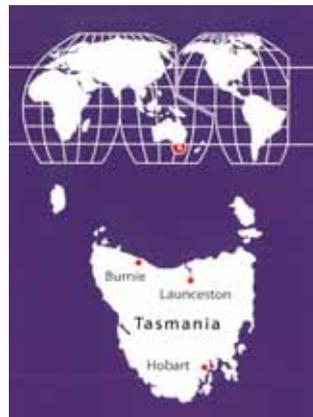


## Eco-Justice and Problem-Solving Approaches to Environmental Crime and Victimization

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### The Problem

- Environmental crime is not a “real” crime
- Devolving of environmental crimes to lower courts
- Poor judicial knowledge about environmental crimes
- Few case precedents due to low prosecution rates
- Placing a low ‘value’ on environmental crimes and harms
- Few well trained people on the ground

### Eco-Justice Orientation

- *Environment justice* – in which environmental rights are seen as an extension of human or social rights so as to enhance the quality of human life, now and into the future
- *Ecological justice* – in which it is acknowledged that human beings are merely one component of complex ecosystems that should be preserved for their own sake
- *Species justice* – in which harm is constructed in relation to the place of nonhuman animals within environments and their intrinsic right to not suffer abuse

### Notions of Justice

#### *Distribution*

justice as fairness/equality (need, desert, entitlement)

#### *Recognition*

justice as acknowledgement (subordination, non-recognition, disrespect)

#### *Participation*

justice as engagement (decision-making procedures, protecting interests)

#### *Capacities*

justice as functionings (opportunities to ‘do’ and to ‘be’)

[Schlosberg, 2007]

### Which ‘Justice’ Should We Adopt?

*What is or ought to be the Moral Basis of Action?*

e.g., the maximisation of dominion/positive liberty

*What is or ought to be the Institutional Basis of Action?*

e.g., repairing harm and restorative justice

### Practices of Justice

If every act of crime represents damage to liberty and wellbeing, then the system's task is to promote positive liberty, by rectifying or remedying the damage caused by the crime

#### *3 Rs of Republican Theory*

- Recognise the 'victim'
- Recompense/Restoration
- Reassure wider communities

### Proposition 1:

#### Justice ought to be an active process

- Emphasis on participation – of victims, of offenders, of advocates, of communities
- Emphasis on doing something – repairing harm, addressing the wrong
- Emphasis on addressing issues – collaborative problem-solving

### Proposition 2:

#### Justice is about maximising liberty

- Emphasis on maximising liberties, choices and autonomy – of victim, of offender, of community
- Emphasis on maximising status, capacities and self-worth – by enhancing control over destiny and bolstering standing in the world
- Emphasis on self-determination – making decisions about the future and ensuring that opportunities are expanded

### Proposition 3:

#### Justice deals with issues holistically

- Emphasis on the rights and dignity of the 'victim' – humans, environments, animals
- Emphasis on each offender as having capacity to do good – it is acts that are socially condemned, not people
- Emphasis on acknowledging the distorting effects of culturally constructed harmful practices on ordinary people – histories of abuse may engender futures of offending

### Proposition 4:

#### Justice has temporal & spatial dimensions

- Emphasis on the past, present and future – learn from what has gone on, and recognise that what we do now has consequences
- Emphasis on potentials and what might be, rather than a fixed state – forward looking and possibilities, with new knowledge and skills opening up new pathways and alternative horizons
- Emphasis on the local – what we do in our own backyard (family, neighbourhood, workplace, community) counts and is particularly meaningful

### Ambiguities of Environmental Crime

Environmental crime frequently embodies a certain ambiguity. This is because it is not only located

- in frameworks of risk (e.g., precautionary principle) or
- evaluated in terms of actual harms (e.g., polluter pays).
- It is also judged in the context of cost-benefit analysis (e.g., license to trade or to pollute or to kill or capture)
- and according to perceived value of harm in relation to specific communities (e.g., developing countries, indigenous, people of colour).

### Court (in)Action

From a legal perspective, the value of environmental harm is linked to the seriousness of environmental offences and this, in turn, is gauged by the sanctions or penalties assigned for such harms

- most offences involving the environment are prosecuted in lower courts, and
- most penalties are on the lower rather than higher end of the scale (and usually involve fines).

This applies to how courts approach animal cruelty as well as to environmental offences relating to pollution and land clearance.

### Specialist Environmental Courts

#### *Local/Regional jurisdictions*

- Knowledge of local and regional issues and problems, access to justice, consistency of sanctions, close to victims/survivors

#### *International court*

- Global issues and transfer of knowledge; appeal court, transnational environmental harm, ecological citizenship

#### *International law/national constitutional law*

- Ecocide as a new international crime, international conventions, Earth rights built into national constitutions

### Sanctions and Remedies

- **full application of criminal laws and criminal sanctions** strategically and in proportion to the nature of the offence, including the use of imprisonment
- **alternative sentencing mechanisms** which involve the compulsory contribution of offenders to an environmental project, that requires restoration or enhancement of the environment
- **civil penalties** for less serious breaches of environmental law, which ensure timely and efficient application of sanctions appropriate to the nature of the offence
- imposition of **stricter liability regimes** (and use of nominated accountability) given the technical and resource difficulties in prosecuting large companies
- **tailored enforcement** approaches that take into account organisation type, which means that sanctions such as fines are suited to the firm-type rather than the offence committed
- **restorative justice and enforceable undertakings** approaches that can involve the offender, victim and community mutually discussing the nature of the offence and suitable remedies

### Problem-Solving Methods

#### **Definitions**

- contradictory principles, illegal acts that are normally condoned, potential harms and risk

#### **Expertise**

- technical, traditional knowledge, ecological, environmental jurisprudence

#### **Complexity**

- issues, trends, internationalisation

#### **Dealing with multiple parties**

- multiple agencies, victims, communities

#### **Specificity**

- tailored solutions to the problem, to the offender

### Court 'justice' Considerations

**Substantive justice:** principles of ecologically sustainable development (principle of integration, precautionary principle, inter and intra generational equity, conservation of biological diversity and ecological integrity and internationalisation of external, environmental costs including the polluter pays principle), environmental impact assessment, public trust, sentencing for environmental crime

**Procedural justice:** access to justice including removal of barriers to public interest litigation in relation to standing, interlocutory injunctions, security for costs, laches and costs

**Distributive justice:** inter and intra generational equity, polluter pays principle, balancing public and private rights and responsibilities;

**Restorative justice:** victim-offender mediation and polluter pays principle for environmental crime; and

**Therapeutic justice:** adopting Court practice and procedure to improve welfare of litigants, including improving accessibility.

### Restorative Justice

- *Crime is fundamentally a violation of people and interpersonal relationships.* The key issue is that victims and the community have been harmed and are in need of restoration.
- *Violations create obligations and liabilities.* It is felt that the offender's obligation is to make things right as much as possible for the harm they have caused. However, it is also argued that the community's obligations extend to victims and to offenders, and to the general welfare of its members.
- *Restorative justice seeks to heal and put right the wrong.* The process of justice ought to maximise the opportunities for exchange of information, participation, dialogue, and mutual consent between victim and offender, and the justice process ought to belong to the community.

### Justice and Victims

Eco-Justice and Political dimensions of justice

- Humans; Specific environments; Animals and plants
- Distribution; Recognition; Participation; Capacities

Environmental Victims

- Status of the non-human as 'victims'
- 'Surrogate victims' who stand in for that which has no voice

### Repairing Harm

**Restorative Justice**

- Victims and Offenders and Communities: mutual membership
- Duality of responsibility: exercising agency
- Giving and Forgiving: achieving redemption

**Reparative Justice**

- Perpetrators as distinctive: the non-human entity
- Dynamics of corporate criminality: chronic recidivism
- Punishment and Power: making things right

### Conclusion

Translating the work of such specialist courts into action will require much more consideration of specific legal issues (e.g., conceptions of ecocide, applications of the precautionary principle) as well as sociological analysis of how best to deal with different kinds of offenders (e.g., working class, corporate). There are also issues relating to how victims and victimhood are to be conceptualised and represented within the court, and how compensation, remediation, rehabilitation and restoration – for victims – is to be accomplished. There is much work yet to be done.