ENVIRONMENTAL CRIME AND JUSTICE

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**Rob Edwards**’ Sunday Herald columns and blog will be familiar to those interested in the environment. Having written largely about Scottish environmental issues, for more than 30 years, Rob’s interest in the environment dates back to his childhood when the M25 passed through woods near his house, destroying animal habitats. He is however, modest about what he, as a journalist, ‘knows’. Hazel Croall, theme editor and Mary Munro, managing editor of Scottish Justice Matters held a wide ranging conversation with him in early 2015, extracts from which can be found below.

**REPORTING ON ENVIRONMENTAL CRIME AND JUSTICE**

*SJM: In the period you have been reporting environmental issues, what main changes have you seen?*

**RE:** A lot has changed. Environmentalism, previously seen as a cranky thing for eccentrics, has moved mainstream, and we now have the Green Party, other parties vying with each over the environment, and the UN and Earth Summits. The science of climate change has moved from being the science of a few to the science of main consensus. Environmentalism has come of age. Climate change has been a major factor, along with environmental disasters such as Chernobyl, Bhopal and Fukushima. While Government and editorial support for environmental issues ebbs and flows, things have got better.

**How has the interface between environmental and criminal justice changed? Are, for example, agencies more prepared to take action?**

I think we are getting better, and (agencies are) tougher and more transparent on, for example, pollution. When I first came to Scotland regulation was very secretive, inward looking and unproactive, with cosy chats being held behind the scene. This ‘regulatory capture’, changed with the creation of the Scottish Environmental Protection Authority (SEPA) and Scottish National Heritage with a greater commitment to more openness and chasing down environmental criminals. The other big change was the Freedom of Information (FoI) Act and, as SEPA now has an obligation to make all information available, it now has a database of pollutants and assessments of the performance of three to five thousand companies. There is more willingness to share information and a greater willingness to take on environmental criminals.

Governments have sought to make environmental justice tougher and more understood by the Procurator Fiscal, with training and conferences slowly bearing fruit. Fines are going up slightly although they are still not high enough. There are more attempts to take action against illegally killing birds of prey, not an easy crime to prosecute as the criminals are never there. In summary, the prospects for environmental justice have got better over 30 years. There is nonetheless a long way to go and difficulties remain, particularly for community groups and NGOs faced by big companies. A specific example relates to coal bed methane in Falkirk, where community groups are pitted against the expensive lawyers employed by Dart Energy, not a fair balance. Access to justice is still therefore in the balance.
A major part of your writing has been about nuclear power, what do you see as the main issues here?

I could talk about nuclear issues for hours. Over the long term things are better now. The nuclear industry is a tremendously powerful complex which started at the heart of government and was shrouded in secrecy, which remains the case. There is more transparency due to the FoI and the Office for Nuclear Regulation (ONR). There is however a major shortage of nuclear engineers. This, in the face of the deal done between the Government and the powerful French firm EDF in relation to building the new Hinkley nuclear power station, creates a risk that reduced resources and pressures will lead to a reduction of ‘red tape’. ONR may become a less tough regulator than it needs to be.

While there has been more accountability in relation to civil nuclear power, the regulation of military nuclear power, including nuclear submarines, weapons and reactors, is a mess. While some information is available from ONR and SEPA, a large portion is regulated by the Defence and Nuclear Safety Regulator (DNSR), the most unaccountable and secretive regulator I’ve ever dealt with. After fights occupying months of my life, involving the Information Commissioner and the MoD, they have been forced to release annual reports. Having prised open MoD’s secretive citadel a little, we have some knowledge of their concerns about submarine reactors, nuclear weapons safety and transporting nuclear weapons. They can’t really be called a regulator, they are still within the MoD and regulation may involve ex MoD chaps saying to MoD chaps, ‘you’re doing fine chaps’. Despite MoD claims that this is proper regulation, there is no public guarantee that this is the case and the process lacks transparency. The UK is more secretive than the US, where Freedom of Information is part of the constitution.

How important is the involvement of private defence companies?

Military sites, such as Faslane and Coulport, are all run by defence companies, including Lockheed, on contract to the MoD. There is a declining number of MoD staff. This produces a situation in which, while the FoI forced more information from Government regulators, however long it may take - it took me eight months this year to get information about Health and Safety at Faslane - the introduction of private companies has made it more difficult again as they provide very little information.

Immunity from prosecution is a further issue, with the MoD still retaining crown immunity, although promising to act as if it doesn’t. This is a concern for example, for SEPA. If they want the MoD to make improvements in the antique nuclear waste arrangements at Faslane, they have no legal powers to force them to do so. Crown immunity is one of those historical anomalies which needs to be looked at.

The Lord Advocate has recently outlined tougher strategies toward environmental crime. Can this make a difference?

Yes, it is very important that the criminal justice system gets on top of environmental crime which it has not been brilliant at doing both in relation to wildlife crime and pollution by companies. SEPA, faced by a reduced budget in the age of austerity, can do less monitoring. It has currently been targeting waste crime, working with the police on what is now seen as a ‘big business’ with links to organised crime, which, to their credit, they have exposed. There is a worry however that other things will slip through the net.

Do you think that, as in other areas of regulation, a lack of resources inhibits the prosecution of large companies?

This is a factor, although it can’t be proved. In contrast to the relatively easy ride of prosecuting a small landfill offender, BP or Ineos might throw their best lawyers at them. SEPA is a smaller organisation than a lot of these companies and may be terrified of getting things legally wrong.

Could the courts do more?

The courts historically haven’t seen environmental crime as seriously as perhaps they ought to. Killing birds of prey or polluting rivers may not be seen to be the same as assaults, physical harm or murder or robbery. Having said that, using the criminal justice system is not going to improve the problem in itself. It makes me uneasy for example when gamekeepers, not highly paid people, are put in prison, when the fault lies in the system and landowners, who condone them, never see inside of a cell. For large companies, you have to take lots of money off them but use it for public good. Companies have to realise that if they do serious pollution it will affect shareholders and the market value of their company.

I must mention that if you are looking for the grossest global example of environmental injustice this must be Bhopal, where around 25,000 Indians died and the water is still contaminated. The compensation offered by the Dow Corporation was 100 times less than that given to the victims of their faulty silicone breast implants. What does that say if you are an Indian? Someone I met there saw this essentially as environmental racism as the value of a life in India is just not worth the life of a citizen of the US.

Do you think the Scottish Government can do something more radical than the rest of the UK?

It already has. The FoI is more radical than elsewhere in the UK, the environment is fully devolved, and there is arguably a stronger green presence in the Scottish Parliament. There is scope for doing these things better in Scotland.

What would be your priorities for the future?

I would take a really serious look at what you could do to make sure Faslane and Coulport are as safe as possible which would mean toughening regulation. Secondly, it bothers me that all the information that SEPA publishes on their pollution register is based on companies’ and public agencies’ own information. There is a need for more resources and more independent monitoring.