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## Environmental victims and criminal justice: proceed with caution

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## Introduction

- Policy and advocacy: the notion of criminal justice as a means to improve the plight of victims of environmental harm:
- Campaign for an international crime against the environment
- Campaign for an international crime against future generations
- Within the European Union:
  - > Directive on the protection of the environment through criminal law
  - > Victims directive (EU-Directive on minimum standards on the rights, support and protection of victims of crime)

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## Introduction

But is step toward criminal justice necessarily an improvement?

1. Some victimological features of (perpetrators and victims of) environmental crimes
2. 'New' victims, the victimization industry and the connection to criminal justice
3. Recent experience with international criminal justice and victims of international crimes

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## Environmental crimes and victimology

Environmental problems as crime

- Changes in the categorisation of non-harm, harm and wrongdoing: the space for harm *as such* is decreasing
- Less clear link between levels of harmfulness and wrongfulness
- Environmental harm as crime: connection to other forms of injustice
- Difficulties in seeing environmental harm as crime, also related to social-psychological heuristics
  - Action principle
  - Intention principle (recklessness)

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## Environmental crimes and victimology

- Difficulties in seeing environmental harm as crime, also related to social-psychological heuristics
  - Contact principle
  - Identifiable victim and offender effect (statistical harm)
  - Extent to which outcome is foreseeable and controllable
- Moral outrage versus moral panic
  - > Importance of differences in appraisal tendencies between emotions anger and fear
  - > Connected to differences in reaction to crime and to criminalization
  - > Differences between outrage and panic

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## Environmental crimes and victimology (perpetration)

- White-collar/ corporate crime
- Transnational
- Organized crime
- Abuse of power
  - State as victimizer
  - State failing to protect
  - State unable to protect
- Wide group of victimizers
  - Including free-rider problems
  - Large overlap victimizers-victims

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## Environmental crimes and victimology (victims)

- Mass victimisation
  - Not necessarily concentrated in time/ space
- Delayed onset (delayed impact, indirect impact, voluntary hazard)
- Self-definition
  - Victims do not self-define
  - Victims can not self-define
  - Victims over-define (malingering, worrying well)
- Intergenerational dimension

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## Some initial thoughts on victims of environmental crime

- What role do social-psychological mechanisms play in the definition of environmental problems as crime, and what consequences do they have?
- To what extent is it the lack of state power, rather than its abuse that plays a role in environmental crime?
- For which of the specific characteristics of victims of environmental crime can a criminal justice process conceivably be a solution?

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## The victimization industry

- Joel Best (1999): *Random Violence*

Applies to different groups of 'new' victims to imagined (alien abduction) and real (domestic violence) forms of victimization :

1. Victimization is widespread
2. Victimization is consequential
3. Victimization often goes unrecognized
4. Individuals must be taught to recognize their own and others victimization

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## The victimization industry (2)

5. Claims of victimization must be respected, not doubted
6. The term victim is undesirable (prefer replacing it by other term)
7. Relationship between victims and victimizers is straightforward and unambiguous: the victimizer is exploitative and the victim is innocent
8. One type of victimization at a time.
  - > Lose sight of the whole, reinventing the (often faulty) wheel.

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## Straightforward relationship between victim-victimizer

- Use of stereotypes:
- Ideal victim (Christie, 1986):
  - > Weak in relation to offender
  - > Legitimate
  - > Blameless
  - > Unrelated to offender
  - > Offender is big and bad

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## Straightforward relationship between victim-victimizer

- Baumeister (1997): The Myth of pure evil
- The offender intentionally inflicted severe harm on the victim.
- This harm was primarily motivated by the wish to harm the victim, merely for the pleasure of doing so. The harm was not inflicted for instrumental reasons, nor was it used reluctantly.
- Evil and evil offenders are so by nature and this nature has a permanent quality.
- The harm is committed by the other, the stranger or the enemy.
- The victim is innocent and good.

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**Straightforward relationship between victim-victimizer**

- Also different stereotypical dyads
- For instance gendered violence movement:
- Stereotype: the *survivor*, the women who has experienced repetitive violence by the hands of a *intimate terrorist*, a man whose violence serves control and patriarchy

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**Straightforward relationship between victim-victimizer**

- Deploying the stereotypical dyad rules out complexity: the narrative is straightforward and simple
- Focus on stereotypical dyad, preferential treatment of cases that meet the criteria,
- Even to the extent of denying other similar forms of victimization
- Even in the face of conflicting evidence:
  - > Ideal victim versus the diversity in real victimisation
  - > The survivor – intimate terrorist versus different forms of domestic violence

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**Talking about social problems**

- Best (1999): the use of the language of war
  - > The war on poverty, crime, drugs.
  - > The notion of defeat of an enemy: the promise of winning the war
  - > The importance of speed and melodrama
  - > The neglect of subtlety and complexity
  - > In Europe: fight, rather than a war.

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**Talking about social problems**

- Glendon (1994): rights talk
  - > Political discourse increasingly imbued with the language of rights: inalienable, universal, inviolable.
  - > Social dilemmas are matters of right and wrong, rather than problems in search of solutions
  - > Rights discourse neglects responsibility, but overestimates the extent to which governmental agencies can/ should respect rights
  - > Glosses over the difficulties of implementation and enforcement: promotes unrealistic explanations
  - > Myth of rights (Scheingold, 1974)

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**Converging on criminal justice**

- Combination of notions fight/war against problems and individual rights: self-evident role for criminal justice in the solution of victimisation issues
- While it is often not clearly suited to purpose
  - > Criminal justice has a hard time dealing with complexity in social problems
  - > Only a minor proportion of victimisation reaches final stages of criminal procedure, most undoing of harm takes place elsewhere
  - > Falling levels of victim satisfaction in countries with longer histories of protecting victims rights
  - > Stable and sometimes even falling reporting and attrition rates for domestic violence

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**Some more thoughts on victims of environmental crime**

- To what extent is it helpful – also when it is true - to think about environmental problems in terms of victims and perpetrators?
- What dyad? For the wrongdoer the connection to white collar crime, or to racism or both? And conversely seeing the victim as the poor or minorities?
- To what extent could a focus on clear forms of environmental crime detract from other environmental issues, which lack the melodrama of crime and victimization?
- To what extent is viewing environmental harm in terms of a fight or even a war beneficial to solutions?

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## Victims of international crimes

- Share certain characteristics with victims of environmental crime:
  - > Mass victimisation,
  - > Abuse of power,
  - > Absence of rule of law,
  - > Transnational,
  - > Transgenerational.
- Recent upsurge of criminal justice activity to the proposed benefit of victims: in particular the ICC in the Hague
- Rhetoric surrounding international criminal justice triumphant

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## International criminal justice and victims

- Situation of international crimes poses large difficulties to administration of international crimes:
  - Criminalisation *ex post facto*
  - Collective perpetration versus individual guilt
  - Unclear line between culpable and inculpable parties (bystanders)
  - Matching remedies to the enormity of wrongdoing
  - Reaching normal criminal justice goals: retribution, deterrence, prevention?

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## International criminal justice and victims

- Selective nature of prosecutions
- Legitimacy issues
- Insufficient clarity concerning the main audience of the justice proceedings
- Issues of proportionality:
  - > Big Fish versus small fry: differential treatment of high-level and low-level perpetrators
  - > Comparison of punishment for international crimes with 'ordinary' crimes
- Lack of *external coherence*
  - > Lack of horizontal integration
  - > Lack of vertical integration
  - > Remote justice

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## International criminal justice and victims

- Lack of internal coherence: what is the purpose of ICJ from a victimological perspective?
- Participation of some versus acknowledgement of many
- Compensation? ICJ is a very expensive and lengthy means to deliver compensation or reparations
- Symbolic value ICJ
- The glacial speed of justice

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## International criminal justice and victims

- *A drunkard's search*: trying to fit the reality of international crimes to the abstractions of criminal justice
- *Moral hazard*: having ICJ offers the illusion that justice is being provided, and that no more is needed
- *Crowding out*: of other solutions to the problems posed by mass victimisation, due to the allocation of funding, and to the fact that ICJ can mask the neglect of other solutions

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## Some further thoughts on victims of environmental crime

- How to avoid the drunkard's search of criminal justice in cases of environmental harm?
- To what extent does the combination of moral hazard and crowding out mean that
  - > The plight of victims of environmental harm will depend upon harm-irrelevant factors of the perpetrators of environmental crime
  - > That increasing the focus on criminalisation will draw away attention and funding from more promising avenues to restore the harm done to environmental victims

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## Questions?

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