

Exploring a socio-ecocentric approach to criminal law to enforce sustainability commitments

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Associate Professor of Criminal Law Sjarai Lestrade explored the possibility for a socio-ecocentric criminal justice system. She did so in a theme issue of *Delikt & Delinkwent* on the possible modernization of the Dutch Penal Code.

The theme issue of *Delikt & Delinkwent* addressed the question of how "modern" substantive criminal law should be shaped. In this context, several substantive criminal law issues were raised for discussion. Of the five articles, four came from researchers at Nijmegen's law faculty.

Since the current Penal Code dates from 1886, the participating researchers advocate an active role of academia in this discussion. For instance, Sjarai Lestrade wonders what the consequences would be of modernizing the Penal Code toward a socially ecocentric criminal justice system.

Suitable tool?

Lestrade explores the possibility of a socio-ecocentric system in which not only the individual but also the ecosystem is central. She explains, "Our current system is anthropocentrically oriented; the individual human being in the present is central. With the growing focus on sustainability and the balance between people, planet and profit, the question arises whether our criminal justice system is geared to that.

"Moreover, there is a tendency for [political parties](#) to be quick to resort to criminal law when it comes to social problems. 'We should criminalize ecocide.' It could well be that such a criminalization will eventually end up in the Penal Code.

"But then no real thought is given to the more fundamental questions behind it: how does it actually fit into criminal law and what do you want to do with it?" Lestrade therefore argues that more research is needed

into whether criminal law is the appropriate tool to address sustainability challenges.

Individual and collective interests

In a socio-ecocentric criminal justice system, the focus shifts more towards safeguarding collective interests. Are there any examples of this in current criminal law? Lestrade states, "There already are, for example in the area of security. That is a collective interest that has been given wide coverage in the Penal Code. Sometimes it is also difficult to distinguish between an individual interest and a collective interest."

In her article, Lestrade illustrates possible consequences that a socio-ecocentric criminal law would entail. "Polluting [surface water](#), for example, is also punishable now, but only if it reaches such proportions that it is dangerous for people in the present. When you move to a different system, it could already be punishable if you discharge waste when it is not directly dangerous at the time, but could have harmful consequences for future generations. When you regulate this in criminal law, the question of 'what are you allowed to just dump in your garden' suddenly becomes a lot more urgent."

An animal or mother nature as a party in criminal proceedings

Lestrade cites another example: granting rights to animals and nature reserves. "Maybe from sustainability considerations we should move towards a system where you give rights to animals or nature reserves. Only question is whether you necessarily have to do that in the criminal justice system. That's a tricky question. Ultimately, of course, that is also a political choice. But that does not alter the fact that it is up to legal science to have this discussion.

"Current criminal justice theorizing is critical of such a systemic change, but at the same time does not sufficiently answer pressing sustainability questions. If you adopt a [criminal justice system](#) that puts the ecosystem at the center, then animals or nature reserves could potentially become parties to the criminal proceedings. Then conflicting interests may arise between the (freedom of the) citizen on the one hand and an animal or a nature reserve on the other. Can murder charges be filed on behalf of a cow? Can [nature reserves](#) join the criminal process as victims of destruction?"

"This has huge implications. Not only from the fundamentals of [criminal law](#), but also in terms of practicality. It is possible that administrative law or civil law are more suitable legal systems with which to enforce sustainability policies. In any case, it is important for science to look into this from different angles and for this knowledge to be shared."

Provided by Radboud University

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