HIGH PROFILES

# Polly Higgins

The lawyer campaigning for ecocide to be recognised as the fifth 'crime against peace' interviewed by ***Huw Spanner*** at her office in Stroud

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# Changing the Ground Rules

## Polly Higgins

leads the campaign to get ecocide recognised as a fifth 'crime against peace', alongside genocide, crimes against humanity, war crimes and the crime of aggression.

**Huw Spanner** met her at her office in Stroud.

PHOTOGRAPHY: **SIMON GUNN**

**You were a successful corporate barrister in 2006 when it struck you that 'the Earth is in need of a good lawyer.' Where did you find the self-belief to say, 'And that lawyer is me'?**

Well, that took quite a bit of doing. In fact, I looked right around the world for lawyers who were [representing the Earth], and an awful lot of lawyers *were*, and had been for 30 years or more. What frustrated me was that nobody was actually creating the laws to protect the Earth.

I'm a practising lawyer, a barrister in court, so my natural predisposition is to find the law that's required; and when I couldn't find it, I came to recognise that it has to be created.

**And so you thought –**

I'm going to have to do it. I initially proposed a universal declaration of Earth rights, and that was taken up by Bolivia.[1] I was the [original] drafter of that.

**In 2009, you had (as you put it) a 'lightbulb moment', when you concluded that ecocide[2] should be made a crime.**

I began to realise that rights in isolation are not enough. If you have rights, there are corresponding duties and obligations – it's like two sides of the coin. And what gives enforcement to your rights are the responsibilities that are put in place in *criminal* law. So, your right to life is governed and protected by the [law against] murder, or homicide – or, at a collective level, genocide.

Rights in isolation give [only] what's known as 'second-tier governance'. This means that a community whose territory has been harmed is going to have to fight long and hard through civil litigation to get any remedy, which is often too little too late. Unless you have that top tier of *responsibility*, which is criminal justice, such rights will never be properly enforced.

What really bothered me as a child was the injustice of what I saw going on in the world. That's what made me stand up and speak out, time and time again

**You were originally embarked on a career in the arts. How did you come to be a lawyer?**

I remember when I was 22, maybe, thinking: I'm studying the wrong subject, I should be studying law! At the time, I was doing a postgraduate [degree] in decorative arts at Glasgow University. I already had a first-class degree in cultural history from Aberdeen and a diploma in semiology from Utrecht.

What really bothered me as a child was the injustice of what I saw going on in the world. That's what made me stand up and speak out, time and time again

Then I came down to London and worked with an art dealer for six years or so and I found myself thinking again: I really should be doing law. I don't really know why. So, I went to City University to study law for a year – I fast-tracked it.

**Were you fascinated by law, or was there a particular case or cause that made you think…?**

I really can't give you a rational explanation for it. It was just a very strong gut feeling.

My mother thought the idea was nuts – she couldn't understand why I would even remotely be interested in the law when art was so much more interesting. And my father was not for it, either. There was nothing in my childhood that spoke of law, but it was just a deep, deep knowing that I should be doing it.

It wasn't for the want of the drama! I was deeply uncomfortable with public speaking – I was very shy as a child – and I still can be. It's not my natural way of being or doing.

**What kind of law did you go into?**

Employment law – a lot of whistle-blowing cases, and disability discrimination. As a barrister, I was dealing with the courtroom stuff rather than the devil-in-the-detail stuff.

**Were you argumentative as a child?**

My father would say yes, definitely. But it wasn't that I was argumentative, actually; it was justice [that] was my big driver. What really, really bothered me as a child was the injustice of what I saw going on in the world, what I saw going on around me, what maybe happened to me. That's what made me stand up and speak out, time and time again.

Or take action, you know? I was expelled from school when I was 16 for doing just that. I punched the art teacher because he was just about to punch a young kid. The school I went to was very much run on command-and-control principles. The leather belt had been made illegal the year before, but the Jesuit priests who taught us used the threat of violence – and not just the priests.

**You were bullied at school, is that right?**

Yes, at the school before that. By the time I got to the big school I was standing up for other people!

**Did your experience of being bullied feed into your concern for justice?**

Yeah. When I saw this kid being bullied I intervened because I knew from experience what it was like to be abused by someone bigger than yourself – or just another person on an unfair premise. It went beyond empathy: it was a sense of 'I have to take action here.'

**What were the primary influences that formed you as a child?**

Well, certainly my father. He was a meteorologist and I remember very clearly him talking about climate change when we were youngsters around the kitchen table. I don't know if it was called 'climate change' then, but he tried to explain to us what was happening and that had quite a profound effect on me. I had an awareness that there was something big going on, and that sense of having to take care of the world was very deeply embedded in me.

**Your mother was – well, what kind of artist?**

She taught at Glasgow School of Art. Her big thing was textiles, so we grew up with really wacky 1960s curtains around the house. She paints and draws as well.

**So, you have siblings?**

I have a younger brother and a younger sister.

**Have you got eldest-child syndrome?**

Certainly I was the groundbreaker. I broke the rules so that they had an easier time.

**Three years after that 'lightbulb moment', you had another, which you have summed up as: Dare to be great![3]**

**I was puzzled by that. If you had, in effect, appointed yourself as the Earth's pro-bono lawyer some years earlier, weren't you already aspiring to greatness?**

I haven't actually ever seen myself as the Earth's pro-bono lawyer. That is something that others have put a name to.

**But what did you mean by being 'great'?**

I think that thing of stepping into your higher purpose and not being frightened of doing that, you know? An awful lot of us duck our heads and walk on by when there's trouble on the other side of the street, and it's about not doing that. It's standing up and speaking out. And for an awful lot of individuals who are on the front line of communities facing ecocide, to stand up and speak out can be a very scary thing to do, and those that do it have great courage. And that is a greatness in its own right.

Ironically, the law is protecting those who are causing significant harm. Those who stand up as Earth defenders are not protected in law and they end up being the ones in court

Ironically, the law is *protecting* those who are causing significant harm, and those who stand up as Earth defenders are not protected in law and *they* end up being the ones in court.

**Where do the deepest roots of your commitment to the welfare of the Earth lie? What are your deepest reasons for taking action?**

It's just a deep love for the Earth. It's really simple!

**Theologians used to talk of 'the Book of Nature', but it strikes me that different people read very different things in that 'book'. For example, there's a video clip of the film director Werner Herzog in the Amazon rainforest describing it as a place full of obscenity and misery.[4]**

That's his perception. But for me also the Amazon is a place of obscene cruelty. When big transnational corporations go in and destroy it, that is an obscene cruelty to me, which is sanctioned by governments.

**Many green people seem to see nature as something essentially benign, but it isn't, is it?**

I'm not sure whether or not that's an issue I resonate with. Ultimately, nature has its own cycles, and life and death come into that, of course.

Where we are very different from any other species is that we have the capacity to recognise and understand the consequences of our actions and take collective action to remedy them. And yet no other species is destructive at the scale that we are. So, my concern is how we take responsibility for how we engage with nature.

**There is a statement attributed to the Native American chief Si'ahl: 'If all the beasts were gone, Man would die from a great loneliness of spirit.' Many of us might say,**

**'Oh, that's so true!', but do you think it *would* bother most people?**

I'm not terribly sure. I had a conversation with a woman a couple of years ago – you know, 'If you could change the world, what would it look like?' And it came down to this: 'Well, I'd definitely like it to rain a little bit less, and probably be a bit warmer.' And that's when I realised that I think fundamentally differently, because I could spend 15 minutes explaining what I would like to see change – you know, eradicate world poverty, you know, the list goes on and on! But an awful lot of people are just busy getting on with their own lives and they tend not to think outside their own small world.

**I watched your conversation with the US 'degrowth activist' Charles Eisenstein[5] and at one point you say to the audience: 'If I asked you what you care about most deeply, I'd wager it isn't something you've bought.' And I thought: For a lot of people, it would be!**

Yeah, but they wouldn't be turning up to our conversation.

Here's the thing. You know that great statement [attributed to the US cultural anthropologist] Margaret Mead: 'A small group of thoughtful, committed citizens can change the world; indeed, it is the only thing that ever has.' I think that's true. The line of work that I'm involved in attracts those who care and I'm not interested in talking to a whole batch of people who *don't* care.

I turn down 90 per cent of the public talks that I'm asked to do now – it's not the best use of my skill and time. Those few that I do do tend to be to an audience that will engage from a place of deep care, and there may be a few among them who will help to take things forward and effect great change.

Those few who do kind of step out of their own comfort zone and say, 'I'm going to dare to be great and I'm actually going to do something about this,' those are the change-makers. They're the ones, if you like, that don't play by society's rules.

**You're not a materialist. Would you call yourself 'religious'?**

No.

**In *I Dare You to Be Great*,[6] you said: 'I believe in something that is bigger than humans but which I find difficult to define.' Are you any closer to defining it?**

Not really. And I'm not – I'm not really – I don't know that it really matters. You know, maybe it's the way we make sense of the world, to give it a name – for some people it's Buddha, it's God or what have you. 'Life force' is maybe the best term I can come up with – I don't know. But there's definitely – the way I make sense of the world is that there's something bigger at play here.

**There's a sculpture here in your office that proclaims: 'Trees have rights, too!' What does that mean? Is it just a nice sentiment?**

This is really to do with how we ascribe trees… personhood, if you like. In law. So, by dint of being a person you have rights ascribed to you in law through the Universal Declaration of Human Rights. Corporations, as well, have rights ascribed to them in law, [because] they have 'fictional personhood'. A corporation can have more rights in law than a tree can – and yet you could argue that the tree has a life-and-death cycle that is far easier to understand than that of a corporation and [in that sense] is closer to humanity, if you will.

**When the philosopher Peter Singer says that rights should be extended to other primates, he argues it on the grounds that they are self-conscious, rational beings.[7] I've never heard anyone ascribe sentience to a tree.**

What is our sacred duty to each other, human and non-human? To be life-affirming rather than life-destroying

I think you should talk to a Buddhist! I think there's a whole raft of indigenous [people] that would say that trees are conscious – and indeed science now shows this as well. [The forest scientist Suzanne Simard] did a recent Ted talk [about] how in a forest if you cut down what's known as 'the mother tree' all the others will suffer as a result.[8] Because of their interconnected root system, there is actually a reciprocity between the trees.

**Is that enough to base tree rights on?**

It's an injustice to kill people, so we criminalise it. It's an injustice to steal, so we make it a crime. Likewise, it's an injustice to cause mass damage and destruction, so we should criminalise that as well

What I'm dealing with is a legal framing that is underpinned by a moral framing – that's what's really important here. It's a way of framing an understanding that we have a duty – a sacred duty, if you like – to ensure that we don't destroy at will, across the board. And the way we frame that in law is by ascribing rights to individuals, and responsibilities. In fact, I'm less interested in the rights narrative – it's not my thing. Once that was up and running, I was onto the duties and responsibilities. This is my big thing: how do we actually enforce the legal duty of care? Through criminalising ecosystem destruction.

So, in a way I think it comes down to something far simpler than, you know, whether or not trees have rights. Yes, that helps us in framing, just as [the idea] that we have human rights [does]; but actually does this not really come down to what is our sacred duty to each other, human and non-human? I call it a 'sacred' duty because I do think that we have responsibilities in this life, to be life-affirming rather than life-destroying. Who are we to go out and destroy at large, without looking to the consequences? You know, that is recklessness, on an *enormous* scale now. And we do know the consequences.

**But you can't build a new city, or even establish a new farm, without obliterating an ecosystem that was there before, can you?**

Oh, I don't know. The Biodynamic Association[9] would probably disagree with you, actually.

I'm dealing with the most serious, international crime, of significant concern, at the

very top. What it comes down to, at the end of the day, is whether or not the harm is so serious that it constitutes an ecocide. Fracking is a very good example. Just one well, one frack field, hey, no problem! But when a government wants 30–60,000 wells, as ours does, you have a really serious problem on your hands. That's *enormous* in terms of damage, destruction and loss of ecosystems. You can go to Australia or North America, as I have, and [see] how truly horrific the harm is. And this is coming in our direction.

Ecocide is more to do with the most destructive industries: fossil-fuel extraction, deforestation, the palm oil industry, big industrialised agricultural practices on a super scale. What we're really dealing with here is corporate crime: decision-making at the board level that can have significant adverse consequences for the inhabitants of a given community.

**Looking at photographs of the Athabasca oil sands,[10] say, some people might sense that what is happening there is evil –**

Well, I wouldn't say 'evil'. That's a non-lawyer's way of looking at it. We'd be looking to the establishment of harm.

**OK, but I'm curious to find the source of your own moral indignation at ecocide. Is it that a landscape is being permanently destroyed –**

You could bring a case on that basis…

**– or is it that it has inhabitants who are not being allowed to enjoy their environment in peace?**

It's the recklessness of going into a territory and destroying it, for a want of profit. You know, we know how we can generate energy, how we can do agriculture, without [causing significant harm]; but at the moment law has created a system that is actually prioritising very destructive practices.

So, what I'm wanting to do – what I *am* doing – is resetting the law so that it actually puts the health and wellbeing of people and planet first. It doesn't make sense to keep on causing mass damage and destruction in pursuit of profit. Whether or not you say it's morally wrong, at a higher level you could say it doesn't *work* to do that.

All that criminal law does is take a moral wrong and make it a legal wrong. It's an injustice to kill people, so we criminalise it. It's an injustice to steal things, so we make it a crime. Likewise, it's an injustice to cause mass damage and destruction, so we [should] criminalise that as well.

**Who is the injustice to?**

Wherever you have an ecocide, those that are most adversely impacted are first and foremost those that are living in that territory – and 'inhabitants' is a wider remit than just human beings. The Athabasca delta was ancient arboreal forest and wetlands. When we held a one-day mock ecocide trial [at the Supreme Court in London in 2011],[11] the expert was asked: How long will it take for this to be renewed? He said: 'It could take thousands of years.' You know, who are we to go and destroy something that has fundamental benefit for humanity at large, just for a bit of energy extraction?

**Many technologies that green people pin their hopes on, such as wind turbines, depend on the use of rare earths. What if it's not possible to extract them without causing immense damage?**

Why would that be the case?

There are many ways that you can extract them that aren't harmful. The mining industry is 19th-century in its operations. I had a meeting a number of years back with a mining baron and he explained why he needed my law. He wanted to use laser technology, but it's hugely expensive and if he said to his board of directors, 'We're going to use lasers,' they'd vote him off the board because it would damage their bottom line, which meant they became non-competitive and wouldn't get government tenders. It's as simple as that.

Of course, you're never going to get the price [of laser technology] down unless you've got a law that says you can no longer operate in a manner that amounts to ecocide. What [such a law] will do is make sure that those industries up their game so that it's far less harmful. [At present, the search for less harmful methods of extraction] is a fringe activity – you have pilot programmes, a little bit of this and that – but once you change the law, it changes the remit for [research and innovation] in a really big way. Suddenly it's: Right, we're on the job!

**In the past you have said that the big opportunity to bring in a law on ecocide is in 2015, with the chance to review the Rome Statute [which established the International Criminal Court to try 'crimes against peace']. Obviously, that date has come and gone and it didn't happen. Are there days when you lose hope?**

Yeah. I have had a few, definitely. Last year, I completely hit rock bottom. I actually got to the point of thinking I had got it all completely wrong.

**Are you placing too much faith in the law, maybe? One could argue that the ICC has not made a huge difference. Look at the 2003 war of aggression in Iraq – no one has ever been charged for that.**

Sure. This is an ongoing struggle for the ICC. The court itself stands for justice, and it

won't be moved on that. There is a lot of political pressure to compromise – a couple of African states have pulled out, for instance, and on that basis finance from the UN has been withdrawn, which hampers the court's ability to prosecute. But more countries are wanting to come on board and the court is growing in strength. Those countries that are engaging with ecocide law want to see the ICC better resourced, so they are giving assistance as well.

So, this is something that is growing and building.

**So, you feel you *are* making progress?**

I am.

 *This interview was posted on highprofiles.info on 30 November 2017.*

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1 www.therightsofnature.org/universal-declaration

2 Defined as 'the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other, to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished'

3 See bit.ly/2jX3WVT.

4 bit.ly/2AtaFxI

5 bit.ly/2mZRR30

6 Clink Street Publishing, 2014

7 See, for example, bit.ly/22IeEyD.

8 bit.ly/2zxrwPV

9 www.biodynamic.org.uk

10 See, for example, bit.ly/2A8YMu1.

11 See bit.ly/2BfI7Ey. As it happened, Huw Spanner was foreman of the jury.

# Biography

**Polly Higgins** was born in 1968 and grew up a few miles from Loch Lomond. She was educated at St Aloysius' College in Glasgow. She took a first in cultural history at Aberdeen University and, concurrently as an Erasmus student, a first-class diploma in semiology from Utrecht University; and then gained a postgraduate degree in decorative arts from Glasgow University in 1991.

She moved to London the following year to work for an art dealer.

She studied law for a year at City University, before entering the Inns of Court School of Law in 1997. She was called to the English Bar the following year. She trained as a pupil at the chambers of Baroness Scotland QC and was a tenant at Bridewell Chambers.

In 2006, she gave up a 'hugely lucrative career' as a corporate barrister in London to devote herself to campaigning to change international law to protect the planet. In 2008, she presented her proposal for a universal declaration of Earth rights, which Bolivia subsequently took up.

In 2010, she submitted to the United Nations a fully drafted proposal for an international law of ecocide. The following year, she organised a mock trial for ecocide at the Supreme Court of England and Wales in London, with Michael Mansfield QC as counsel for the prosecution.

She founded the Earth Community Trust in 2011 and co-founded the Earth Law Alliance in 2012.

Her first book, *Eradicating Ecocide* (2011), won the People's Book Prize for non-fiction that year. It was followed by *Earth is Our Business: Changing the rules of the game* (2012), which includes a draft of an Ecocide Bill, and *I Dare You to Be Great* (2014).

In 2013, she received an honorary doctorate from Business School Lausanne and was made an honorary professor at Oslo University. In 2009, the *Ecologist* hailed her as one of the world's 10 most visionary thinkers, and in 2016 the 'compassionate business magazine' *Salt* placed her 35th in its list of the world's 100 most inspiring women. That same year, the Swedish company Polarbröd awarded her its Utstickarpriset prize 'for good leadership for the future'. In 2017, she won the Honour of Ekotopfilm award at the international environmental film festival in Bratislava.

She is married.

*Up-to-date as at 1 December 2017*