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Green Criminology and Restorative Justice: natural allies?

by Femke Wijdekop and 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

Abstract

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 care for the environment can be stimulated. The implementation of restorative justice in cases of environmental harm is still in the developing stage but examples from Canada, Australia and New Zealand are promising. Applications from ecopsychology ('ecotherapy') could support an attitude of environmental care as well. The authors 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[1], 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 behavior, 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[2].

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”[3].

A central discussion within green criminology is whether environmental harm rather than environmental crime should be its focus, 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[4]. Moving beyond mainstream criminology’s focus on individual 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 behaviors 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:

1. Ecocide law: an international movement has emerged to define the duty of care towards nature as a matter of criminal justice[5].

2. 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.[6]

3. 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.

4. 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.[7]

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 behavior 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[8].

The Australian case *Garrett v Williams* (2007)[9] 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." [10] 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 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 specific, the confrontation with human and non-human victims during a conference can educate the offender about the harmful environmental effects of his/her behavior 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.[11] 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 biophilia-hypothesis of biologist E.O. Wilson, human beings have an innate instinct to care about and connect emotionally with nature.[12]

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

There are many studies that show that time spent in nature can improve your (mental) health.[15] 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.[16] 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.[17] 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.[18]

This short oversight 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[19] 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”[20].

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[21]. Schuilenburg defines it[22] as creating safety by strengthening positive feelings such as connection and security[23], 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 behavior on the natural world;
- To give all victims of environmental harm a voice, including future generations and nature itself; and
- 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[24] and environmental harm they caused. We feel that green criminology and restorative justice indeed 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 thinktank on the topic of restorative justice responses to environmental harm and ecocide[25]: a promising new branch in what might hopefully become a new flourishing movement.

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[1] This concern was already voiced in 1972 by the Club of Rome in their first groundbreaking 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.

[2] *Exploring green criminology: Toward a green criminological revolution*, Lynch, Michael J. and Stretesky, Paul B., Ashgate, Farnham 2014.

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

[4] *Green criminology: shining a critical lens on environmental harm*, Nurse, Angus, Palgrave Communications volume 3, Article number: 10 (2017), p. 3.

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

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

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

[8] *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/

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

[10] *Ibidem*, p. 110

[11] http://www.eco-psychology.com/pages/about_ecopsychology.asp.

[12] *The Biophilia Hypothesis*, Wilson, E. O., Island Press, 1995.

[13] https://en.wikipedia.org/wiki/Ecopsychology#cite_note-And-1.

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

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

[16] Ibidem.

[17] 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.

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

[19] 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 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.

[20] www.harmonywithnatureun.org/unDocs/.

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

[22] In Dutch he calls it “positieve veiligheid”.

[23] <https://www.socialevraagstukken.nl/pleidooi-voor-positieve-veiligheid/>

[24] 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.

[25] See for more information on this thinktank 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/.