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Hearing the Voices of Environmental Harm from Oceania: The Potential of Restorative Justice

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Abstract

This article explores the potential of restorative justice as a vehicle through which to hear stories of environmental harm from Oceania. Conferencing, a restorative justice process, is a face-to-face dialectic exchange where people are heard, their views valued, and repair of harm is central. As well as human voices, such conferencing is broad enough to encompass the voices of nature and unborn generations through human representatives. Recognising two central questions relating to the use of restorative justice will determine such use in the context of environmental harm in Oceania (including from climate change). Firstly, a *definitional question*: is the use of restorative justice in the face of environmental harm consistent with the theoretical boundaries of restorative justice? Secondly, a *relational question*: what is the relationship between restorative justice and traditional Indigenous conflict resolution (i.e., Indigenous justice) in Oceania? That is, has restorative justice co-opted and misappropriated Indigenous justice and what effect, if any, does that have in hearing voices from Oceania?

Keywords: Environmental harm, Oceania, restorative justice, voice

Introduction

In one of the greatest ironies facing the planet, environmental harm (including that from climate change) is, and will be, felt the most by the Global South (particularly Indigenous peoples from Oceania). This is despite the fact that it is those peoples who have historically contributed least to that harm. Development driven by the Global North has been, and continues to be, a major contributor to environmental harm in Oceania, primarily through resource extraction and the impacts of climate change – especially rising sea levels. This article is concerned with environmental harm in Oceania, because the people of Oceania, especially Indigenous people will face the greatest peril from climate change (especially sea-level rise) and environmental destruction and therefore are in greatest need to have their voices heard; voices which are often silenced by dominant Western voices and Western interests. Oceania encompasses countries located in *Australasia* (Australia and New Zealand), *Melanesia* (Papua New Guinea, Soloman Islands, New Caledonia, Vanuatu, Fiji), *Micronesia* (Palau, Guam, Mariana Islands, Marshall Islands, Federated States of Micronesia, Naru) and *Polynesia* (Kiribati, Tokelau, Samoa, Cook Islands, Tonga, French Polynesia, Pitcarn, Niue, Tuvalua). While it is important to note similarities among the countries of Oceania (such as culture and lifestyle), it is also important to recognise differences, especially in the context of environmental harm and Indigenous voices. The main difference of relevance to this article is Australasia and the dominant voice—with Western, European tones—it has. Not only does this voice impose itself over the Indigenous voices in those countries, but it is also a prominent voice on the world stage to different degrees. Indeed, Australia and New Zealand may be geographically located in the Global South, but they metaphorically belong in the Global North. As proof of this, Australia's contribution to climate change, at least per capita, is the one highest in the world through CO_2 gas emissions in 2024 (14.48 tonnes per capita). This compares to other

large emitters – the United States (14.20 tonnes per capita), China (8.66 tonnes per capita), Russia (12.29 tonnes per capita), and India (2.20 tonnes per capita) (Global Carbon Budget, 2025a, b; Park & Gunaydin, 2024; Ritchie et al., 2023).

The vast majority of the 436.87 million tonnes of greenhouse gas emissions (in the form of CO2 gasses) from Oceania in 2024 came from Australasia (Australia [386.73 million tonnes; 88.52%] and New Zealand [32.48 million tonnes; 7.43%]). Other countries from Oceania contributed much less to total Oceania greenhouse gas emissions – New Caledonia (5.29 million tonnes; 1.21%), Fiji (1.45 million tonnes; 0.33%); Samoa (246k tonnes; 0.06%); Tonga (153k tonnes; 0.03%); Federal states of Micronesia (151k tonnes; 0.03%); and Cook Islands (80k tonnes; 0.02%). Oceania contributed 1.13% of the world's CO2 emissions in 2024. Some of the largest contributors to global greenhouse gas emissions in 2024 where China (12.29 billion tonnes; 31.84%); the United States (4.90 billion tonnes; 12.71%); India (3.19 billion tonnes; 8.27%); and Russia (1.78 billion tonnes; 4.61%) (Global Carbon Budget, 2025a, b).

Given the environmental difficulties facing Oceania, especially that pertaining to climate change, such as the threats posed by sea-level rise, it is important to acknowledge that voices from Oceania are important, particularly Indigenous voices. The collective wisdom and practice of the Indigenous people of Oceania may well hold keys to dealing with environmental harm. The challenge is in hearing such voices.

As an academic with an interest in both green criminology and restorative justice, my impulse is to explore restorative justice conferencing as a vehicle to hear the voices of environmental harm from Oceania. Such conferencing is a face-to-face dialectic exchange where people are heard, their views valued, and repair of harm is central. This is important because the ripples of environmental harm can permeate far and wide. Restorative justice is a good vehicle for exploring Indigenous voice because it is an Indigenous practice of conflict resolution and justice adjudication. Or is it? This is where my research took an unexpected turn, a critical turn, down the path of origin myths, misrepresentation, co-option, and misappropriation of restorative justice as Indigenous justice, and the effect that may have on restorative justice as a vehicle for hearing voices from Oceania—particularly Indigenous voices. That concern I will call the *relational question.* Additionally, this article seeks to uncover whether restorative justice can be viewed through a green criminological lens and whether that lens is consistent with the theoretical boundaries of restorative justice, or whether those theoretical boundaries need to be expanded to accommodate restorative justice use with environmental harm. I call this second concern the *definitional question*.

It is important to point out that this review does not attempt to catalogue the justice systems and the use of restorative justice type processes in each of the countries which form Oceania. Nor does it seek to explore nuances between such countries. Its aim is more modest than that: it seeks to understand potential barriers to restorative justice providing a vehicle through which to hear the voice of environmental harm from Oceania.

This article will proceed through two main parts. The first part will explore whether the use of restorative justice as a vehicle to hear voices of environmental harm expands the theoretical boundaries of restorative justice to such a point that it is no longer restorative justice but something else. Those "boundary pushes" encompass a) the expansion of restorative justice beyond "crime" and "conflict" to "activity" (i.e., legal actions) and "events" (including climate change), b) the expansion of victimhood beyond individual living humans and communities, c) the intensification of the scale of harm beyond individual sites within one country to the national and transnational, and d) the use of restorative justice proactively before harm has occurred, rather than reactively when harm has already occurred. The second part will explore the relational question. That is, is restorative justice an Indigenous practice of conflict resolution and justice adjudication, and what effect has the (mis)marketing of restorative justice by the mainstream had on its potential to hear voices of environmental harm from Oceania?

Definitional Question – What is Restorative Justice and What is it Not?

This part is concerned with traditional conceptualisations of restorative justice and how a concern with environmental harm pushes the theoretical boundaries of restorative justice.

Restorative Justice

"Restorative justice is a multifaceted concept with debate ensuing over exactly what it is and what it involves and, indeed, what it isn't" (Hamilton, 2015, p. 164). For some, restorative justice is a set of principles to live by, which could include taking relationships seriously, being aware of the impact of one's actions on others and the environment, taking responsibility for one's negative impacts on others, treating everyone respectfully, making decision-making inclusive, viewing conflicts and harms as opportunities, listening deeply and compassionately to others, engaging in dialogue, being cautious about imposing one's "truths", and confronting everyday injustices sensitively (Zehr, 2015a [1990], pp. 95-96). Similarly, restorative justice can be seen as an ethos to live by, but which has practical goals such as repairing harm and rehabilitation (Gavrielides, 2007,

p. 139). For others, restorative justice is a process of bringing together, voluntarily, affected stakeholders to crime or conflict. Stakeholders can include victims and perpetrators of crime and conflict, experts, and even the prosecutor and government departments, but this will depend on the context. For example, in New Zealand the prosecutors were invited to the restorative justice conferences held following environmental offending, in the capacity of advisors and representatives of the general community and environment. However, in two conferences held in New South Wales, Australia, following offending against Aboriginal Cultural Heritage, the prosecutors were not involved in the conferencing. Such a process entails a facilitated dialogue which seeks to repair the harm occasioned by the crime or conflict. Restorative justice, when in the form of a conference, is labelled as a "purist" account of restorative justice. It can operate as a diversion from prosecution or as part of the sentencing process (Hamilton, 2022b). A maximalist account, on the other hand, is intention based and dispenses with the purist's notions of voluntariness and encounter and is concerned with the repair of harm. Repair may come in the form of court-ordered community service or reparation, including reparative orders (for an overview of reparative orders in an environmental context see Hamilton 2021, pp. 38-50; White, 2017; for an overview of the purist and maximalist accounts of restorative justice see McCold, 2000; Zernova & Wright, 2011, pp. 92-93).

The definitions of restorative justice that have been proffered usually relate to the purist model. For example, one of the most widely adopted definitions describes restorative justice as "a process whereby all of the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future" (Marshall, 1996, p. 37). Similarly, Zehr (2015a [1990]) defines restorative justice as "[a]n approach to achieving justice that involves, to the extent possible, those who have a stake in a specific offense or harm to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible" (p. 48). As one final example, the United Nations (2002, Annex 2) defines restorative justice as "any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator."

Restorative justice has been characterised by its underlying principles (Zehr, 2015a [1990], pp. 43, 83-89), values (Braithwaite, 2000, pp. 185-186; Pranis, 2011; UNODC, 2020, p. 6; Zehr, 2015a [1990], pp. 46-47), signposts (Zehr, 2015a [1990], pp. 51-52), accounts (Braithwaite, 1999), guiding questions (Zehr, 2015a [1990], pp. 49) and attributes (Forsyth et al., 2021, pp. 29-36). Hamilton (2021, pp. 88-92) has taken those characteristics and formulated them into three central tenets of restorative justice. The first central tenet is that crime is a violation of people and relationships. This tenet derives from one of the underlying beliefs of restorative justice: "humans are profoundly relational. There is a fundamental need to be in good relationship with others" because "humans are communal" (Pranis, 2011, p. 64); "we are all interconnected" (Zehr, 2015a [1990], p. 29). Crime violates that relationship. Responses to crime should be inclusive, is the second central tenet. That is, relevant stakeholders to a crime should participate in processes leading to the resolution of that crime. Underpinning this tenet is the realisation that "[i]nterrelationships imply mutual obligations and responsibilities" (Zehr, 2015a [1990], p. 29). Such interrelationships dictate inclusiveness in the response to crime with a goal of repair. The third central tenet is that responses to crime should heal and put things right. This tenet derives from the previous two; crime creates "a debt to make right …" (Zehr, 2015b [1990], p. 200). These central tenets were formulated in the context of mainstream offending, where crime is committed by an individual against a currently living human victim. The fit with underpinnings of green criminology pushes the theoretical boundaries of restorative justice and thereby the underlying central tenets. These theoretical boundary pushes will be explored shortly.

Restorative justice has also been characterised by four functions it can fulfil: *communication*, "[i]nteractive conversation allows for immediacy in a question and answer exchange and allows a more genuine exchange than the sterile environment of a court room"; *education*, building on communication, where "expressions of hurt and disappointment, questions and answers, and explanations all educate … [those participating in the restorative justice process]"; *resolution*, "repair of the harm caused by the crime, [or conflict]"; and *reintegration*, which is concerned with reintegrating into society those who have caused harm, and the seeking to repair fractured relationships and "ensure happy relationships (or at the least the absence of a fractured relationship) for the future" (Hamilton, 2019, pp. 206-210).

Restorative justice and modern criminal justice systems employ shame, but the form of that shame is different. Braithwaite (1989) explores the effect that shame can have on an individual, and the importance of how shame is delivered. When shame is directed towards a person's core rather than their actions, it is stigmatising because it is internalised as an inherent personal flaw. It is counter-productive because it pushes those subject to stigmatising shame toward others so labelled. The result is a group of individuals who reject those directing that shame towards them, as a way of maintaining their self-respect (Braithwaite, 1989, p. 14). These groups provide role models to play down crime, strengthen pro crime attitudes and justify/minimise the effect of crime on victims. These groups of like-minded individuals also cut off from pro social/protective influences such as family, neighbours and church (Braithwaite, 1989, p. 102). Reintegrative shame, on the other hand, is shame directed at the

offence rather than the offender. It is shame delivered with reintegrative gestures or ceremonies to reintegrate the offender back into society. Such shame is productive, and conducive to desistance from future offending (Braithwaite, 1989).

Stigmatising shame is associated with the modern criminal justice system and is akin to saying, *Johnny you are a bad person for committing that robbery, and you will never amount to anything*. Those words need not be muttered to Johnny, but the effect of the criminal process will leave him deflated and worthless as if those words were heard. Reintegrative shame is associated with restorative justice and is akin to saying, *Johnny, you did a bad thing by robbing that lady, but you are not a bad person, and we will help you through this situation*.

The potential of restorative justice as a vehicle to hear the voices of environmental harm from Oceania comes from its ability to achieve what Hamilton (2021) characterises as Justice as Meaningful Involvement. Justice in this framing involves three components. Firstly, its focus on recognition. That is, an acknowledgment that human/environment interaction can have harmful effects on both humans and environment alike (Hamilton, 2021). Secondly, its focus on participation. That is, the inclusion of a wide range of stakeholders in decisions involving human/environment interaction that may impact on them (Hamilton, 2021). Thirdly, its focus on capability. That is, the ability of those harmed by human/environment interaction to retain (or have restored) that which is essential to their/its functioning (Hamilton, 2021). This article is not prescriptive as to the form restorative justice should take, but to hear the voices of environmental harm it should focus on recognition, participation and capability as just described. This would usually involve a face-to-face encounter like conferencing. As we shall see, a focus on environmental harm expands the theoretical boundaries of restorative justice in at least four ways. Such boundary push is necessitated when considering restorative justice through a green criminological lens. I have an interest in both restorative justice and green criminology; therefore, this article focusses extensively on the interplay between the two.

Boundary Push 1: Expansion Beyond "Crime" and "Conflict" to "Activity" and "Events"

In the previous section, some of the prominent definitions of restorative justice were advanced. Context for the use of restorative justice is important: Crime and conflict. Marshall (1996) and Zehr (2015a [1990]) talk about an offense, whereas the United Nations (2002) talks in terms of crime. That is, a breach of criminal law. Zehr's following of offense by the words "or harm" suggests that conflict falling short of crime may be subject to restorative justice, such as at work, school or university. This article is concerned with environmental harm which moves beyond crime and conflict, as dictated by a green criminological lens, to include activity and events. "Environmental harm" encompasses harms to the environment caused by crime (i.e., something prescribed as against the law, such as water pollution) but also sanctioned activity (be it via consent, permit, licence or approval, such as vegetation clearing or fossil fuel extraction and combustion, or activity which is not regulated in any way) which can lead to an event (such as climate change) (White & Heckenberg, 2014). Passas (2005) refers to sanctioned activity as the "Lawful but Awful" (for obvious reasons) and warns that:

> [b]y concentrating on what is officially described as illegal or criminal, a more serious threat to society is left out. This threat is caused [predominantly] by corporate practices that are within the letter of the law and yet have multiple adverse social consequences. (p. 771)

A legitimate question that one could ask is why harm to the environment could be lawful. The answer to that question is captured in the concept of an "ecological-economic trade-off" (Lampkin & Wyatt, 2020, p. 502) where environmental regulation is a balancing of economics and a healthy environment. That balancing is underpinned by an acknowledgement that some harm to the environment is inevitable for social, technological and economic growth. Skinnider (2013) points out, "[t]he reality of our age is that much of the economy is based on the exploitation of natural resources" (p. 3). Indeed, much of the activity causing environmental harm is either permissible or not regulated. For instance, think in terms of fossil fuel extraction and consumption, land clearing and beef farming.

When considering environmental harm, the notion that restorative justice processes (such as conferencing) only pertain to crime or conflict needs to be displaced to facilitate the inclusion of activity (lawful but awful) and events (such as climate change), noting that there are challenges in the use of restorative justice in this context.

In terms of activity (i.e., the lawful but awful) a challenge relates to the motivation of the proponent undertaking the activity in attending restorative justice conferencing. When it comes to environmental crime, an offender may attend restorative justice because they are contrite and remorseful about their offending (see Al-Alosi & Hamilton, 2019; 2021); that is, a level of blameworthiness attaches to the offender. As I have outlined elsewhere, the same blameworthiness does not attach to those undertaking lawful but awful activity (Hamilton, 2022c). Therefore, some consideration needs to be given as to the motivation of a proponent undertaking lawful but awful activity has in attending restorative justice conferencing (for an overview of such motivations and the process involved see Hamilton, 2022c). One possible motivation is to establish, or consolidate, a social

licence to operate. A social licence to operate "is a term that describes how much community support a project, company or industry has in a region" (Luke, 2018).

A social licence is metaphoric (Bice, 2014; Parsons & Moffat, 2014). It "is intangible and unwritten; it is not the type of formal 'licence' that can be granted by civil, political, or legal authorities" (Hurst et al, 2020:, p. 1; see also, Baumber, 2018; Franks & Cohen, 2012; Parsons & Moffat, 2014). Hence, a social licence to operate is not applied for but rather is granted by the community and must be "earned [and] then continually renegotiated" (Hall, 2014, p. 220). A social licence to operate requires work to maintain because it does not exist for perpetuity; it "may be revoked at any stage of the project lifecycle based on changes in perceptions, and reflective of the relationships between a company and its external stakeholders …" (Mercer-Mapstone et al., 2017, p. 347, emphasis omitted).

The maintenance of a social licence to operate is vitally important because its loss "can lead to serious delays and costs for organizations, reduced market access, boycotts or protests, community anger, increased regulations, loss of reputation, and, in extreme instances, the failure of a project, organization and/or industry" (Hurst et al., 2020, p. 1; see also Dare et al., 2014). A social licence to operate has been explored in the context of various lawful but awful activity: Wind farms (Hall, 2014), mining (Mercer-Mapstone et al., 2017; Parsons & Moffat, 2014;), energy (Shaffer et al., 2017), aquaculture (Baines & Edwards, 2018; Leith et al., 2014), forestry (Edwards et al., 2016), agriculture (Greiner, 2014), and pulp and paper manufacturing (Gunningham et al., 2004).

There are significant challenges in using restorative justice conferencing in the context of events, such as climate change. For example, who are the stakeholders to the event? In terms of climate change, it is the result of everyday activity, particularly in the Global North, and it effects most people, but disproportionately those in the Global South. Substantial thought needs to be given to both theoretical and practical aspects of restorative justice conferencing in the context of "events," including stakeholders and accommodating conceivably substantial numbers of stakeholders at conferencing; consideration of what can actually be achieved through such processes; and who would facilitate the conference.

Boundary Push 2: Expansion of Victimhood

The various definitions of restorative justice explored earlier define participation in terms of individuals or collectives of individuals (communities). Marshall (1996) talks in terms of parties with a stake in an offense. Zehr (2015a [1990]) talks in terms of those who have a stake in an offense or harm. The United Nations (2002) talks in terms of victim and offender, and any other individual or community members affected. This is representative of the fact that restorative justice has a non-environmental lineage. Practice in New Zealand suggests adoption of an expanded definition of victimhood during the use of restorative justice conferencing following environmental offending. This is despite the supporting legislation (*Sentencing Act 2002* (NZ) and *Victims' Rights Act 2002* (NZ)) defining victimhood narrowly (a presently living human; see Hamilton, 2022a, p. 65). The reason for this narrow conceptualisation of victimhood is the legislations' "non-environmental lineage" (Hamilton, 2022a, p. 65).

Victims who have been represented at restorative justice conferences following environmental offending in New Zealand include individuals, communities and the environment. Of interest to the current discussion is the environment which "was represented in restorative justice conferences by local Indigenous people and groups who have a close connection with that environment, such as the local Māori trust, Waikato-Tainui Raupatu River Trust or otherwise through the prosecuting council" (Hamilton & Stanton, 2024, p. 604, citations omitted). Interestingly, in the New Zealand environmental offending context, there is no mention of future generations of humans (i.e., those unborn) as victims of environmental offending, let alone their representation at conferencing. This is probably because the context for their inclusion in conferencing has not arisen rather than any deliberate attempt to exclude their voices. Through a green criminological lens, those unborn are viewed as victim because when one generation inherits an environment in a worse state than the previous state inherited it, then there is intergenerational inequality; "[w]here intergenerational inequality is caused by the commission of an environmental offence, the victims include future generations" (Preston, 2011, p. 143; for an overview of the doctrine of intergenerational equity, see Anstee-Wedderburn, 2014). Expanding notions of victimhood is representative of evolving knowledge of harm within a green criminological perspective.

Boundary Push 3: Intensification of Scale and Reach of Harm

A third boundary push relates to the potential scale and reach of harm in an environmental context, be it from illegal or legal activity. Traditionally, restorative justice operates in the context of mainstream offending (for want of better phraseology) where crime is a "random but deliberate action of a person (evil, desperate, or otherwise impaired) against an innocent and undeserving victim … involving interpersonal violence or theft" (Hamilton, 2021, p. 5). Hence victimhood is individual, local

and immediate. Harm manifests at an individual level, at the site of the crime, and at the time of the crime, or shortly thereafter. Environmental victimhood can be completely different, for the following reasons: a) victimhood can be a result of not only illegal activity but also legal activity (per boundary push 1), b) victimhood extends beyond individuals and communities to include the environment and future generations (per boundary push 2), and can include hundreds, thousands, and even more victims, c) harm can manifest at the site of the legal/illegal activity, such as the locality of a water pollution incident, however, it may manifest hundreds of miles downstream (see, for example, Spapens & Huisman, 2016, p. 27), d) harm may manifest immediately, such as pollution consistent illness from water or air pollution (vomiting, nausea, headaches etc.), or it may take decades to manifest, if at all, such as mesothelioma caused by breathing in asbestos fibres (what could be labelled "slow violence"; Nixon, 2011), and e) the line between those harming and those being harmed is not always clear. Think for example of climate change and lifestyle contribution to greenhouse gas emissions. Think also of tradespeople using asbestos in the 1950s, 60s, and 70s who did so with consent but unwittingly exposed themselves and others to disease and death.

The unique features of environmental victimhood presents interesting challenges for the use of restorative justice conferencing including identification of those causing harm and those affected by harm; convincing relevant stakeholders that there is some utility in participating in the process; and, actually ensuring that there is utility in such processes especially in the context of victimhood which is spread across time and space (for a consideration of the use of restorative justice in the context of harm caused by asbestos, see de Nardin Budó & Pali, 2023). Guidance for navigating these challenges may come from the processes of transitional justice in South Africa (Apartheid; Truth and Reconciliation Commission, see Ephgrave, 2015; Fairbank, 2019), Rwanda (Genocide; Gacaca Court, see Clark, 2010; Ephgrave, 2015; Gomez, 2008), Afghanistan (Civil War; Peace Jirga, see Fazli et al., 2024) and East Timor (Human Rights Violations; Truth Commission, see Zifcak, 2005). While such crimes/harms are not environmental, and while each intervention may not be an exact model of restorative justice in every sense, there are elements of restorativeness in a context of large-scale harm over a long period of time.

Boundary Push 4: Proactive use of Restorative Justice

A fourth boundary push relates to the defining of restorative justice as something that is reactionary. That is, in response to harm. Indeed, the word "restorative" implies restoration or repair, meaning harm having already occurred. In recognition of the fact that harm to the environment can come from legal activity, Wilson (2016) proposes the use of restorative justice in a proactive fashion, that is before harm has occurred and in anticipation of that harm; it "is preventative in that its deployment is before any harm has manifested" (Hamilton, 2024, p. 40). What Wilson calls "proactive restorative justice" encompasses the use of a set of restorative justice principles which can be used "throughout the application, assessment, approval and implementation process for major projects …" (Wilson, 2016, pp. 252, 256-258). Those principles are *constructive dialogue* (listening to stakeholder views and proffering of helpful or constructive comments); *knowledge sharing* (among stakeholders, including "knowledge about a particular environment or area, local or Indigenous knowledge, or knowledge about the business concerns or operations of a person or corporation which wishes to carry out an activity" (Wilson, 2016, p. 257); *allocation of benefits* (to local or Indigenous communities anticipated to flow from the activity or project to stakeholders "before a project or activity has been carried out, as a way of strengthening the relationship between the parties involved" (Wilson, 2016, p. 257); and, *focus on future harm* (preventing future harm that may arise from an activity or project).

Restorative justice as traditionally conceived is reactionary; that is, employed after harm has occurred. That much is clear from the use of the word "restorative", and its derivative "restore." To restore means to heal, to repair harm occasioned. With no harm, there is nothing on which restorative justice can operate; so, the traditional conceptualisation goes. Wilson is challenging that conceptualisation. Is what Wilson proposing consistent with the theoretical boundaries of restorative justice, or does the boundary push mean that what is proposed is no longer a form of restorative justice? What Wilson is describing is very much embedded in major development planning and implementation through things such as environmental impact assessment, community consultation and objection processes. These processes very much encompass the principles of proactive restorative justice that Wilson espouses. Interestingly, what Wilson is proposing encapsulates some of the ethos of restorative justice explored by Zehr (2015a [1990]) when he talks about ten ways to live restoratively. That is, not restorative justice as an outcome (maximalist definition) or process (purist definition), but an ethos (a way of living and relating to other people).

Zehr (2015a [1990]) talks about the need to "[t]ake relationships seriously, envisioning yourself in an interconnected web of people, institutions, and the environment" (p. 95). The use of the word "yourself" centres this ethos as being held by individuals, but it does seem to fit with corporations, which are essentially a collection of individuals.

Zehr (2015a [1990]) advises that another component of living restoratively is "to be aware of the impact—potential as well as actual—of your actions on others and the environment" (p. 95). Corporate activity, such as resource extraction, can have an impact on others (including non-humans and those yet to be born) and also the environment. Zehr seems to be almost posturing

this ethos before harm has actually been occasioned – hence this is a matter of "potential" impact of actions on others and the environment. This has synergy with the way that Wilson (2016) is positioning proactive restorative justice, which includes "dialogue" and a focus on "future harm." Indeed, one way that a corporation may become aware of its potential impact, putting to one side due diligence and environment impact assessment, is through discussion with local communities where "knowledge about a particular environment or area, local or Indigenous knowledge" can occur (Wilson, 2016, p. 257).

"When your actions negatively impact others …" Zehr (2015a [1990]) advises that one should "take responsibility by acknowledging and seeking to repair the harm – even when you could probably get away with avoiding or denying it." This is obviously operating after the fact - "[w]hen … actions negatively impact others," but is it permissible to add in a few words here and there to operate proactively? (pp. 95-96). Consider: when your actions *have the potential to* negatively impact others *or the environment*, take responsibility by acknowledging and seeking to repair *or minimise* the harm – even when you could probably get away with it*, especially when you are complying with the law*, or denying it. Do these additional words change the meaning of what Zehr is advocating? Wilson (2016) suggests not. Is the meaning consistent with the theoretical boundaries of restorative justice? Wilson (2016) suggests so.

"Treat everyone respectfully …" suggests Zehr (2015a [1990]), is another component to living restoratively (p. 96). This component does not seem contingent on there having been harm occasioned. Rather, it seems to be suggesting that people should treat everyone respectfully on all occasions. There is some synergy here with proactive restorative justice because underpinning each of the proactive restorative justice principles is respect.

Zehr (2015a [1990]) posits that a further component to living restoratively is to "[i]nvolve those affected by a decision, as much as possible, in the decision-making process" (p. 96). Proactive restorative justice is engaged when decisions are made giving consent to an environmentally damaging project, relate to the scope of that project, and relate to the mitigation of harm from that project. Wilson's (2016) proactive restorative justice principles resonate with such inclusive decision-making because this is about listening to stakeholder views and comments, knowledge-sharing among those stakeholders and figuring out how to prevent or minimise future harm derived from major projects. Zehr (2015a [1990]) also reminds us to view conflicts and harms as opportunities. This has some resonance with proactive restorative justice which suggests that conflict and harm should be addressed even where that harm hasn't manifested yet. Living restoratively is also about listening to others, deeply and compassionately, to understand other's positions (Zehr 2015a [1990]). Again, this has some resonance with proactive restorative justice where constructive dialogue fosters knowledge sharing among stakeholders. That is, the appreciation of other viewpoints. Indeed, engaging in difficult dialogue with others and remaining open to learn from that encounter is another principle of living restoratively (Zehr 2015a [1990]). This ties in with the fact that living restoratively is not about the imposition of one's "truths" and views on people and situations (Zehr 2015a [1990], p. 96). Hence, aligning with proactive restorative justice, the constructive dialogue is about knowledge sharing as Wilson suggests, rather than an imposition of one's truth or one's entrenched views.

Having explored the four boundary pushes which are enlivened when restorative justice is used in the context of environmental harm, it is worth considering whether what is proposed is still restorative justice. What is proposed expands the nodules of harm beyond crime and conflict to include activity and events; it expands victims, and quite substantially; it acknowledges and responds to the sheer scale and reach of environmental harm; and it proposes a proactive rather than purely reactive response. What restorative justice in an environmental harm context does not do is displace the importance of relationships, inclusion, voice, and resolution of harm. Therefore, what is proposed is still restorative justice, but restorative justice which views environmental harm through a green criminological lens with a comprehension of the deepness in Indigenous lived philosophies.

A Relational Question – Restorative Justice as, or informed by, Indigenous Justice/Practice

How effective restorative justice can be as a vehicle to hear stories of environmental harm from Oceania will depend on Indigenous perceptions of, and past experiences with, restorative justice. That is, how Indigenous people relate to restorative justice will determine their willingness to trust it and engage with it. Indeed, when it comes to indigeneity and restorative justice it is vital to point out a common misconception which is pertinent to Australia and New Zealand but could also be representative of the rest of Oceania, to various degrees: restorative justice is not a form of Indigenous justice. It operates within the confines of a Western colonising system and does not further claims of Indigenous sovereignty and self-determination. It is not a de-colonising program (Blagg & Anthony 2019).[1]

The origins of Western inspired restorative justice date back to the 1970s in North America. Firstly, in Kitchener, Ontario, Canada, in 1974, following the vandalisation of 22 properties. A victim-offender mediation brought together victims and

offenders, with the offenders offering to pay restitution to the victims (King, 2008; Zehr, 2015b [1990];). Victim-offender conferencing then began in the United States through a project in Elkhart, Indiana, in 1977–78 (Zehr, 2015b [1990]). Oceania was "graced" with Western inspired restorative justice with family group conferencing commencing in New Zealand in 1989. Such conferencing has been the default response to juvenile offending in New Zealand ever since. Police-mediated conferencing began in New South Wales, Australia in 1991 through the Wagga Wagga program, dealing with predominantly juvenile offenders. Police facilitation was soon abandoned with the introduction of independent facilitators. Notwithstanding the fact that four different labels have been given to these restorative justice interventions, representative of minor differences, each have at the core voice, inclusion and participation. The experience of restorative justice in Australia and New Zealand is unique in Oceania as it was a tool employed by the dominant white settlers to solve a predominantly youth (Indigenous) crime problem. There is some debate in the restorative justice literature relating to the extent to which restorative justice processes are representative of historical Indigenous justice practices. Zehr (2015b [1990]) opines that "restorative justice represents a validation of values and practices that were characteristic of many indigenous groups" (p. 234). Similarly, Braithwaite (1999) points out that "[r]estorative justice has been the dominant model of criminal justice throughout most of human history for the world's peoples" (p. 2). In contrast, Daly (2002) asserts that claims about restorative justice contain four myths, one being that "[r]estorative justice uses indigenous justice practices and was the dominant form of pre-modern justice" (p. 56). Daly (2002) claims that "to say that conferencing [a form of restorative justice] *is* an indigenous justice practice (or 'has its roots in indigenous justice') is to re-engage a white-centred view of the world" (p. 56).

Indeed, restorative justice can be described as having been dressed in an Indigenous cloak, involving "a few concessions to Indigenous 'culture' (such as having Indigenous Elders present at diversionary conferences) … [to] sugar the bitter pill of Indigenous dispossession" (Blagg & Anthony, 2019, p. 134). The "extent of Indigenous influence in the design of specific [r]estorative [j]ustice … programs has been greatly exaggerated …" (Tauri, 2016, p. 46). Moyle and Tauri (2016) conclude that in New Zealand, family group conferencing "is experienced by some Māori participants as one that encloses Indigenous culture and Indigenous participants within a Eurocentric, formulaic and standardized process" (p. 87). Representations that the New Zealand Family Group Conferencing is based on "Indigenous cultural principles and practices" is characterised as a marketing strategy by the "restorative justice industry and policy entrepreneurs" (Moyle & Tauri, 2016, p. 89). Such marketing mythologises restorative justice as Indigenous justice.

Even a preliminary comparison between some of the practices of Indigenous justice and those of restorative justice reveals an imperfect fit. While some Indigenous practices have a restorative feel, other practices would not find favour with restorative justice practitioners. Cunneen (2007) highlights the following Indigenous sanctions: "temporary or permanent exile, withdrawal and separation within the community, public shaming of the individual and restitution by the offender and his or her kin[…,] physical punishment such as beating or spearing" (pp. 115-116).

Exile, withdrawal and separation from the community seems the antithesis of reintegration which is a function restorative justice is said to fulfill. "Public shaming" without reintegrative gestures would most likely be an example of stigmatising shame which is associated with modern criminal justice systems, rather than an example of reintegrative shaming associated with restorative justice. Restitution fits within a restorative justice framing, and while retribution is not excluded from restorative justice, beating or spearing does not readily come to mind when one thinks about restorative justice and what it is seeking to achieve.

One of the harms that can come from the (mis)marketing of restorative justice as Indigenous justice is the inevitable claims from Western politicians (and their voters) to Indigenous people and Indigenous crime: *we gave you the opportunity to use this Indigenous (restorative) form of justice to manage your (Māori or Aboriginal) youth offending, yet crime and reoffending is still the reality*. Moyle and Tauri (2016) characterise such claims as "one of the most startling examples of the mystification process …" (p. 91).

What claims of Indigenous control fail to consider is that restorative justice operates within a Western legal framework and is not concerned with Indigenous sovereignty and self-determination (Blagg and Anthony, 2019). It is part of a colonisation process; its confines are that of "law" not "lore". Blagg and Anthony (2019) explain that:

> Restorative Justice has not emerged organically from within Indigenous communities, it arrives on the back of a wagon train of top-down government policies, statutes and laws that also include mandatory sentencing laws, assimilationist child removal policies, insensitive and inappropriate forms of policing, petty restrictions on driving, and the destruction of native flora and fauna. (p. 137)

Indeed, the continuation of historical legacies "has not made the system as a whole less punitive and retributive …" (Blagg & Anthony, 2019, p. 133). Restorative justice is not part of a decolonising project:

> Restorative Justice … is a modernist, Euro-north American concept concerned with reforming what remains an essentially Western paradigm of justice reform … Further, Restorative Justice has nothing useful to say about bedrock Indigenous demands for the return of sovereignty over land and self-determination. (Blagg & Anthony, 2019, pp. 133-134)

Indeed, "the inter-jurisdictional transfer of these [restorative justice] programs has impeded the ability of Indigenous peoples to strive for a measure of self-determination in the justice sphere" (Tauri, 2016, p. 46; see further Tauri, 1999).

What the above analysis highlights is that there may be some reluctance on behalf of Indigenous people of Oceania to agree to participate in a restorative justice process and express their experiences of environmental harm. This is because they may have had negative experiences with restorative justice in the past. It was sold to them as an Indigenous form of justice, but within a Western legal framework. Operating within the colonisation process means it has not furthered Indigenous sovereignty or self-determination. As Cunneen (2007) explains, "[t]he state is synonymous with government agencies that forced people on to reservations, denied basic citizenship rights, forcibly removed children, enforced education in residential schools, banned cultural and spiritual practices, and imposed an alien criminal justice system" (p. 117). This may mean for many Indigenous people that the state lacks legitimacy, casting shadows over restorative justice processes.

Conclusion

In a world of increasing environmental harm, how do we ensure that all voices are heard, not just those from the Global North, industry, political parties and media? That is, how do we ensure the victims and survivors of environmental harm emanating from Oceania are heard, especially Indigenous voices? As an advocate of restorative justice, my first thought is to suggest the use of restorative justice conferencing as a vehicle for hearing Indigenous voices. Such conferencing is a facilitated face-to-face dialogue among stakeholders to crime or conflict.

Restorative justice must be flexible enough to respond to activity and events, as well as crime and conflict. Writing in this space suggests that restorative justice is sufficiently flexible (Hamilton, 2022c). Restorative justice in the environmental context, for either illegal or legal activities, requires representation of nonhumans and future generations of humans. Such voices can be represented by NGOs and government entities concerned with environmental protection, as well as Indigenous people whose identity is strongly connected to their territories (Goyes & South, 2021). The use of conferencing in New Zealand following environmental crime suggests that such representation is already occurring and will not impede the use of conferencing in an environmental harm context (for an overview of the New Zealand context, see Hamilton & Stanton, 2024).

Restorative justice needs to be sufficiently flexible to deal with the sheer scale and reach of environmental harm, which can be located across time and space. This will require thought as to the logistics of the restorative justice process, the motivation in attending those processes, and what can be achieved through that process.

To deal with environmental harm, restorative justice needs to be proactive and not just reactive after harm has occurred. One of the aims of restorative justice is to repair the harm occasioned by crime or conflict. In an environmental harm context, harm is continuing to evolve and indeed the world is trying to prevent or at least limit harm. Restorative justice in this context could be used proactively to prevent or limit such harm. Wilson's (2016) conceptualisation of proactive restorative justice just may well be what is needed to push this theoretical boundary.

Potentially impeding the use of restorative justice in an Oceania environmental harm context is an image/relational problem in parts of Oceania. This is particularly among the Indigenous people of Australia and New Zealand. This is because restorative justice has been misappropriated as a form of Indigenous justice and "sold" or "marketed" as such. Additionally, restorative justice operates within a dominant Western legal system with Western laws. Further, restorative justice is not a vehicle for Indigenous sovereignty or self-determination. The compounding effect of these interrelated parts is that Indigenous people from Oceania may be hesitant to embrace restorative justice as a vehicle to express their voice about harms.

If restorative justice is to play a prominent role in hearing the voices of environmental harm from Oceania, it will need to overcome its image/relational problem and accommodate the four theoretical boundary pushes explored. If it can overcome those barriers, it may well prove to be a great vehicle for hearing such voices because it is inclusive and respective of all voices including Indigenous voices, voices of those unborn and the voices of non-humans.

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[1] This misconception was vehemently pointed out by the Indigenous people present (mainly Australian Aboriginal supported by New Zealand Māori), at a recent restorative justice conference I attended in Canberra, Australia (November 2024).

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