Environmental harm and environmental victims: scoping out a 'green victimology'

In this paper I intend to discuss the adaptability of victimological study to the question of 'environmental victimisation'. The impact on those affected by environment crime, or other environmentally damaging activities, is one that has received scarce attention in the mainstream victimological literature (see Williams, 1996). The role or position of such victims in criminal justice and/or other processes has likewise rarely been topic of academic debate. I have recently expanded upon various aspects of this subject and surrounding issues at greater length (Hall, 2013) but for the purposes of this article I wish to expand specifically on what a so-called 'green victimology' might look like, together with some of the particular questions and challenges it will face.

The 20th anniversary of the leading international journal in victimological thought seems a fitting place to discuss developments in the burgeoning study of environmental harm principally because a focus on victimisation beyond that which is officially recognised as *criminally* perpetrated evokes arguments original being made at a much earlier point in the history of the victims' movement. A key question raised at an preliminary stage in most debates concerning how environmental destruction might fit within the corpus of criminology and victimology is whether those harmed by environmentally destructive activities are truly victims of *crime*, given that many polluting activities are frequently not only state sanctioned, but in fact are actively *promoted* by states. As noted by Skinnider (2011):

> "[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" (p.2).

Nevertheless, the expansion of victimology to cover those harmed by such 'non-criminal' activities is far from unprecedented, Pointing and Maguire (1988), for example, discuss how the victims' movement in the US was

originally driven by a diverse group of advocates concerned with different aspects of victimisation in its broadest sense. These ranged from feminists and mental health practitioners, to survivors of war and atrocities such as the Nazi concentration camps (Young, 1997) and victims of the apartheid regime in South Africa (Garkawe, 2004). Divergence has also developed within the the (sub)discipline between 'positivist victimology', which employs scientific methods (such as victimisation surveys) to examine criminal victimisation specifically, and 'general victimology', which encompasses wider victimisations: including war and, of particular relevance to the present discussion, natural disasters (Cressey, 1986; Spalek, 2006). Indeed, it was only later in the development of victimology that, despite the initial divergence of foci and aspirations amongst those within the field, the study of victims of (officially recognised) *crime* took centre stage (Maguire, 1991). Even by this point, the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (still a key inspiration for may recent official documents concerning victims of crime) focused specific attention on victims of 'acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights' (para.18). It is notable that this aspect of the Declaration has still received relatively little attention compared to the provisions aimed at more 'traditional' notions of criminal victimisation.

In more recent years the cause of victims of acts which are officially classified as non-criminal has been the preserve firstly of zemiology (the study of social harms) and of so-called 'critical victimology' with its expanded notions of victimhood beyond simple, criminal classifications (Hough, 1986; Dignan, 2004). Hillyard and Tombs (***) have also championed a so-called 'social harms' approach to criminology and the study of victims, rather than narrowly focusing on 'criminal harms'. In many ways those suffering environmental harm fall squarely within the category of "real, complex, contradictory and often politically inconvenient victims" (Kearon and Godey, 2007: p.31) with which the critical critique is so concerned. This is particularly so given the reality that not only do environmental harms often derive from entirely *legal* activities, as noted above, there may in fact be very sound economic and/or

political justifications for a company or a state to passively allow such activities to continue, or even actively promote them (Walters, 2006). Thus, as observed some time ago by Schnaiberg (1980), states are often willing to undercut environmental concerns to facilitate the 'treadmill of production'. Of course, as noted by Ruggiero and South (2010), such political and economic decisions are heavily influenced by power inequalities, which are another key feature of the critical school:

> "[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).

Nevertheless, even amongst the critical school, victims of environmental harms have largely been overlooked in the literature, although the first call for the development of what was then turned 'environmental victimology' came as early as 1996 in an article by Christopher Williams. Williams begins his argument by acknowledging the 'limits of law' (Williams, 1996: p.200) in addressing environmental victimisation and, much like Hillyard and Toombs would later follow (albeit in more general terms), notes the "obvious need for social justices to parallel formal legal processes" (p.200). Williams calls for a move away from prevailing concepts of 'environmental justice' (see ***) which he views as subjective and swayed by activism in the field' to embrace victimology as a means of addressing environmental victimisations. For Williams 'environmental victims' are:

> "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" (p.35).

This definition embodies intergenerational justice and, importantly for Williams, is grounded on the notion of 'injury' rather than 'harm'. Williams'

argument is that this is a more useful starting point for victimologists if the goal is to promote the development of working legal systems around environmental victimisation, especially in criminal justice, as the concept is more objective and measurable than 'harm'.

It is extremely telling of the state of the victimological literature in this field that when White compiled a reader on environmental crime in 2009, the only chapter specifically focused on the victims of such crimes was in fact a reprint of William's 1996 work. A further edited collection from White (2010) has no specific chapter on victimisation at all, although it does contain a chapter from South (2010) who in one section reflects upon the unequal impact of climate change on various groups of (usually poor) victims, and the possibility that some 'environmental rights' are being breached (see ***). Notably this discussion contradicts one of William's views that the impacts of environmental harm are more evenly spread between rich and poor. White (2011) has more recently dedicated a chapter to environmental victims in which he emphasises the socio-cultural context of understanding and responding to environmental harm:

> "Ultimately the construction of [environmental] victimhood is a social process involving dimensions of time and space, behaviours involving acts and omissions, and social features pertaining to powers and collectivises" (p.122).

As further noted by White, this state of affairs in relation to environmental victims reflects "one of the truisms of victimology that being and becoming a victim is never socially neutral" (2011: p.111).

Moving towards a 'green victimology'?

Both Williams (***), and more recently White (***) end their arguments with a resolute call for further development of the study of environmental victims and victimisation. This paper in effect takes up this challenge by discussing some likely parameters of such a field of study and what its key challenges might entail. Underpinning much of this debate is the general point that

environmental crime and environmental victimisation do not sit well with traditional models of criminal justice and, therefore, traditional modules of victimology which - as critiqued by (***) - have tended in recent years to revolve around officially proscribed notions of crime and victimisation. Indeed, as noted by *** 'not much progress'

Conceptually ascribing *criminal* blame for environmental destructive activities is indeed a difficult proposition, even before one begins considering the role of the individual or collective groups of victims in such a process. Often it is difficult in such cases to ascribe direct (or even indirect) causation between the actions/inactions of a specific party (or state) accused of bringing about the harm and the undesirable outcomes themselves. Du Rées (2001) has commented on this issue in relation to methods of neutralisation employed by supervisory agencies concerning environmental crime, whereby any victim(s) and/or the harms caused are effectively denied:

> "It is often claimed that environmental crimes have no directly or clearly defined groups of victims. It is difficult, for example, to connect a specific discharge of a prohibited substance to a specific form of damage to the environment or to people's health" (p.649).

Furthermore, as noted by Bell and McGillivray (2008), the extended range of perpetrators of environmental crime can seem hopelessly wide:

> "A diverse range of individuals and corporate bodies carry out the activities that lead to breaches of environmental law, from solo fly-tippers, to huge multinational corporations" (p.264).

In the absence of a generally recognised right to a clean and unpolluted environment (see below) the basis of any criminal liability for such activities and their resulting harms at a jurisprudential level is often unclear. Indeed, Passas (2005) has highlighted the particular difficulty in relation to cross-border practices which are legal in one country but not in another:

> "Asymmetries in legal definitions and law enforcement enable corporations to do what is prohibited at home in other jurisdictions without breaking any laws. Processes of globalization have multiplied the opportunities for that" (pp.773-774).

Although Passas is not primarily concerned here with *environmental* crime or harm, it is clear that the asymmetries he speaks of are precisely what render specific parts of the world and specific groups within society especially vulnerable to environmental victimisation, a fact that which will be discussed in more detail below.

In light of such jurisprudential difficulties, there are plenty of sound arguments as to why *criminal* justice may be ill suited to dealing with environmentally destructive activities as a whole, or certainly with environmental victimisation. For example, fundamentally the majority of criminal justice systems across the world are not accustomed or adapted to deal with 'mass victimisations' of the kind that are often a feature of environmental offending (***). Furthermore, the wide and eclectic scope of possible harms that can be associated with environmental victimisation (discussed below) go well beyond those with which criminal justice systems are traditionally concerned: or indeed, one might argue, *can ever* be concerned given the necessarily high standard of proof that is required to convict defendants in a criminal court.

On a related point, we may be concerned that any encouragement of a greater role for criminal justice in matters of environmental degradation might well have a net widening effect, bringing more people and corporations within the scope of criminal justice (and state control) than ever before (McMahon, 1990). Here academic victimologists must be wary of setting out to shed light on environmental victim only to find them being used to justify retributive criminal justice policies, as Elias (**) argues has occurred with other victims of crime.

For such reasons some authors, notably Mares (2010), dismiss the idea that criminal justice can effectively deal with environmental victims - or indeed that *law* of any kind is capable of doing so - as a misnomer, preferring instead a system based on civilising and shaming. The situation appears even further removed from traditional criminal justice principles if one approaches the issue from a less anthropocentric perspective to consider victimisation to non-

human animals, the ecosystem and so on (see Cazaux, 1999; Zimmerman, 2003; White ***).

The above points notwithstanding, a key role for any green victimology, it is submitted, will lie in unpicking the extent to which formal justice mechanisms are *incapable* of dealing with cases of environmental victimisation and the extent to which this alleged incapability in fact reflects cultural reticence amongst legal practitioners and others involved in delivering those justice systems. Victimologists have of course long been concerned with the extent to which criminal justice practitioners - as a matter of occupational culture - construct ideas of their roles within the criminal justice system, and whether such roles include consideration for more traditional victims of crime (Shapland, ** **; Hall, 2009). For its part, in a review of the English and Welsh criminal justice system's handling of environmental crime (in which, notably, no reference to victims was made), the House of Commons Environmental Audit Committee (2004) emphasised a lack of awareness of such issues amongst judges and prosecutors rather than any fundamental incompatibility with criminal justice *per se*. In the same report, the English Law Society labelled this state of affairs as 'clearly unacceptable', indicating that the problem lay with attitudes amongst the legal professions rather than with the law itself.

One particularly stark example of the impact of occupational cultures within a legal system on the plight of environmental victims can be drawn from the oil extraction taking place in the Nigerian Delta. Here, Ebeku (2003) argues judges have traditionally disregarded the position of environmental victims in favour of the economic interests of the state. Although Ebeku's discussion of this issue is mainly based on civil courts, the point concerning judges as the ultimate 'gatekeepers' to the justice system is well made. Ebeku (2003) has also argued that it is the *culture* of judges in Nigeria that needs to change in this regard, and is in fact slowly doing so. Kotzé and Paterson (2009) have, likewise, emphasised the key significance of differing attitudes taken by judiciaries across different jurisdictions to environmental governance. Bell and McGillivray (2008) have further argued that the operation and enforcement of

a great deal of environmental regulation and criminal law at present depends very much on the working practices and cultures of enforcement agencies.

Identifying environmental victims and the heterogeneous nature of environmental harm

The argument that all victims of crime are not the same, do not react in the same way (or to the same timetable) to their victimization and require different services and support from criminal justice and other agencies is another familiar tenant of mainstream victimology (Shapland and Hall, 2007), and one which may apply to an even greater extent to environmental victims. Theoretical musings, or even parallels drawn with more traditional and well-studied victims groups are, for this reason, insufficient as a basis for the continuing development of green victimology. As with other areas of victimisation, the voices and views of these victims of environmental harm have largely remained absent from the relevant literature, and indeed from policy debates. Given that almost no empirical research has been carried out which takes into account the perspective of environmental victims themselves, green victimology will face the arduous challenge of developing methodological approaches to finding, sampling and drawing data from this diverse 'group'.

The principal difficulty here lies in the apparent heterogeneous nature of environmental victimisation. In one of the few in-depth (literature-based) studies on this issue Skinnider (2011) extrapolates the following broad characteristics of environmental victims:

(i) The victims are not always aware of the fact that they have been victimised;

(ii) The victimisation is often delayed with the victim becoming aware of the victimisation much later after;

(iii) Victims are not sure about who victimised them or who exactly is responsible;

(iv) The victimisation is often serious not so much because any

individual victim was seriously affected, but because numerous victims were affected by the crime; and

(v) Victimisation can often include repeat offences.

Skinnider goes on to postulate that environmental victims can be classified by a number of different typologies including: by wrongful act; by the nature of the harm; by the extent of the damages suffered; by the scope of the harm or by the perpetrator(s) of that harm. Expanding on the 'nature of the harm' typology, I have previously argued that such harm may fall into four broad categories: impacts on health; economic impacts; impacts on victims' security and social/cultural impacts (Hall, 2013). Needless to say however these classifications in all likelihood represent only the tip of the iceberg.

What *is* clear about environmental victims themselves is that the overriding evidence now points to endemic inequality in the distribution of environmental harms at local, national and global levels (Dobson, 1998). This inequality is in part geographically grounded. So, for example, the 1992 UN Framework Convention on Climate Change (FCCC) acknowledges the particular vulnerability of "low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems" (***). This notwithstanding, it is important that a focus on the inequalities of environmental harm fostered by physical geography does not distract us from the more complex - social, economic and cultural - aspects of environmental victimisation. The unequal distribution of environmental degradation as a whole has been commented on by South (2010), who sees this as reflecting wider tendencies towards 'social exclusion' that have long been a topic of research and discussion in mainstream criminology (Byrne, 1999). In relation to environmental victimisation, Lee (2009) has summarised the situation in the following terms:

> "Poor people are usually excluded from the environmental decision-making process, and once a policy is made, they are usually powerless to change it" (pp.3-4).

In sum, therefore, a further key challenge for any green victimology will lie in identifying the nature of environmental victimisation itself and the people (businesses, countries) affected. Perhaps to a greater degree than for many other kinds of victimisation, this is unlikely to be a cognate grouping.

The human rights perspective

As a concept, 'rights' for victims of traditional crimes is now fairly well established, at least on a rhetorical level, in a number of national and international instruments (***). Such rights include a number of important service rights - which have been largely uncontroversial (JUSTICE, 1998) - and also a developing assortment of procedural rights of participation within justice systems, which have attracted much fiercer debate (Ashworth, ***). Human rights have thus become one of the cornerstones of the discussion going on around tradition victims of crime (as well as criminal justice in general) and, as such, will prove a vital component of green victimology as well. This is all the more certain given the transnational nature of many environmental harms and the likely involvement of the *international* legal order, under which human rights are at present one of the few mechanisms by which *individuals* (rather than states) can seek recognition. Indeed, the move towards greater recognition of human rights within the international legal order (including the area of international environmental law) has been heralded by (***) as 'the most significant***'.

As noted by Jackson (1990), talk of rights within more traditional victimological areas is dominated by 'balance' rhetoric: chiefly concerning the balancing of victims' rights with those of offenders. The same balancing exercise will need to be addressed by green victimologists as well although, in this case, there may well be more complex issues at stake. Whilst green victimology must tackle the same concerns about (environmental) offenders being prejudiced by more victim involvement in the justice system (the so-called 'zero-sum game' (****)) environmental crime also raise tensions between the economic needs of the broader community or the state as a whole and smaller groups or individual citizens within those communities (***). Furthermore, to redress

environmental harm for some victims may lead to forced changes in industrial practices, potentially putting other victims out of work[1]. Indeed, it seems likely that, much more so than for many traditional crimes, the 'balance' to be struck in relation to environmental crime and justice may actually lie between one set of victims' rights and those of another group of victims, or potential victims: now or in the future.

If green victimology is to adopt the language of rights it must also, it is submitted, address another key set of questions raised by more traditional branches of victimology: concerning the *enforceability* of such rights. Here there are definite parallels to be drawn between the fledging recognition of rights for environmental victims and those rights ascribed to more traditional victims in that the enforcement mechanisms attached to these 'rights' remain in most cases markedly underdeveloped and lacking true compulsive authority. For example,

Compliance Committee of the Aahrus UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

In fact the broad consensus at present amongst international environmental lawyers appears to be that no definitive right to an unpolluted, green environment can yet be said to exist in international law (***). Rather, the most progressive developments concerning rights for environmental victims so far have come about as a result of interpreting existing, well established, rights - such as the right to privacy and the right to a home life - to include environmental harms: especially by the European Court of Human Rights (****). Nor in most case can existing 'rights' for victims of crime be easily applied to victims of environmental harm given that the definition of victims employed in most case is often purposely narrow (****). That said, a more progressive example comes from the US, where

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[1] Although see ** for a contrary view

It is clear therefore that, like victimology as a whole, the study of environmental victimisation and environmental victims will inevitably to raise many questions concerning the nature and scope of such victims' 'rights' (needs, entitlements, legitimate expectations and so on) and how those rights relate to the rights of others: including the rights of corporations, states and *other* victims. Green victimology therefore needs to apply itself to understanding these developments and how they might be applied to wider groups of environmental victims.

The need for an interdisciplinary approach

By expanding here on the characteristics and challenges of a 'green victimology' there is of course a danger that this paper will be viewed as proposing a siloed approach to the study of environmental harm and its victims. That is to say, promoting an excusive or rigidly defined discipline or subdiscipline of study. In fact however a key aspect of any success study of environmental victimisation has to be a strong interdisciplinary, and indeed inter-sectorial, component. The virtues of an interdisciplinary approach are of course widely touted throughout the social and physical sciences (see Matthews and Ross, 2010), and for good reason. Drawing from a variety of sources and perspectives almost inevitably provides a deeper understanding of any given subject of the research exercise as well as providing the scope for transposing ideas and solutions between subject areas (see Lury and Wakeford, 2012). The virtues of interdisciplinary approaches are also well recognised by criminologists (Walsh and Ellis, 2007) and by victimologists specifically (Dupont-Morales, 1998). Indeed, at the time of writing the British Society of Criminology is preparing to host summer conference under the title 'challenging disciplinary boundaries within criminological discourses'.

The study of environmental victimisation draws on a complex array of data, ideas and practices from across the social and physical sciences. It calls into question the interface between science and law, which Houck (2003) describes as a "tale from a troubled marriage" (p.1926). Economic matters are clearly raised (***). Perhaps more subtly, economic impacts of environmental

victimisation are often inherently linked with more cultural and social factors: at which point we move into the domains of sociology and anthropology. Thus, the loss of the fishing industry in the Maldives due to sea level rises (caused, it now seems fairly certain, by climate change (***)) is, it is submitted, as much a tale of cultural destruction as it is of financial loss and therefore victimologists require the input of cultural experts in order to fully appreciate and incorporate such ideas. Studies of environmental victimisation also inevitably touch upon healthcare issues (**), the politicisation of the 'green agenda' (**) and the provision of insurance (***). I have argued elsewhere that a key component of any 'green victimology' is the close interaction between victimologists and international legal scholars (and practitioners), environmental pollution so often constituting a cross-border issue (**). That said, given the breath of possible contributors and perspectives relevant to the debates concerning environmental victimisation, the idea that *law* (much less *criminal law*) can or should constitute the *sole* solution to the problems of environmental victimisation is surely wrong.

A 'green victimology'?

In the 21st century issues pertaining to the environment, climate change and atmospheric pollution have become persistent and inexorable social issues attracting study and analysis from across the physical and social sciences (***). As yet however victimologists have largely ignored in their theorising the plight of those harmed by the destructive effects of these processes and events, even when there is evidence that they are man-made. Nevertheless, the scope of officially recognised 'environmental crime' is growing (***) such that, even if we restrict ourselves to official notions of criminal victimisation the time has surely arrived for more detailed study of these issues amongst victimologists.

The aim of the present paper is a modest one: being largely to set out some key issues and questions posed by the study of environmental victims and the directions such study might take. If nothing else, the above discussion has highlight the complexity of these issues although, interestingly, many of the

questions raised have actually been extensions of the challenges faced by victimologists for some time. So, from the outset, we have seen that any green victimology needs to fully appreciate and emphasise the heterogeneous nature of 'environmental harm' and 'environmental victims'. Even in relation to traditional notions of criminal victimisation academics, and certainly policy makers, have been in danger of treating 'victims' as if they were a uniform group when in fact we know that crime impacts upon different people in different ways and at different times. If anything, the above discussion suggests that the breadth of likely impacts may be even wider in the area of environmental harm.

The second key conclusion to be drawn from the above is that a green victimology is by its nature necessary a critical victimology. It is submitted that the social, political and economic influences on the identification and recognition of 'illegal' or 'harmful' acts and omissions necessitates fundamental questions being asked of what any given criminal justice system does and does not accept as an 'environmental crime' and thus an 'environmental victim'. State interests clearly play a large role in this labelling process, as do powerful corporate and economic interests within the state. The situation on the Nigerian Delta, discussed above, is a prime example of the resulting victimisation that occurs when these interest combine and are prioritised over and above those of individuals and communities. This interplay of corporate and state interests of course effects not just what environmental crimes (or harms) are committed, but the very definition of such 'official crimes' in the first place. This critical approach is in fact consistent with developments seen in may jurisdictions of defining victims by the harm they endure rather than through set legalistic categories (Hall, 2010) and thus represents another extension to debates already occurring within victimological circles rather than a completely novel area of concern.

Also expanding upon existing debates in more mainstream victimological literature, green victimologists need to consider carefully the advent of human rights, including environmental rights and intergenerational rights (***), if they are to offer a fully reasoned view of this form of victimisation. It is submitted

that such an analysis will be largely impossible without close cooperation with human rights experts, human rights layers and international legal scholars. This returns me to my final point concerning interdisciplinarity. Whilst arguably all areas of study benefit from an interdisciplinary approach, the breadth of issues from both the physical and social sciences raised by environmental victimisation, it is submitted, make such interdisciplinarity an essential (not merely desirable) component of green victimology. Furthermore, this must constitute true *inter*disciplinarity rather than *multi*disciplinarity, with synergies being drawn between the knowledge and methods used by quite diverse groups of researchers.

Finally, the most notable absence from the vast majority of work carried out relating to environmental victimisation so far is the voice of environmental victims themselves. Given the heterogeneous nature of this (non) group, the methodical challenges of identifying and drawing data from those harmed by environmentally damaging activities (whether or not officially defined as 'criminal') may prove the greatest challenge to green victimology of all. The challenge must be met however if we are to avoid the charge so often levied at states and criminal justice systems by victimologists of all descriptions: proceeding in a manner that at best assumes and at worst ignores real victims' views and needs.

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