massive. According to some authors, certain characteristics of victims of environmental crime are: mass victimization; abuse of power; absence of rule of law, transnational, trans generational.²⁴

The correlation between the perpetrator and the victim is a connection between strangers (victims). The perpetrators of environmental crimes are also unidentified and in these crimes there is noncontributory behavior of the victims. As is already stated, the environmental crime, or environmental offenses is a mass type of crime where it comes to endangering advance unlimited space and an indefinite circle of victims in this space.

This means that between the perpetrator and the victim there is no connection and that the harmful consequences of the act can occur far from their perpetrators or source of endangering. Not only that the ground distance could be excessive, but the time difference can be also. The time difference could be decades, centuries where future generations and generations are victims. (Ex. The Nuclear disaster at Chernobyl, the bombing of FRY with depleted uranium bombs, Fukushima disaster etc.).²⁵

Skinnider goes on to postulate that environmental victims can be classified by a number of different typologies including: by wrongful act; by the nature of the harm; by the extent of the damages suffered; by the scope of the harm or by the perpetrator(s) of that harm. Expanding on the 'nature of the harm' typology, that such harm may fall into four broad categories: impacts on health; economic impacts; impacts on victims' security and social/cultural impacts.²⁶ Needless to say however these classifications in all likelihood represent only the tip of the iceberg. The harms resulting from environmental crimes can be indistinguishable from harms resulting from the commission of traditional or violent crimes;

The concepts of indirect, tertiary and secondary victimization in part explain suffering that does not meet the criteria of criminal victimization.²⁷ The concept of secondary victimization refers to those who are indirectly harmed following criminal victimization, for example, the significant others of murder or rape victims. This is also sometimes known as indirect or tertiary victimization. Essentially, it draws attention to the impact that crime has on those not directly involved in the particular

²³ Skinnider, *Environmental Harm And Environmental Victims: Scoping Out A 'Green Victimology'*, 2011, p.9.

²⁴ A. Pemberton, *Environmental Victims And Criminal Justice: Proceed With Caution*, Texas: 2012, www.environmentalcrimeseminar.com.

²⁵ Marina Malis Sazdovska and Aleksandar Ivanov, *Victims Of Environmental Crime (Student's Perceptions Of Environmental Crime)* Criminal Justice Issues Journal of Criminal Justice and Security, Year XI, Issue 5-6, 2011. p. 75-90 p. 63.

²⁶ Hall, 2013

²⁷ (Davies, 2011a)

event concerned but to a wider circle of ‘victims’ who may have been affected by a particularly shocking event or life-changing experience. Another meaning of secondary victimization is similar to being re-victimized. Here, victimization occurs at the hands of criminal justice system staff or anyone else responding to an offence. It results from the insensitive treatment of significant others, bystanders, witnesses, victims of crime—often inadvertently— by the criminal justice system (or by friends and acquaintances). Barristers, jurors, police officers may be a cause of secondary victimization and, through their insensitivity, may exacerbate feelings of victimization.²⁸ In the context of this article’s Case study, those vicariously victimized are those individuals and families in the local and regional community who bear the brunt of the closure. They have been disempowered, and a major plank of their social capital has been removed. They have experienced the equivalent of having been robbed of their jobs and financial resources, and their chances of replacing these losses in the aftermath of the closure, by legitimate means, are, as the deprivation data suggest, severely restricted.²⁹

IV. THE HARMS THAT CAUSED BY ENVIRONMENTAL CRIMES

This Part will discuss and apply the benefits framework to three types of environmental crime victims: (1) easily identifiable victims, (2) victims identified via statistical probabilities, and (3) non-conventional victims or “victimless” crimes.³⁰ Easily Identifiable Victims, in instances where there is direct harm to an individual or group of individuals that appears relatively contemporaneously with the offender’s bad act, it is relatively easy to identify who the victim is. In such cases, the potential benefits traditional crime victims gain from prosecution are equally applicable. Victims identified via statistical probability, many victims of environmental crimes are not as easily identified. Instead, their harms and injuries are identified via statistical probability. Rather than having a clear and direct causal link—e.g. an oil rig explosion and loss of life—harms caused by releases of toxic substances are not as certain. Non-conventional victims or “victimless” crimes. Many environmental crimes involve the victimization of “non-conventional victims (non-human species, the environment and future generations).

In his book *Random Violence: The Way We Talk About New Victims and New Crimes*, Joel Best³¹ analyzes the patterned way in which new victims and new crimes are framed in public discourse by news outlets and advocacy organizations. According to Best, this pattern is visible irrespective of the evidence base, and it applies in similar fashion to reports concerning victims of stalking or of alien abduction. The similarities across situations are evidence of the ‘crime’ master frame to which they are connected. The pattern consists of the following elements:

- **Victimization is widespread and consequential**—The case for attention to a group of victims is made first by reference to the extent of suffering. This

²⁸ (Davies, 2011a).

²⁹ Pamela Ann Davies, *Green crime and victimization: Tensions between social and environmental justice*, Article in *Theoretical Criminology Journal*, 2014 sagepub.co.uk/journalsPermissions.nav DOI: 10.1177/1362480614522286 1–17 P.10

³⁰ Alexandra Akre, *Including The Victim In The Decision To Bring Environmental Prosecutions*, *Willamette Environmental Law Journal Fall 2015*, p. 18 *

³¹ Best, J. *Random Violence: How We Talk About New Crimes and New Victims*. Berkeley, CA: University of California Press, 1999.

applies to the number of victims, which are either large or at least larger than most people would think (see the following point), but especially to the impact of individual instances of victimization.

- **Victimization often goes unrecognized; awareness of victimization should be improved**—The widespread and consequential nature of the problem contrasts with a lack of recognition for those bearing the brunt of it. A key issue in victim advocacy is raising awareness of the size and impact of the problem, which includes teaching victims and others to recognize their own victimization. Coupled with this is the perception that victims' justified claims will be doubted, and that this doubt is a source of further anguish for victims, covered by the term *secondary victimization*. Raising awareness should then contribute to the extent to which claims are respected.
- **There are qualms about the label 'victim'**—A recurrent point of discussion is the term used to describe those suffering victimization. The connotations of the word 'victim' are often a bone of contention, for instance because of the connotations of helplessness associated with victimhood. Other terms, for instance 'survivor,' maybe more appropriate. It might also be due to the importance of separating one's self from the victim group: the term 'victim' is reserved for those who are either deceased or still in relationships where violence is a regular feature. It might also be that the term 'victim' is not specific enough: Best notes that the focus is most often on one particular type of victimization.
- **The relationship between victims and victimizers is straightforward and unambiguous**—The roles of victims and victimizers in the definition of new victims is clear-cut: victimizers intentionally exploit the victims for their own gain, while the victims are blameless for what happened.³²

Within a green criminology perspective, there are three broad conceptualisations of harm (see Figure 1). Each of these is construed in relation to particular notions of rights and justice: with variable focus on humans, environments and animals. Justice within an eco-justice perspective is initially framed in terms of the subject or victim that is liable to be harmed.

Figure 1. An Eco-Justice Perspective – Three Approaches To Justice, Rights And Harms Adapted from White White 2013 ³³

Variable	Environmental justice and human rights	Ecological Justice And Ecological Citizenship	Species Justice And Animal Rights
Focus	Environmental rights as an extension of human or social rights in order to enhance the quality of human	Human beings are merely one component of complex ecosystems that should be preserved for their	Focus: Non-human animals have rights based upon utilitarian notions (maximising pleasure and minimising pain), inherent value (right to

³² Antony Pemberton, *Environmental Victims and Criminal Justice: Proceed with Caution*, in Toine Spapens, Rob White, and Marieke Kluin, *Environmental Crime and its victims Perspectives within Green Criminology*, ashgate Publishing limited, 2014. p.67

³³ Rob White, *Eco-justice and Problem-solving Approaches to Environmental Crime and Victimisation*, in Toine Spapens, Rob White, And Marieke Kluin, *Environmental Crime And Its Victims: Perspectives Within Green Criminology*, ashgate Publishing limited, 2014, p. 89

	life	own sake via the notion of the rights of the environment.	respectful treatment) and an ethic of responsible caring.
Concepts	Intergenerational responsibility – The present generation is responsible for ensuring environmental equity for future generations. Environmental justice – Everyone has the right to a healthy environment, and there ought to be environmental equity for present generations.	Ecological citizenship – humans are responsible for the preservation and conservation of nature. Ecological justice – concerning the quality of the biosphere and rights of non-human species.	Concepts: Anti-speciesism and animal rights – addressing the discriminatory treatments of animals as Other. Animal welfare – dealing with issues of animal abuse and suffering, and the nurturing of respectful relationships.
Emphasis	Environmental harm is constructed in relation to human-centred notions of value and use.	Environmental harm is constructed in relation to notions of ecological harm and destructive techniques of human intervention.	Environmental harm is constructed in relation to the place of non-human animals within environments and their intrinsic right not to suffer abuse, whether this be one-on-one harm, institutionalised harm or harm arising from human actions that affect climates and environments on a global scale.

Green criminology has focused much of its analysis of threatened and endangered species on case studies of specific animals rather than empirical approaches to address species decline and endangerment issues. To date, both case studies and empirical studies have been compiled on a case-by-case or species-by-species basis. Extant research of this nature has provided important insights into certain aspects of anthropocentric harms that impact single species. These studies tend to focus almost entirely on the negative effects of poaching and hunting and tend to be

species specific, impeding a broader analysis of the commonalities among crimes/harms against non-human species.³⁴

According to Lewis³⁵ environmental justice can be defined in terms of “inequality or unfairness in the distribution of environmental burdens, where there is exclusion from the processes which determine how that distribution will be effected, or where disproportionate distribution is not balanced by sufficient reparation. This extends to potential injustices between developed and developing states, and between present and future generations.” In this way environmental justice and human rights can be seen as tied together and there is some expression of this in various international treaties, in some national laws and constitutions, in propositions that environmental rights should be seen as human rights and in cases where human rights regimes explicitly incorporate environmental rights for current and future generations. However it is difficult to achieve and maintain high-level support for such ideals or to mobilize effective response in cases where both rights and the environment suffer, are violated and destroyed. To enact environmental justice on any basis requires action but experience indicates that self-interest and contested evidence disincline many or most from seeking genuine change in their own lives or on a broader scale while political will is swayed by shortterm priorities.³⁶

V. RESTORATIVE JUSTICE FOR CRIME ENVIRONMENTAL

This section will briefly consider the possibility of applying burgeoning restorative justice solutions to the issue of environmental victims seeking restitution or compensation. Although there is no consensus among restorative justice practitioners and scholars on a definition of restorative justice,³⁷ the definition offered by Tony Marshall seems most appropriate. According to Tony Marshall, ‘restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of that offence and its implications for the future’.³⁸ However, this definition cannot stand alone, since its building blocks are unclear and vague. Indeed, initial statements of both community and restorative justice, as well as some of the best known practices associated with each, suggest three apparent differences.³⁹ First, until recently most restorative justice practice has been at the more micro level of primarily informal responses to individual incidents of crime, while community justice has been more concerned with larger units of intervention and collective outcomes. Second, the restorative justice emphasis on repairing harm has generally been perceived as a way of intervening in reaction to observed crimes, while community justice has been explicitly focused also on the prevention of crime. Third, restorative justice since its earliest origins in community mediation has had an

³⁴ Michael J. Lynch, Michael A. Long and Paul B. Stretesky, *Anthropogenic Development Drives Species to Be Endangered: Capitalism and the Decline of Species* in Ragnhild Aslaug Sollund (edt), *Green Harms and Crimes Critical Criminology in a Changing World*, Palgrave Macmillan, 2015. p.119

³⁵ Lewis, 2012: 87)

³⁶ Nigel South, *Green Criminology, Environmental Crime Prevention and the Gaps between Law, Legitimacy and Justice*, *Revija za kriminalistiko in kriminologijo/Ljubljana* 65/2014/4, 373–381.

³⁷ John Braithwaite, *Restorative Justice and Responsive Regulation*, Oxford University Press, 2002, p.11.

³⁸ Tony Marshall, *Restorative Justice: An Overview*, London: Home Office Research and Development Statistics Directorate, 1999, p. 5.

³⁹ Gordon Bazemore and Mara Schiff, *Understanding Restorative Community Justice: What and Why Now*, in Gordon Bazemore, Mara Schiff (edt) *Restorative Community Justice: Repairing Harm And Transforming Communities*, New York: Routledge, 2015, p.21.

informal, community-based focus, generally operating outside the formal system and at times distrusting of its motives.

To do that will draw on three principles and four values of restorative justice that Karen Strong and Daniel W. Van Ness proposed several years ago. The three principles are: (1) justice requires that we work to restore victims, offenders and communities who have been injured by crime; (2) victims, offenders and communities should have opportunities for active involvement in the restorative justice process as early and as fully as possible; (3) in promoting justice, the government is responsible for preserving order and the community for establishing peace.⁴⁰

In addition to its procedural aspect, the restorative justice paradigm consists of a set of principles and values. John Braithwaite, a prominent restorative justice advocate, compiled three lists of values which he referred to as (1) constraining values, (2) maximizing values, and (3) emergent values. According to Braithwaite, “list one are values that must be honored and enforced as constraints; list two are values restorative justice advocates should actively encourage in restorative processes; list three are values we should not urge participants to manifest – they are emergent properties of a successful restorative process.”⁴¹ The first list consists of values such as non-domination, empowerment and equal concern for all stakeholders. The second list includes basic kinds of emotional and monetary restoration, prevention of further injustice and similar principles. The third list includes remorse, apology, censure of the act, forgiveness, and mercy.⁴²

Knowing Kay Pranis might be divided restorative values into process values and individual values.⁴³ Process values address the qualities of the restorative processes themselves. Individual values address qualities the processes should nurture within the participating individuals. These are typically the same characteristics people aspire to when they are at their best. Some values, such as respect, appear in both groups. Some, such as honesty, relate primarily to the individual participants while others, such as inclusion, are relevant to the process. The process values encourage or enable the participants to exhibit the individual values. Both are critical for the transformative outcomes sought in restorative interactions. Combined, the definition and the values mentioned above provide a useful basis for understanding what restorative justice is. The definition provides the basic structure and procedural context, and the values provide the goals and constraints of the process. What is missing, however, is a systematic connection between them an underlying theory of restorative justice.⁴⁴

Information concerning the application of restorative processes to environmental harm is scant, although the growing evidence of its uses for victims of other crimes makes this an area worthy of detailed research. Generally speaking, pilot restorative justice schemes for adult offenders, in England and Wales and elsewhere, seem to confirm that when victims of more traditional crimes do become involved in

⁴⁰ Daniel W. Van Ness, *The Shape Of Things To Come: A Framework For Thinking About A Restorative Justice System*, in Elmar G. M. Weitekamp and Hans-Jürgen Kerner (ed), *Restorative Justice Theoretical Foundations*, Willan Publishing: 2002, p. 2.

⁴¹ John Braithwaite, *Principles Of Restorative Justice, In Restorative Justice And Criminal Justice: Competing Or Reconcilable Paradigms?* In Von Hirsch, Roberts & Bottoms, Eds., 2003, p.1.

⁴² *Ibid*

⁴³ Kay Pranis, *Restorative Values*, in Gerry Johnstone and Daniel W. Van Ness (ed), *Handbook of Restorative Justice*, Devon: Willan Publishing 2007, p.60.

⁴⁴ Zvi D. Gabbay, *Exploring The Limits Of The Restorative Justice Paradigm: Restorative Justice And White-Collar Crime*, *Cardozo Journal of Conflict Resolution* (Vol. 8:421), 2007 p. 425.

restorative processes they draw benefits from doing so, as does the restorative enterprise itself.⁴⁵

What does exist is a small but growing literature on what has been variously termed 'environmental mediation' and 'environmental alternative dispute resolution' (ADR). These terms are variously defined, although one concise definition is provided by Amy: 'environmental mediation is a process in which representatives of environmental groups, business groups and government agencies sit down together with a neutral mediator to negotiate a binding solution to a particular environmental dispute'.⁴⁶

Of course, this definition excludes environmental victims directly, which is quite telling in an article devoted to the issue of environment degradation. In fact, victims themselves feature relatively little in this literature, with many more of the discussions revolving around the role of 'environmentalists' or 'environmental groups'. The extent to which such groups Generally speaking, the key advantages of mediation or alternative dispute resolution in environmental cases are said to be considerably lower costs and shorter timescales compared to civil or criminal justice resolutions, although very little detailed empirical evaluation has been undertaken to test these claims. One expectation is that of Sipe (2007), who argues via quantitative analysis that environmental mediation does produce a statistically significant increase in settlement rates compared to civil law actions, but no difference in compliance rates with these agreements. Again, it is notable that Sipe's analysis does not mention victims of environmental harm.⁴⁷

Generally, the criminal justice approach is seen as an *ultimum remedium*—a last resort. The administrative authorities thus act first, and if that does not produce the desired outcome, the public prosecution service and the police take over the case. Under Indonesian law, coordinated and parallel administrative and penal interventions, for instance to exert pressure on a corporation, are also possible. although they are jointly responsible for enforcing environmental laws, the administrative authorities and law enforcement agencies have very different DNA, and in practice this can lead to several problems.

Represent real victims of environmental harm is a moot point. Furthermore, one of the few studies to examine environmental ADR empirically, as well as to discuss the position of the victims directly, suggests that when environmental victims engage representation, or group together in an effort to increase bargaining power, this in fact complicates the process to the extent of prolonging it.

One emergent aspect of environmental courts as specialist problem-solving courts is the increasing attention being paid to the notion of 'restorative justice' as applied to this area of jurisprudence.⁴⁸ The restorative justice perspective is informed by concepts such as those of harm reparation, social restoration, community harmony and problem-solving. A retributive system of justice is essentially punitive in nature, with the key focus on using punishment as a means to deter future crime and to provide 'just deserts' for any harm committed. A restorative approach is concerned

⁴⁵ Shapland, J., Robinson, G. and Sorsby, A. *Restorative Justice in Practice*, London: Routledge. 2011.

⁴⁶ Amy, D. 'The Politics of Environmental Mediation', *Ecology Law Quarterly* 11(1), 1983, p. 1–19.

⁴⁷ Matthew Hall, *Victims of Environmental Crime: Routes for Recognition, Restitution and Redress*, in Toine Spapens, Rob White, and Marieke Kluin, *Environmental Crime and its victims Perspectives within Green Criminology*, ashgate Publishing limited, 2014, p.111.

⁴⁸ Preston 2011b; Besthorn 2012.

with promoting harmonious relationships by means of restitution, reparation and reconciliation involving offenders, victims and the wider community.⁴⁹

A restorative justice approach seems to be ideally suited to dealing with environmental crimes in so far as they hold out the promise that things will be done to rehabilitate or repair the harms that have occurred. There are other issues and constraints as well. The prosecution and sentencing of environmental crime really only finds purchase within particular jurisdictions and national contexts. The problem, however, is that frequently the key actors involved in such crimes are global entities, able to take advantage of different systems of regulation and legal compliance.⁵⁰

Another issue with statistical victims, particularly with respect to restorative justice, is the possibility of victims serving in a representative capacity. When victims cannot be identified with any measure of certainty, participants in restorative justice programs would essentially act as representatives for the unidentifiable. For example, if there is no dispute that the release of asbestos is the sole cause of mesothelioma, but there is no way to tell which asbestos release caused a specific individual's mesothelioma when he is exposed to multiple releases by different companies. It would be entirely possible to have a company, convicted of releasing asbestos, to engage in a restorative justice dialogue with someone diagnosed with mesothelioma—but having the *actual* victim speak to the *actual* offender seems to be a key component of the restorative justice paradigm.

The use of representatives defines traditional criminal proceedings—the prosecutor represents the victim and society—the restorative justice model focuses on the individual as just that. Here, the offender may benefit from having a face connected to his or her criminal actions, and would be further deterred from committing the crime again, but is there any benefit for the victim? One explanation is that those who choose to participate in the process may find meaning in meeting with offenders and would experience the same benefits as someone who is certain of the cause of their harm.

VI. CONCLUSION

Restorative justice creates a forum in which an "offender meets face-to-face" with representatives of a harmed community. This face-to-face "meeting involves a facilitated dialogue in which all participants are given an opportunity to share their views." The core in essence, this approach requires less "professional expertise in substantive law, procedure, or sanctioning. Restorative justice seeks to simplify procedure and put the offender and the affected party in direct control over the outcome. The restorative process is a unique approach to justice that can be applied to unique crimes. Therefore, restorative justice principles can work well when handling specialized types of crime, including corporate and individual crimes affecting the environment.

Environmental crime, just like prostitution and vandalism, can cause the victimization of a community as a whole. The restorative justice model envisions crime as a "Violation of people and relationships" that "creates obligations to make things right. Environmental violations threaten human and environmental health, and that threat can be considered a harm which restorative justice may ameliorate. Unfortunately, the effects of environmental crimes may not be purely local or readily

⁴⁹ White et al. 2012.

⁵⁰ Braithwaite and Drahos 2000.

recognizable. Therefore, the restorative justice paradigm will be most useful when applied to crimes that result in identifiable harms within a specific community or that are committed by a specific individual. In such situations, when a corporate employee causes identifiable harm, the individual at fault, along with the corporate executives, should be present to explain the reason for their illegal conduct.

The members of the public who represent the community would then express the impact resulting from the corporation's actions or inactions. In addition to expressing these views, the participants will seek consensus as to restorative measures to minimize the harm. The restorative justice dialogue occurs in place of judicial sentencing and if no agreement is reached or the offender chooses not to participate, sentencing will take place in the conventional manner

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