

Victims, Criminal Process and Environmental Justice

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The foundations of green criminology (Lynch, 1990)

- **Ecofeminism** (effects of environmental degradation impact upon women more than men)
- **Environmental racism** (effects of environmental degradation impact upon some racial/cultural/social groups more than others, new international environmental regulations and laws unfair on developing countries)
- **Red/Green Alliances** - 'Ecological Socialism' (environmental degradation is the rich minority exploiting the poor majority on a global scale)

Green criminology as Critical Criminology (Ruggiero and South (2010)

"[T]he high status of those causing the most [environmental] harm who (like other powerful offenders) frequently reject the proposition that criminal definitions should apply to them while constantly striving to persuade legislators that the imposition of norms of conduct on them would be detrimental to all. Powerful actors whose conduct impacts on the environment possess the ready-made rationalisation that a law imposing limits to the harm they cause would implicitly endanger the core values underpinning economic development and therefore be damaging to the collective wellbeing" (p.246)

- Note links to Red/Green alliances again.

Critical Victimology

"real, complex, contradictory and often politically inconvenient victims" (Kearon and Godey, 2007: p.31).

Victimologists to blame?

"Indeed, *politically*, victimology has contributed to the strengthening of the state's role. It has set itself up as engaging not just in academic debate but in "affirmative action for the victims of crime", and, like traditional criminology before it, its too-ready acceptance of official definitions of criminal and victim have reinforced rather than questioned the status quo" (p.302, emphasis in original (McBarnet, 1983)

Questions

1. Can criminal justice play an effective role at the national and international levels towards providing official recognition, support and redress for victims of environmental harm?
2. What are the limitations to current provisions for official recognition, support and redress for victims of environmental harm through criminal justice both within individual jurisdictions domestically and at the international level? Are these limitations inherent to *criminal justice* (making it unsuitable to deal with these matters) or are they the result of engrained cultural practices?
3. What does an inter-disciplinary approach (encompassing socio-legal analysis, criminology, victimology and international law) teach us about how to effectively address these limitations?

But is environmental degradation 'crime'?

"[M]any environmental disruptions are actually legal and take place with the consent of society. Classifying what is an environmental crime involves a complex balancing of communities' interest in jobs and income with ecosystem maintenance, biodiversity and sustainability" (Skinnider, 2011: p.2)

"A grey area emerges for environmental risks that are not currently subject to regulation or criminal enforcement but where further understanding of the risk may lead stakeholders to argue for regulation and/or criminalization" (Gibbs et al, 2010: p.133)

'Crime' or 'Social Harms'? (Hillyard and Toombs, 2003)

- These authors have argued that, in more recent years, the progress of both critical criminology and victimology has **stalled somewhat from their heyday in the 1960s and 1970s**, giving way to an empiricist 'applied science' orientation driven by the political issues of the day. The authors therefore advocate in response to this a return to a criminology based on 'social harms'
- Includes activities that are not 'crimes' or are **legally ambiguous**. Also includes 'mass crimes' and 'mass victimisations', which mainstream criminology has always struggled with
- They conceive such harm as including physical harm; financial/economic harm; emotional/psychological harm and consideration of so-called 'cultural safety'
- **BUT**
- Is this **TOO WIDE?** How can a criminal justice system function with such wide understandings of noncompliance and victimisation. Criminal justice systems need **certainty** to run fairly and consistently
- Is there a danger that CJS/the state will **shirk its responsibilities** for these activities if they are seen as 'beyond crime'?

Who are the environmental victims?

- "those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or omission" (Williams, 1996: p.35).

Skinnider's (2011) Characteristics

- the victims are not always aware of the fact that they have been victimized;
- the victimization is often delayed with the victim becoming aware of the victimization much later after
- victims are not sure about who victimized them or who exactly is responsible;
- the victimization is often serious not so much because any individual victim was seriously affected, but because numerous victims were affected by the crime; and
- victimization can often include repeat offences.

Who are the environmental victims?

- **Health Impacts**
- **Economic Impacts**
- **Social/Cultural Impacts**
- **Security Impacts**
- **Victim/Offender Overlap**
- **Inequality of Impact**

What place do environmental victims have in the (criminal) legal order?

Domestic Criminal Justice Systems

- Very little application of standard victim-involvement reforms to victims of environmental harm/crime.
- Main exception is the US Crime Victims Rights Act 2008 [BP Oil Refinery in Texas in 2005; *Re Parker*; *U.S. v. U.S. District Court and W.R. Grace & Co*]
- Private Prosecutions??

What place do environmental victims have in the (criminal) legal order?

European Criminal Justice?

- 2001 EU Council Framework Decision on the Standing of Victims in Criminal Proceedings
- New victims Directive
- EU Directive 2008/99/EC on the protection of the environment through the criminal law
- 1998 Council of Europe Convention on the Protection of Environment through Criminal Law

What place do environmental victims have in the (criminal) legal order?

Wider International Law?

- 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- International Law Commission's draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities
- State responsibility for environmental harms as principle of international law?

Human Rights: Common solution for international law and victimology?

Rights leading to the recognition of environmental victimisation by criminal justice systems

A right to a clean environment?

- Article 11 of the American Convention on Human Rights
- 1981 African Charter on Human and People's Rights states in Article 24
- African Commission on Human Rights and Peoples Rights in the *Ogoniland* decision:

"The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources" (Para. 52)

Human Rights: Common solution for international law and victimology?

Rights leading to the recognition of environmental victimisation by criminal justice systems

The adaptation of existing rights

- European Court of Human Rights – especially Article 2 and 8
- *Lopez Ostra*:

"Naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health" (para.51).

Human Rights: Common solution for international law and victimology?

Rights leading to the participation of environmental victims in criminal justice systems

- 1998 UNECE 'Aarhus' Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters:

"The Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention. These arrangements shall allow for appropriate public involvement and may include the option of considering communications *from members of the public* on matters related to this Convention (Article 15 - emphasis added)"

Human Rights: Common solution for international law and victimology?

Rights leading to the participation of environmental victims in criminal justice systems

- 1998 Council of Europe Convention on the Protection of Environment through Criminal Law

"Each Party may, at any time, in a declaration addressed to the Secretary General of the Council of Europe, declare that it will, in accordance with domestic law, grant any group, foundation or association which, according to its statutes, aims at the protection of the environment, the right to participate in criminal proceedings concerning offences established in accordance with this Convention" (Article 11)

Rights leading to the participation of environmental victims in criminal justice systems

- 2004 EU Environmental Directive (but administrative):

Article 12

1. Natural or legal persons:

- (a) affected or likely to be affected by environmental damage or
- (b) having a sufficient interest in environmental decision making relating to the damage or, alternatively,
- (c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this Directive.

Providing redress to environmental victims?

Compensation orders from criminal courts

- But are not being used in these cases
- Resistant culture amongst judges?
- Limited amounts?
- Requires convictions to be achieved

Providing redress to environmental victims?

Damages from Civil Courts?

- Very expensive
- Still have to prove a level of compensation
- Civil liability can be restricted by statute – as in the Alaskan Exxon oil spill of 1989

Providing redress to environmental victims?

Administrative Compensation Schemes?

- Criminal injuries schemes won't cover this victimisation
- Other schemes have been very ad-hoc, mainly in rich countries with highly mediated environmental disasters
- Who pays?

Providing redress to environmental victims?

Environmental Mediation?

- No information on what victims get from it
- Inequality of power in the bargaining
- Some indications it takes longer than other methods in mass victimisation cases

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