

# Eradicating Ecocide

## Interview with Polly Higgins

By Richard Swann

### Richard

*Thank you for giving some of your valuable time to speak with us. Can you start off by telling me a bit about yourself?*

### Polly

I am a Lawyer. I started out as a Barrister in corporate law in London and I got to a point where I found myself asking how it is that people I get on with very well, representing big transnational corporations seem to think it is perfectly normal to make lots of money out of mass damage and destruction. That led to a whole process of inquiry and I realised very quickly, that there were missing laws and that law had created a huge problem here. Law had put in place an overriding legal duty within corporations to put the interests of the shareholders first.

### Richard

*Do you mean here in the U.K.?*

### Polly

Not just here, in virtually every country in the world. Often laws are made in one country and then copied in many other countries. Putting the interests of the shareholders first is pretty much global. There may be one or two exceptions but that is a global normative in how we run business.

It seemed to me that this had led to an imbalance in the scales of justice. We were failing to look at things in the round and there was missing law that put the interests and health and wellbeing of people on the planet first. It seemed to me that only when we do that can we align human law with a higher law, based on a principle of first do no harm. If we operate from that principle then whatever business or whatever flows from that can only be constructive rather than destructive.

I found myself recognising that we had a missing law



and that law was ecocide. I was in Copenhagen, legally advising the climate negotiations back in 2009 and someone in the audience said, “We need a new language to deal with this mass damage and destruction.” And I thought, “You know it is like genocide only it is ecocide. Wow, that should be a crime, how come that is not an international crime?”

That led to my treating it like a legal brief and subjecting the idea to really rigorous intellectual and legal scrutiny. I went back to first principles to look at the existing international criminal laws defined within the Rome Statute, the treaty that established the international criminal court to which 123 countries have signed up. These crimes are

defined as genocide, war crimes, crimes against humanity and crimes of aggression. What I saw was that there was a missing fifth, what is known as an international crime against peace, to stand alongside them. It seemed to me absolutely common sense that we should be criminalising mass damage and destruction to the earth.

### Richard

*Are you looking to amend the Rome Statute?*

### Polly

My intent is to have a number of States standing up and calling for ecocide law to be added as the fifth international crime against peace, and calling for an amendment in the Rome Statute to include it. I am meeting with a number of States to see who could come forward and creating the safe space for that to happen.

A lot of what I have been doing over the last five years is building awareness of the idea, taking it out into the public domain, making it very visible. Legally advising at different levels, political, legal and grass roots level as well, and navigating those waters to find out how to move very quickly

with it. There is no set way of doing this, it is an emergent space if you like.

**Richard**

*In the end a decision has to be made, a document may have to be signed?*

**Polly**

Yes, so all it requires is for one Head of State who is a signatory to the Rome Statute to call for this, and that would trigger the whole mechanism. Within three months of that call being made there could be a Meeting of Assembly of State Parties and then a draft of that law has to be tabled. That has all been drafted, it is there ready to go.

Then it is just a matter of garnering signatures. What I am particularly interested in are the small island states. There are 54 small island states in the world that are looking at going under water because of rising sea levels. Under existing climate negotiations they have no recourse to justice.

Ecocide law deals with two types of ecocide. It deals with corporate ecocide, so criminalising mass damage and destruction that is human caused. But it also creates a legal duty of care for naturally occurring ecocide, which then imputes a legal duty of care on other member states to give assistance for those who are looking at, for instance, rising sea levels, tsunamis, floods and what have you.

**Richard**

*Would people who have got businesses that are causing damage be prosecuted?*

**Polly**

So let me explain that. In law you are looking to garner the evidence of whether or not there is extensive damage and destruction to a loss of ecosystems. For instance, if you look at the Athabasca tar sands in Canada, for ecocide law purposes you would go in there and you would be prosecuting CEOs and Directors of companies that are extracting fossil fuel, because they are causing significant harm.

That could be on a number of fronts. You could look to the extensive damage and destruction of the ancient arboreal forest, the wetlands, the pollution to the waters, the atmospheric pollution that could be the increase in greenhouse gases.

In 2011 at the Supreme Court in London, we road tested the law as if it was already in place, and looked at the Athabasca tar sands as our test case. We had three counts on the indictment, Athabasca tar sands were two and the other one was the BP Gulf oil spill.

To establish ecocide law you are looking at the evidence of the harm itself.

**Richard**

*So agriculture could be a good situation? For example in the US where dust bowls are created as a result of monoculture agriculture?*

**Polly**

Yes, and not just the use of monoculture agriculture, but also the use of genetic modification, Roundup, herbicides, pesticides. Also remember it is about looking to the cumulative impact of the significant harm. So this is very important because then you can actually pinpoint certain industrial practices and decisions that have been made in the board room, that are leading to and contributing to ecocide in farming as well as many other industrial sectors.

**Richard**

*So if you were to prosecute an agribusiness in say America, you would need to have evidence of the effect of their practice on that piece of land over a number of years?*

**Polly**

Exactly. It gives you a legal process by which you can bring the evidence that already exists into the courtroom. At the moment there

is no process by which to do that. Also remember this is not civil litigation. Civil litigation only stops a specific harm or a pay out in the aftermath, but allows the industry to keep on continuing.

What the prosecution does is treat a certain industrial activity as criminal activity if it is going to cause the ecocide and therefore can no longer continue. So it is very powerful, it flips the normative. It would make biodynamic gardening a normative rather than an exception for instance.

**Richard**

*Where is the funding for all of this? Wouldn't it be expensive for communities to prosecute?*

**Polly**

No, prosecutions are brought by the state. Let me explain the difference between civil and criminal law. A criminal law attaches a criminality to an individual. So for instance, if you were to walk down the road and someone stole your bag and you turned around to a police officer and said, "Stop that man, he is stealing my bag." If that person refused to accept that they had stolen it, the state would take the prosecution for that person stealing your bag. It is the same thing with a crime of ecocide, it is incumbent upon the state to take the action.

Let me give you an example. Prosecutions during the Nuremberg trials after World War II weren't just prosecutions of war Generals, they were also to do with CEOs and Directors of companies who had made decisions causing significant harm, for example there was a consortium of companies that aided and abetted genocide and the facilitations of Jews into internment camps, the supplying of the gas and so forth.



It is the individuals who are culpable and the principle is known as the principle of superior responsibility. The higher up you are in the chain of command and control, the more of the mantle of responsibility you carry. You can't sidestep that, there is no diplomatic immunity from international criminal law.

In civil law, you take civil litigation against a company and all you can do is seek remedy through a fine. The personhood of the company is fictional because the company is actually a piece of paper, their Charter, their Articles of Association. So all you can do is maybe fine that company, it doesn't attach itself to the persons of superior responsibility right at the top end.

**Richard**

*So they could just continue what they were doing?*

**Polly**

Exactly right, you just pay out and then continue what you were doing. Often with civil litigation it is too little too late and more often than not communities don't chase for something that

has caused harm, because they don't have the money or the legal wherewithal to do it. This allows companies to perpetrate harm again and again, because it is not a crime.

As soon as it becomes a crime it becomes incumbent upon the state to take action on your behalf. So what you are doing is you are calling in the support of the law for your communities and for your individuals, for the state to take action against those individuals that make decisions at the very top end, that harm many millions below.

**Richard**

*Who in the state would take action?*

**Polly**

Exactly the same as the theft case - the decision would go to the state prosecution department.

**Richard**

*Would it then be taken to an international court?*

**Polly**

With international crime, all the signatories of the Rome Statute, 123 countries in all, have to transpose it into their own national law. Here in the U.K., the state has to take prosecutions against the CEOs of British companies or a non-British company that is committing ecocide over here. Likewise a U.K. CEO who is committing ecocide in another country can be prosecuted over there.

It only goes up to the international criminal court in The Hague if the country is either unwilling or unable to take that prosecution. Often that happens where the country, the government is complicit and corrupt and refuses to make those prosecutions themselves.

**Richard**

*So would there be criminal sentences?*

**Polly**

If you have committed genocide you tend to go to prison for it. But with ecocide it is slightly different. Not all ecocides are intended, you don't have CEOs and Directors sitting around rubbing their hands saying, "What are we going to destroy today?" It is the collateral damage if you like. The intent is to make money; not to destroy.

**Richard**

*I was just wondering whether a hefty fine would put things right in a certain way?*

**Polly**

No, fines don't apply in criminal law, fines apply very much in civil law. With criminal law, it is about taking responsibility, and if you fail to take responsibility then you end up going to prison. But if you are willing to take responsibility for the decisions that have

led to an ecocide, then what is offered under the Ecocide Act is that you can enter into a restorative justice hearing and that is about coming together with the communities that have been adversely impacted and deciding on a route map as to how you restore the land, the territory and make good the harm that has arisen.

**Richard**

*So with a dust bowl in America, a restorative action could be that together with affected communities, they would then start to look at how to build up the humus and how to make a more diverse cultivation, in order to remedy the soil?*

**Polly**

And a court of law can make orders to that effect and order to have it reviewed over time by an independent environment investigation agency, to ensure that it is upheld. If it is not then there could be further sentencing and imprisonment.

**Richard**

*There must be lots of cases already lined up somewhere?*

**Polly**

You could say that no country comes to the table with clean hands on this. But this is why it is very important that there is a transition period, where you give transnational corporations an opportunity to clean up their act and turn their ships, and only after that do you go in and start leveraging prosecutions. We always have transition periods with law so with national or European directives for instance, we have anything between six months and two years implementation transition period. I have proposed a five-year transition period for ecocide law.



**Richard**

*How would you get the message out during this transition period?*

**Polly**

I think you will find that when heads of state call for this to be put in place, the international media will run with this story big time. The beauty is that when heads of state then call for this and it is tabled, it will trigger a mechanism that moves very fast and it will gain a lot of public coverage.

It is very important that I keep what I am doing out in the public domain, to ensure that it remains visible as it moves through, so that it doesn't become compromised. It very nearly became an international law in the mid 1990s, which I hadn't known about when I first proposed it. When the Guardian first ran the story back in 2010, it generated a huge amount of activity across the world and one of the people that got in touch with me was a journalist from the Baltic States who had found a UN document that referred to ecocide as the fifth international crime against peace.

**Richard**

*The word ecocide was used then?*

**Polly**

The word ecocide has been around since the 1960s and in fact Olof Palme in his opening speech at the Stockholm Conference back in 1972, berated the United Nations for dragging their feet in implementing law to stop the escalating ecocide.

At the University of London their School of Advanced Studies went into the U.N. basement and followed a huge paper trail of evidence showing us that for a period of 11 years from 1985 to 1996, ecocide law was being drafted into the Rome Statute as the fifth international crime against peace. Many countries had gone on record to support it. We also have documents the U.N. rapporteurs left behind which include records of the last meeting held for the working group on crimes against the environment. They reveal that the head of the group at that time announced that he was removing ecocide law as a crime. He didn't give reasons and many countries objected. It was suggested it was a result of lobbying behind the scenes of four countries, the U.S., U.K., France and the Netherlands.

So one of the reasons why I am keeping this out in the public domain is to ensure that doesn't happen again.

**Richard**

*Who are the 'warm' countries that are supporting this? Is that still confidential?*

**Polly**

I would love to be able to say but in truth until these countries stand up and say it themselves nothing is a dead cert, so there is no point in me pre-empting anything. Also this is about creating a safe space for those states to operate within. At the moment there is a lot of mobilisation behind closed doors to create that safe space and ensure that there are various organisations, NGOs and institutes around the world in place so that when the moment comes, a lot of other supporters feel confident to come forward.

**Richard**

*Can you give me a picture of your organisation?*

**Polly**

There are many people involved. It is an extensive international network of lawyers, non-lawyers and political actors right across the world. There is a Global Alliance of Earth Lawyers that is active in various countries and also non-lawyers, various NGOs, ambassadors, U.N. representatives, senior legal advisers and ministers are now helping with this. There is also a very active grass roots movement operating in different countries in different ways. It is five years' worth of going in and legally advising, with many others running with this in their own capacity. My website 'Eradicating Ecocide.com' is the information portal at the centre of it all and out of that people then take this forward in whatever way or capacity they can, because they know best how to do that.

So for instance there is a group of volunteers in Europe who have set up 'End Ecocide on Earth' and they do great stuff; including a lot of grass roots activism. There are groups in various countries. 'End Ecocide' in Sweden for instance is a very proactive group of NGOs and grass roots organisations. I am not a campaigner. I don't know how to campaign, that is not my skill base. I am very much inviting those who can and do to take that forward in their way. Not just campaigners, but institutes, organisations, NGOs and political actors.

**Richard**

*What can the biodynamic organic community do to help?*

**Polly**

One of the most powerful things of all is to seed this as an idea. I see things in very much holistic terms and how this is one idea whose time has come. By scattering the seeds of this, it will take root and grow. We are all capable of what I call being bridges here, where we can take it out into our networks and seed it out in many different ways.

Certainly the biodynamic world is going to greatly benefit as this process will really call in the support of law for the great work that you are doing in engaging with our very soil, the very stuff that nourishes our lives.

**Richard**

*You are involved in other work as well? I know you have got another book called 'Dare to be Great'?*

**Polly**

Yes I live and breathe this, but also in a way it is something that I have discovered through the journey, dealing with outer law as a direct parallel with inner law. How do we govern ourselves and what are our inner ecocides, our patterns of harm that are destructive to ourselves and to our community around us? So in a way it has also taken me on a spiritual journey.

We can ask ourselves some fundamental questions that apply equally to inner and outer governance. Whose interests are being protected; people and the planet or the polluter? You can look at any written law out there and you can see whether or not it is protecting one or the other. If it

is protecting the polluter then we know that something is seriously out of kilter here.

So for me this is really about aligning human law with higher law. When we do, we move away from significant harm into harmony. That is something that Martin Luther King talked about, that Plato talked about, that goes back through the centuries of what is this higher law, natural law that can govern us? That actually is of a more spiritual dimension if you like. How do we take these intrinsic values into how we govern our lives and the way we engage with the world at large?

So I am also equally interested in the self-governance aspect and that is where the 'Dare to be Great' comes into it. If we are looking at something greater than the self-operating here, then surely that is about us meeting that as well and inviting it into our lives. Yes. For me that is about being in service to something greater than the self.

**Richard**

*So is there a certain amount of personal work here?*

**Polly**

Absolutely yes, and proactive engagement and facing the inner ecocides. Facing the shadow self and giving it name. When we do that we can let it go, we can choose a different pathway. We can choose to engage with life in a different way.

**Richard**

*Finally, who and what has been the main source of inspiration for you?*

**Polly**

I am very eclectic, my inspiration comes from many, many different sources. For instance I have just met Jonathan Stedall, who lives in my village and we had a phenomenal conversation last weekend and he gifted me his beautiful book, 'Where on Earth is Heaven?' which of course can only start within the self, in a way. I have just watched the first half of the two-part Steiner documentary that he made. I am greatly inspired by what I am learning about Steiner, and that far more holistic and spiritual approach to how we engage with the very stuff of life around us. How interesting, here was a man back in the 1920s, coming to the same conclusions as I have myself, without my even knowing about how Steiner operated. And there are other great thinkers throughout the world, from many different disciplines, who come to the same conclusions actually.

Once we gift ourselves some time for deeper, inner reflection, it takes us on a quest. It is about asking the bigger questions of life that we don't know the answers to. How do we create a better world? From what I have seen from Steiner he is so much operating in that space. He was setting himself a huge challenge in life. Jonathan Stedall's documentary really pays testimony to that. ■

**Further information**

Eradicating Ecocide: [eradicatingecocide.com](http://eradicatingecocide.com)  
Polly Higgins: [pollyhiggins.com](http://pollyhiggins.com)

