REMEDYING ENVIRONMENTAL HARMS

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INTRODUCTION

Environmental harms pose a unique problem in the subject of remedies because the harms could potentially have limitless damages. Unlike other harms, there are significantly more injured parties to consider when the environment is harmed. For example, in 1989 at the instruction of a drunken captain, two lower-ranking pilots of the Exxon Valdez oil tanker struck the Bligh Reef in Prince William Sound, Alaska and spilled 10.9 million gallons of crude oil into

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the sea. [2] The spill not only affected people living in the region as the oil dispersed and impacted 1,100 miles of non-continuous coastline, but furthermore killed an approximate 250,000 sea birds, 302 harbor seals, and between 1,000 and 2,800 sea otters.[3] The loss in this case demonstrates the difficulty of remedying environmental harms. How do we value these animals and loss of coastline ecosystems in our market? The defendant must clean up the spilled oil, but should the defendant have to pay for the items we cannot value in our market because they are too abstract or speculative?

Furthermore, those injured in environmental harms are not limited to the immediate area. Unlike the Exxon Valdez spill where the damage was relatively local, other harms can impact markets on the other side of the world. For example, in March of 2011, a 9.0 earthquake off the coast of Japan caused a tsunami, which struck the region and subsequently lead to a meltdown of a nuclear plant in Fukushima, Japan.[4] Although this disaster was not entirely manmade, the following nuclear plant meltdown, caused by poor infrastructure, unpreparedness, and operator mistakes, substantially exasperated the event.[5] The nuclear plant began spewing radiation into the air and water in the region and lead to the evacuation of 185,000 people. Consequently, this event triggered rolling blackouts throughout Tokyo and caused a safety concern which required 18 of the total 54 nuclear plants in Japan to shut down.[6] [7] Subsequently, rebuilding efforts and response to the initial tsunami were curtailed significantly due to the nuclear meltdown and radiation concerns.[8]

The harm did not end in Japan as the shutdown of businesses in the area had a ripple-effect across the global economy.[9] Businesses in Sweden, France, and America all experienced the effect as supplies from Japan became sparse and productivity was lost.[10] Car manufacturers, pork producers, and even luxury garment retailers were impacted across the globe.[11]

The Fukushima nuclear disaster is an example of the far-reaching impact environmental harms can have. Although the responsible parties to the Fukushima disaster were in Japan and will have to face the consequences of the Japanese legal system, it is just as likely that a similar event could happen in the United States. The Fukushima disaster illustrates that the environment connects us in ways that we often do not realize, and environmental harms in one area can have

[2] Peter Saundry, *Exxon Valdez Oil Spill*, THE ENCYCLOPEDIA OF THE EARTH, www.eoearth.org /view/ article/152720/ (last updated Feb. 20, 2013).
[3] *Id.*
[4] *Japan Earthquake-Tsunami Fast Facts*, CNN, www.cnn.com/2013/07/17/world/asia/japan-earthquake---tsunami-fast-facts/ (last updated Sept. 20, 2013).
[5] *Id.*
[6] *Id.*
[7] In September of 2013 Japan shut down all of its nuclear reactors and has not said when they will come back online. *Id.*
[8] *Id.*
[9] Michael Powell, *Crises in Japan Ripple Across the Global Economy*, N.Y. TIMES, (Mar. 20, 2011) www.nytimes.com/2011/03/21/business/global/21econ.html?pagewanted=all.
[10] *Id.*
[11] *Id.*

impacts in distant locations. Yet, how can an injured party in another country sue across the globe for their damages? And who should decide whether distant injured parties can recover?

Globalization has caused an interdependence of our economies, and our traditional notions of boundaries between nations will not "protect us from global-scale environmental threats."[12] The threat of a large-scale environmental harm is ever looming and could impact considerably more parties because of our global society. Nevertheless, the executive branch and the courts have not integrated international and environmental laws in an effective manner to address environmental harms.[13] While bordering countries often have treatises and other agreements to deal with environmental harms, there are not comprehensive laws in place for international harms.[14] The broadest international agreement, the Stockholm Declaration, provides only that sovereign countries avoid international or trans-boundary harms and is not binding on the countries that signed it.[15] [16]

Likewise, a recent case interpreting the alien tort statute (ATS), which gives United States courts jurisdiction over foreign plaintiffs alleging violations of international law, did not include environmental harm plaintiffs.[17] Therefore, the law is unclear as to jurisdiction over foreign plaintiffs; and yet complicated questions arise when international victims are involved because of differing markets, laws, climates, and cultures. The environment is valued differently depending on the culture surrounding it and particularly in cultures that rely heavily on their local natural resources.

Although the ATS and international agreements address procedural issues and not necessarily remedies, they are relevant to this paper because they demonstrate the challenges plaintiffs face in remedying their injuries when the environment is harmed. These challenges arise because harms to the environment conflict with our traditional legal structure. Unlike other legal areas, the injuries in environmental harms are not always tied to the plaintiff's owned property, nor is there always a definitive physical injury. Moreover, environmental harms do not stay within legal boundaries or stop at international borders. Consequently, remedying environmental harms is bound to continue to be a problem in the future, and understanding how environmental harms are currently remedied in the United States is important.

[12] Daniel C. Esty & Maria Ivanova, *Globalization and Environmental Protection: A Global Governance Perspective*, YALE CTR. FOR ENVTL. L & POL'Y WORKING PAPER SERIES 1 (July 21, 2004) http://envirocenter.yale.edu/uploads/workingpapers/0402%20esty-ivanova.pdf.
[13] Noah D. Hill, *Transboundary Pollution: Harmonizing International and Domestic Law*, 40 U. MICH. J.L. REFORM 681, 681-82 (2007).
[14] *Id.*
[15] An extensive list and analysis of international agreements is beyond the scope of this paper.
[16] Ajmel Quereshi, *The Search for an Environmental Filartiga: Trans-Boundary Harm and the Future of International Environmental Litigation*, 56 HOW. L.J. 131, 149 (2012).
[17] *Id.* at 132-33.

I. DO ENVIRONMENTAL HARM'S SPECULATIVE DAMAGES AND LIMITLESS NUMBER OF PLAINTIFFS FIT OUR TRADITIONAL THEORIES OF CORRECTIVE JUSTICE AND ECONOMIC EFFICIENCY?

Corrective justice and economic efficiency are the cornerstone theories to remedying harms.[18] Corrective justice is based on the idea that the plaintiff should not be made to suffer and must be made whole by restoring him or her to their rightful position.[19] Stated differently, the plaintiff should be placed in the position they were but for the harm of the defendant.[20] In contrast, economic efficiency changes the perspective from the plaintiff to the defendant and takes a cost-benefit analysis approach in which the damages are set exactly equal to the harm in order to give the defendant the choice of whether it is economical to commit the harm or not.[21] Despite the differing focuses on defendant or plaintiff in calculating damages, corrective justice and economic efficiency are both fundamentally based on fully compensating the harmed victims. [22] Nevertheless, suits for environmental harms have strayed away from these concepts.

A. HOW HAVE ECONOMIC LOSS, CONTINGENT VALUATION, JURY VALUATION AND ENVIRONMENTAL HARM STATUTES DEPARTED FROM CORRECTIVE JUSTICE AND ECONOMIC EFFICIENCY?

Currently, there are four main methods the United States courts and legislature has developed to calculate remedies in environmental harms; the economic loss model, contingent valuation method, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Oil Protection Act (OPA), and the Restore Act.[23] Beginning in the 1980's, a court in Virginia was presented with a problem when a group of fisherman, restaurateurs, seafood wholesalers, and others involved in the seafood industry brought suit against Allied Chemical (Allied) for contaminating the Chesapeake Bay. [24] Allied had dumped a chemical agent called Kepone into the Bay, which contaminated and killed much of the marine life in the area. [25] The spill was so large that the "potential plaintiffs seemed almost infinite." [26] Therefore, the court came up with the economic loss model which is based on the principals of tort law and limits the amount that plaintiffs are allowed to recover.[27] The idea is to limit the defendant's monetary obligations to victims within a set proximity of the harm, regardless of whether distant

[18] M Stuart Madden, *Efficiency Themes in Tort Law From Antiquity*, 34 ADEL. L. REV. 231 (2014) www.adelaide.edu.au/press/journals/law-review/issues/alr-vol-34-2/alr-34-2-ch2.pdf.
[19] Ernest J. Weinrib, *Corrective Justice*, 77 IOWA L. REV. 403, 408 (1992).
[20] *Id*.
[21] Madden at 232-33.
[22] *Id*.
[23] The four methods described are not an exhaustive list of all the available environmental remedies.
[24] *Pruitt v. Allied Chem. Corp.*, 523 F. Supp. 975, 975 -76 (E.D. Va. 1981).
[25] *Id*.
[26] *Id*. at 979.
[27] *Id*. at 977 -78.

plaintiffs can prove an actual compensable injury.[28] The remedies applied in this case were less about compensating those that were harmed and more about "the proper balance of social forces being preserved." [29]

The court seems to suggest that the defendant's punishment should strike an equitable balance between the harm they caused and their punishment, in terms of monetary damages. In essence, the court reasons that the injury caused would be so great that the defendant could not bear the full burden. However, this method deviates from the theories of corrective justice and economic efficiency. The plaintiffs will not be placed back in their rightful position, as not all those that were harmed will be compensated.[30] Furthermore, the defendant will not internalize the true extent of the harm he created since the actual monetary damages are reduced.[31]

Aside from the courts' adoption of the economic loss model, environmental harms do not solely affect people and businesses. Often, plants and animals are the hardest-hit victims and yet there is no specific market to value their loss. Although there is a market for the consumption of plants and animals, there is not a market for them as they sit unaltered by humans. Stated differently, there is not an ascertainable monetary value for plants and animals in our economic system prior to being caught, harvested, or hunted. Therefore, courts have come up with unique methods to try and put a price on the harmed natural environment. In the late 1980's, the court, relying on new economic methods of analysis, came up with the contingent valuation method.[32] The contingent valuation method creates a hypothetical market by taking an average of the results of a survey which asks people in the harmed area to put a dollar amount to how much they value the environment.[33] The survey is innovative as it constructs a community standard for how valuable the environment is to the area affected. However, courts are skeptical of the contingent valuation method and often rely on the values necessary to restore the area instead.[34]

A further criticism of the contingent valuation method is it could lead to double counting. [35] Double counting is when the defendant is forced to pay twice for the same harm when damages are calculated. [36] If the defendant were to pay twice, the damages would directly violate economic efficiency and corrective justice as the defendant would put the plaintiff in a greater position than they were but for the harm, and the defendant would pay more than the true harm.

[28] *Id.* at 979 - 80.
[29] *Id*. at 980.
[30] *Maloney v. Home & Inv. Ctr., Inc*., 994 P2d. 1124, 1133 (Mont. 2000).
[31] Joseph A. Fischer, *All CERCLA Plaintiffs Are Not Created Equal: Private Parties, Settlements and UCATA*, 30 HOUS. L. REV. 1979, 1980 (1994).
[32] Dale B. Thompson, *Valuing the Environment: Courts' Struggles with Natural Resource Damages*, 32 ENVTL. L. 57, 58 (2002).
[33] Jeffery C. Dobbins, *The Pain and Suffering of Environmental Loss: Using Contingent Valuation to Estimate Nonuse Damages*, 43 DUKE L.J. 879, 882 (1994).
[34] Thompson, *supra* note 32, at 87.
[35] Dobbins, *supra* note 33, at 906.
[36] *Pruitt* at 979.

An alternative to the contingent valuation method was adopted in *United States v. CB & I Constructors, Inc.*[37] In *CB & I*, an employee of the company was pressured to stay ahead of schedule to meet an important deadline.[38] As a result, he did not take the necessary safety precautions of trimming the flammable brush nearby to where he was working and started a fire that subsequently burned 18,000 square miles of forest to the north of Los Angeles.[39] The loss of forest and habitat was tremendous and remedying the environmental harms was "not susceptible to empirical calculation" and therefore had to be "measured by the value to the public and for posterity." [40] Thus, the court created the jury valuation method by asking the jurors to weigh the evidence presented at trial and put a monetary value to the environmental loss.[41]

Although the jury valuation method generates opposition, it has been likened to the analysis of pain and suffering in tort cases where the jurors are asked to reflect on their own life experiences and put a value to the loss.[42] Courts have recognized that the intangible harms such as pain and suffering are too important not to remedy and have trusted jurors with calculating the loss for years.[43] However, courts have not embraced the jury valuation method like they have with pain and suffering, but instead have scrutinized the method for problems of double counting.[44] Moreover, after the *CB & I* decision, the California legislature passed a bill that effectively struck down the jury valuation method and limited the ways for calculating losses in forest fires to the contingent valuation method. [45]

The California legislature is not the only legislative body to have passed bills on environmental harms. The United States legislature has also passed statutes such as the CERCLA and the OPA to deal with the clean up of hazardous substances and oil spilled on land or water.[46] [47] Congress has delegated the two statutes to the Environmental Protection Agency (EPA) to enforce and investigate alleged hazardous sites. [48] If the EPA finds a site is contaminated, the land or water is transferred to a trustee who represents the public and determines the extent of the injury.[49] The trustee is then given the option to either sue the potential responsible parties (PRP), negotiate an agreement with the PRP, or file a claim for reimbursement under the trust fund created by OPA.[50]

[37] 685 F.3d 827 (9th Cir. 2012).
[38] *Id*. at 830.
[39] *Id*.
[40] *Id*. at 832.
[41] *Id*.
[42] Mary Loum, *The Verdict on Environmental Harm: Leave it to the Jury*, 40 ECOLOGY L.Q. 385, 405 (2013).
[43] *Id*. at 399-400.
[44] *Id*. at 390-91.
[45] *Id*. at 406.
[46] This paper will not discuss CERCLAs and OPAs use of the contingent valuation method.; *Natural Resources Damages: A Primer*, EPA, www.epa.gov/superfund/programs/nrd/ primer.htm (last updated Aug. 9, 2011).
[47] *See* 33 U.S.C.A. § 2701; *See* 42 U.S.C.A. § 9601.
[48] *Id*.
[49] *Id*.
[50] *Id*.

Although OPA and CERCLA have made tremendous impacts on the clean up of hazardous waste, suits under the act "generally settle for substantially less…than the asserted damages."[51] OPA and CERCLA incentivize rapid collection of claims by allowing defendants to settle their claim prior to litigation.[52] Consequently, defendants who settle their claims often pay far less damages than they caused, which creates a problem for other defendants who may also be liable for the same hazardous waste site.[53] Defendants that are liable at the same site and who are unable to settle are required to pay the unaccounted liable shares of the other settling defendants.[54] Therefore, CERCLA and OPA are not based on corrective justice and economic efficiency because defendants are either paying far less than the actual damages or paying substantially more in order to off-set the unpaid share.

In addition to CERCLA and OPA, the legislature recently created a statute in direct response to the Deepwater Horizon oil spill in the Gulf of Mexico. On April 20, 2010, British Petroleum's (BP) Deepwater Horizon oilrig exploded killing 11 workers and causing an uncontrolled oil spill in the depths of the Gulf of Mexico.[55] The spill was caused by a failure of a cement casing deep within the well due to BP and its partners' inadequate well control responses, poor risk management, and a failure to respond to critical errors.[56] Subsequently, an estimated 200 million gallons of oil gushed into the ocean during the nearly 87 days it took to cap the well, thus ending the spill.[57] The spill contaminated nearly 1,000 miles of coastline and affected five Gulf States: Texas, Louisiana, Mississippi, Alabama, and Florida.[58]

In response, the legislature created a trust fund for victims of the spill, called the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (Restore Act).[59] The Restore Act was enacted solely for the 2010 oil spill recovery, unlike OPA which was enacted after the Exxon Valdez oil spill to help future victims of oil spills.[60] The Restore Act created a trust fund which is split up into four different "buckets" and funnels funds to organizations that represent the environment, wildlife, individuals harmed by the spill, infrastructure that was damaged, and injured businesses.[61] Although many believe the act will considerably cure the harm, the trust fund is capped at the amount of criminal and civil penalties collected from the responsible parties.[62] Therefore, there is a possibility that not all

[51] Fischer, 30 HOUS. L. REV. 1979, 1983 (1994).
[52] *Id.*
[53] *Id*. at 1983-84.
[54] *Id*. at 1984.
[55] John M. Broder, *BP Shortcuts Led to Gulf Oil Spill, Report Says*, N.Y. TIMES, (Sept. 14, 2011) www.nytimes.com/2011/09/15/science/earth/ 15spill.html?_r=0.
[56] *Id*.
[57] Gerald J. Pels & Julia C. Rinne, *The Restore Act: Legislation that Works for the Gulf Coast*, 27 NAT. RESOURCES & ENV'T 40, 43 (2013).
[58] *Id*. at 40.
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*

the plaintiffs that were harmed will recover, which is inconsistent with theories of corrective justice and economic efficiency.

As the prior analysis of statutes and case law has demonstrated, both the legislative and judicial branches of government have significantly strayed away from the fundamental theories of corrective justice and economic efficiency. Both branches are highly suspicious of methods for remedying environmental harms because of the intangible and speculative nature of the damages involved. The courts do not trust jurors or community members to value environmental harms and have significantly cut back on the number of parties able to claim damages. In addition, the legislature has passed statutes that put caps on damages and indicate a preference for settling cases early rather than forcing defendants to pay for all the harm. In light of the legislative and judicial branches' curtailment of damages in environmental harms, plaintiffs may be better off calling on the courts to stop a defendant from committing a harm in the first place.

II. DOES INJUNCTIVE RELIEF RESOLVE THE PROBLEMS OF SPECULATIVE DAMAGES AND THE LIMITLESS NUMBER OF PLAINTIFFS FOUND IN ENVIRONMENTAL HARMS?

Injunctive relief is a remedy based in equity and, unlike monetary damages, is meant to prevent harms before they begin rather than trying to fix them after they occur. Injunctive relief is a court order to an individual or corporation mandating they refrain from doing something or face contempt. [63] The two most relevant injunctions to environmental harms are preliminary injunctions and permanent injunctions. [64] A preliminary injunction is granted prior to trial and demands that the defendant refrain from doing something until either a permanent injunction is issued or the defendant wins on the merits.[65] On the other hand, a permanent injunction is granted after the plaintiff wins on the merits and is meant to "maintain the status quo indefinitely." [66] For either of the injunctions to be granted, the plaintiff is required to show (1) that a party has suffered, or will suffer, an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the parties, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.[67] Both preliminary and permanent injunctions are powerful court tools and restrict the defendant's rights significantly.[68] Therefore, courts are reluctant to grant injunctive relief and have stated that relief should only be granted in "drastic and extraordinary" situations. [69]

[63] 42 Am. Jur. 2d Injunctions § 1 (2014).
[64] Eric J. Murdock & Andrew J. Turner, *How "Extraordinary" is Injunctive Relief in Environmental Litigation? A Practitioner's Perspective*, 42 ENVTL. L. REV. 10464 (2012).
[65] *Id*.
[66] 42 Am. Jur. 2d. Injunctions § 11 (2014).
[67] *Id*.
[68] *Id*.
[69] Murdock et al., *supra* note 64, at 10464.

Preliminary injunctions are not as powerful as permanent injunctions as they are short in duration. Nonetheless, courts are just as reluctant to grant them. For example, in *Winter v. Nat. Res. Def. Council Inc.*, the National Resources Defense Council (NRDC) and other environmental groups brought suit against the United States Navy for their use of active sonar off the coast of Southern California.[70]Active sonar emits a pulse into the ocean that bounces off targets in order for the Navy to identify modern submarines that are undetectable by other types of sonar.[71] The NRDC sought an injunction against the Navy from using active sonar because they alleged it caused injuries to marine animals "including permanent hearing loss, decompression sickness, and major behavioral disruptions." [72] In addition, the NRDC challenged the Navy's failure to conduct a required environmental impact study (EIS) prior to using the technology [73] The Navy, however, contended they did not need to do the EIS because it is not required if the Navy determines that the action would not have a "significant impact on the environment." [74] The NRDC disagreed and litigation commenced. [75] The court concluded that the NRDC did not prove that they would suffer an irreparable injury or a likelihood of success on the merits because they did not show any documentation of harm to marine animals in relation to the active sonar testing. [76] In addition, the court found that the balance of harm and public interest weighed in favor of the Navy because the training was "essential to national security." [77] The court refused to grant the preliminary injunction and the Navy was allowed to begin the training.[78]

The courts refusal to grant a preliminary injunction in this case reveals the problem many environmental harm plaintiffs face in barring a defendant from doing an act, especially when it is the Navy. Since injunctive relief is an anticipatory remedy, it is difficult for courts and potential plaintiffs to gauge whether or not the harm will actually occur. While the plaintiff has the burden of proving that an injunction is appropriate, this burden is difficult to meet because the harm is often potential and speculative. There is always a possibility that either no harm will occur or the defendant will not act. As demonstrated in *Winter*, it was unclear whether the active sonar would cause damage to the marine animals and, therefore, the court was unwilling to invade the Navy's ability to test the equipment. The act must be imminent or more likely to occur than not to prompt a court to grant an injunction because there would be no purpose for the injunction if the defendant was not going to commit the act. The Navy in *Winter* met the burden of immediacy as they were already testing the equipment.

[70] *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 12- 13 (2008).
[71] *Id*. at 13.
[72] *Id*. at 14.
[73] *Id*. at 16.
[74] *Id*. 16-17.
[75] *Id*.
[76] *Id*. at 21 -22.
[77] *Id*. at 25 -26.
[78] *Id*. at 33.

Still, preliminary injunctions like the one argued in *Winter* have relatively minor consequences in comparison to a permanent injunction, which bars the defendant from acting until the injunction is dissolved or lifted. For instance, in *Monsanto Co. v. Geertson Seed Farms*, the Animal and Plant Health Inspection Service (APHIS) was granted the authority under the Plant Protection Act (PPA) to regulate genetically engineered plants that it considered to be "plant pests." [79] Pursuant to the PPA, the APHIS was required to do an Environmental Impact Study (EIS) before regulating or deregulating genetically engineered plants unless the regulation or deregulation would not "significantly affect the quality of the human environment." [80]

In 2004, the APHIS deregulated Roundup Ready Alfalfa (RRA), a genetically engineered alfalfa crop that contains the active ingredient herbicide Roundup, which is manufactured by Monsanto. [81]APHIS did not do an EIS prior to deregulating the RRA and eight months later Geertson Seed Farms (Geertson) brought suit seeking a nationwide injunction of the deregulation until an EIS study was completed. [82] Geertson alleged that the genetically engineered plants could create a gene flow into the company's crops, which would add costs to testing the company's seeds for traces of the genetically engineered material. [83] The court concluded, by using the four-factor test for injunctive relief, that Geertson did not prove a likelihood of success on the merits or irreparable harm on a nationwide basis because there was little risk of gene flow to their crops. [84] The court did not analyze either the balance of hardships or the public interest prongs, but concluded that the APHIS decision to deregulate was justified. [85] Therefore, the court refused to grant a permanent injunction against the APHIS and the genetically engineered crops continued to be deregulated. [86]

The *Monsanto* case demonstrates a number of issues with injunctions. First, a nationwide injunction is not warranted when a harm is specific to a localized group. Geertson was challenging the deregulation nationwide without showing a harm on a scale that large. If Geertson could have shown that the genetically engineered plants would affect all farmers across the nation, then he would have had a much stronger case. Second, permanent injunctions, even more than preliminary injunctions, can be extremely detrimental to a defendant's rights. In *Monsanto*, the permanent injunction would have constrained the APHIS's ability to make determinations of whether or not an EIS was necessary. In addition, the injunction would have required the APHIS to begin focusing its limited resources on the EIS, even though it had already determined such an action was not necessary.

As the prior cases indicate, injunctions are rarely granted in environmental harms for much of the same reasons that damages are so difficult to calculate. Environmental harms are

[79] *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2749 (2010).
[80] *Id.* at 2750.
[81] *Id*.
[82] *Id*. at 2750–51.
[83] *Id*. at 2760.
[84] *Id.* at 2760.
[85] *Id*. at 2760.
[86] *Id*. at 2761-62.

often speculative and the harm that the defendant may cause is too difficult to prove. Therefore, injunctions do not solve the problems environmental harm plaintiffs face in other remedies; and in some cases, the plaintiff would be better off waiting for the harm to occur and collect damages, rather than arguing for injunctive relief. Injunctions are only useful if there is a clear and imminent harm about to occur and the plaintiff can demonstrate all four factors. Since injunctions are so difficult to prove and damages calculations have veered so far from the fundamental theories of corrective justice and economic efficiency, there must be another remedy available for environmental harms.

III. IS RESTITUTION A WORKABLE ALTERNATIVE FOR REMEDYING ENVIRONMENTAL HARMS THAT WOULD EASE APPREHENSION OF SPECULATIVE DAMAGES AND FULLY COMPENSATE ALL OF THE PLAINTIFFS?

Currently, restitution has not been used to address damages in environmental harms but has been successful in other comparable areas of law including prosecuting the possession of child pornography, combating human trafficking, and deterring the extraction and marketing of conflict minerals. Restitution "is the set of remedies based not on the plaintiff's loss, but on the defendant's gain." [87] Stated differently, restitution is the damages given to the plaintiff from what the defendant gained from the wrongful act, such as profits. Still, unlike the damages described in prior sections of this paper, restitution is a hybrid remedy based on legal as well as equitable remedies.[88] Therefore, restitution damages are still tied to corrective justice and economic efficiency through legal remedies. Yet, at the root of restitution damages are equitable remedies, which acknowledge that restitution is embodied in "natural justice and equity." [89] Thus, restitution is fundamentally about finding the most just and fair method to remedying harms.

Under the theory of restitution falls the concept of unjust enrichment, which is based on the idea that "a person shall not be allowed to enrich himself unjustly at the expense of another." [90] In other words, unjust enrichment bars a conscious wrongdoer from benefitting at the expense of a victim. Unjust enrichment is an intriguing concept, which if applied to environmental harms could have extraordinary results. Imagine, instead of plaintiffs arguing over speculative damages, they could, as an alternative, point to the profits of the wrongdoer as a tangible way of remedying their harm. Underlying all of the following cases is the idea of unjust enrichment; however, the focus will be on the restitution damages spurring from this concept. Furthermore, as will be discussed, restitution damages are not perfect and have created complications for plaintiffs and defendants in cases where they have been applied.

[87] Black's Law Dictionary (9th ed. 2009).
[88] Restatement (Third) of Restitution and Unjust Enrichment § 4 (2011).
[89] *Id.* at § 4.
[90] Allan Kanner, *Unjust Enrichment in Environmental Litigation*, 20 J. ENVTL. L. & LITIG. 111, 112 (2005).

A. HAS THE PROXIMATE CAUSE DEFENSE IN THE PROSECUTION OF CHILD PORNOGRAPHY CASES IMPAIRED PLAINTIFFS ABILITY TO OBTAIN RESTITUTIONARY DAMAGES?

Restitution damages have recently been applied in cases prosecuting the possession of child pornography and, while it may seem absurd to compare the possession of child pornography to environmental harms, there is a correlation between the two. To illustrate, in both environmental harms and child pornography cases, plaintiffs have a difficult time obtaining a remedy because of their distant proximity to the harm. For example, in the case of *In re Amy Unknown*, the plaintiff was sexually abused as child by her uncle who recorded the acts and distributed the images to others.[91] Years later, the National Center for Missing and Exploited Children had "found at least 35,000 images of Amy's abuse among the evidence in over 3,200 child pornography cases since 1998,…" and "…describe[d] the content of [those] images as 'extremely graphic.'" [92]Amy, now as a young adult and still experiencing trauma from the circulation of these images, filed two separate complaints against defendants who possessed the images.[93] In the first action, the defendant, Doyle Paroline, pled guilty to possessing 150 to 300 child pornography photos, two of which were of the plaintiff Amy.[94] In the second case, the defendant, Michael Wright, pled guilty to possessing 30,000 child pornography images, which included images of Amy.[95]

The court consolidated the two complaints for trial and Amy claimed a right to restitution damages under the Crime Victims' Right Act (CVRA), for the defendant's possession of the images.[96] She sought $3.4 million in damages for psychiatric care and loss in future income.[97] The question presented was whether Amy had to prove a proximate cause between the possession of the images and her injuries in order to trigger the restitution damages under the CVRA.[98] The government in the case argued that the CVRA's restitution provision should be read similar to civil tort liability, requiring the defendant to show a proximate cause between the harm and the injury in order to recover losses.[99] The court held that the plaintiff did not have to prove a proximate cause; however the Supreme Court granted certiorari on June 27, 2013 and vacated the judgment on April 23, 2014 remanding the case to the Fifth Circuit to find proximate cause.[100]

[91] *In re Amy Unknown*, 701 F.3d 749, 752 (5th Cir. 2012) *cert. granted in part,* 133 S. Ct. 2886 (U.S. 2013).
[92] *Id.*
[93] *Id.*
[94] *Id*. at 752 -53.
[95] *Id*. at 753 -54.
[96] *Id*. at 752-753.
[97] *Id.*
[98] *Id*. at 752.
[99] *Id*. at 761.
[100] *Wright v. United States*, 134 S. Ct. 1933 (2014).

Besides the Supreme Court remanding this case, their holding could have had broad-reaching implications. Since the question presented concerned a matter of proximity, the impact on future plaintiffs in arguing for restitution could be difficult. As demonstrated in *Amy*, the link between her future loss in income and psychiatric care, and the defendant's possession of the explicit material is difficult to prove. Nevertheless, Amy is still harmed by the circulation of the images and the defendant's possession of those images furthers her harm. Therefore, it appears Amy's case is similar to the *Pruitt* case described above. Both Amy and the plaintiffs in the *Pruitt* case had actual compensable injuries regardless of their proximity to the harm. Yet, the government in *Amy*, similar to the court in *Pruitt*, tried to link principals of tort law to the case, which frustrated the plaintiff's rights to recovery. As stated, the Supreme Court remanded the case in *Amy* to consider proximate cause and restitution has still not been applied to environmental harms, therefore these comments are premature. However, because restitution damages have promising implications in environmental harms, understanding how similar cases are being decided is valuable. It appears that many of the discouraging methods of reducing damages in environmental harms have also begun to permeate into restitution damages.

Still, there are cases prosecuting the possession of child pornography in which the court refuses to follow the proximate cause argument and instead awards restitution for committed harms. For instance, in *United States v. Staples*, Detective Neil Spector, while working undercover in an online chat room, was sent child pornography images by the defendant.[101] The defendant was then identified and a search warrant was issued to search his home in Virginia.[102] The search uncovered hundreds of child pornography images on the defendant's home computer including six of the plaintiff, Misty.[103] Similar to the *Amy* case, Misty was also subjected to sexual abuse by her uncle who recorded and distributed the acts.[104] Misty underwent significant psychological treatment after the abuse from her uncle and had recovered considerably until she learned of the circulation of her images and had a mental relapse.[105] Misty's doctor, Dr. Silberg, testified at trial that the circulation and possession of the images re-victimized her in a manner distinct from the original act.[106] The court, relying on this evidence and the Violence Against Women Act of 1994, awarded restitution damages of $3,680,153.00.[107] The restitution damages were calculated from Misty's future loss in income and future counseling costs.[108]

Unlike in *Amy*, the court in *Staples* did not address the proximate cause between Misty's relapse and the defendant's possession of her images. The court determined that the statutory language mandating the court to give restitutionary damages was enough. Interestingly, the court

[101] *United States v. Staples*, No. 09-14017-CR, 2009 WL 2827204 *1 (S.D. Fla. Sept. 2, 2009).
[102] *Id*.
[103] *Id*.
[104] *Id*. at *2.
[105] *Id*.
[106] *Id*. at *1.
[107] *Id*.
[108] *Id*. at *4.

in *Staples* interpreted the same language that the *Amy* court did to reach an award of restitution damages. However, the *Staples* court may have had an easier time applying the statute to the facts in Misty's case because of her relapse and the doctor's testimony tying the relapse to the defendant's acts. Regardless of how the courts interpreted the act, the significance of these two cases for environmental harms is two fold. First, the cases demonstrate the importance of legislatures that draft restitution provisions for environmental harms to clearly establish whether proximate cause must be shown. Second, if proximate cause must be shown, then plaintiffs should choose whether they can link the harm to their injury, like Misty in *Staples*, and pursue restitutionary damages or instead argue for the other damages listed in earlier parts of this paper.

B. DOES THE DEFENSE OF APPORTIONMENT AND PLAINTIFF'S CLAIM TO DISGORGEMENT IN HUMAN TRAFFICKING CASES ENCOURAGE COURTS TO APPLY RESTITUTION DAMAGES?

Despite the uncertainty of having to prove proximate cause in child pornography cases, human trafficking cases presents another set of problems for restitutionary damages. For example, in 2002, the Sabhnani family arranged for a 53-year-old Indonesian woman named Samirah to enter the United States on a work visa to do household work for their family.[109] When Samirah arrived, she quickly realized that she had been hired as an indentured servant.[110] The Sabhnani's immediately seized her passport and other documents and never paid her the meager $200 a month she had been promised prior to entering the United States.[111] Samirah was powerless to contest her treatment as she did not speak English, did not know how to use an American telephone, and did not know how to drive.[112] Her circumstances then went from bad to worse over the next couple years as she was obligated to wear tattered clothes, was forced to sleep on the floor instead of a bed, and was told she would have to pay back the expenses the Sabhnanis had incurred in bringing her to the United States or her family would be harmed.[113] In addition, she was starved, beaten with brooms, rolling pins and an umbrella, and scalded with boiling hot water.[114]

In 2004, the Sabhnani's lured a 47-year-old Indonesia woman named Enug into the United States to also work as an indentured servant.[115] Enug was subjected to just as awful treatment as Samirah.[116] Fortunately, on May 12, 2007, Samirah escaped the Sabhnani house and ran to a nearby Dunkin' Donuts where she was able to seek help.[117] Subsequently, the Sabhnanis

[109] *United States v. Sabhnani*, 599 F.3d 215, 225-26 (2nd Cir. 2009).
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] *Id*. at 227-28.
[114] *Id*.
[115] *Id*.
[116] *Id*. at 229.
[117] *Id*. at 230.

were arrested and charged with harboring aliens, forced slavery, peonage, and other crimes.[118] At trial, Samirah and Enug sought mandatory restitution of $936,546.22, among other criminal penalties, under the Peonage, Slavery, and Trafficking in Persons statute.[119] The restitution damages were calculated by assuming that Samirah and Enug worked for the family 24 hours a day at minimum wage, and therefore were entitled to overtime compensation under the Fair Labor Standards Act (FLSA).[120] The court held that restitution damages applied to the case, however, the plaintiffs had miscalculated the damages by including overtime for their work.[121] The court found that overtime did not apply to the restitution damages because the plaintiffs lived with the defendants, which offset the overtime claims under the FLSA.[122]

The method the court used of offsetting the overtime claims in this case is somewhat similar to a defense to restitution called apportionment. The defense of apportionment credits the defendant

> "for money expended in acquiring or preserving the property or in carrying on the business that is the source of the profit subject to disgorgement. By contrast, such a defendant will ordinarily be denied any credit for contributions in the form of services, or for expenditures incurred directly in the commission of a wrong to the claimant."[123]

In other words, apportionment allows the defendant to subtract from the profits the plaintiff's claims of any expenditure that is not directly tied to their wrong. As demonstrated in *Sabhnani*, the plaintiffs could not claim overtime compensation because they had arguably benefitted from the Sabhnani's providing them with housing. Although Enug and Samirah argued that their living conditions were horrible and therefore should not be subtracted from their damages, the Sabhnanis were able to prove that the room and board was not directly tied to the wrongful act and should be deducted.

As a comparison, if restitution and the defense of apportionment applied to environmental harms like the *Exxon* case described above, the defendant Exxon would make many similar arguments to the Sabhnanis. Exxon would likely claim many of their overhead expenses and cleanup costs should be deducted from the profits that the plaintiffs claim. However, just because Exxon claims the defense of apportionment does not mean that the plaintiffs should not argue for restitution. It was estimated that the cleanup costs of the Bligh Reef were $7 billion; yet Exxon only paid $3.8 billion in cleanup costs and $507.5 million in punitive damages~~;~~ nearly 12 years after the 1989 spill.[124] Nevertheless, Exxon made a profit of

[118] *Id*. at 231.
[119] *Id*. at 224.
[120] *Id*. at 254-55.
[121] *Id*.
[122] *Id*.
[123] Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011).
[124] Susan Lyon & Daniel J. Weiss, *Making Money on Oil Disasters*, CTR. FOR AM. PROGRESS, https://www.americanprogress.org/issues/green/news/2010/05/26/7726/making-money-on-oil-disasters/ (May 26, 2010).

$3.8 billion in 1989 and $5 billion in 1990 while both battling litigation and cleaning up the spill.[125] In other words, Exxon was making large profits even after the spill. Therefore, if the plaintiffs had argued for restitution damages, they might have been able to seize those profits or at least the ones tied to the spill and may have been fully compensated.

Unlike all the prior cases where plaintiffs restitution damages were based on the fair market value of what they lost and the defendant gained, courts also apply a term under restitution called disgorgement which has much more drastic results. Disgorgement is the elimination of "profit from wrongdoing while avoiding, so far as possible, the imposition of a penalty."[126] Stated differently, disgorgement takes all of the defendant's profits from the wrongful act–not just those tied to the relationship of the parties. But courts will only apply disgorgement if the defendants are found guilty under a statute that requires such penalties or the defendant is culpable enough to require them. For example, in *United States v. Fu Sheng Kuo*, Shengji Wang and Fu Sheng Kuo traveled to Taiwan, China and Fiji over a seven-year time period to deceive women into coming to the Territory of American Samoa to work as prostitutes.[127] Wang and Kuo told the women that they were being hired to work at a grocery store they owned and that their flight, immigration documents, and visas would be paid for.[128]

However, once the women arrived, their immigration documents were taken and they were locked in a three-story building with plywood-covered balconies, doors that locked from the outside, and wire mesh-covered windows and stairways.[129] The women were also told that they would have to pay back their travel expenses by working as prostitutes and, if they refused, they would be beaten and their family members' lives would be threatened.[130] Two particular victims, Y.H. and J.C., were trafficked from China in 2006 and were subjected to forced prostitution.[131] Over a seven-month time period, they were forced to have sexual intercourse with between 50 and 70 customers that did not wear condoms and often bruised, tore, and caused bleeding to their genitals.[132]

After these seven horrific months, J.C. and Y.H. were able to escape the building by cutting through the wire mesh covering the windows.[133] They caught a cab outside of the building and sought help from a storeowner in a nearby village that called the authorities, who later raided the building and arrested Kuo and Wang.[134] Subsequently, J.C. and Y.H. sued Kuo and Wang, and the case reached the Supreme Court, which thereafter remanded the case to the court of appeals of the Ninth Circuit to determine whether the district court had applied

[125] *Id*.
[126] Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011).
[127] *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1160 (9th Cir. 2010).
[128] *Id*.
[129] *Id*.
[130] *Id*.
[131] *Id*.
[132] *Id*.
[133] *Id*. at 1161.
[134] *Id*.

disgorgement restitution damages correctly.[135] The court held that the district court had erred in awarding the plaintiffs all the defendant's profits under the Trafficking Victims Rights Act, because the defendants had been prosecuted under the Conspiring Against Rights statute, which did not provide for disgorgement damages.[136] The court did, however, still apply restitution damages but limited them to the plaintiff's actual losses or the amounts they had not been paid for their forced prostitution.[137]

The *Fu Sheng Kuo* case demonstrates the importance of choosing the right statute to litigate under in order to receive all the profits. Statutes that apply restitution damages use language that directs the court either to the disgorgement values or the fair market values for the victim's loss. Still, courts are reluctant to apply disgorgement damages because of the large impact it has on defendants. But disgorgement is tied to the concept of unjust enrichment which leads to the conclusion that if the defendant acts in a manner that is vastly unjust, he or she should not, in the interest of fairness, profit from that action.

Disgorgement is usually reserved for the most heinous acts, which either means the defendant acted intentionally or with gross negligence. Furthermore, as the definition of disgorgement states, it should not be applied as a penalty. Therefore, defendants can argue that if disgorgement is applied to them, it would be a penalty and the court should not impose it. The defendant can also use defenses to intentional torts and grossly negligent acts to dissuade the court from applying disgorgement damages. Still, the implications of disgorgement for environmental harms is that if plaintiffs either have a statute to litigate under or can demonstrate the defendant's acts were culpable enough, they may receive all the profits the defendant made from the act. Companies such as BP, Exxon, and Allied's actions, all explained above, may reach the level of disgorgement and may have allowed plaintiffs to fully recover.

C. DOES THE RECOGNITION OF PILLAGE CLAIMS IN INTERNATIONAL HARMS AND CONGRESS' PASSAGE OF THE DODD-FRANK BILL ESTABLISH A POTENTIAL FUTURE FOR APPLICATION OF RESTITUTIONARY DAMAGES IN ENVIRONMENTAL HARMS?

The last four cases all dealt with the actions of individuals when applying restitution damages rather than the actions of corporations like those typically found in environmental harms. Fortunately, an emerging trend in the area of conflict minerals may lead to the application of restitution damages against corporations in environmental harms. While there is currently no United States case specifically dealing with conflict minerals, there is an international case and a United States statute that concerns the matter. Conflict minerals are defined by the Securities Exchange Commission (SEC) as "(A) columbite-tantalite (coltan) [also known as tantalum], cassiterite [also known as tin ore], gold, wolframite [also known as tungsten], or their

[135] *Id*. at 1158-61.
[136] *Id*. at 1166.
[137] *Id*. at 1166-67.

derivatives; or (B) any other mineral or its derivatives determined by the Secretary of State to be financing conflict in the [DRC] or an adjoining country." [138]

The DRC stands for Democratic Republic of Congo (DRC) and is a country that has been devastated by unlawful armed conflict committed in the exploitation of heavily-demanded natural resources and conflict minerals. [139] Conflict minerals are found in cellphones, laptops, tablets, and other consumer electronics produced by United States and other countries. [140] Therefore, companies and consumers that use devices containing conflict minerals knowingly or unknowingly finance the conflict and humanitarian emergency in the DRC and other regions. [141]

In addition to financing the conflict, the extraction of conflict minerals in the DRC is also an environmental harm although it primarily affects people rather than plants and animals. Rich countries lacking prized natural resources view poor countries with essential natural resources as an easy target for exploitation. [142] When natural resources are exploited, they are extracted at any cost and often in violation of regulations such as those against clear cutting and overharvesting. [143] Still, the biggest cost is to the people extracting the resources as "armed conflicts in which participants are able to draw upon easily accessible natural resource wealth are often more bloody, financially costly, and intractable than other forms of armed violence." [144]

Internationally, countries have begun to recognize that companies, which knowingly fund this violence should be held accountable. For example, on November 1, 2013, a Swiss organization called TRIAL filed a complaint with the Swiss Federal Prosecutor against Argor-Heraeus SA for the extraction and processing of nearly three tons of gold from the DRC. [145] The gold was a conflict mineral as its extraction was tied to war crimes occurring in the DRC. [146] The complaint in the case uses a term called pillage to describe the acts of Argor-Heraeus SA. [147] Pillage "occurs when a perpetrator takes property from the legitimate owner of his or her private or personal use, without consent, in an armed conflict. Essentially, pillage is theft under the cover of war." [148] TRIAL alleged that Argor-Heraeus SA knew or should have known that they

[138] Karen E. Woody, *Conflict Minerals Legislation: The SEC's New Role as Diplomatic Humanitarian Watchdog,* 81 FORDHAM L. REV. 1315, 1351 (2012).
[139] Conflict Minerals, 17 C.F.R. pt. 240 & 249b, 6 (SEC Nov. 13, 2012), *available at* www.sec.gov /rules/final/2012/34-67716.pdf.
[140] Sri Jegarajah, *Conflict Minerals in Your Mobile – Why Congo's War Matters*, CNBC (Nov. 26, 2012), http://www.cnbc.com/id/ 49961559.
[141] Conflict Minerals, *supra* note 139, at 8.
[142] James G. Stewart, *Corporate War Crimes*, OPEN SOCIETY FOUNDATION, 9 (2011) http://www.opensocietyfoundations.org/sites/default/files/pillage-manual-2nd-edition-2011.pdf.
[143] *Id*. at 34.
[144] *Id*. at 9.
[145] Michael Plachta, *A. Criminal Complaint Against Swiss Refiner Argor-Heraeus SA Filled with the Swiss Federal Prosecutors Office*, 30 No. 3 INT'L ENFORCEMENT L. REP. 88, 88 (2014).
[146] *Id*.
[147] *Id*.
[148] *Why Corporate Pillage is a War Crime*, OPEN SOCIETY FOUNDATION, www.opensocietyfoundations.org/explainers/why-corporate-pillage-war-crime (Last updated Nov. 2013).

had laundered pillaged gold between 2004 and 2005. [149] TRIAL released this information to the Swiss Federal prosecutor who filed a suit against the company, which is still pending trial. [150]

Nonetheless, the ramifications of this case are enormous because of the reestablishment of pillage in international harms. In the Argor-Heraeus SA case, the company is from Switzerland and is being prosecuted for their alleged harms in the DRC because of their furtherance and financing of war crimes. Applying this idea to companies in the United States for furthering these environmental and humanitarian harms could be tremendous. Fortunately, the United States Congress recently began recognizing the problems conflict minerals manifest for United States companies and consumers and, on November 13, 2012, adopted section 1502 of the Dodd-Frank bill. [151] This statute requires companies to begin disclosing the use of conflict minerals in their products. [152] The statute was delegated to the SEC to enforce because requiring disclosure to the SEC would enhance transparency to the final consumer over conflict minerals and hopefully invoke change. [153]

Congress's promulgation of the Dodd-Frank bill as it pertains to conflict minerals is a step towards holding corporations liable for the unjust enrichment of the DRC and other countries in furtherance of making profits. The implication for restitution damages being that congress is now recognizing corporations as accountable for their unjust acts. Courts may soon begin litigating cases against corporations that profit at the expense of other countries and people. Furthermore, congress may begin directing courts to take profits from companies that commit these unjust acts in order to deter them from exploiting other countries' natural resources.

As the prior analysis demonstrates, restitution may be an applicable remedy for environmental harms. Courts have applied restitution damages in child pornography cases, but are split as to whether proximate cause must be demonstrated to receive such damages. Likewise, in human trafficking cases, the defense of apportionment and the application of disgorgement can have promising results for both defendants and plaintiffs. Finally, international courts and the United States Congress have begun to realize that corporations should be held accountable for unjust enrichment of natural resources. Therefore, restitution damages are an emerging remedy for environmental harms and should begin being applied.

CONCLUSION

Although restitution damages may seem like an extreme remedy because it takes the profits of defendants, its application in environmental harms seems justified. The courts and legislatures have substantially curtailed plaintiff's abilities to collect monetary damages and have strayed away from the fundamental theories of corrective justice and economic efficiency.

[149] Plachta, *supra* note 144, at 88.
[150] *Id*.
[151] Conflict Minerals, *supra* note 139, at 6.
[152] *Id.*
[153] *Id*. at 9.

Furthermore, defendants are incentivized to settle cases early for substantially lower costs than their true harms. Thus, defendants are no longer realizing the true extent of their harms through damages. Likewise, plaintiffs are often unable to obtain injunctions for environmental harms because of difficulties in proving the potential harm. Thus, plaintiffs often cannot take mitigating steps to stop the harm before it begins.

The current system for remedying environmental harms encourages defendants to ignore safety precautions and make risky decisions because of the low threat plaintiffs and courts pose in arguing for and applying damages. Thus, restitution damages may be the answer to showing defendants their true harm and creating enough of a threat to invoke behavior changes. Restitution damages recognize that unjust actions, to the detriment of another, should not be tolerated and providing a remedy to equitably cure such actions is necessary. Still, restitution damages acknowledge the importance of fairness and will not apply unless the defendant is truly culpable enough for them to apply.

The environment is a critical part of our economy, lives, and welfare, and preventing environmental harms is crucial for our future. Environmental harms are often not quantifiable in our market systems, and the consequences of the harm are often unknown. Environmental harms test our legal understandings and will go to the limits of our underlying theories because of its speculative and difficult to understand consequences. The environment does not take into account our market system, legal system, or legal boundaries when it is harmed. In today's global society, environmental concerns are more important than ever. Our ever-increasing technological innovations in drilling for oil, shipping goods, mining minerals, and harvesting crops affect more people and ecosystems than ever before. Thus, the potential for large-scale environmental disaster is much more probable. In wrapping up, I leave you with a Cree proverb that succinctly explains the importance of environmental remedies:

> "Only when the last tree has died and the last river been poisoned and the last fish been caught will we realize we cannot eat money."
>
> -Cree Indian Proverb[154]

[154] GOOD READS, https://www.goodreads.com/quotes/152967-only-after-the-last-tree-has-been-cut-down-only (last visited April 4, 2014).