ENVIRONMENTAL CRIME AND JUSTICE

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IN THE 1990s and early 2000s, NGOs such as Friends of the Earth Scotland, managed to raise the profile and legal standing of the concept of environmental justice across the U.K. However, in subsequent years and in the context of an economic recession, governments everywhere have become wary of environmental protection measures in case these are seen as a burden on business and the economy. So Pedersen (2014) has rightly asked ‘What happened to environmental justice?’ The answer lies with its ‘susceptibility to political neglect in accordance with executive winds of change.’ Thus he argues that, ‘environmental justice is today most notable by its absence when it comes to official directives, guidelines and statements.’

All of this raises important questions about the problem of environmental crime and harm and how satisfactory current systems of policing, regulation and law are in a world increasingly facing changing environmental problems. Although awareness of environmental issues has grown, the problem of response faces familiar tensions and dilemmas, and meanwhile, the political agenda has a tendency to move uncomfortable and difficult challenges up and down the scales of importance and urgency, with resources diminishing as the priority reduces and the courts tread carefully. Weaknesses in the models of regulation and enforcement mean that environmental offences are often not accorded the seriousness they deserve, whether due to the way the prosecution case is presented or the defence responds.

Environmental crimes and harms as a challenge

‘Green’ criminologists, interested in crimes and harms that damage and destroy the environment, define the subject in a broad way, encompassing, for example, pollution and its regulation; corporate criminality and its impact on the environment; health and safety in the workplace where breaches have environmentally damaging consequences; involvement of organised crime and official corruption in the illegal disposal of toxic waste; the impact and legacy of law enforcement and military operations on landscapes, water supply, air quality and living organisms populating these areas - human, animal and plant; as well as forms of law enforcement and rule regulation relevant to such acts (South and Brisman, 2013).

Environmental harms and crimes can be transnational yet always have a point of origin and specific sites and populations that suffer the impacts and effects. Regional and national contexts are important and, in turn, shaped by law, culture, traditions and politics. What seems intolerable pollution or living conditions to some is normality for others.

The challenge for environmental and criminal justice

According to Lewis (2012: 87) environmental justice can be defined in terms of

*inequality or unfairness in the distribution of environmental burdens, where there is exclusion from the processes which determine how that distribution will be effected, or where disproportionate distribution is not balanced by sufficient reparation. This extends to potential injustices between developed and developing states, and between present and future generations.*

In this way environmental justice and human rights can be seen as tied together. There is some expression of this in various international treaties, in some national laws and constitutions, in propositions that environmental rights should be seen as human rights and in cases where human rights regimes explicitly incorporate environmental rights for current and future generations (Gianolla, 2013). However it is difficult to achieve and maintain high-level support for such ideals or to mobilise an effective response in cases where both rights and the environment suffer, are violated and destroyed.
**Legality, legitimacy and justice**

Environmental crimes and harms may be committed by those who can draw on legal standing and legitimate status, but such actions should be responded to not just on the basis of legality and legitimacy but also justice. The relationships between these powerful notions, and the gaps between them, are complex and significant.

While governments may make law, corporations can find ways to bend it; while certain actions may be legal, in a normative sense they may be neither just nor legitimate. In order for criminal justice and regulatory response to avoid the erosion of legitimacy and claims to justice then, as Skinnider (2013: 3) observes, ‘There is a need for [such] … systems to function with certainty in order to be fair and consistent’. The question is whether environmental crime and harm can be effectively addressed by existing systems of criminal justice, regulation and law? If the answer to this question is ‘no’, then, in turn, as Popovski and Turner (2008: 7) suggest, ‘the legitimacy of law can be undermined by its structural inability to face urgent problems and respond to pressing issues’.

**From the point of view of a ‘green’ criminology, the ultimate environmental victim is the planet**

Popovski and Turner (2008: 6) remind us that ‘legitimacy needs law as much as law needs legitimacy’. The two need to be able to catch up with each other and be complementary. Environmental crime provides a perfect example of an area of hugely significant activity where, at present, they do not always do this. Of course, sometimes flexibility is needed in law. Equally, sometimes claims to legality and legitimacy do not really deserve to be respected or supported. As Popovski and Turner (2008: 6) argue, ‘appeals to legitimacy outside the law are vulnerable to opportunism by powerful states, with dangerous consequences’.

Powerful states can and do opt out of attempts to create internationally legally binding environmental controls and agreements. Similarly, big business often makes successful calls for exemption or exceptional leniency with regard to environmental regulation and argues that it is authoritarian and misunderstands the reality of business needs. Opt-outs and exemptions are legal and have legitimacy but may not serve the wider interests of justice.

Criminal justice, environmental politics and public participation.

One hope for enhanced legitimacy and justice in legal and enforcement systems lies with demands for greater consultation and public involvement. In relation to developments in the UK, Pedersen (2014) asks whether the 2008 Regulatory Enforcement and Sanctions Act which emphasises use of civil rather than criminal sanctions, will have implications for environmental justice. This could, he notes, be a welcome development if it is successful in encouraging and delivering greater compliance. Pedersen also suggests it could make even more of a contribution to environmental justice if the communities affected and distressed by environmental damage were to be engaged in the processes of ‘negotiation and application of enforcement undertakings where these include provisions for community compensation’. As yet there is no indication that this is happening but, even if the prospects for genuine involvement are not good, this is an important point.

Legitimacy is enhanced by participation and, in theory, movements in international law are seen by some as leading to enhanced public involvement in environmental matters. International agreements such as the Aarhus Convention are supposed to be leading towards citizen rights to environmental information, a voice in decision-making and ‘access to legal remedies where environmental laws are broken’ (Christman, 2013: 6). However, it has to be recognised that while provision of information is one thing, the rights of citizens to meaningfully participate in decision-making is quite another, and their willingness and ability to engage is something else again. Furthermore, as Christman neatly puts it, while citizens may be ‘invited to submit comments on an activity … decision-making rests with government’.

Nonetheless, as Pedersen (2014:2) points out, it may prove to be significant at both international and national state levels, that a recent report from the UN Independent Expert on Human Rights and the Environment has suggested that states run the risk of failing to satisfy their responsibilities in relation to human rights if domestic environmental laws are not enforced. Possibly the most promising scenario for a society that can accommodate and take seriously criminal, social and environmental justice is one in which we recognise that we are individually and collectively responsible for the health of our environment and that we or future generations will suffer if we do not preserve it. From the point of view of a ‘green’ criminology, the ultimate environmental victim is the planet – we share it and it sustains life. There cannot be any better argument for developing and implementing strategies to prevent crimes that damage the environment and for enforcing laws that are designed to protect it.

**Nigel South** is professor of sociology and director of the Centre for Criminology at the University of Essex and has written and published widely on the topic of environmental crime and green criminology.

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