

ROUTLEDGE FRONTIERS OF CRIMINAL JUSTICE

Victims of Environmental Harm

Rights, recognition and redress under
national and international law

Matthew Hall



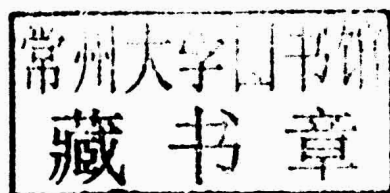
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First published 2013
by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN

Simultaneously published in the USA and Canada
by Routledge
711 Third Avenue, New York, NY 10017

Routledge is an imprint of the Taylor & Francis Group, an informa business

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British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

Library of Congress Cataloging-in-Publication Data

Hall, Matthew (Criminologist)

Victims of environmental harm: rights, recognition and redress under national and international law/Matthew Hall.

pages cm. – (Routledge frontiers of criminal justice)

Includes bibliographical references and index.

1. Offenses against the environment. 2. Victims of crimes—Legal status, laws, etc. 3. Reparation (Criminal justice) 4. Liability for environmental damages I. Title.

K5278.H35 2013

344.04'6—dc23

2012033403

ISBN: 978-0-415-67700-4 (hbk)

ISBN: 978-0-203-08344-4 (ebk)

Typeset in Times New Roman
by Wearset Ltd, Boldon, Tyne and Wear



Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Victims of Environmental Harm

In recent years, the increasing focus on climate change and environmental degradation has prompted unprecedented attention on the criminal liability of individuals, organizations and even states for polluting activities. These developments have given rise to a new area of criminological study, often called 'green criminology'. Yet in all the theorizing that has taken place in this area, there is still a marked absence of specific focus on those actually suffering harm as a result of environmental degradation. This book represents a unique attempt to substantively conceptualize and examine the place of such 'environmental victims' in criminal justice systems both nationally and internationally.

Grounded in a comparative approach and drawing on critical criminological arguments, this volume examines many of the areas traditionally considered by victimologists and relates these areas to victims of environmental crime and, more widely, environmental harm. These include victims' rights, compensation, treatment by criminal justice systems, and participation in that process. The book approaches the issue of 'environmental victimization' from a 'social harms' perspective (as opposed to a 'criminal harms' one), thus problematizing the definitions of environmental crime found within most jurisdictions. *Victims of Environmental Harm* concludes by mapping out the contours of potential further research into a developing green victimology and how this agenda might inform criminal justice reform and policy-making at national and global levels.

This book will be of interest to researchers across a number of disciplines including criminology, international law, victimology, socio-legal studies and physical sciences, as well as to professionals involved in policy-making processes.

Matthew Hall obtained a PhD from the University of Sheffield in 2007, having previously graduated from Sheffield's MA in International Criminology Programme. He is now senior lecturer in Law and Criminal Justice at Sheffield, where he teaches many aspects of criminology, as well as criminal law and the law of evidence. He is an editor for the *International Review of Victimology*.

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For Kate

Foreword

The field of 'green criminology' has grown remarkably in recent years and will no doubt continue to expand rapidly as environmental conditions deteriorate. Climate change, in particular, is set to fundamentally transform the present world. The impact of global warming is already being felt, and rises in the Earth's temperature will continue to generate increasingly profound shifts in weather conditions and climatic events. The devastation wrought by Superstorm Sandy along the eastern seaboard of the United States in October 2012 was not simply a once-in-a-generation phenomenon; it marks part of the beginning of regular chaotic events, the predicted result of anthropogenic contributions to greenhouse gas emissions.

Meanwhile, the demise of plant and animal species, both through legal and illegal means, the growth in human population, and the shrinking of natural resources (such as drinking water) and non-renewable resources (such as oil and gas), all add up to enormous pressures on the environment generally. With biodiversity under threat, global resilience to the impacts of climate change is being reduced. Yet the commodification of nature ensures that economic value is, ironically, best realised in conditions of advancing scarcity. Environmental degradation and destruction is, for some, profitable.

Simultaneously, the global pursuit of the Western consumer lifestyle daily adds to the pollution of air, water and land. Factories belch out smoke, as do cars, buses and trucks designed to transport people and goods. Illegal transfer of electronic waste is fast becoming one of the biggest environmental crimes, while vast areas of the planet continue to suffer deforestation in the global scramble for new mega-mines, for coal-seam gas, for GMO crops and for pastures for cattle and sheep. Changing land uses are creating new toxic towns; new forms of recycling of ships and electronic products are producing contaminated communities. And the planet continues to heat up.

The study of environmental crime and harm has been the core focus of green criminology for more than two decades. Who is doing what, where, and how have been the key questions of those working in this area. The main focus has been on offenders and perpetrators of harm, and on detailing specific instances of environmental vandalism. The pursuit of social and ecological justice has informed much of this work, yet aside from that literature specifically linked to

and stemming from the Environmental Justice movements, little has expressly been written about environmental victims.

This is now set to change. As our collective knowledge of global environmental harm increases, there is an appreciation that those who suffer from environmental victimisation deserve sustained analysis and strategic interventions in their own right. As Matthew Hall demonstrates in this book, however, this is not a straightforward task. Environmental victimisation is, indeed, an extremely complicated and multifaceted issue. The complexity is much further compounded if we include the non-human in addition to the human as victim.

As with 'ordinary' victims within criminal justice, there are persistent issues of recognition, acknowledgement, participation, redress, compensation and restoration that pertain to matters of justice for victims of environmental crime. Unpacking the myriad issues that obtain in such cases is a key task of the present work by Hall. Insights are needed, for example, into the impacts of environmental harm on human victims, including the inequalities in these impacts among diverse population groups. It is vital to gain a picture of how such harms are or could be dealt with within existing criminal laws, and of the potential for human rights law to offer protection and newly conceptualised rights in relation to the environment. What is to be done with and for victims and survivors of environmental harm takes us into the realms of restitution, compensation and restoration, and is likewise in need of illumination.

Dealing with issues pertaining to environmental victims takes the reader into murky legal waters, abstract theoretical matters and substantive areas of application. Offenders are victims, and victims are offenders. The state is perpetrator of harm, and giver of solace and recompense. The Janus nature of criminalisation and victimisation means that there are often more than two sides to specific questions. It is for this reason that calls for a 'green victimology' include assertions of the importance of a critical, holistic approach to the subject matter. Not all is as it seems.

Yet the need for recognition and redress is substantial and urgent, and demands action in the here and now. The intertwining of academic and activist projects are thus crucial to the further development of green victimology.

This book provides a broad conceptual canvas upon which dedicated discussion and debate about the victims of environmental harm take place. It is the first book of its kind. While providing a sophisticated and careful analysis of existing laws and policy applications in this area, it constantly affirms the need for further refinement and continued development of the criminological imagination. Accordingly, it provides the platform for analysis of what is, what could be, and what should be when it comes to the situation of victims of environmental harm. In this regard, it is intended to provoke and stimulate as much as to establish conceptual precision and summarise existing institutional responses. This, too, is what makes the book foundational for those of us interested in the study of environmental harm and in actively supporting those most affected by the processes and institutions that are destroying life as we know it.

Analysis of who or what is being harmed ultimately leads to consideration of environmental victims. This, in turn, highlights the need for a green victimology. In this respect, Matthew Hall has provided a path-breaking initiative that will help to guide research and action in this area for many years to come.

Rob White
University of Tasmania, Australia

Acknowledgements

I owe a large debt to numerous individuals who helped make the following volume a reality. I would particularly like to thank my colleagues from the University of Sheffield Centre for Criminological Research, and from the University of Sheffield School of Law, for innumerable discussions, consultations and brainstorming sessions on every aspect of this project. Dr Richard Collins and Dr Russell Buchan in particular have always been on hand to help this criminologist understand and appreciate the subtleties of international law and its scholarship. I would also like to thank Professor Stephen Farrall for his important advice and insights into numerous aspects of criminological theory and research and how they might apply to climate change and environmental degradation more widely. My thanks also to Professor Rob White of the University of Tasmania for his invaluable advice at the early stages of this project and for penning the foreword to this volume: which of course is to say nothing of his enormous contributions to the development of green criminology as a whole.

A special mention must be made here of Professor Duncan French of the University of Lincoln School of Law. Professor French was the international environmental lawyer who initially asked me what, if anything, criminology had to say about environmental victims. It is hoped that this volume will go some way to providing an initial, if somewhat belated, answer.

Finally, I would like to thank my wife Claire, my son Edward and my daughter Kate, whose support and love – as ever – are reflected on every page of this volume.

Any errors or omissions remain my own.

Abbreviations

BBC	British Broadcasting Corporation
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act, 1980 (USA)
CIVITAS	Institute for the Study of Civil Society (UK)
CNTV	Chinese Network Television
CVRA	Crime Victims' Rights Act 2004 (USA)
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FCCC	United Nations Framework Convention on Climate Change
FTA	Freight Transport Association (UK)
ICC	International Criminal Court
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
NGO	Non-governmental organization
RSPCA	The Royal Society for the Prevention of Cruelty to Animals (UK)
TSDF	Treatment, storage and disposal facilities
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNHRC	United Nations Human Rights Committee
WHO	World Health Organization

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1 Victims, environmental harm and international law

1.1 Introduction and goals of this book

In the twenty-first century, criminal victimization has become a major area of academic debate and policy movement across most of the developed world. One of the most significant consequences of this has been the light that has been shed on the needs and suffering of a multitude of victims who were previously all but invisible in the eyes of both criminal justice systems and the public at large. Such victims include those affected by domestic violence; child and other vulnerable victims; the friends and family of murder victims; and both male and female victims of rape.¹ Recognition of the problems faced by these distinct groups, both within and beyond criminal justice processes, has undoubtedly led to significant improvements in their treatment and support in many jurisdictions (Hall, 2010). Yet the victimological literature increasingly recognizes that other groups have to some extent been left behind the main vanguard of this ‘victims’ movement’. Among these still neglected groups are those victimized by actions of the state, corporate victims, the corporate and individual victims of white collar crime, and those harmed by the effects of environmental degradation perpetrated or brought about by individuals, corporations and states. It is with this last group, which I will refer to as ‘environmental victims’, that this volume is primarily concerned.²

In recent years, the enduring problem of environmental pollution and climate change³ has become an accepted reality for most scholars and practitioners working in both the physical and social sciences.⁴ The progress made in our understanding of the causes of environmental degradations of all kinds has presented a number of challenges for lawyers in particular, as questions are increasingly raised concerning the responsibility of individuals, corporations and states for environmental harms. Given the transboundary nature of the issue, international law has also been obliged to adapt itself rapidly to meet these new challenges, with the development of international environmental law.⁵ Surprisingly, however, there has been almost no attempt by commentators to combine an analysis of these developments in the domestic and international legal orders with some of the relatively well-established lines of critical criminological and victimological enquiry.

2 *Environmental harm and international law*

In light of the above observations, the present volume addresses the issue of environmental victimization: representing the first broad-scale attempt to apply ideas and concepts developed by victimologists over the last 30 years to this relatively new field. The book will also explore the question of who are the victims of such environmental harms and how such victimization is often unequally distributed among the world's populations (see White, 2008a). The resulting analysis will be grounded in the author's long-term interest in the legal position and rights of victims of crime and other social harms (Hall, 2009, 2010) coupled with the growing field of green criminology (Edwards *et al.*, 1996) and the development of international environmental law.

In combining these areas of analysis, and thereby approaching the issue of environmental crime and environmental victimization from an interdisciplinary and comparative perspective, this volume will offer fresh insight into the important questions raised by such victimization. In particular, because international (environmental) law has tended to exclude consideration of the individual in favour of the state, the approach taken by this volume will offer a rare, *unified* consideration of both structure and agency as they relate to such matters. Given the growing interest from governments and international organizations in the harms caused by environmental pollution (spurred on by the developing evidence of the full impact of environmental degradation of all kinds), such an analysis is long overdue, and should prove an important contribution to the on-going policy debate now occurring in all jurisdictions on how they can adapt their justice systems (and other forms of conflict redress) to address these matters. To this end, this volume will present a theoretical framework for understanding and approaching the issue of environmental victimization through criminal (and other) justice mechanisms.

With the above aims in mind, the principal research questions to be addressed in this volume are these:

- 1 Can criminal justice play an effective role at the national and international levels in providing official recognition, support and redress for victims of environmental harm?

This necessitates two secondary questions:

- 2 What are the limitations to current provisions for official recognition, support and redress for victims of environmental harm⁶ through criminal justice, both within individual jurisdictions domestically and at the international level?
- 3 What does an interdisciplinary approach (encompassing socio-legal analysis, criminology, victimology and international law) teach us about how to effectively address these limitations?

The principal contention of this book is that closer collaboration between international legal scholars, criminologists interested in green issues generally, and

those interested in victimization specifically, has the potential to markedly advance our understanding of a wide range of under-researched issues, including: the support needs of those affected by environmental harms; the state's responsibility for the adverse impacts of climate change; and the mechanisms of redress and compensation available to those suffering the impacts of man-made environmental disasters at the national and international level.

To clarify the intended scope of this volume, two points need to be made from the outset. First, as mentioned above, this book is primarily concerned with the victims of *man-made* environmental disasters as opposed to the 'casualties' (Williams, 1996) of natural catastrophes. Of course, the distinction between what is 'natural' and what is 'man-made' may be at the heart of any dispute over the obligations of the state or other parties to provide compensation, restitution and support to victims. An analysis and comparison of the state's responsibility in both cases forms an important component of Chapter 5. The second preliminary point is that this volume is chiefly concerned with the *human* victims of man-made environmental degradation. This is not however to deny or dismiss the wealth of arguments in the literature that such an anthropocentric approach ignores the complex relationship between humans, animals and the biosphere (Lynch and Stretesky, 2003), together with wider notions of ecological justice (White, 2008a), and these issues will not be excluded from my overall analysis. Indeed, White (2011) has also found it necessary to confine his most recent chapter dedicated to victims of environmental harm to human victims, as a way of situating his discussion within a conception of environmental rights (as an extension of human social rights), and also in the context of an argument⁷ that environmental victimization, like other forms of victimization, is an active social process. The present volume draws on a similar theoretical approach but, unlike White, factors in a more legalistic analysis of the position of environmental victims at the national and international levels. At the same time, however, I fully acknowledge (along with White) that a book of this length can inevitably offer discussion of only one part of a far wider problem.

Three further terms require explanation before proceeding further. First, as I have already noted, individuals or groups harmed by the effects of environmental degradation perpetrated or brought about by individuals, corporations and states will be referred to as 'environmental victims' in this volume. It is important to note that this term is deliberately wider than 'victims of environmental crime'. It will be seen later in this chapter that the question of whether any given environmental victimization is officially criminalized within a given jurisdiction (or internationally) will be an important theme for this volume as a whole.

Second, throughout the course of this book I will often draw contrasts between both environmental victims and victims of environmental crime on the one hand with 'traditional victims' on the other. 'Traditional victims' here refers broadly to all classifications of victims of crime which have received extended attention by criminologists and victimologists, and by policy-makers, in most

developed jurisdictions (see Goodey, 2005). These include those usually covered on crime surveys (victims of acquisitive and violent crime, the latter comprising both ‘public’ violence and domestic violence) and victims of sexual crimes. I am also including within this category secondary victims (‘survivors’) of homicide. The term is not used in a prescriptive sense, and will usually be used to draw comparisons between the availability of services, support and redress mechanisms for other kinds of victims and the relative absence of such facilities for environmental victims.

Finally, this volume will use the term ‘environmental degradation’. This has been variously defined (see Lonergan, 1998), but is used here in the same sense as the UN’s International Strategy for Disaster Reduction (2007): ‘the reduction of the capacity of the environment to meet social and ecological objectives and needs’ (unpaginated). Note that this definition includes the effects of climate change more broadly. In light of the above definition of ‘environmental victims’, in practice this volume will often be discussing environmental degradation brought about by human actions or inactions, albeit of course the question of culpability will often be key to any associated legal debates.

The remainder of this chapter has two key purposes. First, it will set out the academic and conceptual background informing the above research questions. Second, the chapter will highlight at various points the potential contribution of an interdisciplinary approach (advocated by this volume) to these issues, both as a means of taking forward this established literature and, perhaps more importantly, of converting the *theory* into something *practical* that can be utilized by legal practitioners and policy-makers. It seems logical to begin this discussion with an introduction to a number of the key literatures that will be drawn upon, starting with the developing field of ‘green criminology’ and moving on to the growth of the victims’ movement; cultural victimology; ‘green victimology’; and the role of the state in environmental harms.

1.1.1 Green criminology?

‘Green criminology’ is defined by White (2008a) as ‘basically refer[ing] to the study of environmental harm, environmental laws and environmental regulation by criminologists’ (p. 8). Although the term ‘environmental criminology’ is sometimes used interchangeably with ‘green criminology’,⁸ the former label has more traditionally been associated with the study of crime patterns as they relate to particular locations. For this reason the terms ‘green criminology’ and ‘green victimology’ are generally employed throughout this volume. Indeed, on the question of terminology Ruggiero and South (2010) have argued:

[F]or all that it invites criticism as lacking precision and possibly being open to interpretation as aligned with a ‘green political party’ position, the term ‘Green Criminology’ has become the most familiar and suggestive term, and also serves well as the most comprehensive conceptual umbrella.

(p. 247)