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Preventing Wildlife Crime
Contemporary issues in enforcement and policy perspectives

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Wildlife crime is generally recognised as one of the most serious and high-value forms of crime globally (Nurse, 2013; Wyatt, 2013). Yet, despite growing environmental awareness and the efforts of a variety of non-governmental organisations (NGOs) to influence the wildlife protection policy agenda, wildlife laws remain outside the remit of mainstream criminal justice and their enforcement is often a fringe area of policing whose public policy and enforcement response significantly relies on NGOs (Nurse, 2015).

The urban-centric focus of criminology is evident concerning wildlife crime, which has received little attention within mainstream criminology (Lynch & Stretesky, 2014). Instead, wildlife crime is sometimes confined to discussions of rural crime, notwithstanding contemporary discussions of wildlife trafficking as a global crime problem (Wyatt, 2013; Schneider, 2008). However, given the threat to the planet's biodiversity and wide-scale harms that result from wildlife crimes, green criminology argues for wildlife crime as an important area of criminological inquiry (Nurse, 2013, 2015; Wyatt, 2013).

This chapter considers wildlife crime in respect of poaching and retaliatory killings of animals. In rural and urban fringe environments such as those that exist in the United Kingdom, issues such as badger baiting, illegal hunting and hare coursing can have devastating impacts (Nurse, 2012). However, the legal protection afforded to animals is socially constructed, influenced by social locations, power relations in society, and the need to both promote and protect specific ideological positions on animals by legislators and policy-makers (Schaffner, 2011; Nurse, 2013). Indeed, early in 2019 debates were occurring in the United Kingdom concerning whether to retain the provisions of European Union law that recognise animals as sentient beings (Nurse, 2019). Whether the United Kingdom Government decides to do so and how it might integrate any notion of sentience into post-Brexit animal protection, may be an important indicator not just of the 'value' of wildlife, but also of the importance attached to a particular type of rural crime, that affecting non-human animals within current policy debates**.**

A critical evaluation of different perspectives on wildlife crime and its law enforcement and policy imperatives is offered in this chapter. In particular, consideration of contemporary debates on the prevention of wildlife crime and addressing criminality in wildlife crime will be provided from a green criminological perspective (Lynch & Stretesky, 2003).

Defining wildlife crime

For the purposes of this chapter, a broad definition of wildlife crime is adopted. This definition considers wildlife crime as rural crime with several dimensions. Wildlife crime is not just crime that is specifically located within legally defined notions of the rural (Bosworth & Somerville, 2016) but is also crime that impacts negatively on natural resources often integral to the rural economy and rural communities and that should arguably be held in trust for future generations (Weston & Bollier, 2013). However, the reality of most legal systems, is that non-human animals have the status of human property (Schaffner, 2011). Sometimes, they are protected from a range of harmful actions and cruel practices, though wildlife can generally be killed and exploited for human benefit, subject to various conditions (Nurse, 2015). Thus "animal legislation serves multiple purposes and is intended to address a variety of human activities considered harmful towards animals, although arguably animal law is primarily aimed at preserving human interests" (Nurse, 2013, p. 6). Accordingly, non-human animals are arguably only protected to the extent that doing so provides some form of human benefit, whether economic or otherwise. As such, the nature and extent of wildlife 'crime' – here in the strictest sense of the word crime that only includes actions, which are prohibited by criminal statutes – is limited (Nurse & Wyatt, 2019).

Legislation recognising that wildlife should be protected for its intrinsic value – because wild animals are sentient beings deserving to live a life free of suffering (Wise, 2000) and because protection of wildlife and maintaining good standards of non-human animal welfare represent a public good (Nurse, 2016) – is mostly non-existent (Nurse & Wyatt, 2019). Wildlife protection legislation is limited by the fundamental principle that such laws operate primarily on the basis of sustainable use of wildlife. Thus, whilst offences are created by wildlife protection laws and various methods of taking or harming wildlife can be explicitly prohibited by law, the underlying principle remains one of allowing the use and consumption of wildlife.

Defining wildlife crime requires some consideration of the difficulty in distinguishing between (a) when the law allows wildlife to be killed and taken and (b) understanding of when non-human animals are taken in contravention of these laws. Criminology's historic focus on wildlife trafficking makes sense because trafficking by its very nature involves illegal acts that are the core focus of criminology (Edwards & Gill, 2004). However, this chapter's discussion of wildlife crime expands beyond the traditional analysis of wildlife trafficking that is a mainstay of criminological wildlife debate. This chapter explores wildlife crime in the context of wrongdoing and harm against wildlife that considers a range of activities that impact negatively on wildlife.

In addition to wildlife trafficking of live species and illegal killing of wildlife for 'sport', this chapter's conception of wildlife crime includes non-human animal baiting (for example, badger baiting and badger digging), illegal hunting and poaching, egg collecting, illegal predator control, taxidermy offences, and illegal exploitation of non-human animals for food and clothing. Nurse (2015, p. 27) offers this definition:

> For an act to be considered to be a wildlife crime, it must:
> - Be something that is proscribed by legislation
> - Be an act committed against or involving wildlife (as defined above) – wild birds, animals, reptiles, fish, mammals, plants or trees which form part of a country's natural environment or which are visitors in a wild state
> - Involve an offender (individual, corporate or state) who commits the unlawful act or is otherwise in breach of obligations towards wildlife

This definition – which includes fungi, plants and farmed non-human animals of a wild species – broadly applies to the discussion of wildlife crime in this chapter. As Nurse (2015, p. 27) identifies, "for the purposes of discussing wildlife law enforcement, wildlife crimes should also consider regulatory offences; breaches of the law which may not attract a punitive criminal sanction, but which nevertheless attract some sanction or enforcement activity". One potential conception of wildlife 'crime' is that which includes a broad range of harmful acts that encompasses direct and indirect acts or omissions and indicate failure to comply with legal obligations or comply with legislation (Nurse & Wyatt, 2019). This would be the case irrespective of whether the legislation or its associated sanction is distinctly criminal in nature or the species is actually living wild. Wildlife crime thus need not to be explicitly punished via criminal law to be recognised as 'crime' although arguably where this is the case, normative approaches to crime and crime prevention are more likely to be applied.

Attitudes towards animals

The response to wildlife crime is partly determined by socially constructed attitudes towards animals (Nurse, 2013; Beirne, 2007). Within animal abuse (Henry, 2004; Linzey, 2009) and species justice discourse (White, 2008) researchers have identified variations in how animal abuse is conceptualised both socially and in legal responses. Attitudes towards wild animals both on the part of offenders who harm them and the society which punishes (or in some cases allows the harm to continue) reveal much about tolerance for different forms of violence within society, sympathy towards the suffering of others, the capacity for empathy (Beetz, 2009) or an inclination towards violence or other forms of anti-social behaviour (Linzey, 2009).

Species justice discourse considers the responsibility humans owe to other species as part of broader ecological concerns. Humans, as the dominant species on the planet, have considerable potential to destroy non-human animals, or, through effective laws and criminal justice regimes, to provide for effective animal protection. Benton (1998, p. 149) suggests that "it is widely recognized that members of other animal species and the rest of non-human nature urgently need to be protected from destructive human activities". Wildlife laws are an integral part of species justice and provide a means through which contemporary criminal justice can extend beyond traditional human ideals of justice as a punitive or rehabilitative ideal, to incorporate shared concepts of reparative and restorative justice between humans and non-human animals. However, animals – particularly wild animals – are often viewed solely in relation to their economic or property value. Thus, legal protection for wildlife often exists only so far as wildlife use corresponds with human interests in using animals for food or other forms of commercial exploitation (for examples, trade in skins, parts or derivatives).

Wildlife campaigners in the United Kingdom, the United States and across Europe have consistently argued for stronger wildlife laws, reflecting the perception that current wildlife laws are generally inadequate to achieve effective animal protection, and a more punitive regime is required to deal with the criminality inherent in wildlife crime (Nurse, 2012). However, for the most part, wildlife law remains outside the mainstream of criminal justice and is dealt with as an environmental issue that is primarily the responsibility of government environment departments (such as the United Kingdom's Department for Environment, Food and Rural Affairs and the United States Department of the Interior) rather than being firmly incorporated into the responsibilities of the relevant justice and policing ministries. This

political demarcation of wildlife crime issues continues despite evidence of the links between wildlife crime and other forms of criminality (Lockwood, 1997; Linzey, 2009).

Arguably, levels of wildlife protection in the United Kingdom and the United States are being reduced either through potential changes to wildlife legislation (in the United Kingdom) or a reduction in the protection afforded to specific species (in the United States).[i] In the specific context of human-animal relationships and species justice, green criminology is uniquely placed to promote news ways of thinking about our attitudes towards and exploitation of animals as an integral part of mainstream criminal justice.

White's (2008) green criminology notion of animal rights and species justice deals with animal abuse and suffering, and increased levels of wildlife protection over the last 30 years or so reflect a growing environmental awareness and the efforts of a variety of NGOs to influence the policy agenda in respect of wildlife crime and wildlife protection. Yet wildlife laws remain outside the remit of mainstream criminal justice, and current legislative and policy proposals risk reducing the protection available for wildlife by failing to address specific problems of wildlife criminality and rolling back wildlife protection to serve other interests.

Wildlife protection and politics

Political considerations are central to the protection afforded to wildlife in law and policy. Wildlife protection and animal law risks being in conflict with other rural policies such that wildlife protection laws might be seen by some communities as lacking legitimacy (von Essen & Allen, 2017b). Organ et al. (2012) identify that the increasing politicisation of wildlife management threatens the existence of the North American Wildlife Management model which argues that wildlife should only be killed for a legitimate purpose, that science is the proper tool to discharge wildlife policy, allocation of wildlife is the responsibility of law, and wildlife should be considered an international resource. Species justice discourse would broadly agree with these principles and it is not too dissimilar from the model adopted in the United Kingdom (although it should be noted that some animal rights discourse promotes an absolute prohibition on animal use and killing).

However, current wildlife law policy in the United Kingdom and the United States indicates that wildlife law is less about achieving effective species justice and more about perpetuating the use of wildlife and its regulation within an environmental rather than criminal justice context (Nurse, 2015). The United Kingdom's Law Commission, the body with responsibility for reviewing legislation, conducted a review of United Kingdom wildlife law with a view to abolition of the majority of existing law and introduction of a single wildlife management act (Law Commission, 2012). The Commission's proposals aimed to address the current confusing regime of different legislation for different species with different levels of wildlife protection: however, the United Kingdom Government chose not to implement the Commission's proposals. Review of environmental and wildlife laws as part of the Brexit process raise the possibility that the United Kingdom will weaken its existing animal protection through removal of European Union law that explicitly requires recognition of non-human animals as sentient beings (Nurse, 2019). In the United States, NGOs have recently fought against efforts by anti-bison ranchers to remove the last genetically pure bison from the lands of Montana and also fought against the United States Fish and Wildlife Service's decision to remove federal protection from grey wolves by making amendments to species listings under the Endangered Species Act 1973 (Woolston, 2013).

These law reform and political initiatives highlight the political nature of wildlife law and the difficulties of achieving effective species justice. In the United Kingdom, wildlife and environmental regulation is seen by Government as imposing an excessive regulatory regime on business (The Cabinet Office, 2011). Thus, United Kingdom wildlife law reform proposals took an approach consistent with the (then) coalition Government's view that regulation and criminalisation should be a last resort when dealing with business offending. It is also notable that the United Kingdom's Hunting Act 2004, which prohibits hunting wild animals with dogs, was excluded from these wildlife law reform proposals in part because of political sensibilities around the issue. In the United States, the conflict between ranching and farming and environmental protection interests is a factor in some endangered species listings and decisions to allow wolf killing. Thus, 'problem' species or at least those perceived as causing an economic problem to countryside interests, risk having their protection removed or at least temporarily reduced (Musiani & Paquet, 2004).

These approaches to wildlife law reform risk ignoring the individualistic nature of much wildlife offending (Nurse 2011) that requires an effective criminal justice approach to resolve. The approach adopted in the United Kingdom is one of amending the existing regime on the grounds that a suitable one already exists (Law Commission 2012) and thus there is no need for a new regime. Similarly, review of wildlife protection in the United States is primarily based around amendments to existing law and a belief in the existing system as broadly controlling wildlife crime problems. However, despite the existence of federal enforcement in the shape of the United States Fish and Wildlife Service, NGOs such as Earthjustice and Defenders of Wildlife have raised concerns about the continued illegal persecution of species such as wolves, bears and bison and about decisions to remove legal protection from certain species via the United Kingdom's Endangered Species Act 1973 listings. In 2011, Defenders of Wildlife (2011, p. 3) identified that the United States Congress had "introduced more than a dozen bills or legislative proposals to undermine the Endangered Species Act", and argued that such legislative moves either chipped away at the foundation of the Act or singled out species no longer deemed worthy of protection. The basis of such legislative movement was often economic considerations. Wildlife protection and compliance with wildlife legislation could potentially be a costly issue for business, and Government – keen to reduce the regulatory burden on business – has sought to streamline or reduce wildlife protection.

Problems of wildlife law enforcement

Considerable research evidence indicates that existing wildlife law regimes do not work in their implementation rather than in their basic legislative provisions. Practical enforcement problems are endemic to the United Kingdom's wildlife law system as identified by Nurse (2003, 2009, 2011, 2012) and Wellsmith (2011) in their respective analyses of the United Kingdom's wildlife law enforcement regime. Both researchers identified that the United Kingdom was operating with an enforcement regime consisting of legislation inadequate to the task of wildlife protection, subject to an equally inconsistent enforcement regime (albeit one where individual police officers and NGOs contribute significant amounts of time and effort within their own area) and one that fails to address the specific nature of wildlife offending (Nurse, 2013, 2011).

Wildlife law is often a fringe area of policing whose public policy response is significantly influenced by NGOs (Nurse, 2012) and which continues to rely on NGOs as an integral part

of the enforcement regime. White (2012) identifies that third parties such as NGOs often play a significant role in investigating and exposing environmental harm and offending and have become a necessity for effective environmental law enforcement. In wildlife protection, NGOs are an essential part not only of practical enforcement regimes but also the development of effective policy. NGOs act as policy advisors, researchers, field investigators, expert witnesses at court, scientific advisors, casework managers and, in the case of a small number of United Kingdom and United States organisations, as prosecutors playing a significant practical role in policy development and law enforcement.

One difficulty with wildlife legislation is its intended use as conservation or wildlife management legislation rather than as species protection and/or criminal justice legislation. For several years, academics, investigators, NGOs and wildlife protection advocates have voiced concerns about the perceived inadequacy of United Kingdom and United States enforcement regimes (Defenders of Wildlife, 2011; Wilson, Anderson & Knight, 2007; Nurse, 2003). NGOs have highlighted inadequacies in individual legislation such that legislation intended to protect wildlife often fails to do so and ambiguous or inadequate wording actually allows animal killing or fails to provide adequate protection for effective animal welfare (Parsons, Clark, Wharam & Simmonds, 2010). Such confusion also causes problems in the investigation of wildlife crime with investigators and prosecutors needing to understand a complex range of legislation, powers of arrest and sanctions.

Wildlife crime is frequently enforced reactively rather than proactively; albeit situational crime prevention (discussed below) is employed in some settings to address poaching. In the United Kingdom, this means relying on charities to do the bulk of the investigative work into wildlife crime and to receive the majority of crime notifications. Whilst the United Kingdom has an excellent network of Police Wildlife Crime Officers and now boasts a National Police Wildlife Crime Unit, at a regional level many of the officers carry out their duties in addition to their 'main' duties (Roberts, Cook, Jones & Lowther, 2001; Kirkwood, 1994) and both public and seemingly Governmental perception is that charity support is an integral part of the enforcement system.

But while the United States has a federal and dedicated enforcement body (in the form of the Fish and Wildlife Service) that many United Kingdom NGOs desire, United States NGOs have expressed dissatisfaction with their system ranging from issues with poor wildlife management through to bad legislation (including delisting of endangered species). Concerns have also been raised about cuts to the Fish and Wildlife Service's budget and its possible effect on wildlife law enforcement (Jarman, 2018). In addition, wildlife law enforcement is primarily based upon a socio-legal model which relies on use of existing law and an investigation, detection and punishment model rather than the use of target-hardening or other forms of preventative action (Wellsmith, 2010). Thus, the policy approach adopted in wildlife law and its enforcement is primarily one of dealing with wildlife crime after it has happened, albeit through an under-resourced regime which often fails to recognise the varied criminality that exists in wildlife crime (Nurse 2011, 2013) or which does not adequately reflect the nature and impact of this area of crime in its sentencing and remediation provisions (Lowther, Cook & Roberts, 2002; Nurse 2015).

Preventing wildlife crime

The perceived failures of existing enforcement regimes raise the questions of how wildlife laws should be enforced and how can wildlife crime can best be prevented. For the United

Kingdom, a post-Brexit wildlife law and enforcement regime arguably needs to take what is good in existing wildlife law and in the European Union's principle that environmental crime should be dealt with as 'serious crime'. The positive aspects of both should be used to develop proper effective legislation and an effective enforcement regime that recognises wildlife crime as part of mainstream criminal justice, and does not continue to see it solely as a purely environmental problem.

The United Kingdom Law Commission's enforcement approach for a new, more effective wildlife law regime was based on a mixture of criminal and civil sanctions, suggesting that "criminalising regulatory transgressions may not always be the appropriate way of ensuring beneficial outcomes. It may be better to provide the non-compliant individual or organisation with advice or guidance" (Law Commission, 2012). This is consistent with a regulatory justice approach that believed in 'risk-based regulation' in accordance with the Hampton Principles (2005) and which suggests that regimes for achieving compliance with business regulations through regulatory inspections and enforcement are generally complex and ineffective. The Law Commission when reviewing United Kingdom legislation, identified that the United Kingdom government's approach is generally that regulation should only be resorted to where "satisfactory outcomes cannot be achieved by alternative, self-regulatory, or non-regulatory approaches" (Law Commission, 2012).

While the risk-based, prosecution-as-last-resort regulatory approach is consistent with government policy and its approach to 'light touch' regulation, there are however potential flaws with this approach, not least the possibility that offenders could engage in repeat offending before any use of criminal sanctions is considered or begins to bite. Given academic and policy research on the nature of criminality in wildlife law violations (Nurse, 2013; Wyatt, 2013), the advice and guidance/decriminalisation approach proposed within the United Kingdom wildlife law reform proposals raises species justice concerns.

While in principle the Hampton risk-based regulation approach may be an appropriate model to deal with regulatory crime, in practice the implementation of these principles is problematic in the face of the persistent law-breaking that characterises much wildlife crime. Academic research on the use of civil sanctions as an approach to consumer problems conducted on behalf of the United Kingdom Department for Business Enterprise and Regulatory Reform (BERR) in 2008 noted both a lack of willingness on the part of enforcers to use civil sanctions and the increased resources required for this approach to be effective where criminality was an inherent problem that needed to be addressed (Peysner & Nurse, 2008).

Thus, doubt was cast on the effectiveness of civil sanctions in certain circumstances. In addition, while the United Kingdom's Law Commission refers to the United States Environmental Protection Agency's (EPA) use of administrative penalties, these have often been ineffective as a solution to wildlife crime and environmental non-compliance, resulting in NGOs in the United States challenging the ineffectiveness of EPA enforcement activity which has persistently failed to address problems and allowed ongoing non-compliance.

While civil sanctions may be attractive politically as a way of reducing the regulatory burden and decriminalising legitimate business activity, they are often ineffective in dealing with environmental/wildlife criminality. The United Kingdom wildlife law reform consultation documents suggest that the current wildlife law regime is too reliant on criminalisation. But a different view emerges from research evidence suggesting instead that a weak enforcement

regime allows a wider range of criminality and transfer of criminality from mainstream crime into wildlife crime.

Future protection of wildlife and wildlife crime prevention

Despite improvements in law and high-profile publicity for wildlife crime, it is still not seen as serious crime within the context of mainstream criminal justice. This allows offenders such as gamekeepers or ranchers caught poisoning, shooting or trapping protected wildlife to deny that they are criminals although they can easily admit and identify criminality in others such as poachers (Nurse, 2013, 2015). Offenders may deny that their actions are a crime, explaining them away as legitimate predator control or a necessary part of their employment, or may accept that they have committed an 'error of judgment' but not a criminal act. In rural areas where wildlife such as large carnivores are perceived as a threat, offenders might deny the legitimacy of legislation and of any enforcement action taken against them (von Essen and Allen, 2017a).

Matza's (1964) drift theory applies to these offenders who drift in and out of delinquency, fluctuating between total freedom and total restraint, drifting from one extreme of behaviour to another. While they may accept the norms of society, they develop a special set of justifications for their behaviour that violates social norms. These techniques of neutralisation (Sykes & Matza, 1957) allow them to express guilt over their illegal acts but also to rationalise between those whom they can victimise (wildlife) and those they cannot (other humans) – rationalising when and where they should conform and when it may be acceptable to break the law. As an example, for those offenders whose activities have only recently been the subject of legislation, the legitimacy of the law itself may be questioned allowing for unlawful activities to be justified. Many fox hunting enthusiasts in the United Kingdom, for example, strongly opposed the Hunting Act 2004, which effectively criminalised their activity of hunting with dogs, as being an illegitimate and unnecessary interference with their existing activity. Thus, their continued hunting with dogs is seen as legitimate protest against an unjust law and is denied as being criminal (Pardo & Prato, 2005).

Wildlife laws often fail to deal with such attitudes and frequently view wildlife crime as outside the mainstream of criminal justice and often as purely technical offending. While options for prison sentences exist in some wildlife legislation, evidence exists that except in the case of serious crime and crimes involving rare or endangered species, sentencing might be at the lower end of the scale. A potential impact of Brexit and the loss of European Union wildlife law, and of the United States Fish and Wildlife Service's delisting approach to certain species, is to allow for an increased ability to exploit wildlife through a relaxation of the regulatory regime and reduced scrutiny of 'authorised' animal killing. Wildlife laws are often broadly adequate to their purpose as conservation or species management legislation but are inadequate to fulfil their role as effective criminal justice legislation due to their reliance on a reactive enforcement regime that in practice is often ineffective and lacking resources.

Conclusion

While it was beyond the scope of this chapter to conduct an exhaustive analysis of wildlife laws and enforcement regimes, the chapter has argued that the future protection of wildlife requires not only robust legislation that actually protects wildlife but also an effective enforcement regime that contains mechanisms for dealing with wildlife criminality and

reduces repeat wildlife crimes. In addition, wildlife crime enforcement needs to take advantage of the preventative measure employed in other areas of crime.

There are certainly signs of situational crime prevention (for example, use of drones, target hardening measures and so on) being employed in respect of endangered species such as rhinos (Haas & Ferreira, 2016). But such measures also need to be used in respect of more 'mundane' species. Our twenty-first century wildlife protection regime requires providing a coherent robustly resourced system of protection for all wildlife as part of mainstream criminal justice system.

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[i] At time of writing (May 2019) EU wildlife protection legislation risks being withdrawn from United Kingdom legislation following the country's decision to leave the European Union (EU). NGO's have expressed concerns that EU laws that provide for effective animal protection have not been adequately considered as part of the Brexit process (Wildlife and Countryside Link, 2018)