



Defining environmental crime: The perspective of farmers



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ABSTRACT

Most discussions of environmental crime typically refer to environmental degradation at the macro level, such as the large scale pollution of rivers or oceans, where there is no clear victim. This paper reports on a study which examined environmental crime from a more micro, place-based perspective, namely incidents that occur on farms where individual farmers are victims. Almost half of the 1926 respondents to a nation-wide survey of Australian farmers reported experiencing some type of environmental harm over the previous two years. Three case studies then examined whether farmers defined such harms as environmental 'crime'. Many but not all harms were described as crimes and there was divergence as well as convergence with formal law. In some areas, farmers' appreciations led formal proscriptions. Where farmers 'lagged' behind, contextual reasons were provided for the exceptions. All actions leading to harm were considered criminal if intentional, while accidental acts were not. Negligence was also used to define some actions as environmental crimes. The findings add to the growing literature on Green Victimology and the need to understand informal norms and appreciations of law as well as formal impositions and structures.

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1. Introduction

The study of environmental crime incorporates many different perspectives and strategic emphases. This is largely due to the diversity of acts that cause environmental harms which occur across a variety of environments (White, 2008:89). For criminologists, however, environmental crime has received less attention than traditional crime. This is now changing, as evidenced by a growing body of work in Green Criminology. Recently Hall (2014) highlighted the dearth of empirical work in environmental victimisation and called for research to ascertain the views and needs of environmental victims. This paper reports on the findings of an Australian study that examined the nature and extent of environmental harms that occur in rural communities where individual farms and their owners are victims. The research question was: Do farmers consider incidents that cause environmental harm on farms as 'crimes' and do they see themselves as 'victims', or do they qualify such acts in other ways?

Within this paper the terms environmental 'crime' or 'offences' refers to acts proscribed by formal laws or regulations,

environmental 'harm' denotes actions or events that cause harm to the environment but are not necessarily illegal, while environmental 'problems' is a more collective term to describe community concerns about environmental harm. The study sought to clarify how farmers, those who are inextricably involved in environmental management, define and distinguish between environmental harm and environmental crime.

While there is great diversity in what is meant by "rural", for the purposes of this paper, rural refers to areas under agricultural production. Although this study pertains to environmental harms that concern Australian conditions, the findings are offered for consideration of the way farming communities elsewhere might socially construct environmental crime victimisation, and as a contribution to empirical work in Green Victimology. The findings also contribute to the growing literature on the need for appreciation of the informal environment of law's operation, in addition to examination of formal law and institutions (Robards et al., 2011).

1.1. Defining environmental crime

Finding a sufficient, all-encompassing and generally agreed upon definition of environmental crime has proven difficult. There are a number of reasons for this. First, the study of environmental crime is a relatively new field of inquiry (Wiernik, 2006). Second, individualised harm and causation can be difficult to identify. Many

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of the incidents that cause environmental harm are extremely diverse and occur at both local and global levels (White, 2007). Further, environment harm often involves multiple acts that may not always produce immediate consequences and may remain undetected for years after the act (Bricknell, 2010; Wiernik, 2006). Most importantly, many of these actions or incidents may not be legally defined as criminal (Clifford, 1998; White, 2007) and, even when they are, there may be moral ambiguity surrounding the activity.

Environmental crime is often seen as ‘victimless’ (Bricknell, 2010). Victimisation is complex in terms of time, space, impact, and who or what is victimised. Victims may be few or many and victims may be non-human as well as human, which is problematic for traditional criminal law and is one of the reasons why governments and enforcement communities struggle with appropriate responses. Even if victims are aware of environmental harms, they might not consider themselves as “crime victims” and harms may go unreported (Wiernik, 2006; Bricknell, 2010).

Among criminologists, there are differing perspectives embedded in moral, philosophical or legalistic interpretations of harm as to what constitutes an environmental crime, and when the enactment of environmental harm actually becomes a crime (Bricknell, 2010). The main division is between those who adopt a strict legalistic approach and those who prefer a broader socio-legal definition (White, 2008:88). For example, Situ and Emmons (2000:3) define environmental crime as ... ‘an unauthorised act or omission that violates the law and is therefore subject to criminal prosecution and criminal sanctions’. This definition omits certain practices or behaviours that many may see as environmentally irresponsible, negligent or destructive. Yet these authors argue that until an act actually breaks a law, it cannot be considered a crime (Bricknell, 2010).

Many environmental offences are strict liability offences whereas most other criminal offences are defined by a requisite mental state (*mens rea*, for e.g. intention) as well as an *actus reus* (an act in contravention of the law). Penalties imposed are usually pecuniary rather than imprisonment. Offences are often administrative, for e.g. acting without a license or in contravention of permit conditions, and harm is inchoate. These types of regulatory interventions are generally adopted in areas where the behaviour is not considered so morally repugnant that it is banned outright, but is instead controlled, so as not to hamper an otherwise legal, and often beneficial enterprise (Bartel, 2005). It is this very ambiguity that has (historically) prevented the harms caused being categorised as ‘traditionally’ criminal. However with growing public concern about environmental degradation and anthropogenic climate change many environmental offences are increasingly viewed as akin to more traditional criminal offences, and this is reflected in rising statutory maximum penalties. Ambiguities remain however, reflecting the somewhat uncomfortable “retrofit” of criminal law to address environmental problems. Laws may go unenforced and while maximum statutory penalties may be high, actual penalties imposed may be much lower (Bartel, 2005) and proscriptions vulnerable to regression (Priour, 2012).

Those that prefer a more socio-legal approach argue that the concept of ‘harm’ should be included to account for those activities that may be legal and ‘legitimate’ but which nevertheless negatively impact on people and environments (Lynch and Stretsky, 2003). Rather than ‘environmental crime’, Clifford (1998) preferred the term ‘offences against the environment’. Clifford defined this as ‘an act committed with intent to harm or with a potential to cause harm to ecological and/or biological systems and for the purpose of securing business or personal advantage’. Here, defining environmental harm is about values and priorities, and not just what the law decrees (White, 2007). Yet there are also different

perspectives on what constitutes ‘harm’. Different authors focus on various types of harm, such as animal abuse or pollution of a specific waterway. The important difference between these varying frameworks is the focus on the victim which includes not only humans but the environment generally, and nonhuman animals (White, 2007). White outlined three broad categories of perspectives:

- **Anthropocentric** – Environmental rights are seen as an extension of human or social rights so as to enhance the quality of human life. Environmental harm focuses on human-centred notions of value and use.
- **Biocentric** – Humans are considered morally equivalent to other species. Environmental harm focuses on the intrinsic rights of nonhuman species to not suffer abuse, whether this be institutionalised harm or harm arising from human actions.
- **Ecocentric** – Humans are integral to complex ecosystems that should be preserved for their own sake via the notion of rights of the environment. Environmental harm centres on notions of ecological harm and deleterious human activities (White, 2007, 2008:11).

Claims relating to biocentric and ecocentric rights can potentially conflict with social and economic rights (White, 2008:51). Competing claims are particularly relevant to farming. Farmers are concerned with productive farm businesses (property rights) and workers in agricultural industries wish to preserve their jobs (social rights). Environmentalists are concerned with environmental rights, such as the need for water for environmentally sensitive areas and the preservation of native vegetation on farms, while those who champion animal rights may not agree with some livestock production practices.

1.2. The farming environment

Farmers often describe themselves and their peers as ‘stewards’ or ‘guardians’ caring for the land for future generations. Furthermore, caring for the environment is a fundamental for the sustainability of their farm operation (Beedell and Rehman, 2000). Yet farmers are often stigmatised as ‘environmental vandals’ (Lowe and Ward, 1997).

Modern agriculture is certainly no different from other industries in that it generates waste. It can also be associated with depletion of underground and surface water sources, degradation of soil, contamination of surface and ground water through fertiliser/chemical or effluent run off from farm land, destruction of wildlife habitat, and reduction of biodiversity (SEC, 2011). Australia wide, concerns about environment degradation have pressured industry groups to develop voluntary environmental codes of practice to demonstrate that the environmental risks from farming activities are being addressed (Geno, 2000).

However, the best intentions of landowners can sometimes be thwarted by factors outside of their control, or the deliberate or inadvertent actions of others. Williams (1996) distinguished between environmental casualties as those who suffer as a result of natural disasters which are due to chance, and environmental victims who suffer due to deliberate or reckless human acts (or acts of omission). Australian farmers are frequently environmental casualties, as in the case of bushfire. However, they may also be environmental victims if a fire is deliberately lit or if neighbouring land is inadequately protected from bushfire. Other actions that cause environmental harms on farms and are governed by environmental regulations and laws in Australia are presented in Table 1. These categories were used to guide the approach of the present study. There are some necessary generalisations in Table 1

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