

AN INTRODUCTION TO  
**GREEN  
CRIMINOLOGY  
& ENVIRONMENTAL  
JUSTICE**

**ANGUS  
NURSE**

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# 3

## THE CAUSES OF ENVIRONMENTAL CRIME AND CRIMINALITY

By the end of this chapter you should:

- Understand the varied nature of environmental criminality and its causes.
- Have a firm understanding of the key theories that explain environmental offending and the contexts in which they can and should be applied.
- Understand key debates concerning environmental criminality and its causes.
- Understand key debates on environmental offending as deliberate, accidental or unintended and on non-compliance as a form of entrepreneurship.
- Understand the distinction between criminality and regulatory or technical breaches and how behaviour that infringes different types of legislation are viewed.

### Introduction

This chapter discusses the causes of environmental criminality by examining key debates concerning the reasons why environmental crimes occur, as well as theoretical discussions on environmental offending. Conventional criminology is perhaps dominated by discussions of street crime and serious offending related to crimes of violence, sexual offences and the activities of organized crime; particularly in the areas of drugs, weapons and people trafficking

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(Lea and Young, 1993). As Chapter 1 indicates, much mainstream criminological discourse is concerned with individualistic offending and is anthropocentric in nature, dominated by human concerns and human victims.

By contrast, much environmental crime is corporate in nature and concerns the behaviour of legal actors, legitimate corporations engaged in lawful, state-supported activities. Thus immediate differences can be found between environmental crime and mainstream crime in conceptions of both offender and criminality. Offenders in mainstream crime are generally regarded as deviants by both society and criminal justice agencies, whereas corporate environmental offenders are frequently characterized as having committed technical, regulatory offences and are often not subject to the attention of mainstream criminal justice agencies.

Chapter 3 discusses these issues, noting that the distinction between the legal and illegal is sometimes blurred, but also noting that the legal often facilitates the illegal. This chapter primarily considers corporate environmental offending in respect of pollution and hazardous and toxic waste although brief preliminary mention is made of the causes of wildlife crime, albeit that topic is dealt with in more detail in Chapter 4, while criminality associated with the oil and gas extraction industries, the timber trade and biopiracy is dealt with in Chapter 6.

## Protecting the Environment

There are a number of international environmental conventions, mechanisms put in place requiring states to provide for effective environmental protection, which create broad environmental protection regimes and are designed to prevent environmental crimes. Nurse (2015a) identifies that such international laws represent a consensus among nation states that, despite arguably belonging to no one, the environment and natural resources should be protected both for their intrinsic value and for the benefit of future (human) generations. This requires mechanisms that implement protection of the environment as benefiting communities where natural resource exploitation occurs, often through human rights mechanisms as well as environmental ones. Voiculescu and Yanacopulos (2011) identify the United Nations (UN) as being at the forefront of devising universally acceptable standards to embed 'respect for human rights norms and abstention from corrupt practices' into business and transnational corporations' operating practices (2011: 4). Their observation is based on the idea that environmental damage is predominantly committed by corporations who fall outside the remit of much criminal law and are subject only to civil or administrative sanctions. However, despite such international agreements, the reality is that environmental protection in practice is implemented via state law

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(discussed further in Chapter 5). Thus, taking cultural and social differences into account, different countries have different laws and ‘frequently quite different approaches to dealing with environmental crime’ (White, 2007: 184). Environmental crime is also not always dealt with by mainstream criminal justice agencies such as the police, and in many countries falls within the jurisdiction of the enforcement arm of the state environment department, rather than being integrated into mainstream criminal justice (Nurse, 2015a, 2013b).

Western conceptions of environmentalism and the need to protect the planet and criminalize environmentally damaging actions are not universally shared and the concept of criminal environmental activity is a relatively new concept. As Nurse (2013a) observes, Brown Weiss (1993) identified that until the 1960s environmental issues were viewed as state concerns and there was a lack of appreciation of the need for international environmental agreements. The Convention on International Trade in Endangered Species of Flora and Fauna (CITES) was one of the first and oldest international legal agreements on environmental issues; it provided a framework for future wildlife and animal protection measures (Zimmerman, 2003). Attempting to provide a framework for international environmental protection, the UN General Assembly adopted a World Charter for Nature in 1982, which contains the following five principles of conservation:

- Nature shall be respected and its essential processes should be unimpaired.
- Population levels of wild and domesticated species should be at least sufficient for their survival and habitats should be safeguarded to ensure this.
- Special protection should be given to the habitats of rare and endangered species and the five principles of conservation should apply to all areas of land and sea.
- Man’s utilization of land and marine resources should be sustainable and should not endanger the integrity or survival of other species.
- Nature shall be secured against degradation caused by warfare or other hostile activities.

In principle, the UN Charter provides a mechanism for protecting the environment (and animals) from harm by providing a conservation framework that requires active protection of nature. However, in practice, implementation of the Charter relies on national environmental protection and biodiversity laws that contain enforcement mechanisms and provide a framework for conservation enforcement. Nevertheless, Sections 21–24 of the Charter provide authority for individuals to enforce international conservation laws that could provide for some environmental protection and has been used by NGOs as a basis on which to conduct direct action to prevent animal harm (Nurse, 2013a; Roeschke, 2009).

Regional environmental legislation also exists. For example, the Treaty on the Functioning of the European Union (TFEU) provides a framework for

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environmental protection across the EU, dictating minimum penalties for environmental offences in accordance with Article 175 of the Treaty establishing the European Community. TFEU requires Member States to treat certain intentional or seriously negligent acts which breach Community rules on protecting the environment as criminal offences. EU legislation includes provisions prohibiting the following:

- the unauthorised discharge of hydrocarbons, waste oils or sewage sludge into water and the emission of a certain quantity of dangerous substances into the air, soil or water;
- the treatment, transport, storage and elimination of hazardous waste;
- the discharge of waste on or into land or into water, including the improper operation of a landfill site;
- the possession and taking of, or trading in protected wild fauna and flora species;
- the deterioration of a protected habitat;
- trade in ozone-depleting substances.

The EU requires criminal penalties to be effective, proportionate and dissuasive and to apply both to persons convicted of breaching Community law as well as persons involved in such offences or inciting others to commit them (Nurse 2015a: 52–3). Thus an obligation exists on states to ensure effective environmental protection and which arguably regulates Member State environmental protection and failure to provide such protection. This is discussed further in Chapter 5 although the quality and nature of regulation is of relevance to this chapter's discussion of the causes of environmental crime.

As Chapter 2 illustrates, green laws, and particularly protective laws, often specify prohibited activities, while this chapter indicates that international law sets out the obligations on states in respect of legal standards, with the primary international law mechanisms being treaties and conventions (Schaffner, 2011). In the field of environmental law, a range of different laws both national and international prohibit specific action deemed to harm the environment. However, environmental laws also incorporate the idea of *sustainability*, a concept which identifies that use of natural resources is permitted only so far as those resources (including wildlife) are not exhausted. Chapter 5 details the obligations on states where environmental protection is concerned and also discusses how state wrongdoing or failures in environmental protection might be addressed. However, for the purposes of this chapter's discussion of environmental crime causes, it is worth noting that, generally, states have an obligation to prevent environmental crime and to create a system of sanctions (or punishments) in respect of environmental crime. States should also provide for a system of monitoring and investigating environmental offences (discussed in Chapter 9). The extent to which a state has effective environmental law, regulation and enforcement systems is crucial in its level

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of environmental crime given that weak enforcement regimes are considered a primary cause of environmental crime (Situ and Emmons, 2000).

Quinney's idea of crime as a social construction identified that acts defined as crime are, for the most part, behaviours undertaken by relatively powerless social actors (Quinney, 1970). But the response to these actions and the way that knowledge and understanding of them is collected, collated and disseminated by different groups determines our understanding of crime. However, environmental crime is often a crime of the powerful, committed by corporations, organized crime groups and others who constitute powerful social actors with access to capital and the benefits of globalized markets (Lynch and Stretesky, 2014; South and Wyatt, 2011). Situ and Emmons (2000) identify that environmental crime is predominantly a civil matter; in other words fines and administrative penalties are the main technique for dealing with environmental crime. The reason given for this is a perceived lack of effective international law and the reliance on national (state) legislators to define what environmental crime is and how it should be dealt with. The result is often that it is not seen as a priority criminal justice issue. However, Lynch and Stretesky (2014: 7) point out that 'green harms are the most important concerns in modern society because they cause the most harm, violence, damage and loss'. While acknowledging that much environmental harm is the result of lawful activity, or at least activity not defined or controlled by the criminal law, Lynch and Stretesky argue that the very nature of environmental harm as activity that has wide-reaching impacts makes it worthy of dedicated criminological attention which it seldom receives. Implicit in their analysis is a criticism of traditional criminology's limitations dictated by narrow concerns of 'crime' as solely being activities defined as such by the criminal law and of justice systems' failure to deal with major environmental harms such as pollution.

## Pollution and Waste Offences

White and Heckenberg define pollution as 'contamination of the soil, water or the atmosphere by the discharge of harmful substances that adversely affect the environment' (2014: 157). Their definition acknowledges that pollution can be deliberate or accidental and may be the incidental by-product of otherwise lawful operations. Indeed they go so far as to identify that global capitalism is inherently polluting; given the extent of globalized production and consumption. Lynch and Stretesky (2014) echo this idea; identifying that human industrial and consumerist activity generates an extraordinary amount of pollution seemingly without due regard to the consequences of such activity on ecosystems and future generations.

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However, this chapter's concern is primarily with the causes of *illegal* pollution; offences against regulatory mechanisms and existing legislation, rather than the wider harms caused by polluting human activities, which are, in part, dealt with in Chapter 7's discussion of climate change and global warming as areas of criminological concern. As with animal and wildlife offences, most Global North jurisdictions have some form of legislation dealing with pollution. For example, both the USA and UK have Clean Air Acts designed to maintain acceptable levels of air quality. The UK Clean Air Act 1993 is particularly concerned with 'dark smoke' and emissions produced by burning non-organic, especially carbon-containing manufactured materials and items such as:

- plastics
- tyres
- foams
- treated, impregnated and painted items (windows, doors)
- glued and bonded items (particle board)
- paints, resins and thinners
- bituminous materials (roof felt, roof sealant).

The US Clean Air Act 1990 (which consolidates and updates clean air provisions originally passed in 1970) is also concerned with smog and other pollutants. Both US and UK acts create offences in relation to their respective concerns with air quality and emissions. The UK Clean Air Act 1993 provides for a fine of up to £20,000 for each offence in relation to 'dark' smoke. In the USA the Environmental Protection Agency (EPA) is able to use both civil and criminal sanctions to deal with Clean Air Act offences. The Agency explains that 'when EPA finds that a violation has occurred, the agency can issue an order requiring the violator to comply, issue an administrative penalty order (use EPA administrative authority to force payment of a penalty), or bring a civil judicial action (sue the violator in court)' (EPA, 2014). EPA enforcement of the Clean Air Act 1990 (and regulations issued under it) can, therefore, result in offenders being given a chance to prevent further offending, settlement of a case or prosecution that can result in prison. Other legislation covering pollutants and toxic waste is designed to either prevent uncontrolled pollution or to provide for some form of remediation when it occurs. White and Heckenberg argue that 'the rise of the chemical industries means that many different types of toxic waste are produced, gathered up and put together into the same dump sites (e.g. rivers and lakes and ocean outlets)' (2014: 159). Clapp (2001) argues that both legal and illegal transfers of toxic waste create social vulnerabilities and impact negatively on a range of communities. Walters (2007: 188) identifies that illegal actions involving radioactive waste including dumping at sea have been well documented. Walters (2007: 188) cites Parmenter (1999) as having identified that the nuclear and chemical industries in both the USA and Europe routinely illegally



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burned or dumped waste at sea. These illegal actions were a consequence of a perceived corporate view that environmental regulations were impossible to comply with or placed an unnecessary burden on business (2007: 188). Thus, one cause of such environmental crime is a rational choice decision taken by corporate offenders to subvert regulations considered likely to impact negatively on corporate profits. Consumer pressure and concern over pollutants is another factor. As Chapter 1 indicates, polluting industries and harmful activities arising from lawful business activities, routinely impact negatively on vulnerable and marginal communities. Particularly in respect of toxic waste, there are demands that such harmful chemicals should not be disposed of in urban affluent areas. However, pollution offences can also occur as a result of 'upset' accidents such as equipment malfunctions, failures in processes and accidents as the following case study illustrates.

### **Case Study 3.1 Thames Water and the River Wandle (R v Thames Water Utilities Ltd. [2010] EWCA Crim 202)**

Thames Water is one of the largest suppliers of water and sewage services in the United Kingdom. It is regulated by the Environment Agency and has an annual operating profit in the region of £278 million. This case concerns Thames Water's sewage treatment processing at the Beddington Sewage plant where treated effluent exits the works via the main effluent carrier, which is a concrete channel some 2.3 kilometres long forming a tributary of the River Wandle. The court heard that at the point of confluence, the effluent from the works amounts to about 80% of the water in the river, which eventually flows into the River Thames.

The court also heard that in the two years leading up to the offence, Thames Water had invested over £15 million in the equipment at Beddington Works, in order to further its continuing effort to improve the quality of the effluent. As part of this improvement, four large filter tanks were purchased from the manufacturer Norsk Hydro, and were installed at the Beddington Works in about 2005/6. The tanks supplemented the already existing primary and secondary sewage treatment plants at the Works by together providing a tertiary treatment plant for the removal of any remaining small pieces of solid waste, before the effluent flowed into the main effluent carrier, and thus finally into the river. The tertiary treatment plant came on line in early 2007. Effluent from the

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secondary treatment plant flowed to the tertiary treatment plant where it was diverted into the tanks, exiting each tank over a weir, and then into the main effluent carrier.

Planned maintenance at the site included periodic cleaning of the inside of the tanks, involving two processes being carried out, about a fortnight apart, by the manufacturer Norsk Hydro. In the first process, hydrochloric acid was to be used to remove limescale build up. The second process involved about 1,600 litres of sodium hypochlorite (bleach) being poured into each tank to remove any biological matter. Cleaning involved closing the penstock valve to the tank in order to prevent the flow of effluent into the tank and also any risk that the cleaning chemical (bleach) would be flushed into the river. Norsk Hydro completed the first ever hydrochloric acid cleaning in the weeks leading up to 17 September 2007 but was unavailable to carry out the second process, a sodium hypochlorite cleaning process, until the end of October 2007. Wanting to ensure optimum performance of the tanks Thames Water decided not to wait on Norsk Hydro's availability and decided to carry out the cleaning itself.

The cleaning operation resulted in discharge of bleach into the river. In its assessment of the facts (paragraphs 14 to 15) the court stated that Thames Water failed to carry out a risk assessment, used untrained and unsupervised staff and that while the first three tanks were cleaned without incident:

When the penstock valve to the fourth tank was closed it registered as being fully shut. However it was not, and effluent continued to flow into the tank. No dipstick test was carried out as to the level inside the tank, nor was a lookout posted on the weir, and therefore the two employees failed to notice the continuing ingress of effluent. Mr Barnard for the Appellant conceded that a moment's reflection would have revealed the need for safeguards, and that the mistake in failing to post a lookout on the weir was a 'juvenile' one. Thus when the 1,600 litres of sodium hypochlorite was poured into the tank, the great majority of it was flushed out over the weir and into the main effluent carrier. Although the employees realised that some of the chemical had been flushed out, it appears that they thought that it was only a small proportion, and thus the matter was not reported.

The court also commented that within half an hour local residents noticed a strong and nauseating smell of bleach. As a result of the discharge, the river turned milky white and began to bubble and fish died along a 5 kilometre

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stretch of river. Police were called and the public needed to be kept back from the edge of the river for their own safety. Police visited Thames Water and the incident was reported to regulator the Environment Agency who tested the water, confirming that the bleach discharge was 150 milligrams of bleach per litre, well above the Environment Agency's recommended limit of 0.005 milligrams per litre.

A significant clean-up operation followed over several days involving Thames Water's contractors, the Environment Agency, local angling clubs and the public. Subsequently Thames Water was originally fined £125,000 for causing polluting matter to enter controlled waters (i.e. spilling a form of bleach into the River Wandle) contrary to Section 85 of the Water Resources Act 1991. However, on appeal, judges ruled that the fine imposed in January 2009 was 'manifestly excessive' and cut it to £50,000 (BBC News Online, 2010). However, Thames Water had also entered into an agreement with the Angler's Conservation Association (ACA) where it had agreed to resolve problems at the river via the following actions:

- provide £7,000 project funding for a local education project;
- pay £10,000 in compensation for two affected local angling clubs;
- pay £30,000 to meet the costs of restocking and an ongoing survey to assess damage to the river's ecology;
- provide £200,000 core funding for the Wandle Trust to include support for the cost of an employee who will raise additional project funding to deliver access and habitat improvements along the length of the river;
- pay £250,000 over 5 years for a restoration fund to support local projects to improve the river environment;
- investment in failsafe measures at Beddington Sewage Treatment works to prevent a future occurrence of such pollution.

The River Wandle case indicates how corporate offending, albeit in this case accidental offending, can impact on a range of victims. Victims include: the river itself; local angling clubs who are users of the natural resource; the fish; and the wider public as all affected by an incident where significant environmental harm was caused by an illegal act committed by a legal actor otherwise providing an essential service. Situ and Emmons (2000) argue that the type of corporate environmental offending generally typified by waste and pollution offences is characterized by motivation, opportunity and enforcement. Toxic waste, in the form of e-waste is discussed in more detail in Chapter 9, which looks at the monitoring and investigation of environmental offences. However as White and Heckenberg (2014: 159) identify, chemicals, toxic waste and other pollutants have proliferated over the last 60 years to the extent that while

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'normal' (i.e. legal) pollution causes significant environmental harm, illegal pollution represents a significant environmental problem. While it should be noted that Thames Water admitted liability and participated in clean-up and remediation, in some respects the case typifies attitudes towards environmental responsibility and compliance that at their most extreme result in excessive risk taking and non-compliance, as the next section examines.

### **Corporate Environmental Crime and the Criminal Entrepreneur**

The subject of corporate environmental responsibility is dealt with in Chapter 6 as it relates closely to the manner in which corporate actions impact negatively on marginalized and vulnerable communities who often have their environmental rights infringed by the actions of business. However, the activities of transnational corporations can have a significant negative impact on local communities and are problematic in the area of environmental crime.

White (2012d: 15) identifies that 'international systems of production, distribution and consumption generate, reinforce and reward diverse environmental harms and those who perpetrate them'. Referring to production and distribution of unsafe toys, increasing reliance on genetically modified grains and the dumping of hazardous chemicals that are central to production, White identifies that global markets (often legal) are a central factor in environmental harm. Lynch and Stretesky (2014) refer to this as the 'treadmill of production', the increase in production and economic growth that has negative impacts for the environment. This is a significant concern of green criminology; that growth seen as good in the context of increased productivity, profits and consumption results in environmental harm when externalities, such as environmental damage, are not taken into account by markets. In this respect arguably markets do not reflect the true cost of their activities and consumers, who generally want cheaper products and a wide range of choice, are not called upon to pay the true costs of their products. Instead these are often borne by local communities in the source countries, some of whom are exploited by corporations who occupy a position of power in markets and are able to set prices and dominate supply chains and the retail environment. Thus, the legal market is a significant cause of environmental harms that green criminological discourse might well argue should be made or considered to be criminal (Lynch and Stretesky, 2014; Ellefsen et al., 2012; White, 2008) particularly if one is to adopt a victim's perspective on the consequence of corporate operations (Hall, 2013).

However, in addition to the harm caused by legal corporate activities, considerable illegality exists in the area of corporate environmental harm.

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Nurse (2014) identifies that corporate environmental responsibility is largely a voluntary concept with corporations choosing which of the various standards for measuring responsibility and environmentally friendly activity they will abide by. Chapter 6 identifies that monitoring of these standards is piecemeal and, in practice, corporations are broadly only required to comply with the strict wording of legislation. Such wording is often inadequate to deal with the reality of corporate activity on the ground. In the case of transnational corporations, corporate abuses of power, the victimization of employees, local public and consumers, and the crimes of the powerful more generally have been relatively free of state, public and academic scrutiny (Pearce and Tombs, 1998). However, Tombs and Whyte (2015) argue that the private, profit-making corporation is a habitual and routine offender that in its present form is permitted, licensed and encouraged to systematically kill, maim and steal for profit. In the case of environmental crime, this freedom is arguably encouraged by weak regulatory systems that fail to deal with corporate criminality or recognize the corporation itself as a criminal entity.

Criminology has dealt with corporate offending primarily via discourse on white-collar crime, which Nelken (1994: 355) describes as being typified by a situation where 'successful business or professional people are apparently caught out in serious offences, quite often for behaviour which they did not expect to be treated as criminal, and for which it is quite difficult to secure a conviction'. Nelken and other scholars have conceptualized white-collar criminals as responsible people whose crimes are possibly an aberration in an otherwise law-abiding lifestyle. White-collar criminals are usually in gainful employment and thus arguably lack the stressors of other offenders. They are not, for example, directly comparable with those street criminals who steal or commit violence out of necessity or as a response to perceived relative deprivation (Lea and Young, 1993). Thus the crimes they commit raise questions that are not posed by other types of criminal behaviour, namely: Why do they do it when they have so much to lose? How likely are they to be caught? What is the true level of crime in their area? However, Merton's (1968) 'anomie' theory, which describes a process whereby the previously accepted rules of a society no longer control the individual, arguably applies to corporate offenders under pressure to increase profits and succeed in an increasingly competitive world. Merton's theory explains the pressures inherent in a capitalist society such as the USA where the goals of society are more important than the means. In other words, individuals continue to feel pressure to acquire money and consumer goods even where the legitimate means to do so are blocked. Merton argued that this caused pressure to commit crime, particularly 'when people experience a level of unfairness in their allocation of resources and turn to individualistic means to attempt to right this condition' (Young, 1994: 108).

However, by applying Merton's strain theory, Lea and Young's relative deprivation theory and masculinities theory (discussed later in this chapter)

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combined with Friedman's (1970) explanation that business primarily operates on the basis of profit maximization, corporate environmental crime becomes easier to understand.

Corporations are generally not treated as criminals and indeed in some jurisdictions a corporation cannot be prosecuted through the criminal law as a legal offender (Slapper, 2011). Criminality caused by a lawful business operating in an unlawful way is potentially difficult to detect, as they are often subject to business, rather than criminal (law), regulation and their unlawful activities may go largely unnoticed by the public due to the generally closed nature of neoliberal markets (Lynch and Stretesky, 2014). In effect, the criminal justice system expects corporations to self-regulate, to obey the law and to operate according to the rules of their industry regulators. However, there are numerous ways that voluntary compliance and self-regulation can fail, as follows:

- a difference of opinion between stakeholders and the corporation about what is required;
- a difference of opinion between corporations and regulators about what is required;
- a corporate culture that prizes success over compliance;
- the value of profit and minimizing costs over compliance;
- poor enforcement and inadequate penalties for non-compliance.

(Nurse, 2014, 2015b)

McBarnet (2006) uses the term 'creative compliance' to refer to the way in which companies adopt the practice of using the letter of the law to defeat its spirit. She suggests that within white-collar crime, companies develop 'practices that might be illegal, indeed criminal', but which 'if legally structured in one way could be legally repackaged and claimed to be lawful' (2006: 1091). A number of recent high-profile corporate scandals have taken place, involving major corporations such as Enron and WorldCom, where corporations who appeared to be healthy and making major profits were later discovered to have been actively evading regulations while appearing to comply with them.

In discussing Enron, Cavender et al. (2010) suggest that the 'bad apples' explanation was initially used to explain the company's downfall and framed the initial media coverage. This illustrates the general unwillingness of policy-makers and even regulators to accept that corporations may be inherently corrupt (Tombs and Whyte's 2015 claims notwithstanding) but instead to believe that any wrongdoing is conducted by individuals rather than the corporate body. Knottnerus et al. (2006), however, argued that the corporate structure of Enron (and, by implication, WorldCom and others) was such that deviancy had become normalized. In other words, the corporation had developed a way of doing business which, by itself, meant that individual employees behaved in

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a deviant manner in order to pursue profits for the company. It also led to the corporation developing a culture of creative compliance, which meant that seemingly fraudulent accounting practices were an integral part of the company's business model. In effect, it used legal accounting structures to commit crime. While corporations may publicly claim to be ethically and socially responsible and to take their environmental responsibilities seriously, green criminology has documented the persistent nature of law-breaking in respect of pollution, disposal of toxic waste, and misuse of environmental resources (Pearce and Tombs, 1998). It has also challenged corporate definitions of good environmental practice, and has provided a means through which corporate wrongdoing can frequently be considered as deliberate criminal acts (Lynch and Stretesky, 2003). In addition, Crowther and Aras (2008) argue that corporations do not truly account for the environmental impact of their activities, and externalities are routinely excluded from corporate accounting, with the true costs of corporate damage of the environment being met by communities.

The reality is that society requires corporations, generally seen to do good and provide services of public benefit, to remain in operation thus there is potential conflict between punishing their wrongdoing and allowing business operations to continue. Hawkins (1984) identified the use of criminal prosecution as a means of addressing environmental harms as 'a kind of eminence grise, a shadow entity lurking offstage, often invoked, however discreetly, yet rarely revealed' (i.e. available yet seldom used). Hawkins favoured compliance over policing and criminalization while Gunningham and Sinclair argued that the failure of market-based approaches to compliance necessitates using a range of regulatory measures to address pollution problems (Gunningham and Sinclair, 1999). Such views reflect the need to allow corporations to continue producing products desired by the public, while seeking an effective means to curb the associated environmental damage. Corporations will naturally claim to be operating responsibly and taking account of the needs of communities. However, while companies and their directors have a number of incentives to align their behaviour with accepted standards, numerous cases highlight the failure of corporations to comply with legislation. When found to be operating unlawfully, they often fail to accept responsibility for their actions and remedy the harm they have caused, suggesting the failure of self-regulation and voluntary compliance with ethical standards. While a range of activities that cause harm to the environment are subject to national and international law, there is no single definition of environmental damage for which corporations should be held responsible. Thus a corporate mindset may exist which is inherently environmentally criminal, as Tombs and Whyte (2015) suggest. Situ and Emmons argue that corporate environmental crime is 'a product of motivation and opportunity conditioned by the quality of law enforcement' (2000: 67). While this is not to suggest that all corporations are predisposed towards environmental crime, when the drive for corporate success (in terms of greater profits or

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lower costs) greatly exceeds the legitimate or profitable means for achieving it, 'the structural groundwork' for motivation is laid. Where this is combined with opportunity and a weak regulatory structure, corporations who see their profits cut and/or their costs increasing may seek to circumvent environmental legislation, even while publicly making pronouncements that the corporation is environmentally responsible. Where corporations may be dealing with multiple environmental performance demands and expectations from stakeholders and investors, the extent to which a corporation sets protection and restoration of the environment as a strategic priority can sometimes result in a conflict between the interests of the corporation and the interests of the environment and the wider community.

However, it can be argued (Nurse, 2015b) that while Baumol identifies a distinction between productive corporate innovation and unproductive activities such as organized crime (1990: 893), within corporate environmental crime discourse, this distinction is not absolute. Corporate compliance with environmental regulations operates along a continuum from absolute compliance to total non-compliance consistent with Hobsbawm's view that private enterprise has a bias only towards profit (1969: 40). Accordingly, non-compliance with environmental regulations and entrepreneurship that actively subverts or minimizes the costly impact of regulatory compliance can represent a form of innovation. Corporations exploit business opportunities cognisant with the goal of maximizing profit. Embracing green credentials, reassuring consumers and governments that they take their social and environmental responsibilities seriously are legitimate means through which corporations demonstrate alertness to opportunity, creativity and respond to consumer demand for ethical corporate practice. Friedman theorized that the main responsibility of the corporate executive is 'to make as much money as possible while conforming to the basic rules of the society' (Friedman, 1970). Crowhurst (2006) identified that while responsible industry usually welcomes certainty in environmental legislation and clarity in Corporate Environmental Responsibility there are corporations that actively seek to avoid 'costly' legislation. Global corporations that produce harmful environmental effects and who have the economic power to do so deliberately, invest in 'pollution havens' (countries with low levels of environmental regulation) so that as standards of environmental liability become stricter in the EU and other Western countries global companies move their investments and harmful environmental activities out of the reach of the tougher regulatory systems. This represents a form of 'criminal' entrepreneurship (Nurse, 2015b).

McBarnet suggests a tension between conflicting responsibilities such that creative compliance becomes 'something to be emulated rather than reviled' (2006: 1092) and is considered clever rather than deviant. McBarnet primarily refers to 'clever and imaginative legal problem solving' (2006: 1096) and the use of legal mechanisms to make potentially unlawful mechanisms and practices



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lawful (see later discussion on biopiracy, p. 104). However, corporate practices that embed environmental compliance within policies that can be referred to in the event of regulatory investigations but which in practice may not be effective also represent a form of creative compliance. Gallicano refers to active 'greenwashing' where individuals are actively misled about a company's environmental practices (2011:1). In a broader sense, inconsistency between a company's environmental claims and its actual behaviour also represents a form of 'greenwashing'.

### Masculinities as a Cause of Environmental Crime

Before leaving the subject of causes of crime it is worth considering the extent to which environmental offenders (including wildlife offenders) share certain characteristics as criminology has historically paid little attention to the specific behaviours of environmental and wildlife offenders. However, understanding the psychology of offenders, the economic pressures that affect them and the sociological and cultural issues that impact on behaviour greatly aids understanding of what needs to be done to address behaviours and conditions that lead to environmental and wildlife crime. Some offences are motivated by purely financial considerations, some by economic or employment constraints (Roberts et al., 2001: 27) and others by predisposition towards some elements of the activity such as collecting, or exercising power over animals. Nurse (2011, 2013a: 69–70) identified five categories of wildlife offender:

1. Traditional profit-driven offenders
2. Economic criminals
3. Masculinities criminals
4. Hobby offenders
5. Stress offenders.

His analysis concluded that certain wildlife offences involve different elements, some incorporating the taking and exploitation of wildlife for profit (wildlife trade) others involving the killing or taking or trapping of wildlife either in connection with employment (bird of prey persecution) or for purposes linked to field sports (hunting with dogs). Environmental offences such as pollution and toxic waste offences are primarily profit-driven offences, undertaken to gain maximum profit for a corporation. However, they also fit the economic offender model, where crimes are committed by those in otherwise lawful employment as a result of economic and employer pressures whether real or imagined (Nurse 2013a: 70).

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Sykes and Matza's neutralization theory (1957) is a useful model for identifying the justifications used by offenders that gives them the freedom to act (and a post-act rationalization for doing so) while other theories explain why environmental and wildlife offenders are motivated to commit specific crimes. Nurse (2013a) observes that wildlife offenders exist within communities, although there may not be a community where the crimes take place or neighbours to exert essential controls on wildlife offending. Similarly, corporate environmental offenders exist within a community or corporate subculture of their own that accepts their offences, as many environmental offences are regulatory in nature carrying only fines or lower-level prison terms which reinforces environmental crime as 'minor' offences unworthy of official activity. In addition, Sutherland's (1939) differential association theory helps to explain the situation that occurs when potential corporate offenders learn their activities from others in their community or social group (Sutherland, 1973 [1942]). As McBarnet's (2006) analysis identifies, corporate culture may rationalize an appeal to higher loyalties (profits and shareholders) and that there is no harm in continuing with an activity that represents standard or widespread industry practice. Similarly, in wildlife crime, junior gamekeepers on shooting estates learn techniques of poisoning and trapping from established staff as a means of ensuring healthy populations of game birds for shooting (Nurse, 2013a). Awareness of the illegal nature of their actions leads to the justifications outlined by Sykes and Matza (1957) but the association with other offenders, the economic (and employment related) pressures to commit offences and the personal consequences for them should they fail are strong motivations to commit offences (Merton, 1968).

Past academic debate on crime has generally accepted that crime and criminality are predominantly male concerns (e.g. Groombridge, 1998). This perhaps reflects the role of gender and predominance of male offenders in serious and violent crime and concerns over youth crime; in particular both the propensity towards violence of young males and the extent to which young males might become victims of crime (Norland et al., 1981; Campbell, 1993; Flood-Page et al., 2000; Harland et al., 2005). Some offences are also crimes of masculinities involving cruelty to or power over animals, in some cases linked to sporting or 'hobby' pursuits, perceptions by the offender of their actions being part of their culture where toughness, masculinity and smartness (Wilson, 1985) combine with a love of excitement. In the case of badger-baiting, badger-digging and hare coursing, for example, gambling and association with other like-minded males are factors and provide a strong incentive for new members to join already established networks of offenders. Similarly within a corporate culture of risk-taking, pressure to succeed arguably impacts differently on male employees than female employees such that much corporate environmental offending might reflect Nurse's (2011) notion of the *Masculinities Offender* who is primarily motivated by

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power and notions of masculinity. In wildlife crime, Nurse (2011, 2013a) observed that masculinities offences are seldom committed by lone individuals as such crimes predominantly motivate via group activity, such as gambling and its associations with organized crime and conflict with law enforcement (Clawson, 2009).

US research on wildlife-oriented crimes of the masculine, including cockfighting and cockfighting gangs, explains that: 'cockfighting can be said to have a mythos centered on the purported behaviour and character of the gamecock itself. Cocks are seen as emblems of bravery and resistance in the face of insurmountable odds' (Hawley, 1993: 2). The fighting involved is 'an affirmation of masculine identity in an increasingly complex and diverse era' (1993: 1) and the fighting spirit of the birds has great symbolic significance to participants, as does the ability of fighting and hunting dogs to take punishment.

However, masculine stereotypes can be reinforced and developed through offending behaviour (Goodey, 1997) and are important factors in addressing other offending behaviour that may sometimes be overlooked (Groombridge, 1998). Research (Nurse, 2013a, 2011) has identified that wildlife offenders in the UK are almost exclusively male and in the case of the more violent forms of wildlife offender exhibit distinctly masculine characteristics. Corporate environmental offenders are also predominantly male, in part because males likely occupy the relevant positions of power that are conducive to the commission of offences thus male employees have the requisite means, motive and opportunity to commit offences and take decisions that might result in environmental offending. The literature on wildlife crime identifies a group of mostly young males involved in crimes of violence (albeit towards animals) that could turn to more serious forms of crime or expand their violent activities beyond animals and towards humans (Ascione, 1993; Flynn, 2002; Clawson, 2009). Offences such as hare coursing, cockfighting and badger digging all involve gambling, with wagers being placed on individual animals, the outcome of a fight and other factors (including the power or strength of an animal). Such offences also point to the existence of criminal subcultures that are arguably replicated within corporate structures where adherence to norms such as non-compliance with regulation may be a necessary survival or success mechanism.

Wildlife crime discourse (Wyatt, 2013; Nurse, 2012) identifies that group relationships within offender communities replicate informal criminal networks. Maguire's (2000) description categorizes some loose criminal networks as being 'like an "old boy network" of ex-public school pupils, individuals would be able to call upon others for collaboration, help or services when they needed them, and would be able to verify their "bona fides" to those they did not know' (Maguire, 2000: 131). There is also a 'secret society' element to such crimes and here the community can actually encourage crime. Such principles can equally be applied to the corporate

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arena. The male-bonding element identified by Hawley when talking about cockfighting is as significant to the corporate world as is the banding together of men from the margins of society and for whom issues of belonging, male pride and achievement are important. In discussing cockfighting in the USA, Hawley (1993) explains that 'young men are taken under the wing of an older male relative or father, and taught all aspects of chicken care and lore pertaining to the sport'. (Such subcultural arrangements also exist within the dogfighting world (Forsyth and Evans, 1998).) Similarly, socialisation within corporate environments dictates that new employees are shown the ropes and are integrated into corporate culture and expectations. Thus within a corporate culture of non-compliance individuals either become socialised to such normative practices or face the prospect of having to leave their employment should they wish to make a stand for compliance and adherence to wider social values (see for example McBarnet on Enron, 2006). Thus within a corporate structure an appeal to higher loyalties and an attachment to smaller groups (one's immediate team or office) takes precedent over attachment to mainstream societal values in much the same way that Forsyth and Evans (1998) found in researching dog fighting in the USA. Thus wildlife offenders may rationalize on the basis of historical precedent, tradition or pseudo-psychological notions of a victimless crime given that the birds or animals feel no pain (Hawley, 1993). Corporate offenders may also rationalize on the grounds of a corporation's wider good works, the services it provides and the jobs it creates while also arguing that nobody is being harmed because natural resources belong to no one and are there to be exploited (Stallworthy, 2008). They may also 'condemn the condemners' (Sykes and Matza, 1957) arguing that environmental regulation is bad for business, is not a legitimate use of enforcement resources and is unjustified given that generally the market is able to police itself in accordance with Adam Smith's 'invisible hand' theory (Dine, 2007). This bears some resemblance to the aggressive response of field sports enthusiasts towards NGOs such as People for the Ethical Treatment of Animals (PETA) and other advocacy groups whom they demonize as 'effete intellectuals and kooks' lacking understanding of their activity (Hawley, 1993: 5).

In wildlife crime the public policy response to masculinities crimes reflects acceptance of the propensity towards violence of offenders and is similar to that employed for organized crime. Techniques employed by enforcers include infiltration of gangs, surveillance activities and undercover operations. While wildlife masculinities offenders are considered to be more dangerous than other wildlife criminals and are treated accordingly, their less dangerous corporate offending brethren are similarly the subject of infiltration and surveillance techniques, reflecting the closed world of such offending (TCEQ, 2012).

## Summary

As Situ and Emmons (2000) identify, environmental crime is primarily caused by weak regulatory structures combined with considerable incentives for offenders to ignore or seek to subvert regulations. This is particularly so in the corporate sphere, where profit-making pressures and entrepreneurial and risk-making cultures may be in conflict with environmental concerns and priorities. Corporations, primarily created to provide products and services within neoliberal markets, may well see environmental regulation as burdensome and inhibiting business innovations. They are perhaps supported in this view by political ideologies that see environmental regulation as not interfering with free market principles and as being subservient to market needs (Lynch and Stretesky, 2014). Thus while various environmental protection measures exist in the form of international conventions and national legislation and regulations, the regulatory approach and criminal justice response to environmental crime is often limited to treating environmental offences as relatively low-level crime, seldom attracting serious penalties.

Lynch and Stretesky argue that 'the societies that tend to be the least willing to respond to environmental problems are those that cause the most environmental damage because of the economic gains involved' (2014: 22). In doing so, they further argue that neoliberal markets and a human-centred view of nature as being a resource for human benefit undermine the willingness of legislators and states to deal with environmental harms while simultaneously identifying how criminology's techniques of neutralization (Sykes and Matza, 1957) are employed as tools to nullify culpability for environmental harm and minimize enforcement actions intended to address these. This chapter has outlined some of the difficulties in taking action over corporate crime. The nature of corporate organization and the financial and political power that the major corporations have means that they are able to influence the regulatory climates in both indirect and direct ways. Corporate regulation and penalties for corporate wrongdoing are therefore generally less than for individual crimes. While most 'ordinary' crime is generally committed against the public or in public, much corporate wrongdoing goes on behind closed doors, making it difficult for law enforcement to obtain information about corporate crimes. In addition, corporate crime is monitored and responded to by a variety of criminal, administrative and regulatory bodies, including financial investigators, environmental protection agencies, health and safety regulators, tax, customs and fair trading offices, alternative dispute resolution services (e.g. Ombudsmen), the police and others. Thus jurisdictional and practical enforcement issues (e.g. cooperation) may impact negatively on effective enforcement.

## Self-study Questions

1. Corporate environmental offending illustrates the relationship between the legal and the illegal. To what extent is this a symbiotic relationship?
2. Risk-taking, bending the rules and a flexible approach to complying with legal norms are attributes integral to successful business activity. To what extent do these business behaviours cause corporate crime and criminality?
3. Why are most wildlife offenders male? Consider the differences between the genders in criminal behaviour and criminality as part of your answer.
4. To what extent are masculinities a factor in environmental and wildlife crimes? Consider the links with mainstream criminology and criminological theory in your answer.
5. How should the criminal justice system deal with the distinctly masculine offender and masculinities crimes? Consider the impact of sentencing and relevant criminological theory as part of your answer.
6. Why are there distinctly masculine subcultures within environmental and wildlife offending? Consider corporate offending and relevant theory on corporate culture and criminality as part of your answer.
7. Environmental crime is often not a core policing responsibility, is frequently left to NGOs to monitor or is dealt with via 'lesser' options like environmental tribunals, and is the responsibility of environment departments like DEFRA (UK) and the Department of the Interior (USA) rather than criminal justice ones like the Home Office (UK) and Department of Justice (USA). Why might this be the case?