

## BOOK REVIEW

**Adán Nieto Martín and Raúl Calvo Soler (eds.), *Justicia restaurativa empresarial: un modelo para armar [Corporate restorative justice: a model to be built]*. Madrid: Reus, 2023, 313 pp., ISBN: 978-84-290-2691-7 (hbk).**

The book *Justicia restaurativa empresarial: un modelo para armar* is edited in Spanish by Adán Nieto, Chair of Criminal Law at the University of Castilla la Mancha (Spain), and Raúl Calvo, facilitator and Professor of the University of Buenos Aires and the University of San Andrés (Argentina). It is co-authored by the editors along with sixteen other academics – some of them lawyers – and one compliance officer. These contributors are affiliated with universities in Spain, Italy, Chile, Brazil and the United States, bringing expertise in the fields of legal theory, criminal law and corporate communication studies.

The book's title translates to *Corporate restorative justice: a model to be built* in English. It expands on ideas from previous works written by the authors, some of which were published as articles in English and/or Spanish (Baucells, 2020; Cardona, 2020; Colacurci, 2021; de Pablo, 2022; Guardiola, 2020; Nieto, 2015, 2022; Saad-Diniz, 2019). Financially supported by Spain's Ministry of Economy (MINECO), the book is part of a research project titled, 'Criminal liability of transnational corporations in relation to human rights and environmental violations' (DER 2017-85144-C2).<sup>1</sup>

This 313-page edited collection is organised into five sections, which the editors refer to as 'lessons' rather than 'chapters'. It offers a significant exploration of corporate restorative justice from a practical standpoint. As highlighted on its cover and in the introduction, the authors focus not on developing a theoretical model but on providing practical insights that can systematise and guide existing and potential restorative justice practices. Ultimately, their goal is to create a pioneering handbook outlining the fundamental elements of a restorative justice-based criminal policy proposal for addressing serious corporate criminality. This includes economic offences, environmental crimes, crimes against human rights and against workers' social rights, all committed by corporations. Addressing the marginal application of restorative justice in this realm, the book tries to respond to the practical challenges of dealing with collective victimisation and corporate offending (Forti, Mazzucato, Visconti & Giavazzi, 2018; García Arán, 2021). It suggests concrete ways of incorporating restorative justice mechanisms within different criminal jurisdictions. Through case studies from various countries, the book offers actionable ideas for legal professionals, authorities and corporations, in terms of enabling restorative justice to establish concrete and effective avenues for development.

The introduction begins with a frustrating account of how civil, administrative and criminal laws have been applied to corporate victimisation in environmental and economic crimes, as well as in cases involving violations of human rights and

1 Information about this research project can be retrieved from <https://blog.uclm.es/repmult/> (last accessed 25 April 2024).

social workers' rights on a global scale. Typically, in these scenarios, neither the actions of prosecutors nor the activism of victims prevent the lack of accountability and reparation, leading to profound secondary victimisation. To illustrate this point, five well-known cases involving U.S. and European companies – sometimes with state connivance – are portrayed, showing very serious harms affecting the so-called Global South: the Bhopal case in India; the Texaco-Chevron case in Ecuador; the Shell case in Nigeria; the Kik case in Bangladesh; and the Riggs case in Chile.

In the first lesson, written by Professors Calvo, Galain, Medina and Saad, a broad approach to restorative justice is articulated by highlighting the elements of harm, conflict, dialogue, collaborative participation and reparation – all in alignment with international standards in the field. Consequently, restorative justice is primarily understood as complementary to the penal system. This perspective allows them to reinterpret the existing criminal provisions in a restorative manner, even where such approach has not previously been applied. However, the authors argue that this reinterpretation will only prove useful if legal professionals, especially lawyers, prosecutors and magistrates, receive proper education and training in environmental restorative justice (Pali, Forsyth & Tepper, 2022) and/or in restorative justice approaches to white-collar crimes more broadly.

The second lesson, authored by Calvo, de Páramo, Nieto, Manfredi and Herranz, explores how to implement restorative justice in these cases, both within and outside the criminal justice system. It introduces principles, attitudes and tools such as negotiation, communication and evaluation which are essential for designing restorative processes. Examples include applications linked to social corporate responsibility or extrajudicial reparation mechanisms, as outlined in the 2011 United Nations *Guiding Principles on Business and Human Rights* within the 'Protect, Respect and Remedy' framework (Goerzen, 2023).

The third lesson, written by Guardiola, Cardona and Baucells, provides insights, particularly for Spain, into modifying parts of the existing criminal justice response in a restorative way, for example, through restorative plea bargaining, penalty mitigation, probation, fines, community service or even special restorative programmes in prison. This applies to natural persons who have been accused, charged or convicted, with the restorative response emerging from a reinterpretation of criminal procedural, substantive and penitentiary laws. Each proposed 'restorative reinterpretation' is critically assessed for its potential benefits and risks.

The fourth lesson, authored by Nieto, Martufi, de Pablo, López Lorca, Colacurci and Cardona, sets out that same restorative reinterpretation, mainly in Italy<sup>2</sup> and Spain, but applies it to legal persons accused, charged or convicted of such crimes. The authors advocate for the use of restorative procedural agreements prior to

2 After introducing Legislative Decree n. 231 on 8 June 2001, Italy is cited by the authors as a good model regarding the administrative liability of legal entities (including companies) for crimes committed by their legal representatives, administrators, managers, etc., as well as by persons under their direction and supervision. This liability is combined with the criminal liability of the natural person who physically committed the crime.

sentencing, as well as restorative sanctions and sentences, the establishment of fiduciary funds for broader reparative purposes, and the implementation of restorative corporate monitors and confiscation. The adjective 'restorative' qualifies these well-known punitive or penal instruments by incorporating the principles outlined in Lesson 1, such as voluntariness, active participation, engagement in dialogue, confidentiality, honesty, impartiality, relationship repair and the healing of both tangible and intangible harms in a participatory, non-stigmatising and non-victimising way.

The fifth lesson, written by Nieto, Guasti, Gandara, Calvo, Carretero and Martufi, examines the potential for restoratively rethinking concrete case studies in Brazil (the Samarco case), Guatemala (the Chixoy case), Peru (the Pluspetrol case) and the United Kingdom (the Severn Trent Water case). In these cases, while some restorative elements can be found, the authors also identify myriad limitations according to international standards of restorative justice. They discuss these limitations to find alternatives to minimise abuses of power.

The book concludes by acknowledging reasonable doubts about the motivation of offending corporations to engage meaningfully in restorative justice. It critically examines whether these corporations' ethos genuinely supports participation in such practices in light of consistent evidence that (large transnational) corporations are often keen at avoiding civil, administrative and criminal liability.

In general, this book provides a comprehensive overview of developments in corporate restorative justice across Latin America, Italy, Spain and other Western countries. It highlights evolving common themes relevant to practitioners, academics and policymakers. Moreover, the authors cross traditional disciplinary boundaries, such as those of criminal and procedural laws, and confront unresolved debates regarding the theory and practical application of this field. Perhaps introducing recent green criminological literature could have further enriched this work in a transdisciplinary way, as suggested by the upcoming quotation from de Oliveira, Prata & da Silva (2023).

Finally, there are some critical constructive considerations I would like to add. At a concept level, it is arguable that restorative justice does not contradict the existing criminal justice system, particularly where power imbalances are evident from the outset of conflicts or abuses, and these imbalances directly influence the application of law. As de Oliveira et al. (2023) contend for Brazil, any restorative proposal in this field must consider, among other factors, 'historical colonial exploitation of natural resources and social inequalities intrinsically linked to environmental harm', a lack of access to reliable justice institutions for victims, and various cultural, structural, contextual and interpersonal power imbalances. In light of this, as the editors point out, restorative tools in these cases require more critical thinking at the operational and implementation levels to ensure their effectiveness, to improve access equality and to influence outcomes in criminal procedures and sentencing (Riccardi & Martino, 2022; Varona, 2024).<sup>3</sup>

3 For further insight, refer to the critical note by the European Forum for Restorative Justice Working Group on Environmental Restorative Justice (EFRJ, 2021) regarding the reform process of the 2008 EU Directive.

In the Introduction, the editors acknowledge that this handbook is an imperfect work, but as Voltaire said, 'the perfect is the enemy of the good.' Nieto and Calvo's edited volume is a commendable and pioneering effort that may in the future be improved by further theoretical and practical developments, hopefully incorporating nuances brought by marginalised yet significantly impacted Indigenous and excluded communities at a globalised justice level. Furthermore, the book consistently illustrates a key insight we have observed in both cases of interpersonal or collective victimisation: restorative justice is feasible in addressing corporate harm, but it is not perfect (Aertsen, 2023). This observation continues to spark debate among many activists, legal professionals, policymakers and other stakeholders. Ultimately, this book serves as a valuable resource in refining our approaches, offering guidance on engaging corporations more effectively in restorative conversations.

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