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Green Criminology

Edited by

Bill McClanahan and Avi Brisman

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Cover image courtesy of Bill McClanahan.

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About the Editors

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Editorial

Green Criminology for Social Sciences: Introduction to the Special Issue

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April 22, 2020 marked the 50th anniversary of Earth Day. In contrast to the first Earth Day in 1970, when millions of people took to the streets to protest air and water pollution and to demonstrate support for environmental protection (Browning 2020; Lockwood 2020), few people left their homes, let alone marched. Instead, millions were sheltering-in-place to try to retard the spread of COVID-19. But even if we were not in the midst of a global pandemic, one has to wonder how much of a celebration we could or should have held.

The immediate aftermath of Earth Day 1970 ushered in a host of environmental legislation: in the United States alone, the Clean Air Act, Clean Water Act, Endangered Species Act, Marine Mammal Protection Act, National Forest Management Act, Resource Conservation and Recovery Act and Toxic Substances Control Act were all passed with bipartisan support in the 1970s. Unfortunately, the "Environmental Decade" symbolized by the first Earth Day in the 1970s (see Tuholske 2017), did not lead to an "Environmental Semi-Centennial." Indeed, in 2020, we are bearing witness to disappearing Arctic ice, dying coral reefs, floating plastic garbage patches, floods, greenhouse gas emissions, intensifying storms, raging wildfires, a precipitous sea-level rise and searing summer heat—as well as mourning the loss of human and nonhuman life in the Deepwater Horizon explosion off the coast of Louisiana, which occurred ten years ago this April (on almost the exact day of the 40th anniversary of Earth Day) and set into motion the biggest oil spill in the history of the United States (Editorial Board 2020). And with the Trump Administration's concentrated efforts to eviscerate so many environmental measures (e.g., Bloomberg and McCarthy 2020; Popovich et al. 2020; Tollefson 2020), as well as its steadfast commitment to profits over preparedness (Editorial Board 2020), there seems little reason for hope.

We are not sanguine. But we are also not silent—and we are not alone. The articles in this Special Issue, written by an international cadre of researchers and scholars, reflect growth in an area known as "green criminology," which has sought to recast the criminological gaze onto crimes and harms affecting non-human life, ecosystems and the biosphere. The result has been an area of scholarship which has blossomed to encompass and speak to a diverse range of interests and concerns, including air and water pollution, climate change, deforestation, the extraction and metabolization of natural "resources," harms to animals other than human animals, environmental (in)justice and relationships between "nature" and "culture." Along the way, green criminology has made significant contributions to our understanding of the causes, consequences and prevalence of these environmental crimes and harms, the responses to and prevention of such environmental crimes and harms by the legal system (civil, criminal, regulatory) and by nongovernmental entities and social movements, and the meaning and mediated representations of environmental crimes and harms.

To some extent, green criminology has been slow to find its place alongside other disciplinary trends in environmental research. Green criminology, it seems, continues the tradition of self-isolation—social distancing, if one will—established by criminology writ large in its divorce from sociology. While we might find entire departments, funded research centers and conferences dedicated to similar disciplines

like environmental sociology, green criminology has yet to find that sort of momentum or legitimacy. This is not to say, of course, that green criminology has not made significant impact and headway. Quite the contrary, in fact: the relative invisibility of environmental concerns in criminology is so glaring *precisely because* there has now been roughly three decades of sustained scholarship undertaken beneath the banner of green criminology with which that invisibility can be contrasted.

This collection, in many ways, is a minor attempt at raising the visibility of that banner so that it might be seen across disciplinary divides. The value of interdisciplinary research is undisputed, and this seems to be the case especially when working to analyze and understand complex and multivariate ecological problems—ones that do not respect academic campsites or national borders. While green criminology might be well suited to offer some insights into, for example, the environmental outcomes of organizational or industrial deviance or criminality, the resulting analyses might also necessitate some consideration of the economic, social or political dimensions of the issue in order to paint an adequately vivid picture. While green criminologists, of course, each have their own unique interests and areas of focus, which might buttress or lead to such an analysis, it remains the case that multivariate problems require multipronged analyses, and we find again and again that green criminology has at its core precisely those tendencies.

In the spirit of fostering the sort of disciplinary cross-pollination that we imagine might enliven and invigorate criminological debates and conversations surrounding environmental harm and crime, this collection proceeds without a more specific thematic thread with which to bind the articles, other than the type of concern expressed at the outset. Instead, recognizing the broad audience of a journal like *Social Sciences*—which speaks across disciplinary and geographic cleavages—our aim in assembling this collection has been, largely, to expose new audiences to a collection of new and compelling chapter which are, we feel, representative of the diversity within green criminology.

We begin, perhaps fittingly, with one of the most essential elements of both biotic human life and constructed human cultures: food. In this first collection, "*Food Crime: A Review of the UK Institutional Perception of Illicit Practices in the Food Sector*," Alice Rizzuti offers a comprehensive, timely and compelling account of the ways in which food and the food industry exist as a key vector for significant harms and crimes. From food adulteration and mislabeling to outright fraud, Rizzuti reveals and contextualizes the intersections of food, crime and harm in the United Kingdom.

While food—and the harms or crimes associated with it—has received scant attention in criminologies green or otherwise, the nonhuman animals that play such essential roles in the global food industry, however, have captured green criminological attention for decades. "*Wildlife Crime: A Crime of Hegemonic Masculinity*?," Ragnhild Sollund's collection, offers an example of the sort of critical scholarship that has come to characterize green criminology. Sollund reminds us that the animals we encounter in our lives are also worthy of care and consideration, while her critique of human violence against animals as an expression of hegemonic masculinity returns us to the social justice roots of green criminology so evident in those first moments of scholarship in the 1990s.

While Sollund looks squarely at the social world, green criminologists often find their inspiration in the tensions and contradictions created in and by law. Continuing the theme of nonhuman animals, James Gacek and Richard Jochelson, in "*Animals as Something More Than Mere Property: Interweaving Green Criminology and Law*," further probe the edges of human–animal relations by discussing and describing the development of laws governing human ownership and management of nonhuman animals, arguing that the studies of law and green criminology, when interwoven, "have the potential to reconstitute the animal as something more than mere property." Here, these authors remind us again of the value in fostering interdisciplinary approaches within green criminology and the ways that new areas of critical scholarship might emerge from those moments of cross-pollination.

Although green criminology finds it origins in the social justice perspectives articulated by Lynch (1990) and South (1998, 2014), it remains the case that procedural justice often dominates the conceptual landscape of the criminological imagination. James Heydon, in his collection "*Procedural Environmental Injustice in 'Europe's Greenest City': A Case Study into the Felling of Sheffield's Street Trees*,"

expertly captures and describes the ways in which environmental justice perspectives might find in procedural systems the opportunity to democratize human–environment interactions. Through a case study of a controversial tree-felling program in Sheffield, England, Heydon makes strikingly clear the ways in which a social justice-oriented green criminology might find an unlikely ally or counterpart in more procedural forms of justice and justice-seeking.

If climate change represents one of the biggest issues regularly taken up by green criminologists, culture represents another. It is little wonder, after all, that "nature" and "culture" are the two words that so vexed Raymond Williams, leading him to remark that while "culture is one of . . . the most complicated words in the English language" (Williams 1973, p. 87), "nature is perhaps the most complex word in the language" (Williams 1973, p. 219). Green criminology, in a moment illustrative of the sort of disciplinary promiscuity and engagement we hope to encourage with this collection, has started down a cultural path with the ongoing development of a green cultural criminology (see, e.g., Brisman and South 2013, 2014; Ferrell 2013; McClanahan 2014, 2019; Natali 2016). In the final article of this issue, "*From Social Deviance to Art: Vandalism, Illicit Dumping, and the Transformation of Matter and Form*," Mark Palermo jumps with both feet into the cultural pool. By creating sculptural forms from found materials—what would, in most contexts, be considered waste materials—and then employing those art objects in an analysis of human patterns of consumption, Palermo offers a decidedly non-traditional but fascinating glimpse into the ties that bind art, culture, deviance, ecology, refuse and reuse.

We began this Editorial Introduction with a brief word on current conditions, and it seems appropriate to end this way, too. Writing, as we are, in the spring of 2020, it is difficult to imagine not addressing the global pandemic caused by the transmission of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19), that initially emerged in China and quickly swept across the planet. Here, we contend that this pandemic and the various social and economic challenges it has presented offer a unique opportunity to further understand ourselves as ecological beings. It is our hope that, in the wake of the pandemic and its chaos, we will find new ways to comprehend the ties that bind humans, nonhuman animals and the ecological systems on which we all rely. One of the bright spots amidst the suffering of 2020 has so far been a new solidarity that has emerged, at least at the edges, which might contribute to making a more empathetic social world and a healthier planet for us all. We hope that by encouraging interdisciplinary connections and conversations, by continuing to foster and stimulate thoughtful scholarship into the natural and built worlds around us and by striving for justice, we might, as a discipline, play some role in the (re)building of a better Earth.

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Article

Food Crime: A Review of the UK Institutional Perception of Illicit Practices in the Food Sector

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Abstract: Food offers highly profitable opportunities to criminal actors. Recent cases, from wine and meat adulteration to milk powder contaminations, have brought renewed attention to forms of harmful activities which have long occurred in the food sector. Despite several scandals over the last few decades, food has so far received scant criminological attention and the concept of *food crime* remains subject to different definitions. This article assesses regulations in the United Kingdom (UK) and UK authorities' official reports published between 2013 and 2018 through a review of academic literature published in English. It charts the evolution of the food crime concept, its various meanings, and different harmful activities associated with *food crime*, which originate from unlawful acts and omissions. This article also points out that further criminological research needs to address the definitional issue of *food crime* and inform a more integrated policy approach by considering activities beyond food fraud and the protection of food safety.

Keywords: food crime; food scandals; food safety

1. Introduction

Morally questionable, harmful and criminal practices, such as fraudulent activities of adulteration and misrepresentation or addition of chemicals, have a long history in the food sector (Phillips and French 1998; Walters 2010; South 2010; Croall 2013; Tourangeau and Fitzgerald 2020). Only within the last two decades has criminology considered these acts and omissions under the label of *food crime*.

Although food crime has a long history, it has come to public attention only after certain notable public scandals, such as the "horsemeat scandal," where, in 2013, cow meat (beef) across Europe was found to have been adulterated fraudulently with horsemeat. Despite the consumption of horsemeat not being harmful, the media presented the issue as a threat to human health. Notwithstanding the huge exposure to several food scandals, however, few people know what *food crime* means, and criminological interest in the problem has been scant. Practices, such as pollution caused by long-distance food transportation, the sale of adulterated food, the abuse of chemicals, and the exploitation of workers, as well as fraudulent trading behaviors committed by corporations and governments, have been considered more within discourses on food security and the violation of safety regulations rather than activities whose legal and criminological aspects are worth analyzing within a socio-legal perspective (Lang and Heasman 2004; Walters 2010). Moreover, little research has been carried out so far to investigate the institutional perception and policy response to food crime activities.

This article reviews the academic literature on the phenomenon of *food crime* and evaluates UK food regulations and official reports and documents published over the last five years by British public authorities active in the sector of food safety and crime. The specific timeframe that is chosen begins with the "horsemeat scandal", because this affair represents a turning point for policy attention to food-related criminal activities. This study charts the different conceptualizations of *food crime* adopted by the relevant academic literature in order to see if and how these perspectives match with the concept

embraced by the UK authorities. This article maps the different types of activities under the *food crime* label, pointing to the definitional issues of the term, *food crime*, within UK policy documents. While these documents use food crime and food fraud interchangeably, a green criminological perspective (Croall 2013; Tourangeau and Fitzgerald 2020) allows for a broader analysis of the entire spectrum of harmful activities—beyond just that of food fraud—committed in the food sector.

The next section offers a brief outline of the specific context of the study and indicates the sources that have been used. The third section shows how the discourse around food crime has been connected historically to the concept of *food security* that has been considered by international agencies, such as the Food and Agriculture Organization (FAO) of the United Nations (UN), as well as within the green criminological literature. The fourth section reviews different conceptualizations of *food crime*, as formulated in the relevant literature, and the ways in which notions of *food security* and safety have shaped the understanding of *food crime*. Following this, the article charts UK institutional perceptions of illicit food-related activities and how enforcement authorities shape policies to protect the safety and authenticity of the food sector. Finally, the article concludes by returning to a discussion of the definitional issues surrounding the concept of food crime, suggesting that a green criminological perspective on food (Croall 2013; Gray 2018) can help to overcome these terminological and conceptual difficulties and can provide a guide for analyzing the harmful and criminal activities committed along the food supply chain.

2. Methodology

This article aims at analyzing the UK institutional approach to the issue of *food crime*. The backbone of the study has been the analysis of the conceptual and definitional issues surrounding *food crime*, taking into consideration its historical background. I adopted a qualitative methodology, which consisted of collecting and reviewing the relevant academic literature on *food crime* and the UK policy literature published after the "horsemeat scandal." Through documentary analysis, this article attempts to examine the British strategy on illicit activities in the food sector and the official reports and policy documents published by British public authorities active in the fields of food safety and *food crime*. The UK has been chosen because it was one of the main sites of the "horsemeat scandal," where investigations were conducted, and where actors were prosecuted and convicted (Lawrence 2013a, 2013b). Moreover, it was the first European country where the expression *food crime* appeared (Elliott 2014) and where the "horsemeat scandal" triggered the establishment of a specific agency (the National Food Crime Unit) created to tackle criminal practices inside the food sector.

For this study, I searched Google Scholar using the keywords "food crime" and "food fraud." I also located articles by examining the references of other connected articles and reports published in the field. The sources selected from the grey literature (see Table A1 in the Appendix A) reflect those that were issued by the UK authorities which are directly and indirectly relevant to the prevention and fight against food-related illicit activities during the aforementioned time period.

3. The Precursors of the Food Crime Concept: From Food Security to Food Safety

I begin this review of the concept of *food crime* by looking at how the food supply chain has been studied and linked historically to the conceptualization of *food security*. After the Second World War, in times of demographic and economic growth, a new agricultural system was developed in industrialized nations. Many countries, in fact, changed their agricultural techniques to achieve self-sufficient levels of production and avoid shortages of food for their growing populations. The modern agricultural system saw for the first time the use of chemicals, such as fertilizers and pesticides, and mechanization of the production of crops, such as corn, rice and wheat (Slater et al. 2014), which raised concerns about the safety of the practices applied. It was in this context, in 1974, that the World Food Conference first conceptualized the term *food security* to refer to "the availability and price stability of basic foodstuffs at the international and national level" (FAO 2006)—with increased rural

deprivation and huge social inequalities in access to food contributing to unequal distribution of food and generating *food insecurity* (Slater et al. 2014).

It was not until the World Food Summits that took place in 1996 and in 2002, however, that the FAO formulated a more precise conceptualization of *food security* by considering the problems of *distribution* and *food safety*. These new understandings of *food security*, in fact, reflect the idea that "all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life" (FAO 2006). The concept of food security is clearly addressed in the several reports and policy briefs on the state of food security and nutrition in the world annually published by FAO (for instance, see (FAO et al. 2018)). Furthermore, food security is explicitly linked to the right to food, which is protected by article 25 of the UN Declaration of Human Rights (United Nations 1948). This article considers the right to food in connection to the right of a standard of living adequate for health and well-being. Along the same line, the International Covenant on Economic, Social and Cultural Rights (United Nations 1966) recognizes the right of everyone to adequate food and pushes states to improve methods of production, conservation and distribution of food, with the aim of ensuring an equitable distribution of world food supplies. Similarly, the UN Committee on Economic, Social and Cultural Rights (CESCR) identifies the human right to adequate food as essential for the enjoyment of all human rights and links it to the fulfilment of human dignity (CESCR 1999). It continues by stressing that it is the duty of states to guarantee access to food and, in the context of social justice, to adopt specific economic, social and environmental policies to protect the right to adequate food. Interestingly, this document suggests the adoption of international and national strategies that could address critical issues of food security by taking into consideration *all* aspects of the food system including "the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security" (CESCR 1999).

In academic literature, food security has been analyzed from many perspectives. For example, Brisman and South (2017) consider access to food in the context of global conflicts. Johnson and Walters (2014) describe how the stability-of and access-to food can be endangered by factors such as climate change and (related) natural disasters, as well as changes in economic, political and social situations. Indeed, a more robust notion of *food security* takes into consideration the stages of production, distribution and exchange (Ericksen 2008), and acknowledges connections between poverty and unequal distribution of food (Johnson and Walters 2014). Stack et al. (2013) underscores that for *global food security*, food must not just be available, but *safe*—an issue to which I turn next.

Food scandals that have occurred over the last thirty years have raised general concerns around the safety of the global food supply chain. The use of antibiotics in agriculture has been linked to antibiotic resistance in humans, and the abuse of genetically modified (GM) food is considered, by some, to pose a threat to public health and safety (Walters 2010). The UN World Health Organization (WHO) has devoted special attention to the concept of *food safety* by considering it an international security priority that is connected to "all the hazards, whether chronic or acute, that may make food injurious to consumer's health" (World Health Organization 2015). According to this perspective, *food safety* means "handling, storing and preparing food in order to prevent infection, and making sure that food keeps enough nutrients for a healthy diet." Endorsing this perspective, the FAO released a collection of guidelines and codes of practice with the aim of improving food safety policies and quality standards in order to protect human health (FAO and WHO n.d.). In the EU, the Green Paper on General Principles of Food Law (COM(97) 176 final 1997) (the "Green Paper") and the White Paper on Food Safety (COM(99) 0719 final 2000) state that consumers' health is a policy priority to develop by tracing the production and by monitoring the food supply chain in order to prevent any health risk (Smith et al. 2017; Manning and Soon 2016; Manacorda 2016). The Green Paper specifically claims that if a food business is caught in the act of selling a product that does not conform to the EU or national (UK) safety requirements provided, the firm may be liable under criminal or administrative law. In the UK, the Food Safety and Hygiene Regulations of 2013 are based on the European Regulation (EC)

(n. 178/2002), which contains a general definition of *food* and *food safety*. More precisely, in order to protect food safety, article 14 of this regulation states that "it is necessary to adopt measures aimed at guaranteeing that unsafe food is not placed on the market and at ensuring that systems exist to identify and respond to food safety problems in order to ensure the proper functioning of the internal market and to protect human health." The regulation goes further by advising a wide perspective of food law that should cover a broad spectrum of provisions that could affect the safety of food. In protecting food safety, the law should consider all the stages of the food supply chain including production, manufacture, transport and distribution of food and feed, by addressing all those—also fraudulent—practices that could endanger the safety of the food system.

Moreover, the Food Safety Act 1990, the main legal framework regarding food safety in the UK, establishes that "consumers must have confidence that the food they buy and eat will be what they expect, will do them no harm and that they are protected from fraud" (Food Standards Agency 2009). The Food Safety Act applies to every food business, which must ensure not to include or remove anything in or from food or treat it in any way that can harm consumers' health, and this act establishes the offense of rendering food injurious to health (Section 7 of the Act). It also attempts to ensure the safety of food by prohibiting food which is not of the nature, substance or quality demanded (Section 14), and by rendering illegal the false or misleading description or presentation of food (Section 15).

In summary, *food safety* reflects attempts to protect public health and to safeguard the food supply chain from illicit practices. In many ways, then, the concept of *food safety* serves as an antecedent to that of *food crime* to which I turn next.

4. Between Food Defense and Food Fraud: The Conceptualization of Food Crime in the Criminological Literature

As this section will show, the criminological literature shapes *food crime* around the concept of *food safety* and the prevention of harms by intentional acts perpetrated in the food supply chain. Accordingly, this literature distinguishes *food defense* as policies and practices adopted against activities intended to harm consumers, and *food safety* encompassing policies and practices protecting the food system against unintentional contaminations of food products (Kastner et al. 2014; Manning and Soon 2016; Smith et al. 2017).

The concept of *food crime* has received limited attention within criminology, although many aspects of the food industry could be investigated under the lenses of criminality and deviance (Tourangeau 2016). By reviewing the literature, two main tendencies in the academic study of *food crime* can be distinguished. First, some researchers focus mainly on the organizational aspects of fraudulent activities in the food sector and the possible policy approaches in the prevention of these illicit practices. Second, some authors embrace critical approaches within green criminology and are interested in discourses around social and environmental harm, as well as social justice debates surrounding access to food.

According to the first strand of these discourses, fraudulent activities committed inside the food sector can be labeled as *food fraud*. *Food fraud* is a phenomenon that happens outside of the legitimate food sector and encompasses "the deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging; or false or misleading statements made about a product for economic gain" (Spink and Moyer 2011).

Lord et al. (2017a) analyze the nature and organization of the behaviors that constitute fraud and consider the conditions that facilitate various types of fraud. They conceptualize food fraud as an endogenous phenomenon of the food system that consists of the "abuse or misuse of an otherwise legitimate transaction in which the actor undertakes practices of deception or dishonesty in order to avoid legal procedures and to gain profits or cause harm" (Lord et al. 2017a, p. 10). They argue that the legal definitions constructed from a policy point of view tend to focus on the mere manifestation of food fraud without actually understanding its nature, and the factors and conditions of its organization

(Lord et al. 2017a). Hence, in a second paper, they suggest viewing food fraud through the lens of situational crime prevention and routine activity theory, identifying opportunities for food fraud, offenders' motivations and absences of capable guardianship (Lord et al. 2017b).

The second group of authors analyze the problem of illicit practices in the food system within a broader contextual perspective. From within green criminology, Croall (2007, 2013) is the first author to give a definition of *food crime*. According to her, *food crime* includes the "crimes that directly involve the processing, production and sale of food" (Croall 2013, p. 167). This conceptualization embraces the criminal activities involved in the local and global food trades that victimize consumers physically (by harming their health), psychologically (by eroding their trust) and/or financially. Cheng (2012) also describes food crime as a broad set of practices that violate laws, regulations and customs that should be respected by members of the food industry. Similarly, Gray (2018) claims the necessity of a *food crime perspective* that questions the concepts of crime and harm in relation to food issues and, hence, she includes a vast spectrum of illegal, criminal, harmful, unjust, unethical or immoral food-related practices. This conceptualization includes a wide range of illicit behaviors, including economic and physical harm to humans and non-humans involved in the food sector (Gray and Hinch 2015). Gray and Hinch (2015) argue that the criminological implications of food crime should be analyzed by investigating the criminogenic factors and the complexity of the contemporary food production system (Croall 2013; McDowell 2017). More specifically, Croall (2013) suggests a study of cultural factors, such as unethical consumption of unhealthy food that involves the exploitation of workers and environmental harms, and organizational factors, such as competition and corporate power. In the same way, Cheng (2012) claims that cheap capitalism is the criminological context that makes food crime possible. By *cheap capitalism*, he means a form of trade characterized by unsafe products and services, cheap prices and low quality, within a general condition of degraded business ethics where the only aim is to maximize profits.

According to this strand of the literature, food crime practices involve *food fraud* (e.g., intentional adulteration of food, counterfeiting food, watering down food), *food poisoning* (e.g., neglecting safety and handling food regulations, engaging in regulatory non-compliance), *addition of chemicals* (e.g., use of additives), *food labeling* (e.g., disregarding standards), *non-criminalized food trade practices* (e.g., anti-competition industry cartels and targeted food marketing), *pricing* (e.g., suspicious bargain offers aimed at deceiving the consumers), *exploitation of labor in the agri-food sector* (so-called "modern slavery"), *financial crimes* (e.g., tax and subsidy frauds, fraudulent handling of food paperwork), *cruelty to animals* and *environmental harm due to food industry practices* (e.g., overuse of pesticides and fertilizers) (Croall 2013; Gray 2018; Lang and Heasman 2004; Leon and Ken 2017; McDowell 2017; South 2010; Tourangeau and Fitzgerald 2020; Walters 2010).

If food crime incorporates a broad list of illicit activities directly and indirectly related to the food supply chain, then the above list is clearly not exhaustive. Essentially, while the first group of authors (Lord et al. 2017a, 2017b; Manning and Soon 2016; Spink and Moyer 2011; Van Ruth et al. 2018) acknowledge the wider harm of food crime activities and the role of corporate power, but focus primarily on the organization of food fraud, considering it a specific form of crime under the broader umbrella concept of *food crime*, by referring to a wide spectrum of criminal and quasi-criminal practices in the food sector, the second strand (Cheng 2012; Croall 2013; Gray 2018; Gray and Hinch 2015; McDowell 2017; Tourangeau and Fitzgerald 2020; Walters 2010) confronts the legal definitions of crime and poses questions around the concept of harm itself. Food crime is, therefore, perceived and conceptualized as a form of environmental harm and/or crime that affects food as a natural resource, where the modern food supply chain also raises issues of social (in)justice. In this way, this conceptualization of *food crime* is linked to *food security* and the necessity of equal access to sufficient food, but also to the concept of *food safety*, which focuses on whether food is safe to eat without the risk of illness or poisoning.

5. The Institutional Response to Food Crime in the UK Public Policy

After the BSE (bovine spongiform encephalopathy or mad cow disease) outbreak at the beginning of the 1990s, governmental focus shifted to the protection of public health from contaminations of the food supply chain. Consequently, in 1998, the UK government decided to create a specific authority, the Food Standards Agency (FSA), in order to handle and promote food safety standards (Minister of Agriculture and Fisheries and Food 1998). In a similar way, the 2013 "horsemeat scandal" triggered the public debate around the safety of the sector. This time, because media and public attention centered on the illicit activities perpetrated inside the chain, the UK authorities' approach towards the issue changed. In other words, from this moment on, the UK public agencies and consumer organizations active in the protection of food started to acknowledge that harmful and criminal practices were widespread across the food supply chain and began to provide policy-oriented and working definitions of this nuanced phenomenon to overcome the lack of a legal definition.

In fact, the UK legislation does not encompass any juridical definition of food crime. Nevertheless, the UK National Food Crime Unit (NFCU)—a non-ministerial department established within the FSA after the "horsemeat scandal"—defines *food crime* as "dishonesty related to the production or supply of food, drink or animal feed which is either complex or likely to result in serious detriment to consumers, businesses or the overall public interest" (National Food Crime Unit 2016). The UK Food Law Code of Practice (Food Standards Agency 2017) specifies that food crime is a non-legal umbrella term used only to define the remit of the NFCU and clarifies that, in this context, food crime means "serious dishonesty which has a detrimental impact on the safety or the authenticity of food (. . .) Food crime can be thought as a serious food fraud." As clarified in the document, the paradigm of seriousness is to be evaluated based on the facts of the specific food crime scenario and, hence, "on the likely level of detriment to an important interest such as the general public, a food business of the UK food industry" (Food Standards Agency 2017).

By considering activities that are perpetrated to deceive consumers for financial profits, the NFCU and the FSA identify three types of food crime: (1) "pure types," including serious criminal activities with the intent to endanger the safety and the authenticity of the food sector; (2) "indirect types," which have a detrimental impact as a consequence of other criminal activity; and (3) "cyber-enabled activities," facilitated or enabled by the use of the internet (National Food Crime Unit 2016). These authorities identify as criminal practices the following activities: *diversion of waste products into the chain* (e.g., animal waste used in products for human consumption); *adulteration of food products* (e.g., extraneous substances added to food or drink to reduce the quality); *mispresentation of provenance, origin, quality or benefits* (e.g., false declaration of geographic origin); *substitution* (e.g., replacing the whole product or parts of it without changing the overall characteristic); *unlawful processing* (e.g., using unapproved premises or unauthorized techniques); *mispresentation of durability date* (e.g., changing the label to sell expired products); *theft* (e.g., dishonestly appropriating food in order to make profits); and *document fraud* (e.g., using false product paperwork and documents) (National Food Crime Unit 2016). Moreover, the NFCU also identifies a form of so-called *European distribution fraud* that takes place when an EU-based food supplier is contacted by a fraudulent UK food business that places an order which is dispatched to a UK address without payment. This kind of fraud can cause wide risks for health because food safety, hygiene regulations and storage standards may not be followed by the fraudulent distributor (National Food Crime Unit 2016). The FSA and the Department for Environment, Food and Rural Affairs (DEFRA) also classify other indirect forms of threat that endanger the food sector by being harmful to food companies, such as extortion (e.g., threatening contamination of food products), espionage (e.g., competitors that seek commercial advantage by illegitimately accessing intellectual property), and cybercrime (e.g., credit card fraud in restaurants or hacking of agricultural technology) (PAS 96:2017 Guide to protecting and defending food and drink from deliberate attack, 2017). Except for the above-mentioned activities, the practices considered under the UK governmental conceptualization of food crime have a clear fraudulent characteristic. Indeed, the horsemeat scandal that triggered the regulatory reaction towards the illicit behaviors in the food sector is a case of food fraud.

Food fraud is defined by the FSA and DEFRA as the act of "deliberately placing food on the market for financial gain, with the intention of deceiving the consumer." The FSA considers two main types of food fraud—(1) the sale of unfit and harmful food, and (2) the deliberate misdescription of food products (British Standards Institution et al. 2017). Because of the clamor of the "horsemeat scandal," DEFRA and the UK Department of Health commissioned a report on the integrity and assurance of food supply networks, known as the Elliot Review (Elliott 2014). The Elliot Review found that food fraud is committed to make profits with the intention of deceiving consumers, and it involves: *deliberate and intentional substitution, addition, tampering or misrepresentation of food, food ingredients or food packaging*; or *false or misleading statements made about a product for economic gain*. The report conceptualizes food crime by affirming that "it is a serious form of food fraud that no longer involves random acts by rogues within the food industry, but becomes an organized activity perpetrated by groups who knowingly set out to deceive, and/or injure, those purchasing a food product." By embracing this conceptualization, the NFCU Annual Strategic Assessment (2016) argues that "food fraud becomes food crime when the scale and potential impact of the activity is considered to be serious, (...) when the criminal activity has cross-regional, national or international reach, that there is significant risk to public safety, or that there is a substantial financial loss to consumers or businesses." Both perspectives suggest that when taking place as an organized activity perpetrated by groups who plan to maximize their profit, food fraud becomes serious, and, in this sense, constitutes *food crime*. Accordingly, the concept of food fraud has a central role within the governmental approach, to the extent that its conceptualization is the backbone of the food crime concept. The NFCU specifically establishes that *food crime* consists mainly of serious and complex food fraud, but acknowledges that it also addresses different forms of criminality that might indirectly affect the safety and/or authenticity of the food sector.

The perception of *food crime* adopted by the UK regulatory agencies does not seem to consider issues around *food security* in structuring food policies. The concept of *food crime* is shaped in large part by discourses of public health and food safety. In fact, UK food policies have focused mainly on ensuring that food is safe and free from intentional and unintentional contaminations, without taking into consideration the possible illicit profiles of the practices that happen inside the food sector beyond food fraud activities. Hence, the policy perspective and the theoretical conceptualization of *food crime* do not match.

As mentioned above, after the "horsemeat scandal", the UK government's attention has moved towards the harmful and illegal activities happening along the chain. The NFCU special unit has been created and *food crime* has been conceptualized as a form of serious dishonesty that can happen within the production or the supply of food, causing serious harm to consumers, businesses and the general public interest. The protection of public health and, consequently, the concern for food safety is still the main focus of the UK anti-food crime policy, but there is also increasing attention towards *food authenticity* and the protection of the UK food market's reputation. According to the analysis of the policy reports, the conceptualization of *food crime* adopted by regulatory bodies encompasses activities occurring in the stages of production, retail, logistics and disposal, which affect the safety and authenticity of the food product. Fraudulence is a recurring characteristic of the activities considered under this label of food crime and plays a central role in the governmental conceptualization of food. The Elliott Review explicitly acknowledges that the expressions "food fraud" and "food crime" are often used interchangeably (Elliott 2014). Moreover, *food fraud* emerges as *food crime* when it becomes organized and perpetrated by groups with the specific aim of deceiving and/or injuring consumers (Elliott 2014). The NFCU Annual Strategic Assessment adopts this perspective by asserting that food fraud is often an indicator of food crime (National Food Crime Unit 2016). In addition, the Elliott Review contends that cases in which fraudulently contaminated or altered foods cause severe illness or death are examples of *food crime* (Elliott 2014). The NFCU states that the term *food crime* is more capacious, encompassing forms of crimes that may have only an indirect impact on food safety and authenticity (National Food Crime Unit 2016). By looking at this policy conceptualization of food crime and at the types of practices considered within this perspective, the distinction between *food*

fraud and *food crime* can be seen to rest on the level of seriousness of the fraud that is perpetrated. Furthermore, since food crime is considered as a serious and organized form of fraud, the concept of *food crime* derives directly from *food fraud*, which, in turn, is rooted in concerns around *food safety*.

This article shows that the definitional choices made in the formulation of UK policy appear underdeveloped because the distinction between *food crime* and *food fraud* seems blurred. Through a perspective that is based heavily on the protection of *food safety*, the policy approach aims to make the food market safe as well as reputable in the eyes of consumers. At the same time, there are other factors that should be considered in tackling criminal activities in the food sector. *Food crime* is, in fact, not only a matter of *authenticity*, *fraud*, and *safety* but also one encompassing issues of access, security, ethical consumption and environmental sustainability.

6. Conclusions

This article shows how the concept of *food safety* has been the foundation of a discourse on the issue of crimes involving food in policy documents and parts of the academic literature. Some academic studies specifically embrace the conceptualizations of food crime adopted by the public agencies and focus on developing strategies for industry and public investigators to prevent and address food fraud. Other research discusses, more generally, the harm and crimes that affect the food sector, questioning the legal definition of *crime* itself, and considering interests beyond the mere concept of food safety. One of these interests is food security. Indeed, this article shows how the theoretical concept of *food crime* originates in the concept of *food security*, which, therefore, represents the starting point of a discourse around the issue of illicit activities in the food sector. In this sense, this article also demonstrates that the safety-oriented policy perspective and the wide theoretical conceptualization of food crime do not match. Criminology could help widen policy approaches by considering activities beyond food fraud and outside the protection of food safety and authenticity. A green criminological perspective could be the most promising approach because it adopts a wider conceptualization of *food crime* that would address the definitional and conceptual problems around it. Such a conceptualization would allow us to go beyond legalistic definitions of crime established by the law, in order to include discourses around food harms, breaches of administrative law and their potential interactions with violations of criminal law.

Moreover, considering the socioeconomic and political changes that Brexit is likely to pose in the food sector, this article appears now more relevant than ever. On one hand, having entered the Brexit transition period, as the UK food legislation relies heavily on the EU food safety standards, the lack of a clear regulatory framework may open legal loopholes and gaps that criminal actors can exploit. Indeed, the risk of a no-deal between the UK and the EU persists and poses serious threats to both food safety and food security by leaving the UK food market more vulnerable and open to criminal actors (Grant 2019). The possible increase of tariffs will probably lead to an increase in prices of food products, with criminal actors starting to sell fraudulent goods at lower prices to hold costs down. Moreover, a no-deal Brexit may also endanger the UK's food security and cause food shortages that can be filled by illegitimate actors seeking profits. On the other hand, a possible trade agreement with the US would change and soften the safety standards that the UK has so far applied within the stricter EU framework; for example, US food safety policies permit the use of chemicals by allowing the sale of products such as chlorine-treated chicken or hormone-fed beef that are forbidden under the EU regulation (O'Carroll 2019). In this sense, despite the reassurances of the UK government, a trade deal with the US could push the UK to dilute and soften certain food regulations. At the same time, this dynamic could influence new policy definitions of food crime or crimes. More generally, a wider conceptualization of food crime constructed through the lens of green criminology would address harmful and criminal issues such as the respect towards social and dietary norms, environmental sustainability, improvement of food workers' rights and labour conditions.

A future study could clarify the relations between the wider conceptualization of food crime adopted within the literature and the concept of food safety that is central to food policies. Such an

analysis could consider whether a more integrated approach to investigating and preventing food crimes is needed. Moreover, as already started by Lord and colleagues (2017a), further criminological research is needed to investigate the nature of the actors involved in criminal activities inside the food sector, and the possible incentives to commit food crimes.

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Appendix A

Table A1. UK Public Authorities Policy Reports.

UK Public Authorities Policy Reports
Annual Report 2016–17, National Trading Standards, 2017
Consumer Harm Report 2016–17, National Trading Standards, 2017
Elliott Review into the Integrity and Assurance of Food Supply Networks—Final Report, Chris Elliot, 2014
Inquiry on Food Fraud on the Integrity of the Food System—Transcript of the Evidence Taken Before the Select Committee on the European Union Energy and Environment Sub-Committee, 2016
National Food Crime Unit Annual Strategic Assessment, National Food Crime Unit 2016
Food Law Code of Practice, Food Standards Agency (2017)
PAS96:2017 Guide to Protecting and Defending Food & Drink from Deliberate Attack, DEFRA, FSA, BSI, 2017
The Development of the NFCU and the Decision to Proceed to Phase 2, FSA, 2018
The Food Safety Act 1990—A Guide for the Food Business, Food Standards Agency, 2009
The National Food Crime Unit—Update and Progress and Next Steps, FSA, 2017
Working Together to Tackle the Threat from Food Crime (FSA)—A Guide for the Industry to Working with the National Food Crime Unit, National Food Crime Unit 2017

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Wildlife Crime: A Crime of Hegemonic Masculinity?

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Abstract: Scholarship within green criminology focusing on crimes and harms against nonhuman animals has been increasing. Little attention, however, has been directed at the gendered aspects of these crimes. For example, why is it that the great majority of offenders involved in wildlife trade and the illegal killing of endangered predators are male? The aim of this article is to fill the gap in the literature, relying on confiscation reports from Norwegian Customs of nonhuman animals—most of whom are listed in CITES (the Convention on International Trade in Endangered Species of Fauna and Flora)—as well as an analysis of verdicts in cases in Norwegian courts of "theriocides" (animal murders) of large predators. This article will assess the number of men and women involved in these crimes and harms, and will present some trends of theriociders. This article will employ ecofeminist and masculinities theories to better understand the gendered dynamics involved in wildlife trafficking and the theriocides of large carnivores.

Keywords: ecofeminism; green criminology; hegemonic masculinity; hunting crimes; wildlife trafficking

1. Introduction and Theoretical Approach: Green Criminology, Ecofeminism and Hegemonic Masculinity

During the past decade, an increasing amount of green criminology scholarship has focused on crimes and harms against nonhuman animals, particularly "free born nonhuman animals[1]—or so-called "wildlife." These studies encompass legal and illegal hunting (Nurse 2015; Sollund 2015, 2017b), and "wildlife" trafficking (WLT), with a particular concern for species that are threatened with extinction (e.g., Goyes and Sollund 2016; Leberatto 2016; Maher and Sollund 2016; Schneider 2012; Sollund 2011, 2012a, 2012b, 2013a, 2013b, 2016, 2019; Van Uhm 2016; White 2018; Wyatt 2011, 2013). Less attention has been paid to the offenders, apart from categorizations according to their role in such crimes (e.g., Nurse 2015; Wyatt 2013), although Nurse (2015) and Sollund (2019) underline that men are more likely to commit "wildlife" crimes than women. In addition, although green criminology evolved, in part, from ecofeminist insights and should incorporate the perspectives of this approach, this theoretical line of scholarship has not been explored to the extent that it might (for exceptions, see, e.g., Lane 1998; Lynch and Stretsky 2003; Sollund 2008, 2012a, 2019; Taylor and Fitzgerald 2018).

This is a regrettable void which I aim to reduce, since androcentric, Eurocentric, racist and speciesist[2] ideologies have been and still are institutionalised and, as such, are ingrained into the

[1] Some notes about terminology are in order since words and discourse are in constant interplay with our perception of the world, and as such sustain speciesist practices and attitudes. I have chosen the term "nonhuman animal," although I acknowledge it has shortcomings, just like the word "animal" makes a distinction between the human animal and all the other animal species. "Wildlife" is also problematic insofar as it is a mass term that refers to both animals and plants, and fails to consider the individual intrinsic value of either. This said, for simplicity, I retain these terms in this article, but keep "wildlife" in apostrophes to illustrate the shortcomings of such wording.

[2] Speciesism refers to the ways in which humans discriminate animals on the basis of species, essentially because they are not human. It is analogous to other 'isms' as racism, sexism, ageism and ableism, although the victims of speciesism are always nonhuman.

fabric of scientific research constituted as "neutral" and "objective" (Harding 2004; Haraway 1988; Sollund 2017a). Some feminists in the humanities and social sciences have questioned how women had been portrayed as appendices to men (De Beauvoir and Parshley 1953) and, as such, considered of little interest by male scholars and more generally; the oppression of women being doxic (Bourdieu 1995). As gender theory developed, including theories of hegemonic masculinities (Connell 2005) and intersectionality—the relationships among multiple dimensions and modalities of social relations and subject formations (McCall 2005)—one came to realize that not only are there multiple masculinities, but also multiple femininities. Intersectionality theory has been applied most widely to study women, such as how their gender- or sex-based oppression may occur in conjunction with their class, ethnicity, race and citizenship status (e.g., Joseph 2010). Intersectionality may also be employed to discuss the plight, for example, of male migrant nurses (Seeberg 2012) and, as applied in this article, to discuss offenders, such as why men in rural areas may adopt gender-based or masculine strategies which may impact their sociolegal/illegal behaviour. For example, experiences of being ignored by the central authorities may encourage them to turn to wildlife crimes, whereby both protest (Von Essen et al. 2014) and hegemonic masculinities are expressed. How may the 'wildlife' crimes of men be analysed not only in view of, for example, traditional theories of social exclusion, but also in view of gender theory?

Patterns of abuse and oppression have their source in androcentric culture and power (Adams 1996; Gålmark 2008, 2016; Kheel 2008; Nibert 2002, 2013) and, as will be shown, men are also the most frequent perpetrators of harms/crimes against free-born nonhuman animals. The combination of a lack of empathy and self-ascribed rights to commit violent, abusive acts, such as those legitimised through legal hunting practices, may be very destructive on a large scale. From an ecofeminist perspective (Donovan and Adams 1996; Gaard 1993; Kheel 2008; Sollund 2013b, 2019), the ideals that govern our treatment of nonhuman animals in nature are ingrained by patriarchal values through which, for example, a boy's killing of an animal while hunting is regarded as a rite of passage that turns him into a man, thereby glorifying the act of theriocide (Beirne 2014; Connell 2005; Fine 2000; Kheel 2008, pp. 49, 125, 129).[3] Indeed, one rationale for nature conservation is to provide sufficient prey for male hunters, as Theodore Roosevelt argued (Kheel 2008, chp. 3). This may still be the case in the context of trophy hunting, undertaken for supposed "conservation purposes", whereby foreign hunters pay hefty sums to travel to Africa in order to kill elephants, giraffes, lions, and rhinos; the money they pay is then allegedly used to "preserve" other species (Duffy 2000; Wall and McClanahan 2015). Similarly, Aldo Leopold, the conservationist and environmentalist, saw hunting as contributing to the moral improvement of the human race (read: men) (Kheel 2008).

In contrast, David Nibert (2013) argues that humans' domesecration[4] and killing of animals have contributed greatly to moral decay and to societies that encourage warfare and slavery. Kheel (2008, pp. 16–17) likewise argues that the dominance and exploitation of the natural world is based on gendered ideas and hegemonic masculine ideologies. I will use the examples of WLT and predator theriocides[5] as evidence of a hegemonic and harmful masculinity[6] that permeates not only crimes against "wildlife", but most other harmful aspects of society, including warfare and oppression of nonhuman animals and women.

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[3] One can also ask whether the increase in female hunters in Norway now 15% and on the rise (Sollund 2017b) is related to female hunters' belief that, through hunting, they will become more equal to men, and thus superior to other women.

[4] By domesecration, David Nibert (2013) understands the systemic practice of violence in which social animals are enslaved and biologically manipulated, resulting in their objectification, subordination and oppression.

[5] Piers Beirne develops this concept in an article from 2014, using: theriocide' as the name for those diverse human actions that cause the deaths of animals. Like the killing of one human by another, theriocide may be socially acceptable or unacceptable, legal or illegal. It may be intentional or unintentional and may involve active maltreatment or passive neglect. Theriocide may occur one-on one, in small groups or in large-scale social institutions. The numerous and sometimes intersecting sites of theriocides include intensive rearing regimes; hunting and fishing; trafficking; vivisection; militarism; pollution; and human induced climate change (Beirne 2014, p. 49).

[6] Portions of this article appear in Sollund (2019).

Before proceeding, a word on hegemonic masculinity is in order. Hegemony works here, in part, through the production of exemplars of masculinity—symbols that have authority and meaning despite the fact that most men and boys do not live up to them fully (Connell and Messerschmidt 2005). While only a minority of men might engage in hegemonic masculinity, it still sets normative standards: "It embodie[s] the currently most honoured way of being a man, it require[s] all other men to position themselves in relation to it, and it ideologically legitimate[s] the global subordination of women to men" (Connell and Messerschmidt 2005, p. 832).

Hegemony entails ascendancy achieved through culture, institutions, and persuasion (Connell and Messerschmidt 2005); patriarchal values, as manifested through hegemonic masculinity, become ingrained attitudes and practices—habitus—of the large majority of men as doxic "values" (Bourdieu 1995; Sollund 2012a). Masculinity, feminist and gender theory (e.g., Connell and Messerschmidt 2005), although present in feminist criminology (e.g., Burgess-Proctor 2006; Smart 2013) and criminology, more generally, has been incorporated only occasionally into green criminology's inquiries. In line with ecofeminist thought, the question to be asked is whether normative standards for how to *do* gender, and more specifically, hegemonic masculinity (Connell and Messerschmidt 2005), explain why men are the large majority of offenders of "wildlife" crimes.

My intention in this article, then, is to expand green criminology and the study of "wildlife" crimes by reviving the line of criminological inquiry inspired by ecofeminism and theories of hegemonic masculinity from the 1990s. Initially, the concept of hegemonic masculinity was used to study and explain the overrepresentation of men in "conventional" or violent crimes, but it has since been re-examined (Connell and Messerschmidt 2005)—and it is this reformulated concept that I rely on herein. In their assessment of the validity of the concept, Connell and Messerschmidt (2005) state that, in principle, the concept of hegemonic masculinity is by and large still usable, as it presumes the subordination of nonhegemonic masculinities—a process that has been documented in many settings. Additionally, well supported, they say, is the idea that the hierarchy of masculinities is relational and a pattern of practices and hegemony, not only simple domination based on force, and not just role expectations of an identity (p. 832). "Cultural consent, discursive centrality, institutionalization, and the marginalization or delegitimization of alternatives are widely documented features of socially dominant masculinities" (p. 836). In what follows I present an overview of "wildlife" crimes in Norway and their legal framework. Thereafter, I turn to the methodology applied in the research done for this article, before I discuss findings.

2. WLT and Predator Theriocides in Norway: An Overview

In this article, I focus on two kinds of crimes and harms against free born nonhuman animals: (1) WLT; and (2) theriocides (Beirne 2014) of endangered predators.

With respect to the first of these (WLT), the purported aim of the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) is to ensure that the international trade of wild animals and plants does not threaten their survival (see https://cites.org/). Under the convention, the import, export, re-export and introduction of species covered by CITES must be authorized through a licensing system. Each party to CITES must designate one or more management authorities in charge of administration the licensing system and one or more scientific authorities to advise that party on the effects of trade on the status of the species. Species covered by CITES are listed in three Appendices, according to the degree of protection that they need. Species included in Appendix I are those threated with extinction; trade in these species is permitted only in exceptional circumstances. Appendix II lists those species that are not necessarily threatened with extinction, but in which trade must be controlled in order to avoid "use" that is incompatible with their survival. Appendix III contains species that are protected in at least one country—which has asked other parties to CITES for their assistance in controlling the trade.

The parties to CITES (currently 183), which includes Norway, must ensure that the obligations to the trade regulations of the convention are fulfilled through the implementation of national legislation and enforcement in their own jurisdictions. Norway has attempted to satisfy its requirements under CITES through a number of different laws: the Wildlife Law[7] (Lov om jakt og fangst av viltet—viltloven); the Nature Diversity Act (Naturmangfoldsloven);[8] the Law of Import and Export Regulation from 6 June 1997 (Lov om innførsle og utførsleregulering);[9] and the laws concerning environmental protection of Svalbard and Jan Mayen.[10] Which laws apply are somewhat subject to prosecutorial and judicial discretion, with consequences for enforcement that may affect the severity with which CITES is regarded by the judicial system (Sollund 2019).

The second category refers to the illegal killing of animals of large, endangered predator species (brown bears, lynx, wolverines, wolves). This is of concern not only because of the harm to these animals (see Sollund 2015, 2016, 2017b, 2019) but because Norway is a party to the Bern Convention on the Conservation of European Wildlife and Natural Habitats ("Bern Convention")[11]—a convention with 51 parties that aims to protect endangered species and their habitats. The illegal killing of endangered predators in Scandinavia constitutes the largest threat to those species' survival (Liberg et al. 2012). However, Norway's fulfilment of its duties under the Bern Convention is also a problem. In Norway the enforcement of this convention is (also) based in the Wildlife Law and the Nature Diversity Act. While hunting the endangered animals is illegal, there are a large number of available exceptions. For example, when licensed wolf hunts are organised, a great number of hunters regularly enlist to participate, indicating the enthusiasm Norwegian hunters have for the opportunity to kill this mythic animal (Sollund 2017b). I will return to this later in the article.

There is much controversy surrounding the ways in which Norway has attempted to fulfil its obligations to protect the wolves (Skogen et al. 2013) and to the Bern Convention. For example, an analysis of Norwegian wolf policy in relation to the Bern Convention by Trouwborst et al. (2017) contends that Norway breaches the requirements of the convention by keeping the species at the brink of extinction. The standing committee of the Bern Convention has clarified that wild species which have an unfavourable conservation status (particularly those listed in Appendix II of the convention, like the Norwegian wolf) may require special conservation efforts to acquire a population level which corresponds to their ecological requirements, as stated in Article 2 of the convention (Trouwborst et al. 2017, p. 160). Rather than helping the endangered species to flourish, however, Norwegian policy is the opposite (Sollund 2017b; Trouwborst et al. 2017). The Wildlife Law bans the hunting of these species, but the state nonetheless allows for licensed hunting of the wolves on a regular basis. In the license period from 2017–2018, permission was granted to shoot 50 wolves in Norway, out of a total population of a of maximum 84 wolves. In addition, Norway allows quota hunts for lynx, and the authorities kill wolverine pups and mothers in the dens, in order to keep their populations low. Farmers easily get permission to kill bears and wolves to protect unherded "livestock" and other human interests (Sollund 2019). As a consequence, the World Wildlife Foundation (WWF Norway) has brought the Norwegian state to court on more than one occasion. The last sentence in favor of the state occurred in Oslo District Court May 2018 and was appealed to Borgarting Court of Appeal by WWF Norway. This Court decision fell on 29 January 2020, and will not be analysed herein. The state was partly convicted and both parties, the state and WWF Norway have appealed the decision to the Supreme Court. This court decision is, at the moment of writing[12], pending.

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7 https://lovdata.no/dokument/NL/lov/1981-05-29-38.
8 https://lovdata.no/dokument/NL/lov/2009-06-19-100.
9 http://lovdata.no/dokument/NL/lov/1997-06-06-32.
10 Lov av 15 juni 2001 nr. 79 om miljøvern på Svalbard (svalbardmiljøloven) § 26 annet ledd, lov av 17 juli 1925 nr. 11 om Svalbard § 4, samt lov av 27 februar 1930 nr. 2 om Jan Mayen § 2.
11 https://www.coe.int/en/web/bern-convention.
12 8 May 2020.

3. Methodology

I compiled and produced the data for this project in Norway between November 2010 and December 2017.[13] Data included interviews with customs officials (directorate and border) (4), police officers (4), Norwegian Environment Agency officials (2), reptile traffickers/keepers (5 (3 male, 2 female)),[14] and veterinarians (2). Several of the interviews with control agencies included several interviewees. In addition, I had many telephone conversations with police officers concerning cases under investigation. Furthermore, I had access to customs' confiscation reports concerning "wildlife" trafficking and verdicts concerning the same. Some of these data are also presented and discussed in Sollund (2019).

In total, I collected 125 seizure reports. The Norwegian Customs and Tax Directorate have provided these to me, with the permission of The Norwegian Social Science Data Services (NSD). It must be emphasized that these seizures likely represent only the tip of the iceberg because CITES is not a high priority for Norwegian Customs, who have targets for drugs seizures but not for CITES (Sollund 2013a; Runhovde 2015). In addition to these data, during this project I gained access to more than 800 police case files, which included cases primarily relating to the illegal trafficking and keeping of reptiles. These data will be used as background, although thorough analyses of these data remain. They are therefore not included in the table, and will be subjected to thorough scrutiny in future research. The overall tendency in these are, nonetheless, that only a few of these cases include female offenders.[15] These case files were also accumulated with the permission of the Norwegian Social Science Data Services (NSD) as well as the Higher Prosecution Authorities (*Riksadvokaten*).

Finally, I analysed ten verdicts from the cases involving seizures or other trafficking and approximately thirty sentences concerning other "wildlife" crime cases, such as illegal wolf killing. The ten verdicts concerning seizures and trafficking were cases that were treated in courts during the data collection period that I followed from the seizure to conclusion in the judicial system. The "wildlife" crimes cases were selected from the Norwegian data base Lovdata[16], based on search terms that could lead me to these sentences. This database contains sentences from Norwegian courts of principal interest. Sentences can be found on the basis of search terms. I used search terms such as "lynx", wolf", "bear", or "wolverine", as well as relevant legislation used in these cases, such as the law of biodiversity and the wildlife law. I have during the past decade done analyses of these sentences. From the sentences, I have subjected the most relevant to in-depth analyses. Of these, several have been appealed from the District Court and at times through Courts of appeal ending in the Supreme Court (Sollund 2015; Sollund 2016; Sollund 2017b). The analyses of verdicts for illegal killing of endangered predators in Norway is a project I have run parallel to the research on WLT. In what follows, I sketch out some features of the main categories of WLT, with a special focus on reptile trafficking and collecting, before presenting some significant trends in predator theriocides. Based on the data, these three categories of "wildlife" crimes are the most common, and clearly invite for a gender analysis.

4. Categories of Trafficking Cases in Norway

The seizure reports concerning cases spanning the years 2007–2017 from Norwegian Customs present a diverse picture of animal trafficking victims and perpetrators. They involve three categories of nonhuman animals/products: (1) live CITES-listed nonhuman animals, including amphibians,

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[13] Qualitative interviews and the information they provide depend on cooperation between researcher and interviewee. As such, I see such data as the product of a collaboration, rather than just a matter of collection by the researcher.

[14] Keeping "exotic" reptiles was generally banned in Norway until 15 August 2017, when the Food Safety Authority permitted 19 species, of which 15 are listed in Appendix II of CITES or on lists by the International Union for the Conservation of Nature (IUCN).

[15] These data will be subject to a thorough analysis in the research project Criminal Justice, wildlife conservation and animal rights in the Anthropocene (CRIMEANTHROP), funded by the Research Council Norway (2019–2023).

[16] https://lovdata.no/.

annelids, birds, mammals and mollusks; (2) nonhuman animal products, including stuffed nonhuman animals, and (3) non-CITES, or unknown, live nonhuman animal products (and stuffed nonhuman animals). The cases can be organised according to the motivation of the offenders for the trafficking: (1) "pet" traders;[17] (2) businessmen; (3) collectors; (4) tourists; (5) consumers of traditional Asian medicine (TAM) or traditional Chinese medicine (TCM) (see Van Uhm 2016); (6) sport fishers and (7) trophy hunters.

Within the three categories of seizures, offenders have trafficked live nonhuman animals, such as a Bengal cat, parrots and reptiles to keep them as 'pets'[18]. Nonhuman animals are also trafficked by businesspersons who want to profit from the 'pet wildlife' trade. The (former) head of the standing committee of CITES, working at the Norwegian Environment Agency, added to this category of 'professionals', other profiteers, for example including internet-based companies that make money by not following the rules, and large commercial actors selling medicinal products.

Many offenders also become involved in the WLT based on impulse. For example, they buy a tortoise in a market on the spur of the moment and then cross state lines with the tortoise in his/her pocket. Others, however, engage in WLT in a more planned fashion: reptile traffickers, for example, might drive two cars in tandem, with the second one bringing the animal across the border only if the first car drives through unhindered (Sollund 2013a). Many traffickers in the 2nd category are tourists who buy skins and products, often unaware of the illegality and harms of what they are doing. Nonhuman animals or their parts are also trafficked as medicinal products, reflecting the place traditional Asian/Chinese medicine [TAC/TCM] has in wildlife trafficking (e.g., Van Uhm 2016). Another increasingly frequent seizure, in 2017 the dominant one, is Jungle Cock Necks because sport fly fishers use the feathers to bind flies.

Collectors are important perpetrators in that they buy animals/animal products (e.g., bird eggs, ivory, pelts) to add to their collections. Trophy hunters will also bring home or have sent home the carcasses of their victims.

Table 1 below shows the gender of the trafficker. For all three categories of offense, the large majority of the offenders are male.

Table 1. Gender of traffickers in the three categories.

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	TOTAL	%
Category 1													
Male	0	5	1	3	5	3	3	4	0	2	0	26	89.7
Female	0	0	1	0	0	1	0	0	0	1	0	3	10.3
Category 2													
Male	1	3	4	1	8	6	1	11	17	14	3	69	88.5
Female	0	1	0	0	2	1	0	2	2	1	0	9	11.5
Category 3													
Male	0	2	1	2	0	4	0	1	1	0	0	11	91.6
Female	0	0	0	1	0	0	0	0	0	0	0	1	8.3
Total	1	11	7	7	15	15	4	18	20	18	3	119	89.1 male 8.9 female

According to these reports, nearly 90% of trafficking offenders in Norway are men, suggesting that, at least in Norway, this is a gendered crime. Men are, however, large majority of the offenders of all registered crimes. In this sense, then, WLT is no different from other crimes. For example, according to

[17] "Pet" is an anthropocentric term insofar as it implies that the purpose of the nonhuman animal is to only serve instrumentally as a companion to humans. For simplicity, however, I retain the term, but with apostrophes: "pet".

[18] In six of the cases from the 125 confiscation reports, the gender of the trafficker is not mentioned.

the official bureau of statistics, Statistics Norway's[19] overview of all charges for crime in 2016, the total number of persons charged was 169,496; 145,031 were brought against men and 24,465 were brought against women, constituting approximately 14% of the total.[20]

In the roughly thirty verdicts that I have examined from Norwegian courts for the illegal killing of endangered large predators, all offenders are male (see also Sollund 2015, 2016, 2017b). Another common feature of these cases is that in most cases, these crimes are committed by means of firearms: the offenders have obtained permission to keep/use a firearm, usually a rifle, and which, in other circumstances, they may use to kill other nonhuman animals, such as foxes or elks, within the limits of the law. The weapon may also have been used to legally kill endangered predators when the offenders have enlisted for state licensed hunts, such as those involving lynx and wolves.

5. Trends in Large Predator Theriociders

Most offenders kill by means of firearms, but the extent of their proficiency in using them varies. I note this because in all the licensed hunts, there are numerous incidents of shootings in which a nonhuman animal is injured and suffers significantly before s/he is finally killed or dies as a consequence of the shot; this is also the case in illegal theriocides[21] (Sollund 2017b). This does not mean that a firearm is always involved in such theriocides, however. In the Scandinavian countries, the use of poisoned bait is a well-known tactic to kill unwanted predators (Liberg et al. 2012). Using radio tracking, researchers estimated that between 1999 and 2006, half of all deaths among wolves was caused by illegal hunting, amounting to 136 ± 56 wolves having been killed in Scandinavia in this period[22] (see (Sollund 2015, 2017b) for an analysis of predator theriocides convictions). Although poisoning is a crime that may be difficult to detect, there are still convictions for this kind of crime.[23]

There are also, though, many other ways to kill endangered predators, such as digging out a den of a mother wolverine and her pups, and killing them. This is the method used by the state to keep the number of wolverines down, and individuals have also applied for the license to kill wolverines legally (Sollund 2015).

The most frequent modus operandi in these theriocides—at least, those that result in court cases[24]—involves shooting the nonhuman animal and claiming that it was in self-defense or undertaken in response to an emergency in order to protect "livestock."[25] Every spring, two million sheep are released to pasture, leaving them vulnerable to the 300–400 large predators in the country.[26]

Claims of self-defence or emergency to protect cows, hens, pigs, and sheep, among other nonhuman animals, are often made in Norwegian courts, and state-initiated killing of predators is often undertaken with the same goal in mind—to protect "livestock" (Sollund 2015, 2016, 2017b; Trouwborst et al. 2017). A claim of self-defence or emergency may, nonetheless, mask other motivations, such as hatred; defending "livestock" may be more a matter of protecting one's capital/property than a reflection of concern for the individual lives of the cows, hens, pigs, sheep, etc. see, e.g., (Nibert 2013); for a more in-depth discussion, and (Sollund 2015, 2016).

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19 https://www.ssb.no/sosiale-forhold-og-kriminalitet/statistikker/lovbrudde/aar.

20 Whether this is also caused by under control and thus lack of detection of crimes committed by women due to normative gendered expectations, is a discussion I must leave aside here.

21 For a thorough examination of this distinction and its importance, see (Sollund 2016).

22 https://www.nina.no/english/News/News-article/ArticleId/641.

23 For example, in 2001, an offender was sentenced to twenty-one days in prison for using poison to kill "wildlife." His conviction and sentence were upheld in the Norwegian Supreme Court [LE-2001-246 M].

24 Many wolf theriocides are never detected and thus never result in arrest, prosecution, conviction and sentencing (Liberg et al. 2012).

25 For example, a man who shot a bear in 2003 claimed that he had done so in order to protect his pigs (Sollund 2015). He was convicted, however, and received a twenty-one day suspended sentence [LH-2004-99118].

26 His danger is increased when the Norwegian authorities, as they did in 2017, exterminate packs of wolves that live on elk. Younger wolves, who cannot hunt elk on their own, therefore prey on sheep.

6. Gender-Based Analysis of Offender Typologies

In the following I discuss the three most outstanding categories in my material, which most invite an analysis in terms of hegemonic masculinity and intersecting dimensions, such as marginalization and gender normativity. These are: (1) The *traffickers and keepers of 'exotic' reptiles*, (2) the *collectors of 'wildlife'*, and (3) the *trophy hunters and illegal large predator theriociders*.

(1). Reptile traffickers

Of the cases involving trafficking in live CITES-listed reptiles (one case also included amphibians and birds), thirteen of the offenders were male and two were female. The females trafficked two tortoises each. This gender imbalance may suggest that the keeping of reptiles (other than tortoises) may be more attractive to men than to women, or that men will be more inclined to commit a trafficking crime in order to pursue their interest in obtaining a reptile than women will. The large police case file material, mainly concerning the illegal keeping of reptiles in Norway, may also provide indications of the gendered dimension of this crime. The large majority of these cases also involve male offenders, who were usually involved in other crimes in addition to WLT. These cases give reason to suggest that for many, keeping/owning reptiles may be associated with hegemonic masculinity in that reptiles are species that some people fear (Öhman and Mineka 2003). Consequently, men may purchase these animals to show their "courage" and to demonstrate that they are "real" or "true" men. For example, in many of the police case files, there are pictures and video clips of the offenders posing with reptiles—pictures that prove the offenders' engagement with prohibited species; one may suspect that posing with their reptiles helps them enhance their personal image—akin to narcissistic trophy photos (Linnemann 2017), enhancing the posers' "masculinity", or to keeping "dangerous dogs" (Maher and Pierpoint 2011). Therefore, they probably have less interest in what these nonhuman animals can offer of other dimensions.

These other dimensions were highlighted in the interviews with reptile keepers, among whom both men and women were represented. The women and men seemed equally consumed with their reptile "pets." In these interviews, what seemed to characterize their relationship to their reptiles was not only fascination, but also care and respect (Sollund 2019). It is possible, though, that these few interviewees differ from the large number of men in the police case files, who were often involved in and apprehended for other crimes, and therefore were caught with the reptiles.

One woman, who was not involved in other crimes, was fined for keeping a snake illegally and stood out in the case file material; she expressed her genuine sorrow when the snake, a boa constrictor, was taken away from her to be killed, calling the snake by her name, "Lisa", and referring to her as "her baby". The case file offenders may or may not be representative of reptile owners; otherwise law abiding reptile keepers could, prior to the ban, pursue their hobby in a more clandestine way, with less risk of being detected than those who had already attracted the attention of police. Overall, based on my interviews with reptile keepers, it appeared that both men and women had trafficked reptiles to Norway. So, while the case file material (and also to some extent the confiscation reports) may indicate that the keeping of reptiles for men may serve as a tool through which they instrumentally increase their masculinity capital, this may perhaps only be a valid currency within specific subcultures, wherein men with criminal inclinations also keep reptiles (that were previously illegal). In order to assess this empirically, one would need to interview men and women in different social environments to explore what meaning the reptiles hold for them.

As noted at the outset, what it means to be "masculine" varies: there is not one normative masculinity, they vary within societies, within different subcultures, social strata etc. As emphasised by Connell and Messerschmidt (2005), hegemonic masculinity is relational. What is expressed through body language, for example, will be understood and responded to based on specific social contexts. What one subcultural group may regard as acceptable, admired or expected, may, in another group, be condemned.

Although the large majority of the trafficking offenders are male, this may, as suggested above, be coincidental in that it may represent only that men are less risk-adverse than women, and consequently more inclined to commit crimes, whether they involve live nonhuman animals or other categories of crime. That said, willingness to accept risk could, perhaps, also be a certain feature of hegemonic masculinity whereby bravery and taking chances is socially applauded.[27] For example, in a study on the effects of gender difference on the inclination to commit crime, Lagrange and Silverman (1999) found that: "low self-control . . . differs between males and females. This, in turn, implies that there may be different patterns of causality leading to male and female offending. In addition, the most important variable overall in terms of explaining gender differences is a preference for risk seeking."

(2). Animal products and collecting

This category of offenders is motivated by collecting; these are offenders who purchase items, such as ivory or stuffed nonhuman animals, including large birds of prey, on the internet, and who collect birds' eggs, which they may abduct themselves or buy from others. Collecting per se may not be particular for any gender, but what the individual collects may have gendered aspects. Two collector cases from my data deserve specific mention in this regard. One man was caught trafficking 264 dead nonhuman animals—24 of whom were listed in the appendices of CITES and the Bern Convention, including bears, buzzards, gyrfalcons, hawks, kestrels, lynx, marsh harriers, owls, red kits, turtles and wolves. Another man was caught and convicted mainly for trafficking in ivory (see (Sollund 2016, 2019), for a more thorough analysis of the case and the verdicts). When police and customs searched his house, they found a collection of ten thousand dead, stuffed nonhuman animals, as well as heads, pelts, and skins.

One may link gender to collecting through the gendered meaning of essential collecting activities, the gender associations of the objects collected and the gendered uses of collections (Belk and Wallendorf 1994, p. 241). As mentioned, while collecting per se is neither typically male nor female, the character of the object collected may have masculine or feminine dimensions to it. While girls may collect decorative objects (e.g., flowers, napkins), dolls and doll items, personal referent objects (e.g., souvenirs, autographs, valentines) and jewellery, boys may be more inclined to collect action figures, cars, nonhuman animal and insect parts, saleable junk, objects of war, hunting or fishing objects, and sports memorabilia (Belk and Wallendorf 1994).

According to Belk and Wallendorf (1994), when people collect, the objects in a collection are deemed sufficiently significant that they are removed from the category of the ordinary and treated as extraordinary. When a nonhuman animal or the part of a nonhuman animal is brought into a house, the nonhuman animal ceases to be a free live individual and becomes an "it"—an item in a collection. The reason why such nonhuman animals are killed, removed and shipped as objects is that they represent something special that can add more value to the collection. As in most "collections", the more rare, the better (Courchamp et al. 2006). Belk and Wallendorf (1994, p. 240) also note that "because a collection results from purposeful acquisition and retention, it announces identity traits with far greater clarity and certainty than the many other objects owned. Collections are especially

[27] This observation can, however, be critiqued for regarding such edgework as a representation of hegemonic masculinity, precisely because this kind of activities are chosen to be regarded as "masculine", thus failing to encompass a gendered analysis opening up for other kinds of risk taking edgework performed by women, whether within or outside the law. The analysis can thus, perhaps, be accused of being tautological. My purpose here is not to undertake a gender analysis of "edgework" and other risk-related activities and behavior. As such, I leave the discussion about whether edgework is always, or even usually, an expression or performance of masculinity to another day. I support Newmahr (2011) view, however, that the values that we currently understand as the "edginess" of edgework are enshrined in narratives of hegemonic masculinity. "Edgework" is thus constrained by the same "maleness of philosophy" (Newmahr 2011, p. 686). Whether the risk of committing a crime (involving nonhuman animals or otherwise) is equally appealing to both men and women, but less transparent because the law enforcement agencies generally focus on men, will be omitted from this article.

instrumental to identity among avid collectors." Gender is perhaps the most important identity marker in a person, thus, collecting is a means of achieving, expressing, and enhancing gender identity.

Through collections, nonhuman animals are "tamed"—they are "conquered, captured and hung on the wall" (Belk and Wallendorf 1994). In addition, the collections may compensate for something that is lacking in a person's life. For example, in the case involving the man with the collection of ten thousand nonhuman animals, the man had had to leave his (masculine) job as a deep-sea diver in the early Norwegian oil bonanza because of a work-related illness. He then began dedicating all his time to his collection and to collecting activities, feverishly engaging in eBay auctions on the internet (see Sollund 2016, 2019).

(3). Trophy hunting/illegal predator killings

If a hunter can boast of having killed a nonhuman animal himself, the more valuable the collection since it can document his will and capability of winning the "battle" against nature (Kheel 2008)[28]. While trophy hunting of "exotic" nonhuman animals may be reserved for people with the economic resources to travel to distant locations (such as Africa) to kill an endangered nonhuman animal, and then for the shipping of its remains back home, the (trophy) hunting of domestic nonhuman animals can be accomplished by men from various social layers of society. In Norway, offenders tend to have lower income levels, live in rural areas, and be associated with farming and animal husbandry. There are thus different types of hunting theriocides connected to trophies: the trophy hunting by wealthy Westerners, often in canned hunts, wherein animals like lions are bred and raised in captivity and then released into another enclosure to be shot, and the rural hunter who will hunt legally and illegally as part of a cultural tradition.

Eco-feminists critique the elevation of masculine values and traits, for example, the masculine notion that killing animals in a hunt is "noble" (see Kheel 2008), rather than seeing it for the act of violence it is (Sollund 2019). Women may turn to hunting because of a desire to be on par with men or to embody male values that are elevated in society rather than the denigrated feminine values.

Whether rich or poor, the hunters may have similar motivations, however, they may also have different features. The rich trophy hunter adds another dimension to his "manhood" when he travels to kill: the power that comes with wealth. While the rural hunter may not engage in hunting to flaunt his socioeconomic status, he may take pride in living in close proximity to nature and killing and eating the creatures that live there. His attitudes may, however, also be regarded as alienation from and disrespect for the nonhuman animals who live there. For the rich trophy hunter who travels far and wide in order to kill the "big five" in foreign countries, his alienation to nature seems even bigger, since what he is doing is often mere executions because he is hunting nonhuman animals raised for the purpose of being executed, rather than killing free-born animals in "battle" with nature.[29] For example, a media mogul in Norway, whose collection I witnessed when I picked up my daughter at a birthday party at a classmates' house when she was little, illustrates these expressions of power. The man's collection contained crocodiles, a polar bear, three big cats, including a leopard, and a large number of birds of prey. The hunter himself has said in media interviews that he went hunting frequently, and his stories included killing a black bear in Alaska and a lion in Africa. Regarding the lion, he boasted that in the village near where he shot him, the people were so happy he had killed the "dangerous lion" that they carried him around in triumph, thus exemplifying a typical neo-colonial practice of trophy hunting mentioned above (see Wall and McClanahan 2015). The man idolized Ernest Hemingway, for the ways in which he "lived out the 'man' in himself." By killing animals, especially endangered predator species, he enhanced (a) his collection; (b) his reputation as a hunter; (c) his self-awareness in terms of ideals of masculinity and (d) the thrill of the moment.

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[28] It is worth noting that hunting may take on various forms and meanings depending largely on cultural context.
[29] See, for example, https://www.theguardian.com/environment/2013/jun/03/canned-hunting-lions-bred-slaughter.

To hunt demands that the animal is objectified and othered (Sollund 2016, 2017b; White 2016). Hunting, whether legal or illegal, does not take place in a social vacuum, and the undergirding of the norms and values of the hunting subculture is important (Nurse 2015), as is the more general normative climate that favours hunting (Sollund 2015, 2016, 2017b). One can therefore assume that the media mogul's peers shared some of his hegemonic masculinity ideals. Living in a modern urban society with desk jobs perhaps makes it even more important for some men to engage in traditional hegemonic ideals of masculinity. The collecting of trophies shows the man's prowess in subjugating nature (nonhuman animals), thus enlarging his sense of power and masculinity (Fine 2000; Gaard 1993; Kheel 2008). The trophies provide and prove a particular sort of wealth, increasing his male social capital (Bourdieu 1995).

With respect to rural theriociders, Fine (2000, p. 816) notes that for hunters in Michigan in the United States, "there is no question that many men who took (and take) to hunting did so because it was considered one of the few remaining authentically masculine and white, male-only activities left in a feminized and integrated world." Such motivation may be of particular importance for men from lower, rural social strata of Norwegian society (see Skogen et al. 2013), who for different reasons may feel disempowered. Important decisions concerning their lives and livelihoods are made centrally, such as those concerning the protection of endangered species that may make their sheep-herding difficult, in addition to depriving them of their traditional "right" to hunt with a dog because the wolves may constitute a risk to the free running dogs (Skogen 2001). As discussed by Von Essen et al. (2014), the illegal killing of endangered predators may thus be a crime of dissent, a response to being disempowered by central authorities (see also Hagstedt and Korsell 2012; Nurse 2015). However, more than a crime of dissent, it is also an expression of hegemonic masculinity whereby the act of violence constituted by the hunt represents a means to a sensation of regaining control, in a life situation in which they feel disempowered. Concerning other violence committed by men, for example, such as homicide and rape, it is documented that being subject to social isolation and marginalisation, and a feeling of being powerless and emasculated, can entail the use of violence as a means by which a sense of empowerment, control and masculinity is regained (Sollund 2001).

7. Minority Masculinities in a Centralised Femocracy

In a case before the Norwegian Supreme Court in 2015 the main offender was convicted of killing a wolf (and for attempts to kill a family group) and received a sentence of one year in prison, while the second offender was sentenced to six months imprisonment, the third offender to five months, and the fourth offender to four months (see Sollund 2017b). All lost hunting rights for three years (Sollund 2017b). In the subculture of the above offenders, they too enhance the relational aspects of hegemonic masculinity through the subcultural socialising when the nonhuman animals are hunted (see also Bye 2003; Skogen 2001). Thereby they increase their social identity as hunters, and their social status among their significant others, in constructing the normative climate for masculinity that permits them to illegally kill nonhuman animals pertaining to endangered species.

The main offender had fourteen wolves tattooed on his arm, each representing a wolf he had killed.[30] This may also be perceived as a way of collecting trophies. Rather than keeping the carcasses, which may be risky because the wolves are protected by law, he transferred the trophies to his body. Thus, he made the illegal theriocides a physical part of him and a stronger expression of his personal and social identity, thereby bringing him status among his peers. Being part of a subculture in a community where the general normative climate includes a hostility to the wolves and state predator management, such individuals encounter few informal social controls when it comes to hunting. Quite the contrary,

[30] Personal communication with another researcher, whom I have chosen to keep anonymous. This information was revealed during a police investigation, and the other researcher was informed about this in an interview with the police investigators of the case.

in fact, as the few people who want to have wolves and other protected predators in their nearby forests are silenced with threats and harassment[31]. These silenced voices may also represent counter masculinities that, being in the minority, are oppressed by the hunters. What may be recognized as the "accepted" hegemonic masculinity in Norway, with a well-established and functioning "femocracy"[32], is a "softer" masculinity than that which governs in rural areas, where more traditional gender roles and masculinities may dominate. Hence, in such areas, the kind of masculinity expressed by the killing (illegally) of the wolf may be exaggerated, both as a protest against urban, centralized decisions impacting how they can live their lives and express their masculinity through hunting and farming, but also as a protest against the gender equality ideals that are condoned by the state.

Indeed, Norwegian society exhibits a good degree of gender equality in that it is acceptable for men to parent and for women to be leaders. For some men, however, and perhaps especially for men belonging to the working class, gender equality may be experienced as having gone too far. As Connell puts it, "Many men resist change, because of the 'dividend' they get from patriarchal gender systems" (p. 19). Thus, many men experience the gradual loss of arenas where they could perform traditional masculine ideals (such as demonstrating control over nature through killing animals), carrying weapons, being in company with only men where they can employ sexist jargon otherwise unaccepted in society, and so forth. For this category of men, killing an endangered animal may be a way to compensate for bygone era and a position of status to which they were previously entitled, simply by virtue of being men.

There are several other reasons why killing an endangered animal may be appealing. First, wolves are often hated by farmers and hunters (Hagstedt and Korsell 2012; Sollund 2016) because they allegedly "compete" with hunters for prey and also constitute a threat to their hunting dogs and hunters' therioristic lifestyles. Second, among hunters, killing a wolf enhances one's social status (Hagstedt and Korsell 2012), just like the trophy hunter who killed the lion. This, in turn, is connected to ideals of masculinity: conquering nature through killing large predators, demonstrating the ability to overpower others, and engaging in thrill-seeking through which killing becomes a form of entertainment and a leisure activity (Nurse 2015; Sollund 2015, 2016, 2017b; White 2016). Hunting may also constitute a kind of male comradery—and an enhanced sense of masculinity—when undertaken in groups (Brandth and Haugen 2006; Bye 2003; Kheel 2008; Presser and Taylor 2011, p. 488).

8. Concluding Discussion

This article has demonstrated that men are highly overrepresented in WLT and hunting-related crimes, but categorizing crime as a masculine activity may be a simplification. Collier (1998, p. 840) criticizes the concept of hegemonic masculinity through its typical use in accounting for violence and crime: "Hegemonic masculinity came to be associated solely with negative characteristics that depict men as unemotional, independent, nonnurturing, aggressive, and dispassionate—which are seen as the causes of criminal behaviour." Connell and Messerschmidt (2005) thus note that men's behaviour becomes reified in a concept of masculinity that then, in a bit of circular reasoning, becomes the explanation (and the excuse) for the behaviour. By claiming that reptile-keeping and trafficking and hunting crimes are expressions of hegemonic masculinity, one risks labelling men as brutal criminals while reaching no closer to an explanation of *why* these crimes are more prevalent among men than among women. However, turning to such actions may be facilitated by the repertoire available in such subcultures and contexts, i.e., implying that it is "tough and masculine" to keep reptiles and that "'real men' hunt". This may be regarded not only as an available choice of action, but as a prescript for action.

The hunting and killing of nonhuman animals and the collecting of nonhuman animals' parts may represent one of the last bastions of men to exercise "traditional, hegemonic masculinity." As gender

[31] https://www.gd.no/nyheter/ulv/hedmark/pensjonist-fra-rena-taler-ulvens-sak-i-retten/s/5-18-649072.
[32] A concept signifying the implementation of gender equality measures by the state.

is a system of social relations and patterns of social practice associated with the position of men in any society's set of gender relations (Connell and Messerschmidt 2005), there is, consequently, not just one masculinity. One must assume that within group/subcultures, specific norms of what kind of masculinities may be enacted will determine the space each individual will have for choosing how to perform his masculinity. The smaller the group or social network of a person, the more limited will be his available repertoire of action, the more limited the eligibility of his masculinity. If a person is unable to leave his social context, the person may follow the norms of masculinity that are available within that social setting, such as a subculture with an affinity for killing free born nonhuman animals. This may often be the case with Norwegian farmers/hunters with long roots in a particular geographical context and with a limited number of persons to relate to. Therefore, not only can there be various hegemonic masculinities in a society like the Norwegian, but they may also vary within the same local community. The more homogenous the culture, the less opportunity there will probably be for the enactment of various (relational) masculinities, meaning that those who oppose the killing of endangered predators in their community will be silenced. This, however, does not mean that the subcultures determine them to act according to such ideals, it is also a matter of choice and priorities.

This article has also demonstrated that concerning hunting, whether legal and or illegal and whether or not for trophies, such practices may also indicate the inertia in habitus (Bourdieu 1995) and that it takes time for people to adopt new norms and (embodied) practices. Thus, when men are convicted for illegal theriocides, and claim self-defense or emergency rights to prevent attacks on their nonhuman animal property (and capital), they are also enacting and perpetuating antiquated notions of masculinity. Thereby they may protect their lifestyle with millennia long traditions (Nibert 2013; Noske 1989), and their masculinity. Due to a limited social network, these men fail to incorporate changes in habitus, which imply different notions of what it means to be a man in in a modernized society like Norway, where attitudes towards women and nonhuman animals, as reflected in the growing animal rights and environmental movements, have been changing.

Collecting "wildlife", engaging in reptile-trafficking and keeping and hunting may also reflect a sense of social exclusion and marginalisation from other aspects of society. Such men may thereby increase their social standing among peers who share similar feelings, which again will strengthen such (antiquated) hegemonic ideals of masculinity within these subcultures, and create an even greater divide between the centralised values of a femocratic society which purports to be concerned with environmental issues (Sollund et al. 2019; Sollund and Runhovde 2020).

The concept of hegemonic masculinity has helped in theorizing the relationship among masculinities and a variety of crimes (Newburn and Stanko 2013) and has also been employed in studies of specific crimes committed by boys and men, such as rape in Switzerland, murder in Australia, football hooliganism and white-collar crime in England, and violent assault in the United States (Connell and Messerschmidt 2005). As this article has shown, gender theory and ecofeminist perspectives are also valuable tools for discussing other crimes of urgent importance—those involving free born animals who, as victims of human action, suffer harm and face extinction in large numbers. More research needs to be undertaken, however, to understand further whether the majority of "wildlife' crimes are committed by men in other locations, whether these are connected to ideals of hegemonic masculinity, and how they are interpreted in those specific social contexts.

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Article

Animals as Something More Than Mere Property: Interweaving Green Criminology and Law

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Abstract: Our article argues that non-human animals deserve to be treated as something more than property to be abused, exploited, or expended. Such an examination lies at the heart of green criminology and law—an intersection of which we consider more thoroughly. Drawing upon our respective and collective works, we endeavor to engage in a discussion that highlights the significance of green criminology for law and suggests how law can provide opportunities to further green criminological inquiry. How the law is acutely relevant for constituting the animal goes hand in glove with how humanness and animality are embedded deeply in the construction of law and society. We contend that, when paired together, green criminology and law have the potential to reconstitute the animal as something more than mere property within law, shed light on the anthropocentric logics at play within the criminal justice system, and promote positive changes to animal cruelty legislation. Scholarship could benefit greatly from moving into new lines of inquiry that emphasize "more-than-human legalities". Such inquiry has the power to promote the advocacy-oriented scholarship of animal rights and species justice.

Keywords: bestiality; companion animals; green criminology; harm; law; police animals

1. Introduction

Billions of animals[1] continue to be oppressed, exploited and devalued in parts of Western society, and to add to this oppression, "animals have and continue to be perceived as living property in our legal system[s], which [are] conceived by and for human beings" (Verbora 2015, pp. 62–63). While legal protections afforded to animals have improved, what role does green criminology play in this discussion? Can green criminological insight move the legal dial towards substantial progress for species justice? Conversely, can law contribute new perspectives into green criminological scholarship? Is it possible for the pair to interdigitate and thereby advance an interdisciplinary discussion?

Our article intends to answer these questions in the affirmative, and endeavors to engage in a discussion which highlights the significance of green criminology for law[2] and the ways in which law can provide opportunities to further green criminological inquiry. Building on considerable green criminological and legal scholarship, we believe that such an examination of where these disciplines intersect will showcase the significance each has for the other. When paired together, green criminology

[1] Sollund (2015b), drawing upon Beirne (2011), takes issue with the term "animals" specifically as the term, per Sollund (2015b, p. 163) "conceals the fact that humans are also animals, and that what is included in the term (by humans) is a large diversity of individuals of thousands of species, rather than one which are thereby contrasted with humans." Despite its problematic nature and a lack of good alternatives, while we will refer to animals in this article, we are referring to non-human animals.
[2] While beyond the scope of our paper, we recognize that, depending on the system of law, the distinct legal systems active in various international contexts might affect or complicate the analysis of animal welfare laws.

and law can work in tandem to push the bounds of academic interest concerning: (1) injustices towards species other than humans; and (2) activities in society which are harmful yet legal. While the law is acutely relevant for defining the animal, how "humanness" and "animality" are embedded deeply in the construction of law and society is a consideration green criminology brings to the fore (e.g., Gacek 2017). With green criminology, law's anthropocentric orientation becomes clear—a perspective that can be cruel and coercive.

Yet, law, especially in common law systems, is also iterative and reiterative (Jochelson and Gacek 2018); it is inherently responsive to breakdowns in social cohesion and, ultimately, will bend or break to attend to governing cultures. Sometimes this occurs through law reform movements (for example, the anti-abortion movements in Canada and the United States (US)), and other times through progressive judicial reasoning (for example, Canada's anti-hate speech laws emerged despite tremendous pressure on the judicial branch by far right lobbies[3]. Yet, at other times, change can occur when an unattended issue has undergone tremendous social metamorphosis, such that rights based instruments (e.g., constitutions, rights codes), pressure legal actors to push for attendant change (as was the case when Canada's prohibition on prostitution was declared unconstitutional in Canada in *(AG) v Bedford* 2013)[4]. These examples also reveal law's enduring connection to "the social." Whether laws alter, bend, break or inure, there is reflection and refraction of "the social" in its compositions, and it is the tethering of "the social" and law that provides potentialities for progressive (and at times regressive) change.

These tethering points provide ample opportunity for animal welfare and cruelty legislation, and perhaps more progressive instruments of animal entitlements, to present opportunities for green criminological perspectives to inform the reconstitution and reform of these, at times, antediluvian strictures of law. As Jochelson notes (Jochelson 2014, p. 250):

> The relationship of law and the social is complex. Society informs law and law informs society. Neither do so in linear ways. Yet these interactions reveal that law is inherently tied to the social. This ligature makes law inherently transitory and contingent even as it binds the citizen. This dynamism, is described by Golder and Fitzpatrick as law's "alterity;" law has an ability to be other than what it was (i.e., to change), while still retaining its capacity of coercion and manipulation. (Golder and Fitzpatrick 2009)

With the pliability of law, green criminology gains a bountiful array of possibilities within the legal case itself to further interrogate the environmental and animal-related harms permeating society at large. Indeed, in past studies, we have noted that judicial prose, especially in multi-authored legal decisions, can provide alternative constructions of the animal (Gacek and Jochelson 2017a, pp. 237, 240):

> The judicial decision in particular is intriguing legal media because the judiciary, as arbiters of legal issues before a court, interpret law. Interpretation, though, sometimes leads to reconstitution of law, and what was once innocent behaviour can be reconstituted as, for example, criminal through the adjudicative exercise (and vice versa). Certainly, the judicial decision is capable of shifting legal precedents to align with modern contexts of the law, but it is also capable of toeing a conservative statutory interpretation upholding the original Parliamentary intent that animated a statute when it was drafted ... However, in effect, the judiciary also has the ability to (critically) shift legal discourse to (re)position power relations and social inequalities between humans and non-human beings.

Animal welfare is a rising topic of public interest in many societies, particularly in the West; as Nurse (2016, p. 174) indicates, "Governments have increasingly sought to adopt minimum

[3] R. v. Keegstra. 1990. 3 SCR 697.
[4] (AG) v Bedford 2013 SCC 72, [2013] 3 SCR 110).

animal welfare standards by enshrining these in legislation." Legal systems sometimes struggle with conceptions of violence and cruelty towards animals; however, they often view animal protection solely as an environmental or welfare issue (Nurse 2013) and do not recognize how the law, in general, and criminal law, in particular, should be more reflective of practices by humans and the animals they own (Gacek and Jochelson 2017a, 2017b; Jochelson and Gacek 2018). The fact that animals are generally regarded as property reflects the anthropocentric nature of law; as Nurse (2016, p. 175) puts it, "animals are generally protected only to the extent that their welfare coincides with human interests."

Following Sollund (2015a, p. 8) and Brisman (2017, p. 313), we see little purchase in "'[policing]' the borders of the field" in order to delineate what research areas should be included or excluded in this discussion, nor is there benefit in determining what research topics should be permitted and what should not. We endorse a more capacious conception which sees value in both green criminology and law as disciplines which may, at times, overlap and sync harmoniously. Such overlaps have potentially fruitful consequences, not only in taking a modest step forward in interdisciplinarity, but in the development of workable solutions and outcomes produced through a green criminological and legal intersection.

2. The Significance of Green Criminology for Law

The emergence and development of a green criminological perspective within the last thirty years reflects how little attention criminology has paid previously to environmental and animal-related issues. While the umbrella concept of "green criminology" does not necessitate specific adherence to a set of theories or methods, green criminology provides an apt and warranted discussion of injustice within and throughout our anthropocentric social worlds (Gacek 2017; Hall 2014; Ruggiero and South 2010). White argues that "there is no green criminological *theory* as such" (2013: 22 (emphasis in original)). Perhaps there is no need for one; those who work within green criminology define it in ways that best suit their own interpretations of how green criminology should be applied both in theory and praxis. Indeed, South (2014, p. 8) contends that while there is currently no universal consensus about terminology or applicability within the criminological field, criminologists who critique the environmental and animal-related harms existing in society most frequently define "green criminology" as the study of harm, crime and injustice "related to the environment and to species other than humans."

Yet, the significance of a legalistic approach to green criminology cannot go unnoticed because the law and its analysis has been a central component of green criminological research (see, e.g., Beirne 2009; Benton 1998; Goyes and Sollund 2016; Sollund 2013, 2015a, 2015b, 2017a, 2017b; and White 2013). In particular, one can ascribe the connection between the law and green criminology to a greater focus of green cultural criminology (Brisman et al. 2014; see also McClanahan 2014; Brisman and South 2013, 2014) because legal forces are cultural forces and a legal analysis functions like a cultural one to reveal important tendencies in the construction of animality and justice. Therefore, green cultural criminology highlights the significance of cultural conditions and forces that shape how we perceive and think about environmental harm and harm towards animals. As we have also noted above, law reflects, refracts, absorbs, and feeds into and back from the social world. Law is susceptible to societal shifts and, thus, cultural shifts, and the law functions in agonistic, parasitic, and symbiotic ways with the social order (and vice versa). In other words, how we think about animals has a connection with prospective legal change because culture and law are interwoven, and law is both iterative and reiterative.

Green criminology's blossoming as a key area of debate, moreover, was supplemented by legal scholarship turning towards environmental harms and the impact of such harms on ecosystems and neighboring communities (Hall 2014). In particular, green criminology has considered the rights of victims and the options for redress under the law (e.g., Hall 2011, 2013, 2014, 2015, 2016; Jarrell and Ozym 2012). Indeed, Hall's (2014, p. 97) insight has been significant in not only suggesting how law and legal analysis fit within green criminological inquiry, but in attempting to delineate why and how a legal perspective "is not only a desirable aspect of green criminology but a vital one" for continued

(and further) interdisciplinarity. Hall (2014, p. 103) draws on environmental risk assessments and regulations in developed nations to indicate that "increasingly the general trend in most jurisdictions is for public authorities to view environmentally destructive activities as an exercise in the management of risk." In doing so, Hall engages in a wider green criminological discussion which encompasses both legalistic and non-legal responses in the study and scrutiny of risk management and regulation. As Hall (2014, p. 106) contends, "many of the issues surrounding environmental risk and regulation are fundamentally *legalistic* questions even when 'official' ... legal censure is absent" (emphasis in original). We concur with Hall that green criminology must incorporate legal analysis as a significant feature of its overall project "if green criminology is to succeed in providing workable solutions to the vast array of problems within the 'environmental' sphere" (Hall 2014, p. 106).

We recognize that there is much complexity in addressing environmental degradation through law, especially criminal law, which may call into question why a further examination of crime, criminals, and criminality within the environmental sphere is warranted. As White (2009, p. 483) puts forth, environmental crime "is studied for a reason; namely, we need to understand the genesis and dynamics of such crime so that we can adequately respond to it." We echo White's sentiment that more work "needs to be done to understand the nature and scope of environmental harm" (2009, p. 483), and we believe that our focus on harms to animals which are (still) legal provides not only necessary attention to a contentious aspect of law but supplements a greater consideration for "green" issues at large. Concern for animals and the ecosystems that comprise their habitats are inherently linked to environmental concerns. Further law reform, whether packaged as "green reform," animal welfare legislation, or even as something more radical, such as a "green constitution,"—the latter of which grants rights to nature—has the potential to propagate societal understandings of human–animal relations and galvanize the discussion about appropriate and just treatment of animals in Western, liberal democracies. Informed by green criminological insight, law could recognize the socio-political and anthropocentric machinations of the criminal justice system and reconsider, for example, what safeguards must be implemented to ensure animals conscripted for police work are secured from intrusive or harmful practices (Gacek 2017), or how morality and animal sentience are, or should be, implicated in animal welfare and anti-cruelty legislation (Gacek and Jochelson 2017a, 2017b; Jochelson and Gacek 2018).

Green criminology's attention to harms against and injustices towards animals has the potential to recognize the inherent sociality of the legal case. Such recognition can benefit the judiciary not only in reading and adjudicating the legal case before them, but in reconsidering legal definitions, discourses and harms in the context of shifting socio-political landscapes. As we demonstrate below, our present relationships with animals are a social construction, not a historical or natural constant (Sorenson 2010; Gacek 2017; Van Uhm 2018). Re-examining and re-evaluating the harms caused to animals is significant for exposing anthropocentric logics at play in the criminal justice system.

Case Study: Police Animals and Species Justice

As Brisman (2014a, p. 25) contends, more research needs to be undertaken "to understand the ways in which environmental crime and harm are *constructed by* and *represented in* the media and the ways those constructions and representations affect how we ascribe meaning to the environment, to nature, and to harms and crimes thereto" (emphasis in original). Examples have included Brisman and South's (2013, 2014) examination of how the media portrays real or imagined environmental harms and disasters, and the mediated and political dynamics surrounding these presentations in the news. Similarly, Kohm and Greenhill (2013) have explored "popular" issues within the media, drawing on media depictions of environmental harm, issues of place and space, and oppression relations between humans and animals to characterize a greater concern for the interconnections between the nature of harm and social and physical environments in film and television. While we contend that cultural representations and shifts are interwoven with law and legal change—and thus that the study of

culture has repercussions for the study of law—we note that much of the aforementioned green cultural criminology leaves it to the reader to consider the implications for law.

Just as media and cultural constructions and representations of environmental harm and crime are significant and worthy of study, so, too, are the legal constructions and representations that are caught up and bound within understandings of harm and animality. As indicated above, by drawing together green criminology's consideration of both culture and law, we begin to recognize that as a cultural product itself, law also functions to construct animality and the harms associated by and through such a construction. For example, Wall (2014, 2016) examines the symbolism intertwined in the use of the police dog as a technology of suppression against Black people. As Wall (2016, p. 861) suggests, for many minority communities—both in periods of civil unrest and protest and in daily life—"the animalization of police power prove[s] symptomatic of a much-longer history of [W]hite organized violence against the [B]lack community." Wall contends that the police dog exists as a tool of racial and legal terror enacted through police power. His research reveals the ways in which police animals are used to sustain the liberal, capitalist order, suggesting that the police dog is "not only a metaphor for sovereign monstrosity" (Wall 2014, p. 4) but a "key symbolic figure of racist state violence that place[s] historical subjugation in conversation with the present" (Wall 2016, p. 861). Especially in the era of social media, such images of police dogs attacking Black people contribute to the construction of the dog as both "flesh and symbol" of the police's ability to "take a bite out of crime" and the law's ability to "make and unmake personhood in fundamentally racialized ways" (Wall 2016, p. 862). Taken together, such constructions of police animality "conjur[e] up the apparitions of historical violence to hauntingly appear in the space of the present" (Wall 2016, p. 862) and perpetuate harms towards marginalized communities.

In a similar vein, understanding the representations and meanings of crime and harm bound within police animality has been problematized from a green criminological perspective (Gacek 2017). For example, Gacek questions the anthropocentric logics at play in police operations involving police animals and highlights the need to focus on "species justice" (see also Beirne 2011; White 2011; Wyatt 2011). Drawing on green criminology and critical security studies, Gacek argues that non-human animals should bear rights like their human counterparts, and that from a species justice perspective, police eagles (and other police animals) have the inherent right not to suffer abuse from humans through this type of police work. Through a qualitative media/thematic analysis, Gacek examined twenty media reports about the Dutch "Flying Squad"—a convocation of eagles purchased by Dutch national police. Gacek's study was inspired by Braverman's (2013, 2015) work concerning the "police animal" categorizations, in which Braverman charts an insightful and complex understanding of the ongoing relationship between nature and technology existing within the form of the police dog. In a similar vein to Braverman, Gacek (2017) argues that rather than placing the eagle in "*either* the 'nature' box *or* that of 'technology'" eagles and dogs used for police work exist in both; the "bio" component refers to the animal's "aliveness," which does nothing to negate its technological use to for humans (Braverman 2013, p. 7 (emphasis in original)). Essentially, the police animal constitutes a form of "bio-technology" for the state that is coproduced between the animal and the handler. In effect, police animals are "humanly crafted means to [serve] humanly formed ends and desires" (Braverman 2013, p. 7) which allows humans to subjugate their police animal counterparts to further securitize human society, often at the expense of the animals involved (Gacek 2017, p. 2).

Gacek's findings suggest that within the media reports, the representation of the police eagles as the "most effective countermeasure" to combat drones in Dutch skies perpetuates an anthropocentric logic which can be accepted easily by governments and police agencies to justify their efforts to securitize the skies. Such logic is exacerbated within the hyper-exaggeration of the police eagles' "animal instincts"—a view that constructs the eagle as a set of desirable skills and characteristics to be used by humans rather than a being with potential sentience (Gacek 2017, p. 11). In Braverman's (2013, p. 27) examination of sniffer and detection police dogs, the heightened olfactory sense of the dog was constructed by police agencies as an "advancing technology" that could be used to the advantage of

police officers engaging in search and seizure operations. Similarly, Dutch police and "Guard From Above," a security firm specializing in eagle training, constructed the "increased visual acuity" of the eagles as advantageous to police operations in Dutch skies (Gacek 2017, p. 8). Dutch police and "Guard From Above" coupled this notion (of the eagle's "increased visual acuity") with the eagle's "natural suspicion of drones" without providing any substantiated empirical evidence to support such a claim (Gacek 2017, p. 8). Finally, the minimalization of news coverage concerning the rights of the eagles, as well as the lack of consideration for the eagles' welfare while in captivity, demonstrates the extent of neglect these organizations have in safeguarding the police eagles.

Gacek examines Dutch animal cruelty laws and questions whether such laws are appropriate for protecting the eagles from unreasonable harm, injury, and stress. In the Netherlands, *the Animals Act* (Government of the Netherlands 2011) provides for the protection of animals in captivity, specifically in Article 2.1 ("Animal Cruelty") and Article 2.2 ("Keeping Animals"). This legislation prohibits the infliction of pain or injury on an animal, or the damaging of an animal's health and welfare without reasonable purpose or more than what is reasonable for such purpose. According to *the Animals Act*, any violation of these animal cruelty provisions is a criminalizable offense punishable by fines or imprisonment of up to six months as set forth in Article 8.12 ("Penalties") (Gacek 2017). The legislation, however, offers another indication of uncertainty for police animals—much like the media reports. Gacek found that while the protection outlined in *the Animals Act* applies to domesticated animals, it remains unclear whether such protections are extended to wild or stray animals. Moreover, Gacek underscored how the legislation does not find cruelty problematic when considering police animals that are not "possessed" in the same manner as agriculture or companion animals.

In sum, species justice is—or should be—a contemporary issue of law and justice, and a species justice approach can assist criminology and law in understanding how each discipline has understood and constituted animals (Beirne 2007; Nurse 2011, 2016; Spencer and Fitzgerald 2015). Legal constructions and representations of police animality are bound within cultural conditions and forces that inure with society; yet, as we can see, sometimes the anthropocentric logics embedded within these constructions of police animality discount, evade, or suppress the harms such animals face in police work. Whether the harms to animals entail "one-on-one harm, institutionalized harm" or harm "arising from human actions that affect climates and environments on a global scale" (White 2011, p. 23), the inclusion of eagles into the "police animal" category perpetuates anthropocentric logics within the law and generates a new bio-technological mode of policing which reifies a worrisome norm for criminal justice systems in the West: perceived human security (including the mere fear of human harm) is worth the subordination of non-human animals. By examining law more closely, there may be more fruitful endeavors available for green criminology to achieve "just" reforms in animal welfare and protection.

3. The Significance of Law to Green Criminology

As described above, law is significant to the construction and placement of animals in society and through judicial decisions, we see how potential discursive shifts in such issues may be reflective or refractive of societal perceptions once the legal text is generated through case adjudication. As Cotterell (2006, p. 25) suggests, law "is an aspect or field of social experience, not some mysterious work working upon it." While law can reflect how citizens view justice, it can also be a coercive regulator of behavior; it can be iterative and reiterative. Social interpretations of law—cognizant of social changes and modern contexts—can feed back into the formal legal system, subsequently leading to delegated social governance in communities, as well as in civil society more broadly (Jochelson et al. 2017b, p. 107). Law, then, is not a truth per se, but a "mobile and contingent" feature of the social ties that bind (Golder and Fitzpatrick 2009, p. 125). As we have argued elsewhere:

> Simply stated, the judiciary has the power to alter legal conceptions through case adjudication. However, in effect, the judiciary also has the ability to (critically) shift legal discourse to (re)position power relations and social inequalities between humans and non-human beings.

> In effect, we argue that "legal language is a socially constructed institution in its own right" (Stygall 1994, p. 4). This can be justified through the underpinned logics and judicial articulations within legal text. (Gacek and Jochelson 2017a, p. 240)

What we find troubling, however, is that while human beings, in Western democracies, typically possess legal rights, rights to ensure that our fundamental interests (such as our interest in life, liberty, and security of the person) cannot be overridden—except in limited circumstances and on a principled basis (depending on the relevant constitutional instrument at play)—the same cannot be said for animals (Gacek and Jochelson 2017b, pp. 336–37). Animals do not possess anything approaching the guaranteed rights and protections of persons outlined in constitutional documents such as in Canada or the United States—a view that concerns many scholars who advocate for shifts in such legislation (Jochelson and Gacek 2018; Sankoff 2012; Verbora 2015; see also Brisman 2014b for a review and consideration of interdigitating environmental rights with human rights).

Propelled by science and ethics, public interest in animal issues is mounting, and in legal scholarship, there has been, within the past decade, an increasing amount of debate for animal welfare reforms in both Canada and the United States. The pitfalls of animal welfare legislation in the West have become more prominent than ever and there is rising pressure for law reform to ensure that animal welfare be reflective of contemporary insights and values. Such reform has been advocated by animal rights activists and scholars (Bisgould 2014; Bisgould and Sankoff 2015; Sorenson 2010; Sykes 2015), indicating that accumulated scientific knowledge has demonstrated that animals are more than property: they are "beings with emotions, consciousness, and sentience; yet legal regulations often administer animals as mechanistic property, to be utilized by human beings" (Gacek and Jochelson 2017b, p. 336; see also Deckha 2012; Sankoff et al. 2015). In fact, animals in Canada are arguably less safe than in the Ukraine or in the Philippines, both of which have stronger legislation in place to protect them (Verbora 2015). Regardless of which side of the border one calls home, it is clear that animals in Canada and the United States need better legal protection from deliberate acts of cruelty or negligence. It is also clear that broad social movements have not coalesced successfully around the contention that animals in North America ought to be rights-bearing subjects. Certainly, some constitutional protections for animals are observable internationally; for example, in Switzerland, the law overtly protects the dignity of animals and is constitutionalized. This protection, however, situates animal proto-rights as inherently subordinate to human rights: the protections serve only to counterbalance human interests and do not extend to immanent standalone guarantees for animals (Bolliger 2016; Jochelson and Gacek 2018).

Interestingly, legal cases can be significant sources of information for green criminology because the cases contain analysis, argument, context, history, precedent, and reasoning. Indeed, judicial opinions and orders, especially at the highest levels of the legal system, are not pulled from the ether; they draw upon previous court decisions and social changes that preceded the case at hand. According to Berlant (2007, p. 663), "the case represents a problem-event that has animated some kind of judgement," which may speak to greater societal concerns at large. Examining specific cases also enables the researcher to show how disparate expert knowledges can fold space and time to produce an "event" in the present (Berlant 2007; see also Ettlinger 2011). Doing this allows for analysis to include both the social processes beginning outside of the law which have become "juridified,"[5] as well as accounting for the ways that law structures decisions that govern social outcomes (Hunt 1997; Jochelson et al. 2017b). As Jochelson et al. (2014, p. 19) point out, while it is important for courts at the highest levels to understand past law to articulate, constitute, and/or amend legal tests, "[i]t is just as

[5] In other words, and as we have suggested elsewhere (Gacek and Jochelson 2020, p. 12), studying the logics underpinning legal texts ripened with "judiciomentalities" (i.e., legal expressions that imbed social constructions of history, politics, precedential strictures, constitutionalism, and personal/political judgement) allows us to consider legal texts themselves as representative of a type of technology that delivers and rationalizes the governmental effects of law separate and apart from the law that itself created.

important to place these constructions in a socio-political place by analyzing the social conditions that inured in the relevant era. By necessity this involves a contextual and careful line-by-line reading of the decision to be examined." Therefore, the case as a pedagogical tool (Berlant 2007; Brisman 2010) can be instrumental in cultivating critical discourses which counter anthropocentrism in the law and the criminal justice system at large.

Like other decisions that have extended rights to humans where it was previously thought the common law stunted progress and change (Jochelson and Kramar 2005), perhaps it is time to reconsider the legal position of animals. We follow Nurse's (2016, p. 185) assertion that "the public benefits of animal welfare must be weighed in the context of prevailing social conditions" and, as we have indicated in previous work (Gacek and Jochelson 2017a, 2017b; Jochelson and Gacek 2018), social considerations for animal welfare are shifting—albeit incrementally—in this spirit. Perhaps it is time for the courts to interpret laws that implicate animals in light of potential sentience and constitute the animal as a being that is worthy of, at minimum, modest protections and immanent worth—a discussion to which we now turn.

Case Study: Constituting the Canine in Case Law

Two recent cases, *R. v. D.L.W.* (2016), before the Supreme Court of Canada (SCC), and *State v. Newcomb*, before the Oregon Supreme Court, considered what it means to be an animal in situations of bestiality and animal welfare investigations specifically. We analyzed the trial, appellate and SCC decisions of *D.L.W.* and undertook a similar analysis in *Newcomb*, mining the legal text for judicial reasoning and rhetoric pertaining to the interpretation of the legal terms "bestiality," in the former, and "property," in the latter. Our research and analysis sought to examine the logic of the courts in the *D.L.W.* and *Newcomb* decisions, and by analyzing each case in turn, understand the construction of the animal in these cases.

In 2016, the SCC heard an appeal from a decision from the British Columbia Court of Appeal, which provided a narrow interpretation of the offense of "bestiality" (*R. v. D.L.W.* 2016, p. 403)[6]. In *D.L.W.*, the appellant was charged with a total of fourteen sexual offenses involving his two stepchildren. The appellant was then found guilty on thirteen counts by the trial judge in the Superior Court of British Columbia, including one count of bestiality. The bestiality charge emerged from an incident, which was non-penetrative in nature, caused by the accused and that involved the family dog and a stepdaughter.

Prior to the recent amendments of December 2019, which broadened the definition of bestiality to include sexual touching of any sort with an animal, the Criminal Code{ XE "Criminal Code: section 160" } of Canada prohibited "bestiality" in Section 160 (Criminal Code *R.S.C.* 1985, c. C-46). The word "bestiality" was judicially interpreted in an extremely narrow manner as criminalizing penetrative offences involving genitals. The Code continues to delineate three separate offences. Section 160(1) deals with the basic offence of bestiality by the accused:

(1) Every person who commits bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Section 160(2) criminalized situations where the accused has compelled another person to commit bestiality:

(2) Every person who compels another to commit bestiality is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.

Finally, section 160(3) criminalized situations where an accused either commits bestiality in the presence of someone under the age of 16, or who causes a person under the age of 16 to commit

[6] *R. v. D.L.W.* 2016. SCC 22.

bestiality themselves. It bears mention that the punishment for this offense is greater than that of the other two; this offence has a mandatory minimum sentence, as well as a maximum sentence which is four years greater than the maximum carried by the other two offenses:

(3) Despite subsection (1), every person who commits bestiality in the presence of a person under the age of 16 years, or who incites a person under the age of 16 years to commit bestiality,

a. is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
b. is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

Other sections of the Criminal Code of Canada contemplate offenses against animals, but it is less clear whether bestiality can amount to the degree of harm required to find an offense under these sections. For example:

445.1 (1) Everyone commits an offence who

a. willfully causes or, being the owner, willfully permits to be caused unnecessary pain, suffering, or injury to an animal{ XE "animal" } or a bird;

The punishment under this section is set out in section 445.1(2):

(2) Everyone who commits an offence under subsection (1) is guilty of

a. an indictable offence and liable to imprisonment for a term of not more than five years; or
b. an offence punishable on summary conviction and liable to a fine not exceeding ten thousand dollars or to imprisonment for a term of not more than eighteen months or to both.

The difficulty with applying Section 445 to situations of bestiality is that these provisions require proof of harm to the animal{ XE "animal" }, which could be very difficult to establish without the presence of an obvious injury or expert examination of the animal close in time to the alleged act. Arguably, this means that Section 445 could capture an even narrower range of sexual conduct than bestiality under Section 160.

The term, "bestiality," tends to be used to refer to sexual relations between humans and animals (see, e.g., Beirne 1997). Beirne (1997, p. 320) suggests that usually, "in law, [bestiality] refers to sexual intercourse when a human penis or digit enters the vagina, anus or cloaca of the animal. However, it often also entails any form of oral-genital contact, including those between women and animals, and even, in psychiatry, fantasies about sex with animals."[7] Yet, prior to the recent Parliamentary amendments, the SCC, with a majority of six-to-one, determined that "carnal knowledge" (i.e., penetration) was an integral factor in the definition of bestiality (*R. v. D.L.W.* 2016, p. 402). In its decision, the majority noted that the scope of both bestiality and criminal liability at large must be determined by the Canadian Parliament (*R. v. D.L.W.* 2016, p. 3). In the majority's opinion, judges "are not to change the elements of crimes in ways that seem to them to better suit the circumstances of a particular case" (*R. v. D.L.W.* 2016, p. 3). Supreme Court Justice Thomas Albert Cromwell, in writing for the SCC majority, noted that "the old case law is not abundant, but what there is supports the view that penetration was an essential element of the offence" (*R. v. D.L.W.* 2016, p. 33) and "whatever [bestiality] was called [throughout history], the offence required penetration" (*R. v. D.L.W.* 2016, p. 24).

According to the SCC majority, the early legal history of bestiality in Canada was subsumed under the offenses of "sodomy" or "buggery" and that penetration was certainly one of the offense's essential elements (*R. v. D.L.W.* 2016, p. 50). In addition, the SCC majority noted that despite comprehensive

[7] For a detailed consideration of the philosophical issues raised in the language and spirit of bestiality laws, see Beirne (1997).

revisions and amendments of sexual offenses throughout Canadian legislative history, the Parliament of Canada (the "Parliament") never sought to change the common law definition of bestiality (*R. v. D.L.W.* 2016, p. 52). In the eyes of the SCC majority, this demonstrated a clear indication that Parliament's intention to retain the term was "well-established" (*R. v. D.L.W.* 2016, p. 19) and the definition of "bestiality," itself, had a "well-understood legal meaning" (*R. v. D.L.W.* 2016, p. 18).

Supreme Court Justice Rosalie Abella dissented:

> [D.L.W.] is about statutory interpretation, a fertile field where deductions are routinely harvested from words and intentions planted by legislatures. But when, as in this case, the roots are old, deep and gnarled, it is much harder to know what was planted.
>
> We are dealing here with an offence that is centuries old. I have a great difficulty accepting that in its modernizing amendments to the Criminal Code, Parliament forgot to bring the offence out of the Middle Ages. There is no doubt that a good case can be made, as the majority has carefully done, that retaining penetration as an element of bestiality was in fact Parliament's intention.
>
> But I think a good case can also be made that...Parliament intended, or at the very least assumed, that penetration was irrelevant. This, in my respectful view, is a deduction easily justified by the language, history, and evolving social landscape of the bestiality provision. (*R. v. D.L.W.* 2016, pp. 125–27 (emphasis added))

In sum, Justice Abella argued that imposing the penetrative component of "buggery" on legal definitions of bestiality would leave "as perfectly legal" all sexually exploitative acts with animals that do not involve carnal knowledge (*R. v. D.L.W.* 2016, p. 142).

The case of *D.L.W.* is illustrative of a dissent that considers the harms to animals by humans, the integrity of the animal violated, and the cruelty to animals who are vulnerable beings. The majority may have seen these concerns as ancillary, given that the accused was sentenced and punished for the attendant crimes of sexual assault of human youths that occurred together with the bestiality. This anthropocentrism, though, allowed for the troubling conclusion that the sexual touching of an animal outside of coitus was not bestiality—a perspective that remained the prevailing state of the law in Canada until the December 2019 amendments.

Significantly, Justice Abella advanced an argument that reflects growing concern for human–animal relationships (*R. v. D.L.W.* 2016, pp. 140–42). Rather than expand the scope of criminal responsibility (and such power rests not with the judiciary but with Parliament), Justice Abella, seeing an inherent exploitation of animals in bestial acts (based on modern understandings of consent and dignity of all beings) sought to acknowledge the societal concern for animal welfare. Touching animals for sexual gratification is an illegitimate activity in society, and while the current bestiality provision within the Criminal Code of Canada does not provide for the redress for animals who have suffered harm, it is possible that the provision can be changed. Reconsidering bestiality through a green criminological lens allows the law to recognize that bestiality uses vulnerable sentient beings for exploitive purposes and creates needless risks of harm by virtue of the wide range of sexual activities involved and associated with this offense. Proving bestiality occurred, however, is more difficult than simply demonstrating physiological harm to animals; the very nature of bestiality suggests that the act between the human and subjected animal will almost inevitably and typically occur in private (Gacek and Jochelson 2017b). This indicates that only in rare instances will the examination of the animal near the time of offending be possible, which makes it more difficult for police and prosecutors to prove that offenses have, indeed, been committed.[8] Moreover, Beirne (1997, p. 324) contends that while researchers

[8] For a further discussion of the legal-technical nature of environmental crimes and the issues police and prosecutors face, see du Rées (2001).

> have examined the physiological consequences of bestiality for humans … they pay no such attention to the internal bleeding, ruptured anal passages, the bruised vaginas and the battered cloaca of animals, let alone to animals' physiological and emotional trauma. Such neglect of animal suffering mirrors the broader problem that, even when commentators admit the discursive relevance of animal abuse to the understanding of human societies, they do not perceive it, either theoretically or practically, as an object of study in its own right.

The majority in *D.L.W.* considered legislative intent, seeing the crime of "bestiality" as limited to carnal knowledge (*R. v. D.L.W.* 2016, p. 122). Irrelevant to their calculus were advances in the understanding of consent and emerging social mores about animal sentience. As a result, the majority ignored understandings of the animal as a being, rather than as chattel, and focused only on the moral damage to persons or society at large as a result of immoral sexual behaviors. In effect, for the majority, the animal was merely the circumstance where, or site in which, the criminal act took place. The animal was a mere part of the actus reus of the crime and no harm occurred to a victim.

To be sure, judicial decisions are not immune to shifts in societal perceptions. In *Newcomb*, the Oregon Supreme Court (the "Court") reviewed a case in which the defendant accused the State of Oregon of violating her constitutional rights by taking a blood sample of her dog, Juno, without a warrant to do so. Ultimately, the Court held that the defendant did not have a protected privacy interest in the dog's blood and, therefore, the state did not violate the defendant's constitutional rights. Article I, Section 9, of the Oregon Constitution provides, in part: "No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure … " (This language parallels that of the Fourth Amendment to the United States Constitution.) The provision applies only when government officials engage in conduct that amounts to a search or a seizure. A seizure would only have occurred if, through State action, there was a significant interference with the owner's ownership interests in the dog or its fluids. Newcomb argued that under Oregon Revised Statute (ORS) 609.020, which provides that "[d]ogs are … personal property," a dog is the same as any other item of property that can be owned or possessed lawfully.

The Court, however, disagreed, noting that an animal raised a different kind of search and seizure issue because the animal is "not an inanimate object or other insentient physical item of some kind" (*State v. Newcomb* 2016, p. 439)[9]. Indeed, the Court explained that an overarching theme reflected in the statutes governing animal mistreatment and neglect under Oregon law is the recognition that some animals are sentient beings capable of experiencing pain, stress, and fear, and what mattered specifically in regards to the case at hand was whether Oregon law prohibits humans from treating their animals in the same ways in which they can (legally) treat other forms of property (*State v. Newcomb* 2016, p. 441). The Court stated that there was probable cause by the officer to believe that Juno required medical attention; the officer could act not only to preserve the evidence of animal neglect but to render aid to a near emaciated canine (*State v. Newcomb* 2016, p. 442).

The Court concluded that Newcomb had no protected privacy interest in Juno's blood, and thus there was no violation of the law by the medical procedures performed by Oregon Humane Society veterinarian, Dr. Hedge, in examining the dog (*State v. Newcomb* 2016, p. 442). Specifically, the Court held that there was probable cause to believe that an animal's welfare was jeopardized by way of malnourishment, and that the drawing and testing of the dog's blood would assist in both diagnosing and treating the dog (*State v. Newcomb* 2016, p. 442).

The *Newcomb* Court reasoned that "Juno is not analogous to, and should not be analyzed as though he were, an opaque inanimate container in which inanimate property or effects were being stored or concealed" (*State v. Newcomb* 2016, p. 442). According to the Court, the "contents" extracted from Juno were, in fact, "more dog" and "the chemical composition of Juno's blood was a product of physiological processes that go on inside of Juno and not 'information' [Newcomb] placed in the

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[9] State v. Newcomb. 2016. 375 P.3d 434 (Or. 2016).

dog for safekeeping or to conceal from public view" (*State v. Newcomb* 2016, pp. 442–43). While the Court was mindful that a dog is considered personal property under Oregon law, which grants animal owners dominion and control over their animals, the Court contended that, simultaneously, Oregon law limits ownership and possessory rights in ways that cannot be equated with other inanimate property (*State v. Newcomb* 2016, p. 443). These "reflections of legal and social norms" ensure that live animals receive basic minimum care and veterinary treatment, and that an animal owner "simply has no cognizable right, in the name of her privacy, to countermand that obligation" to their animal (*State v. Newcomb* 2016, p. 443).

In sum, the *Newcomb* Court indicated that, when assessing the constitutionality of an animal owner's protected privacy interests, such interests of privacy and possession must be contextualized with the "evolving landscape" of social and behavioral norms; such a conceptualization allows for the possibility of acknowledgement of the sentient properties of some animals, and could potentially provide support for the reconfiguration of humans' relations with their non-human counterparts (*State v. Newcomb* 2016, p. 444). While the dog, Juno, was evidence that a crime took place, the Court held that the animal simultaneously occupies both the status of property and that of a quasi-rights bearing subject (*State v. Newcomb* 2016, p. 440). The animal is deserving of health and wellness, and this outweighs the privacy interest of humans (*State v. Newcomb* 2016, p. 441).

In addition, the Court was willing to interpret the Oregon Constitution in light of the evolving social and legislative landscape of animal welfarism (*State v. Newcomb* 2016, p. 444). The result is that the decision recognizes that some animals are sentient beings and that a duty of protection is required for those animals, which can compete with and, on some occasions, override a human's right to privacy (*State v. Newcomb* 2016, pp. 441–43). This is a powerful finding from a state Supreme Court, because the decision seems to build animal proto-rights into a balancing calculus which can mediate or limit a human's right to be free from unreasonable search and seizure at the hands of the state. The human need for a reasonable expectation of privacy may then cede or be qualified by the animal right to life which, in this case, included the right to be free from malnourishment. Reading the decision using these logics demonstrates a potential progressive and radical outcome and demonstrates the iterative and reiterative nature of law in response to the developments of the social world. Green criminology could benefit from fostering these social ligatures and finding ways to make persuasive voices of its philosophies and tenets, such as they are, heard in the legal case. Whether through law reform, intervention in important appellate cases, or more organization in general at a grassroots level, driving the social and directing law reform are twin strategies that complement each other, and which can reflect and refract legal change that calls for dramatic and progressive evolution in the direction of more recognition of animal rights.

Examining property and its attendant crimes and civil wrongs through a green criminological lens highlights that consumption, ownership and care and control are, for the average citizen of common law nations, post-feudal concepts. There is nothing innate or immanent in these conceptualizations of chattel. Nor should conceptions of property be fixed. The use of animals by humans for agriculture, food and, indeed, companionship, is in many respects ancient and accepted. Yet, we live in an era that acknowledges that a living being recognized as property under the law may be entitled to the absence of cruelty—hardly a revolutionary measure, we must admit. However, for now, we can point to *Newcomb* as reflective of the evolving social landscapes of animal wellbeing and the necessity of animal owners to take on a duty of protection towards their non-human counterparts.

In examining these two cases from two different jurisdictions, we see different perspectives on the animal in the socio-legal landscape. In *D.L.W.*, the liberty of the human was given paramount effect over the incursion of sexual abuse on the sentient animal. In *Newcomb*, the Oregon Supreme Court saw the right to privacy in sentient animals as ceding to the entitlement of the sentient animal to live and be safe in the context of animal welfare investigations. In effect, however, the approaches represent different sides of the same coin, as they both understand animals as property and though the implications of sentience inculcate *Newcomb*'s green criminological and species justice affinities

in a more pronounced fashion. While agriculture, manufacturing, farming, and cattle (together with energy, of course) are the lifeblood of these capitalist economies, the Court in *Newcomb* and the dissent in *D.L.W.* represent degrees of incremental resistance and change—and today's resistance in law can be tomorrow's landmark emancipatory decision. The iterative, reiterative, and malleable nature of law provides possibilities and hope for green criminological perspectives to inform the conversation and, thus, the legal status of nonhuman animals.

We view Oregon's recent jurisprudence as a significant step forward in reconsidering the animal alongside contemporary considerations of animal existence and possible sentience. Strict constructions or narrow interpretations of bestiality and the nature of property increase the potential for animals to suffer under the control of their handlers and owners, however. While we lament the absence of such a reconsideration in *D.L.W.*, we remain hopeful that the legal case and judicial decision can be essential sites for progressive changes in animal welfare and legal reform. Indeed, in late 2019, an amendment to the Act resulted in section 160(7) which now defines bestiality as "any contact, for a sexual purpose, with an animal"—an incremental shift, but one that is more protective of animals.

4. Conclusion: "More-Than-Human Legalities" Moving Forward

Our article argues that animals deserve to be treated as something more than property for humans to abuse or exploit. As Benton (1994) contends, those who wish to ascribe rights to animals, including the right to respectful treatment, will eventually be forced to challenge the very existence of animals as private property. Property is a word embodying a particular legal relationship and social construction we have chosen to enforce in society. Time and time again, any meaningful effort to achieve more progressive animal protection "quickly collides with [the animals'] entrenched status as things" (Bisgould 2014, p. 162). This does not necessarily have to be the case; as we have indicated, a meaningful study of green criminology and the law's intersection challenges the anthropocentrism of much law. Judicial decisions, which combine context, history, and precedent, provide a wealth of information for green criminology and interdisciplinary academic inquiry, more broadly. Such information has the potential to enrich civic engagement, discussion, and education, and should be welcomed; a critical reconsideration of the landscape of police work and case adjudication can bring to the forefront questions such as "the ways in which we live our socio-legal lives" and how this might impact our understanding of animals as property within human-animal relations (Jochelson et al. 2017b, p. 115).

To be clear, we are not suggesting here that the marriage between green criminology and law is perfect; much like any marriage, such a coupling will have its moments of coalescence and conflict, of triumphs and trials. We recognize there are times where the intersection of green criminology and law will work in harmony for some researchers and provide tensions for others. Indeed, black letter law analyses have their place, as do complex theoretical interrogations of criminal law. As Jochelson et al. (2017a, p. vi) contend, speaking across disciplines between law and cognate disciplines like criminology "is an ever-present challenge." Nevertheless, "[w]e must never forget that good criminal law practice is informed well by social sciences and humanities. [Likewise], the cognate disciplines would also do well to take doctrinal analysis seriously and to include rigorous legal analyses in their own interpretations" (Jochelson et al. 2017a, pp. vi–vii).

Therefore, we see significance in the green criminological and legal pairing, as this scholarship could benefit greatly from moving into new lines of inquiry that emphasize "more-than-human legalities" (Braverman 2015, p. 1). As evidenced from our respective and collective work, such inquiry has the power to promote the advocacy-oriented scholarship of species justice and animal rights. Interweaving green criminology and law is more than a mere academic exercise; the judicial decision can be a site for animal advocacy to happen. As noted above, law is iterative and reiterative; it is malleable. It is mutually constitutive and connected with the social, and there is power in this connection to assist green criminology in modestly resisting anthropocentrism. Bringing green criminology and law together has the power to shift the legal dial in the direction of justice for animals. Incremental drifts towards progressive conceptions of animal existence is possible, and it is through a green

criminological and legal intersection that we can begin to modestly resist anthropocentrism and inch closer to "more-than-property" legal recognition for animals.

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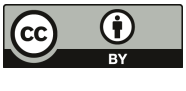

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Article

Procedural Environmental Injustice in 'Europe's Greenest City': A Case Study into the Felling of Sheffield's Street Trees

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Abstract: With around two million trees within its boundaries, the city of Sheffield, England, is known as the 'greenest city in Europe'. Of these, 36,000 are 'street trees', defined as those planted on pavements and other public rights of way. As of 2012, however, a private contractor was awarded a £2.2 billion contract by Sheffield City Council to upgrade the city's roads over a 25-year period. This required the felling of over 6000 street trees by the end of August 2017. By 2015, this had sparked such widespread public opposition that the felling programme missed its 2017 deadline. For protesters, the central point of contention was and continues to be the seemingly indiscriminate felling of healthy trees. This article examines the specific forms of harm precipitating local public involvement in such opposition. In doing so, it explains the substantive injustices associated with the felling of street trees before focusing on the underpinning forms of procedural environmental injustice that have allowed for their ongoing production. This contributes to wider green criminological literature by demonstrating how public participation in decision-making is crucial for the attainment of environmental justice.

Keywords: green criminology; environmental justice; procedural justice; victimisation; green crime; public participation

1. Introduction

Woodman, spare that tree!
Touch not a single bough!
In youth it sheltered me,
And I'll protect it now.
'T was my forefather's hand
That placed it near his cot,
There woodman let it stand,
Thy axe shall harm it not!

George Pope Morris, 1860
Poem extract pinned to street tree, Rustlings Road, November 2016

The above poem represents one of a myriad of approaches taken by citizen groups in Sheffield, England, to raise awareness of the tree felling programme being undertaken across the city. To this end, the groups have pursued television appearances, lobbied local and national governments, communicated across social media, collected petitions, taken part in direct and indirect action, and undertaken fundraising events attended by celebrities—a pattern of activity provoking local, national, and international media coverage. Organised according to the city's geographical areas, most are

collectively encompassed under the banner of Sheffield Tree Action Groups (STAG), forming a core of public opposition to Sheffield City Council's (SCC) plan to remove and replace many of the city's street trees. Drawing upon this case, I employ the concept of 'procedural environmental justice' in this article as a lens through which to understand the tensions and conflicts that have arisen, along with possible avenues for their future amelioration.

As a concept, 'procedural environmental justice' refers to fairness in processes of decision-making (see Schlosberg 2007). It is less sensitive to patterns of substantive victimisation, which tend to be signalled by the term 'distributional environmental justice', and is more concerned with widespread democratisation of deliberation procedures (Walker 2012). Despite much green criminological research concentrating on features that could be broadly categorised under the term 'procedural injustice' (Brisman 2013; Goyes and South 2017; Weinstock 2017), little existing work has sought to develop and apply this specific concept theoretically or empirically.

Only one green criminological study has applied the concept to the First Nations in and around the oil sands of Alberta, Canada (see Heydon 2018). Maintaining less of a focus on distributional injustices, the study focused on the marginalisation and misrecognition occurring during consultation on large-scale energy projects. While providing information on how the protective rights held by First Nations have been circumvented in the process of extracting oil from the third largest reserve in the world, the specificity of this case limits the extent to which 'procedural environmental justice' can be seen to apply elsewhere. Indeed, it contains groups that have constitutionally protected rights to participate in decisions that may affect them adversely, centres on a narrowly defined and rigidly structured regulatory process, and is embedded in a settler-colonial context that colours the multiple injustices observed. As such, to demonstrate the broad applicability of 'procedural environmental justice', as a specific concept encompassing justice-as-recognition and justice-as-participation, this article applies it to a case in which none of these conditions apply: the case of Sheffield's street trees.

2. Procedural Environmental Justice

Environmental justice is a multi-faceted concept, encompassing aspects of distribution, procedure, and recognition. Green criminological scholarship has tended to focus on the first of these, conceiving of environmental injustice as the unequal distribution of pollution across communities with varying racial, ethnic and class configurations (see Brisman 2008; Lynch et al. 2015; Stretesky and Hogan 1998; White 2007). Under this approach, concern centres on the sharing of environmental harms or risk, drawing attention to the substantive victimisation occurring in certain spaces or to certain groups. The limits of focusing solely on this dimension of justice have been outlined elsewhere (see Heydon 2018), but the key contention is that 'one cannot simply talk of one aspect of justice without it leading to another' (Schlosberg 2007, p. 73). This is not to say that use of a purely distributive definition is 'wrong'—only that the choice of definition has consequences for the forms of injustice visible to researchers and, by extension, the measures recommended be taken in response (see Phillips and Sexton 1999). As such, I draw here on the 'trivalent' conception of environmental justice developed by Schlosberg (2007), which incorporates the concepts of 'justice-as-recognition' and 'procedural justice' alongside that of distribution. Acknowledging that unequal exposure to environmental harm tends to result from unequal participation in decision-making processes, and that a lack of participation tends to signal a lack of recognition, the integration of this tripartite framework provides a more comprehensive conceptual toolkit from which to examine instances of injustice.

If inequitable distribution of harm is the first dimension of environmental justice, 'procedural justice' is the second. Concerned with the fairness of institutional decision-making, this dimension acts as the primary medium though which other forms of justice are realised. In this sense, it has a concern with explaining 'why things are how they are', particularly with regard to its distributional counterpart (Walker 2012, p. 47). Indeed, injustice-as-inequity and injustice-as-misrecognition both impede participation in decision-making and vice versa, speaking to Schlosberg (2007, p. 26) description of environmental justice as being 'played out in the procedural realm'. 'Procedural justice'

also acknowledges, however, that a deliberation procedure may be deemed unjust, in and of itself, and independent of its consequences. To establish the fairness of a given decision-making process, 'procedural justice' scholars draw from work on public participation (see Arnstein 1969; Hunold and Young 1998; Tritter and McCallum 2006), where emphasis is placed on facilitating meaningful, or influential, citizen engagement at multiple points in a decision-making process. Acknowledging this, George and Reed (2017) assert that for a procedure to be deemed just, participants should have the opportunity to be heard, should have their contributions respected, valued and considered, and have the chance to determine the scope of issues to be reviewed. This latter aspect holds particular significance as it addresses the question of which environmental problems are to be produced in the first place, if any.

The third dimension is concerned with recognition or, more specifically, the extent to which individuals within a group are considered full-members in a social interaction. Informed largely by Fraser (1999) work on justice, the focus here is on un-, mis- or mal-recognition. This occurs when individuals are not recognised, routinely disparaged and disrespected, or coerced into accepting the culture of others (Fraser 1999, 2000). Such devaluing and demeaning practices represent forms of recognitional injustice because they prevent people from being treated on par with others. As such, if conceiving of decision-making as the site upon which other forms of justice are contingent, the standards to be attained are equality, inclusiveness, and respectfulness (see Hunold and Young 1998; Schrader-Frachette 2002). Institutions responsible for facilitating public participation in decision-making should therefore ensure access for a diversity of stakeholders at different stages of deliberation, transparent and accountable communication structures, and special consideration or accommodation for adversely affected groups (George and Reed 2017).

Taken together, these three dimensions form the underpinning conceptual components of 'environmental justice'. In this article, however, the focus is trained less on the distributional dimension and more on its participatory and recognitional counterparts. Elsewhere conceived of as 'procedural environmental justice' (Heydon 2018; see also George and Reed 2017), this perspective acknowledges that the latter two dimensions of the parent concept are not only entwined but, in many ways, engaged prior to substantive distributions.

This specifically procedural concept is applicable to the case in Sheffield for two reasons. First, it has utility when examining cases where distributive injustices are less clearly identifiable than injustices of participation and recognition. This can characterise the situation in Sheffield, where the substantive consequences of the felling programme are overshadowed by the procedural injustices precipitated by it. Second, the concept—with its philosophical, as opposed to legal, basis for justice—can be used where the formal architecture of procedural rights fails to apply. This is relevant in Sheffield, as there was found to be a lack of legal requirement for public participation in decision-making on street trees. Campaigners raised this at the High Court of Justice in Dillner v. Sheffield City Council (2016) EWHC 945 (Admin) (hereafter Dillner), arguing that the SCC had breached its duty to consult prior to the felling programme because the Town and Country Planning Act (TCPA) triggers consultation as part of an environmental impact assessment when an 'improvement' is planned. The court ruled against this interpretation, finding instead that the felling of street trees amounts to 'maintenance' and not an 'improvement' (ibid., para 174), thereby excluding such activity from the consultation requirement under the TCPA. In noting that public participation in decisions on street trees is unnecessary in the eyes of the law, Dillner illustrates the discretion available to political actors in determining whether deliberation occurs and in what form. Indeed, the degree and type of participation permitted relies on political, as opposed to judicial, competencies. It is to an evaluation of these decisions, made by the SCC and others within this discretionary space, and in accordance with the indicators of 'procedural environmental justice' outlined above that this article now turns.

3. The Case in Focus: Sheffield and Its Street Trees

One of the defining characteristics of Sheffield as a city is its relationship with the natural environment. Despite its industrial past, Sheffield has more trees per person than any other city in Europe (Styles 2011), offers over 200 public green spaces, and is situated on the border of the Peak District National Park. This was the first area in the United Kingdom (UK) to be awarded National Park status in 1951 (Saxena 2005, p. 4), the creation of which is owed, in no small part, to the civil disobedience of the 1930s, where a mass trespass on Kinder Scout put pressure on politicians to open up previously private land to public access (Douglas and Beatty 2018). More recently, in a survey of 2091 Sheffield citizens, 98 percent rated the outdoors as 'important' to some extent (Gregory et al. 2014, p. 12), with its residents with higher participation rates than the national average for ten out of 12 outdoor activities (ibid., p. 5). Findings from the survey also revealed that residents of Sheffield spend over three times the national average on outdoor equipment (ibid., p. 11). This is echoed in the city's branding. Known as the 'Outdoor City' (Outdoor City 2019), Sheffield boasts a myriad of walking, running and purpose-built cycling routes and hosts several outdoor film and outdoor-orientated festivals annually. Taken together, it is difficult to conclude that Sheffield—both geographically and culturally—has anything other than a strong relationship with the natural environment.

Yet, despite these green credentials, Sheffield is a post-industrial city in the North of England. Over the last 50 years, manufacturing employment in the UK has fallen from 8.9 million to 2.9 million, undermining Sheffield's economic base in much the same way as other northern regions (Beatty and Fothergill 2016, p. 4). As a result, large numbers of people have been diverted into incapacity-related welfare programmes or employment in relatively low paid roles that 'depresses tax revenue and inflates spending on in-work benefits' (ibid., p. 2). As such, cities in the north tend to be poorer than those in the south. The consequences of this wider context are visible in Sheffield's reputation for poor quality roads and infrastructure, earning it the disparaging nickname 'pot hole city' (Burn 2018c). Indeed, it was in response to these conditions that the SCC entered a 25-year, £2.2billion Private Finance Initiative (PFI) contract with the private company Amey. In these deals, the private company raises the finance needed to fund the asset and, once constructed or available for use, the public organisation makes payments to the company over the length of the contract (House of Commons Committee of Public Accounts 2018).

These arrangements are now common, particularly within the public sector, with over 700 contracts in operation across the UK (ibid., p. 4). Anchored to the entwined contexts of neoliberalism and austerity (see Mirowski 2013; Streeck 2017), local authority reliance on such agreements is born from necessity; their funding from central government fell by approximately 49.1 percent in real terms from 2010–11 to 2017–18 (National Audit Office 2018b, p. 7). In Sheffield, the agreement is entitled 'Streets Ahead' and involves, among other things, the replacement of street light columns and lamps; the upgrading of surface water drainage systems; the replacement of broken and misaligned kerbs; and the resurfacing of roads and pavements (Sheffield City Council 2017e). The scale of the work is vast:

> *We are improving and maintaining 1180 miles of road, 2050 miles of pavement, 68,000 street lights, 36,000 highway trees, 28,000 street signs, 72,000 drainage gullies, 480 traffic signals, 18,000 items of street furniture, 2.9 million sqm of grass verges and over 600 bridges and highway structures'.*
>
> (Amey 2018)

As explained at the outset of this article, such positive maintenance work was accompanied by a plan to remove and replace many of Sheffield's street trees, which number around 36,000. The initial goal was to fell 6000 of these trees during the first five years of the contract, and between 2012 and March 2017, Amey successfully felled 4168 (Kirby 2017). It is this programme of tree removal and replacement, however, that has provoked strong local opposition to the programme, pockets of which coalesced around the more substantive harms associated with the felling.

There is a plethora of research illustrating the connections between green urban spaces, to which street trees contribute, and positive mental and physical health (Kondo et al. 2018; Beyer et al. 2014;

White et al. 2013; Pretty et al., 2013; Fan et al. 2011; Van den Berg et al. 2010). Although individual determinants also play a role (Lee and Maheswaran 2011), James et al. (2015, p. 136) note that 'greenness may promote mental health by encouraging physical activity, fostering social cohesion, or providing direct psychological benefit'. In support of this, one National Health Service (NHS) Trust has recently started to issue 'nature prescriptions' to help patients treat mental health, diabetes, heart disease, stress and other conditions (Carrell 2018). This is also echoed in Maas et al. (2009, p. 967) study into morbidity data in the Netherlands, which established that rates of disease are lower in 'living environments with more green space'. The authors found that correlation was strongest for anxiety disorders and depression, and for children and those in lower socio-economic groupings. In relation to street trees, in particular, a positive relationship has been identified between density and psychological well-being (Taylor et al. 2015), reductions in air pollutant disposition (Soares et al. 2011), and even house prices (Donovan and Butry 2010).

The climactic significance of street trees is also well-documented. Trees improve air quality (Escobedo et al. 2008; Pugh et al. 2012), make substantial contributions to carbon sequestration in urban areas (Brack 2002; Liu and Li 2012; Nowak and Crane 2002) and reduce emissions if planted near buildings (Nowak et al. 2013). Indeed, the abundant carbon storage capability of street trees is noted in studies in Beijing, China (Tang et al. 2016), Leipzig, Germany (Strohbach and Haase 2012), Tswane, South Africa (Stoffberg et al. 2010), and elsewhere (Vailshery et al. 2013). This is also the case in Sheffield (Powell 2017), where the maturity of many of its street trees grants them greater carbon storage capacity compared to younger trees. It is for this reason that felling without replacement, or replacement with younger trees, has a negative effect on the carbon storage capacity of the tree stock in a city—at least until they mature to a similar age of those originally felled. This holds particular relevance to Sheffield because of its position as one of the most polluted cities in the UK (BBC News 2018b). Indeed, estimates place the number of air quality-related deaths within the city to be around 500 per year, prompting the SCC to recently announce plans for a 'clean air zone', which introduces a charge for high-polluting non-private vehicles within the city's inner ring road (Sheffield City Council 2018b).

When considered in the context of these benefits, the removal of street trees requires clear justification. Some do need replacing, as acknowledged by the community groups opposing the programme, but the extent to which this accords with the number in the Streets Ahead contract is uncertain. Not only is the target number of trees obscure, with several different figures being referred to, but the 'Six D' criteria used to determine whether a tree is 'damaging', 'dangerous', 'dead', 'discriminatory' (trees that obstruct access to pedestrians), 'diseased', or 'dying', is not an industry-standard approach (see Dalton 2017). Importantly, the criteria was devised without public input. As such, it is not simply the unclear number of trees designated for felling that has provoked opposition, but also the clandestine reasoning underpinning it. Indeed, the original decision not to include the public has paved the way for governance mechanisms that have failed to promote 'procedural environmental justice' ever since, provoking ongoing tensions and conflict between the SCC and local citizens. While there are many different examples that could be considered, I focus on three: the Highways Tree Forums, the Independent Tree Panels and, finally, the arrests and injunctions. Arranged in broadly chronological order, the failure to establish just procedures for public engagement in decision-making at each stage acted to escalate tensions in the next.

4. Methods

This study illustrates how the concept of 'procedural environmental justice' applies to situations where substantive injustices are less visible. To achieve this purpose an 'instrumental' case study research design was employed. Under this approach a case is used to facilitate understanding of something else; here that 'something else' is the concept of procedural environmental justice. As Stake (2006, p. 26) notes, this design is particularly useful in situations where 'the purpose of the case study is to go beyond the case'. Secondary data, mainly drawn from media sources, was also used

to establish the chronology and detail of events. As the information sought centred on commentary by officials, the timing of certain decisions, proceedings and trials, media analysis was not deemed necessary. That said, different reports were cross-referenced where possible to establish the accuracy of their content. Information on the context surrounding the three identified sites of tension was also gleaned through means akin to Fujii (2014) 'accidental ethnography'. As I worked at both of Sheffield's universities over the period in which much of this situation was unfolding (The University of Sheffield and Sheffield Hallam University) details of the conflict tended to permeate everyday life in the city. Local news media provided varying degrees of coverage in a range of formats, generating both source material and encouragement for discussion online and offline. Furthermore, the protester tactic of tying ribbons and messages to trees at risk of felling provided a visual marker that suggested *something* was happening, even if the observer did not know what. The street tree poems found at either end of this article were gleaned from observations made on journeys throughout the city—a nod to the work of those who call for green criminologists to recognise the importance of the visual during the course of their research (see McClanahan and South 2020; Brisman 2018; Carrabine 2018; Natali 2015).

5. The Highway Tree Advisory Forums

The persistent opacity of SCC figures on the total street trees to be felled, and unclear evidential basis for the different numbers offered, reflects the absence of transparency and accountability pervading the felling programme. Public input on this scheme was non-existent from the very beginning and this lack of a reasoned public justification was—and continues to be—a key catalyst for public opposition. In 2007, a private consultancy firm undertook the first independent survey of Sheffield's 35,057 street trees, describing 25,877 as 'mature and over-mature', 7487 as 'semi-mature' and 1693 as 'young' (Elliott Consultancy 2007). Of the total trees surveyed, it was concluded that 5191 required maintenance and 1000 needed felling, as might an additional 1236 (ibid, p. 8). A second survey was conducted in 2012, commissioned at the start of the Streets Ahead contract. This is not publicly available, but the SCC referred to its findings in an earlier iteration of their website, where the number of trees deemed 'dangerous', 'dead', 'dying' or 'diseased' was placed at 1000 (Sheffield City Council 2016c). However, the Streets Ahead Five Year Tree Management Strategy, which was published in the same year, placed the 'replanting rate [needed] to maintain the current street tree numbers' at '200 to 400 trees per annum' (Sheffield City Council 2012, p. 4). While this suggests a figure of no more than 2000 trees over a five-year period, the SCC proceeded to refer to plans to fell and replace 6000 trees over the same timeframe (Sheffield City Council 2017a). An interview given by the SCC's head of Highways Maintenance in the same year, 2012, did little to clarify the issue, stating that it was actually 'half' of the city's 36,000 street trees that were marked for removal (Robinson, quoted in Transportation Professional 2012, p. 13).

Over the next three years, as local community opposition began to solidify around an emerging realisation of what was transpiring in Sheffield and a petition containing over 10,000 signatures opposing the felling was presented to the SCC. The core concerns of signatories were twofold—that there was going to be an unacceptable number of mature, healthy street trees felled, and that there had been a lack of public consultation on the programme (Sheffield City Council 2015). In response, the SCC passed a resolution establishing the Highway Tree Advisory Forum (HTAF). Providing 'a platform for an open discussion . . . and to open the Council to public scrutiny over decisions relating to highway trees', the SCC intended for the HTAF to be a 'first step in restoring public faith and trust in Sheffield City Council's management of the City's tree stock, including street trees' (ibid).The HTAF consisted of a panel containing SCC cabinet members, opposition councillors, senior Amey personnel, the Sheffield Wildlife Trust, local academics, and campaign group representatives. The HTAF met twice. The first meeting was on 23 July 2015 and concerned the '6D' classification system for determining whether a tree should be felled. The second was on the 2 September 2015, where attendees discussed the 25 management options the SCC is supposed to consider before deciding on felling. Although intended to be bi-monthly, the HTAF was abandoned after this second session for reasons unknown.

The HTAF sessions were attended by around 200 members of the public, in whose presence panel members were highly critical of the SCC's plans. Having been told that many of the 25 alternative management options could not be used on the grounds of cost (Sandford 2015), the plans were described as an inappropriate 'tickbox' solution (Stevenson, quoted in Sheffield Star 2015). The 'poor communication' between the SCC and local residents was also highlighted, with panel members criticising the lack of transparency around felling decisions (Clarke 2015). Indeed, the extent to which the SCC perceived this as an information-giving exercise, as opposed to a genuine opportunity for citizens to inform the plan of action, is neatly illustrated by Sandford (2015): 'Feelings from the public at both meetings ran high and it was great to see so many people so passionate about trees, but also frustrating to see the Council not really responding to any of their concerns'.

Taken together, the HTAF meetings exemplify Arnstein (1969, p. 216) original description of an 'empty and frustrating' form of engagement. Residents of Sheffield were allowed to hear and be heard but 'lack[ed] the power to ensure that their views [would] be heeded' (ibid, p. 217)—what Arnstein refers to as 'tokenism'. Indeed, after attending the forum, the Woodland Trust made three requests to the SCC (see Sandford 2015). First, that further tree felling be paused until the conclusion of the HTAF and a new trees and woodland strategy could be introduced. Second, that an independent arboricultural consultant be used to determine whether felling is the most realistic option in all cases and, finally, that local people be consulted about replacement species and their location. The first and third of these were essentially ignored, but the second was to some extent manifested in the Independent Tree Panel (ITP) process that came to replace the HTAF.

Before examining the ITP process, and its associated use of household surveys, it should be noted that the opacity surrounding the actual number of trees to be felled is an ongoing source of conflict. Despite repeated use of Freedom of Information requests by local groups attempting to bring the figure into the public domain, the SCC has been reluctant for this to occur. Circumstances changed only when the Information Commissioner's Office intervened. As the regulatory office responsible for data protection and freedom of information legislation, it ordered publication of previously redacted sections of the Streets Ahead contract. This revealed yet another number, provoking further confusion: 'The service provider shall replace highway trees in accordance with the annual tree management programme at a rate of not less than 200 per year so that 17,500 highway trees are replaced by the end of the term . . . ' (Burn 2018a).

In its response, the SCC have emphasised that this is not a target, going on to provide another estimate that around 10,000 trees will be replaced over the course of the contract (ibid.). Taken together, the primary features on display at this juncture include a protracted lack of transparency around the number of trees to be felled and an opacity of factors informing this decision. Indeed, this has acted as the backdrop for public opposition since at least 2015; citizens do now know the extent of the felling planned, why alternative management solutions are not being pursed, or how the decisions around felling are being reached.

6. Independent Tree Panels and Household Surveys

Following the HTAF's lack of success, the SCC set up the ITP process. Viewed through the lens of 'procedural environmental justice', the ITP had several promising objectives: to provide 'independent, impartial and expert advice' on the retention, replacement or treatment of the street trees, to 'take into account all available evidence . . . on proposals for the treatment of trees', and to 'provide advice to Sheffield City Council about potential changes to proposals, as necessary' (Sheffield City Council 2016a, p. 1). The ITP consisted of a layperson, a highways engineer, independent health and safety advisers, an arboricultural consultant, and a chair. In essence, the ITP examined each tree, as required, determined its categorisation using the 'six D' system and considered whether any of the maintenance solutions available in the contract could be used before reaching a decision on whether or not to fell. Importantly, though, the ITP did not examine every tree; the process was triggered only when 50 percent of households on a given street disagreed with proposals to fell on that street.

Information on these perspectives was gleaned from the household surveys—a mechanism of citizen engagement demonstrating such fundamental flaws that it is difficult to characterise it as anything other than superficial.

Social science relies on several key criteria to evaluate research instruments, with one of the most common being that of 'validity'. Validity has a range of sub-types, but that of most relevance here is 'measurement validity', which is concerned with whether the measure of a concept reflects the reality it is supposed to be measuring. This is not only a key component of any form of research instrument, but it is also the one in which the household survey is most fundamentally lacking. The concept this particular instrument attempts to measure can be labelled broadly as 'agreeableness'. This operates on two levels, denoting the extent to which individual households agree with the felling of trees on 'their' street, and the extent to which this opinion is shared by the street as a whole. There are several ways in which the survey fails to measure both. First, at the level of the 'household', bias is introduced into the instrument via the cover letter, where persuasive language depicts the felling as purely beneficial:

> *. . . a sustainable replacement and management programme is required to prevent a catastrophic decline in street tree numbers in coming years . . . without the investment we are now delivering through Streets Ahead, we could be facing decades of under-investment, removal without replacement and a lack of proactive maintenance.*

Considering that the only way a resident would encounter information contrary to this is through contact, either direct or indirect, with one of the opposition groups or sympathetic media reports, the extent to which this survey measured resident perspectives on felling is questionable. Indeed, it may be more accurate to say that the survey measured resident engagement with counteracting arguments outside the leading account given. Of course, this is the more passive interpretation of the instrument. The bias built into the information sheet may actively produce the markers of agreeableness being sought. Either way, this aspect of the survey undermined its measurement validity by subjecting the respondent to a leading account prior to the gathering of data. In social research terms, it demonstrates a fundamental flaw in instrument design.

The surveys were also intended to measure the agreeableness of 'households'. They were designed; however, in such a way that they could record only the response of one member within each. The judge in *Dillner* explained that 'the issue about whether all views in a household are the same is not of much import. The form gives scope for someone to enter that there is a different view. There is no evidence at all of this actually occurring' (para. 210). On inspecting the survey itself; however, this is far from clear. In fact, the survey contained only two boxes for comments; the first asked for the respondent to 'please explain why you do not support the proposals for your street', and the second simply for 'other comments'. There was no indication that disagreements internal to households, or the number of opinions contained therein, could be included anywhere on the survey, or even that residents come to some consensus before completing it. As such, while it may not have 'much import' for questions of legality, it is of fundamental importance when discussing the measurement validity of the instrument. It means that the survey was not accurately measuring household agreeableness at all, but only the extent to which one of the residents in each household agreed with the plan. As a consequence, the measurement validity of the instrument was again undermined.

The extent to which the surveys provided data on whole streets is also questionable. This is not least because the survey collapsed the possibility for multiple and competing opinions within a household into a single survey answer. This meant that the survey did not provide data at the level of the street because only a small proportion of residents were asked. More directly, however, if one examines the data released by the SCC, one observes that the response rate for household surveys was 13 percent of the total number asked (see Figure 1). This is problematic when considering that a postal survey response rate below 50% is considered 'unacceptable' according to some sources by some authorities (see, e.g., Mangione 1995, pp. 60–61). The low number of returns can be attributed to the collection method itself, which is generally known to elicit low responses (see Gray 2017), but it also reflects the cumbersome nature of this particular instrument. On receipt of the participant invitation

letter, which arrived in an unmarked envelope (Moore 2017), respondents were required to access the survey questions online using a code provided in the letter. For those without internet access, residents were asked to telephone a call centre and request a paper copy of the survey. The invitation letter did not make clear when or how the completed paper survey should be returned. There was also a complete absence of support for non-English language speakers. Taken together, the survey cannot be said to measure what it claimed to be measuring, at either the level of the household or street.

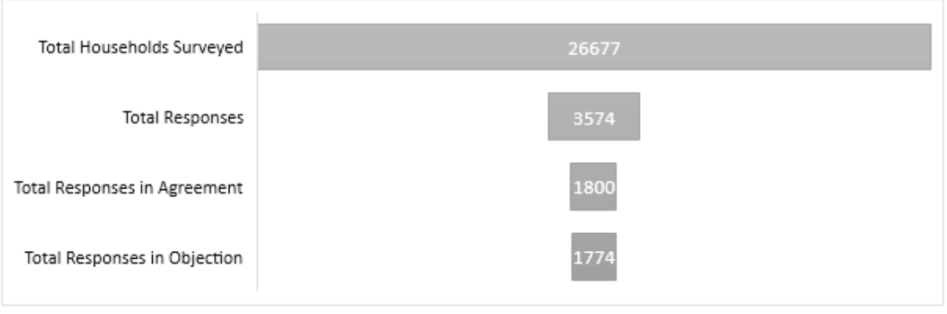

Figure 1. Household Survey Responses. Compiled from (Sheffield City Council 2018a).

Despite these flaws, the SCC interpreted the results in favour of the felling programme. As Bryan Lodge (quoted in Moore 2017), speaking as its cabinet member for Environment and Streetscene, stated upon completion of the ITP process, '[o]ur household surveys show that only a small percentage of residents disagree with our proposals for tree replacement and that the vast majority are supportive or indifferent'. As Figure 1 demonstrates, however, this is inaccurate; there is an almost 50/50 split between respondents agreeing and objecting to the proposals. The only scenario in which the SCC's position has support is if non-responses are placed in the same category as those expressing agreement. This, in and of itself, is an erroneous interpretation of the data, but to build into this an assumption that non-responses indicate just 'indifference' suggests a more calculated awareness. This is further visible in Lodge's subsequent claim that '[w]e do know that the majority of people in the city want to see this work carried out' (quoted in Torr 2017). The evidentiary basis for this assertion is unclear, but it cannot and should not be derived from the household surveys. According to the 2011 census, the number of households in Sheffield stands at 229,928. If 1800 of this number actively agreed with the felling, this would correspond with only 0.78% of city's population (Sheffield City Council 2018c). Even if the SCC's interpretation of the data was used, where no meaningful difference is perceived between non-responses and objections, this number still sits at only 10.8% of the city's population. As such, what is occurring here is a very specific form of 'greenwashing' (see Berrone et al. 2017, p. 363), where the SCC has used data gathered through household surveys to make unsubstantiated and misleading claims about the popularity of its felling programme.

Once triggered by 50 percent of respondents expressing opposition, the ITP inspects each of the trees on the street and makes a recommendation to the SCC about whether to proceed or adopt remedial measures to enable retention. The outcome of this process has been criticised heavily by local community groups, which note that of the 312 trees recommended by the ITP for retention, 237 (or 76 percent), were ignored (Sheffield Tree Action Groups 2017). Much of this decision-making process is clear, as ITP justifications are outlined in its inspection summary documents (Sheffield City Council 2017c), thus conforming to the SCC's description of the ITP as 'transparent' (Lodge, quoted in McEwan 2016). The ITP has important limits; however. The final stage of the process, where the SCC makes a decision on whether to accept the ITP recommendation or not, is opaque; there is very little information available regarding which factors inform this final part of the decision-making process. As such, it may be more appropriate to describe the ITP as *translucent*, where just enough information is permitted to

placate (some) interested parties, but the most important aspect of decision-making remains shielded from view.

While hidden for the most part, the dominant factors exerting influence in this decision-making process are visible in some of the more high-profile examples. The Chelsea Road Elm, particularly controversial felling, is a case in point. Over 100 years old, the tree is a confirmed habitat of the White-letter Hairstreak butterfly, of which elm is its sole foodplant. As Dutch Elm Disease has reduced UK elm numbers by over 20 million since the 1970s (Forestry Commission 2018), the butterfly population has suffered one of the most severe long-term declines of any butterfly species, dropping by 96% over the same period (Butterfly Conservation 2015, p. 6). Spending their whole life cycle exclusively on elm trees, the White-letter Hairstreak butterfly has been classified as a UK Biodiversity Priority Species. One of the actions required under this categorisation is 'the planting of Dutch Elm disease resistant Elm' (Joint Nature Conservation Committee 2010, p. 3). While still susceptible, Huntingdon Elm, of which the Chelsea Elm is an example, has demonstrated some resistance to the disease (Woodland Trust 2018). This value was recognised in the ITP recommendation to retain this specific tree:

> *The tree . . . is a Huntingdon Elm (and not an English Elm), a notable and rare species, which we advise there is a strong arboricultural case to retain. The tree is causing some disruption to the pavement, and to the carriageway . . . We nevertheless believe that a combination of engineering solutions could be used to retain this tree . . . We recognise that this may incur additional costs. We therefore advise the Council to reconsider its plan for this tree with a view to retaining it.* (Buck 2016, pp. 1–2)

In its reply, however, the Sheffield City Council (2017b, p. 1) overruled the ITP, citing economic constraints as the primary reason for proceeding with the removal of the Chelsea Road Elm anyway: '[t]he roots are under the carriageway therefore [a] solution would be expensive if retained . . . Continue with tree replacement as planned'. In response to the subsequent protests, the SCC produced a 16-point plan for removing the Chelsea Elm while attempting to protect the butterfly species. Again, economic constraints were forwarded as a justification for felling. Altering the highway to avoid felling the tree would 'have an additional cost. The Council does not have funding for the additional costs' (Sheffield City Council 2017d, p. 2). As of January 2020, the Chelsea Road Elm has yet to be felled, having been the subject of local and national news coverage (BBC News 2018a; Barkham 2017).

7. The Arrests and Injunctions

After the launch of the ITP in January 2016, the High Court of Justice issued an injunction in February that paused felling. The victory was short-lived; in March, the same court subsequently deemed the request for a judicial review of council decisions 'devoid of merit' (Burn 2018b). At this point, the situation escalated, with the procedural injustices becoming more explicit. In November 2016, five people were arrested in two separate incidents for obstructing felling. In the second of these, the felling operation had been planned a month in advance, following a joint meeting between the private contractor, Amey, South Yorkshire Police (SYP) and SCC staff (Sheffield Star 2016). Here, three people were arrested in what was labelled a 'dawn raid' by the media (Barkham 2016). Contractors and police arrived on the street at 5am, proceeding to wake residents and ask them to move their vehicles to allow for the felling. Objecting, residents stood inside the barrier tape circling a nearby tree, leading to their arrest (BBC News 2016). Importantly, the ITP report, which was released at 4:25am that same day, left little opportunity for members of the public to read it even as an information-giving exercise. This failed to meet even the basic requirements for procedural justice—of information sharing, dialogue and respectful deliberation (George and Reed 2017), particularly when considering the fact that the SCC received the ITP report over three months earlier (Sheffield Star 2016). One decisive factor in this approach may have been that the ITP found seven of eight trees on the street to be in good health, but that the SCC had instead decided to fell all of them (Sheffield City Council 2016b, pp. 2–3).

Tensions continued to escalate over the ensuing winter where in February 2017, seven people, including a Green Party councillor, were arrested at a single protest. By March 2017, the total number arrested had risen to 14, with Section 241 of the Trade Union and Labour Relations Consolidation Act (1992) being used as the basis for arrest. This legislation, which has been used as justification for detaining anti-fracking activists (Booth 2013), aims to stop someone 'compelling' another 'to abstain from doing … any act which that person has a legal right to do … wrongfully and without legal authority'. Following the ensuing media coverage; however, all charges issued under the legislation were dropped by the Crown Prosecution Service (CPS), with the Police and Crime Commissioner providing the following reasoning: "The CPS are not willing to take to court people arrested under trade union laws as it is not in the public interest. There is no mileage for police to make those arrests under that type of legislation" (Billings, quoted in Peace 2017).

A year later, the Independent Office for Police Conduct determined that the law had been used inappropriately in the arrest and detention of protesters (Pidd 2018b). Yet, instead of seeing this as a point in which dialogue may provide a more appropriate avenue for development, the SCC continued to foreclose meaningful engagement by responding with the intention to pursue 'all options that are available to enable the necessary works to be carried out' (Lodge, quoted in BBC News 2017). The police later reached settlements with some of those arrested under Section 241 of the Trade Union and Labour Relations (Consolidation Act), paying £3000 to each (Burn 2018d).

December 2017 marked the end of the five-year-year 'core investment period', after which the Cabinet Member for Environment and Streetscene said there risked 'catastrophic financial consequences for the council' if the felling was not complete by this point (Lodge, quoted in Bounds 2017). This was on the basis that the council would incur penalty charges and have to fund incomplete work. With this deadline approaching, the SCC turned to civil injunctions as a means of continuing the felling programme. These barred protesters from entering a safety cordon around a tree, with disobeying persons risking contempt of court and a prison sentence or financial penalties. Council requests not to breach the injunction were sent to 17 people, who were advised to sign or be taken to court. Nine signed shortly after, eight were taken to court—five of which signed a modified version of the undertaking—and three refused to sign at all. The ensuing case, in August 2017, saw the High Court of Justice uphold the injunction, with subsequent breaches resulting in individuals being given suspended prison sentences and fines.

In a 2018 case assessing whether individuals had indeed reneged on this agreement, the judge sought to confirm that there was a democratic mandate for this course of action:

> *This is a serious application. The council seeks to commit Sheffield citizens to prison for contempt...I would just like to be reassured that this application is brought on the instructions of democratically elected councillors. Do you have instructions from the leader of the council to make this application?* (Males, quoted in Pidd 2018a)

After a short adjournment, the SCC's barrister confirmed that the leader of the council 'positively agreed that proceedings should be brought' (ibid). This demonstrated the extent of the SCC's reluctance to facilitate meaningful dialogue with citizen groups—not only a strategy of passive avoidance but one of active and intentional foreclosure. While the effect of specific deterrence on the named individuals receiving injunctions is relatively straightforward, the extent of the more general deterrence elicited on protest is unknown. It is worth mentioning, however, that this article was initially going to be based on primary research, including interviews with campaigners. The invitation to participate was released before the injunctions were announced, eliciting 15 responses in two days. As soon as the injunctions were announced; however, this figure dropped to two. Ultimately, the injunctions represented the council's reluctance to facilitate open and transparent decision-making, seeking instead to prevent and marginalise citizen input proactively.

Outside of the courts, the granting of injunctions signalled a change in strategy for the management of protests. Amey and the SCC deployed use of private security guards to enforce the civil injunction

both directly, using force, and indirectly, by surveilling those on the scene. The SYP also reprised its role, adopting a more proactive stance following the injunctions. It is important to note that they were not deployed to enforce this civil law, but to *balance* the right to protest with the trespass that occurs within a tree felling safety zone, as established in Sheffield City Council v. Fairhall, Dillner and others [2017] EWHC 2121 (QB). The unclear demarcation between public and private policing; however, and the now-central role of the latter at the felling sites, contributed to the escalation of the conflict. As one observer described:

> *I was near to three people who were being removed. 'Forcibly removing' doesn't capture the reality of what they did: prise fingers off railings, bending thumbs back (one resident shouted that it felt as if they were breaking his fingers); grabbing and bending the arms of the two women who had linked arms; pushing and squashing a man who yelled he was being crushed; dragging an elderly resident by the arms. There were at least 10 security mobbing a group of 3 protesters, two of whom I think were pensioners. It was awful to see people being treated this way, and the police looking on, impassive to the pleas of the protesters that they intervene* ... (Holroyd, quoted in Saul 2018)

The ensuing local and national media coverage provoked Sheffield Councillor Lord Scriven to demand an explanation from SYP for its tactics, such as the need for 33 police officers and 20 private security personnel at a single felling site and the process for deciding resource allocation (Scriven 2018). This elicited a response from the Chief Constable of SYP (see Watson 2018). Tensions became so fraught that the Police and Crime Commissioner for South Yorkshire, Dr. Alan Billings, asked his Advisory Panel on Policing Protests (APPP) to review the policing of street trees in the city. Concluding, among other things that the SYP lacked an effective media strategy, the Advisory Panel on Policing Protests (2018, p. 15) made clear that 'there is no escape from the conclusion that ... without the intervention of SYP ... the tree felling programme could not be carried out'.

8. Discussion

Irrespective of the more substantive injustices associated with the felling of healthy street trees, an array of procedural injustices can be seen to have occurred over the period since the programme started. Characterised by the core features of marginalisation and misrecognition, the first of these is visible in the recurring exclusion of local citizens from key stages of the decision-making process. The absence of public input into the felling programme, back in 2012 when the PFI contract was initiated, demonstrates a reluctance—from the very beginning—to facilitate meaningful engagement with those at risk of being affected. This absence of public input, along with the associated opacity of felling figures, has been a source of tension ever since. Continuing at the HTAF in 2015, where voices were marginalised by what was essentially an information-giving exercise, the subsequent ITP process was also characterised by a minimal degree of citizen engagement. Transparent until the final justification for a felling, which was hidden from view, and accompanied by a household survey that failed to measure what it claimed to measure, the ITP process did little to ameliorate tensions because of fundamental flaws in its creation and delivery. Finally, the SCC resorted to force by using civil injunctions to halt continued protests, the purpose of which was to produce both specific and general deterrence among citizens opposing the felling.

Taking these characteristics together, one can identify several participatory markers of procedural injustice. The process was defined by the exclusion of meaningful citizen input at key stages (Walker 2012); at no point could members of the public influence felling decisions through official channels. There was also a distinct lack of appropriate mechanisms through which citizen voices could be heard, respected and—crucially—integrated into the proposed plan of action (George and Reed 2017). Those that did exist—the HTAF, surveys and ITP—did this to some extent, but they were clearly part of a much broader strategy in which the ultimate decision to fell was the default position. Finally, and perhaps most clearly, the process was defined by deliberation opportunities that failed to build trust and respect across all parties (ibid; Walker et al. 2006). While attentive in some respects—in terms

of providing a few limited opportunities for expression—the process which emerged was clearly not designed to translate this input into meaningful, influential change. The use of force to quell dissent at the end of this process represents the apogee of the local authority's failure to build trust and respect across the factions involved.

As witnessed elsewhere (see, e.g., Heydon 2018), such instances of marginalisation are inseparable from those of misrecognition. The recognitional standards of deliberation to be attained are inclusiveness and respect (see Schrader-Frachette 2002), but these were absent in this case. From the very beginning, there was no acknowledgement that local citizen input should inform the felling programme. This is despite the need for provocative projects to seek public involvement early on 'to encourage consensus and legitimise the process' (Walters et al. 2000, p. 354). Empirical evidence also demonstrates that public participation infuses decisions with local knowledge, produces higher-quality planning outcomes (Laurian 2004, p. 53), as well as better environmental decisions and conservation efforts (Gellers and Jeffords 2018). There are also ongoing questions about the opacity of both decision-making and decision-makers, both of which bely the lack of transparent communication structures needed to promote information sharing—a feature which also inhibits the accountability of those involved (Bostrom 2012; George and Reed 2017). The minimalist stance taken towards citizen engagement, of which these characteristics are collectively indicative, has had consequences for the city council ever since. It has been forced to repeatedly respond to this original, exclusivist stance, placing it under a state of constant pressure that is not conducive to facilitating meaningful dialogue, particularly when locked into a contract that has already established pre-agreed timelines for a host of predetermined activities, and all without input from those most likely to be affected.

When taken together, the injustices speak to Walker (2012) warning about the rolling out of public functions under neoliberalism to non-state actors—that this shift may complicate and hinder the extent to which 'procedural environmental justice' can be attained in any given situation. This is particularly relevant considering that the felling programme stems from a PFI contract, and that much of the subsequent conflict can be traced back to the lack of public input on its content. Coming under recent criticism from the House of Commons Committee of Public Accounts (2018) these agreements harbour several flaws. One of the most commonly levelled is that they incur greater expense than publicly funded projects. For instance, PFI-funded schools cost around 40 percent more than those financed by government borrowing, and PFI-funded hospitals around 70 percent more (National Audit Office 2018a, p. 15). Of more relevance to Sheffield, however, is that they engender a lack of accountability. Not only does the commercial confidentiality and secrecy of the contractual process hinder accountability for works carried out, which also makes it difficult to assess their value for money (Edwards and Shaoul 2003), but the liabilities created are excluded from public and parliamentary scrutiny (Newberry and Pallot 2003). While such characteristics may be attractive to authorities facing pressure to increase investment in infrastructure (English and Guthrie 2003), which is exacerbated by a protracted reduction in funding from central government, they are hardly conducive to a transparent, inclusive, and just process of environmental decision-making.

9. Conclusions

Would you hew me
to the heartwood, cutter?
Would you leave me open-hearted?
. . .
Do you hear these words I utter? I ask this of you –
Have you heartwood, cutter?
Have those who sent you?

Rob Macfarlane 2018
Extract of poem pinned to street tree, Nether Edge, November 2018

This article has demonstrated how the concept of 'procedural environmental justice' can be applied to situations involving citizens without legally recognised participation rights and to deliberation procedures that are not defined rigidly from the offset, but which emerge in response to citizen opposition. In doing so, it has not only illustrated how 'justice-as-recognition' and 'justice-as-participation' are manifested jointly within 'procedural environmental justice', but also how initial instances of misrecognition and marginalisation can generate a subsequent campaign of injustice, as those with authority struggle to manage the resultant dissatisfaction of the local citizenry. The constraints of context have also been drawn out, where the public-private relationships established by PFI contracts can limit the scope of citizen engagement realised. This should not detract, however, from the flawed decisions made by the local authority within the space available; meaningful avenues for citizen engagement could have been permitted at any stage, at least to a greater degree than realised. Indeed, reflecting recommendations made elsewhere (see Heydon and Hall 2018), the Environment Secretary, Michael Gove, announced recently plans to ensure that local councils cannot fell street trees without first consulting local communities (Department for Environment, Food and Rural Affairs 2019). Considering Gove's awareness of the conflict in Sheffield (see Halliday 2017), it may be that the decision whether or not to consult is taken out of local authority hands, with national policy being modified as a direct result of this case. Though the range and extent of the participation envisaged is yet to be determined, when viewed through the lens of 'procedural environmental justice', this is a promising development. Further research will be required to establish whether or not this is the case.

The implications of this case pertain to instances of local environmental injustice, more specifically, and green criminology, more broadly. With regard to the former, local authorities should give serious consideration to the opportunities available for citizen engagement in environmental decision-making. This should entail not only recognising the value of their participation from the very beginning of a proposed plan of action, but also providing opportunities at multiple stages for their meaningful—that is, *influential*—engagement. Doing otherwise—and pursuing an exclusive, narrow, and closed deliberation process that bears the hallmarks of 'procedural environmental injustice'—risks a protracted period of conflict with local citizens and beyond.

With respect to green criminology, more broadly, it would be fruitful to explore other instances of procedural injustice, particularly in those cases where substantive injustices are less visible. Indeed, if procedural injustice is to be understood at a societal level, then the forces serving to produce it will be found not only in high-profile cases with clearly identifiable instances of harm, but in those more mundane and everyday situations, where procedural injustice is normalised—and goes largely unnoticed. This would render green criminology more sensitive to procedural injustice's systemic nature, allowing for connections to be made between individual instances of procedural environmental injustice and broader societal circumstances.

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social sciences

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Article

From Social Deviance to Art: Vandalism, Illicit Dumping, and the Transformation of Matter and Form

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Abstract: In this article, assemblage art is presented to visually underscore social discourse relevant to urban vandalism and illegal dumping. The waste emergency, brought about, in part, also by illegal dumping and littering, is experienced on a daily basis across the globe in industrialized and less-industrialized countries alike. Likewise, vandalism is so pervasive in some areas that we have come to normalize it as intrinsic to urban life. The pieces presented here serve as attention-inducers. Destroyed or dumped things are assembled into new forms which symbolically and "totemically" represent [contemporary] collective identity. While the poetics of the art presented is not political, nor was the art created for social purposes, its social impact or social and criminological connection with deviance is a consequence of the "where" the assembled parts were found. The matter collected is transformed and its shapes and its source can now be seen and confronted, rather than avoided. Broken parts become a new whole, and also herein lies another symbolic connection with the world of deviance as far as the obvious possibility for change and transformation, relevant to broken lives and broken communities.

Keywords: art; transformation; vandalism; dumping

1. Introduction

Along the lines of a green criminological extra-disciplinary theoretical engagement approach (Brisman 2014), art is presented here as a visual accompaniment to social discourse relevant to urban vandalism and illegal dumping. As a nonverbal intermediary, its aim is to circumvent social habituation and prevent distraction. Habituation can be simply defined as a progressive decrease in response to a given stimulus following a repeated exposure to the same. Relevant to the present writing, said stimuli are represented by abandoned urban rubbish or vandalized objects in public places, to which one is exposed in many large contemporary cities and rural areas. Distraction, intended as a more or less purposeful diversion of one's attention, may be a necessary neurovegetative response to lessen the impact of urban chaos, be this visual or auditory. Nonetheless, one of its consequences is inattention to one's surroundings.

Social habituation may be thought of as a form of unlearning and may be an understandable consequence of a systematic exposure to unwanted environmental stimuli which may, in the end, result in an actual form of community victimization (Hall 2017). One of the consequences of social habituation may be the unintentional adaptation to a critical *status quo*. This, in turn, may lead to an apparent impossibility to make an impact on social phenomena which have become entrenched in a combination of social chaos and, de facto, tolerated deviance.

This is not a criminology paper stricto sensu, although by necessity it will touch upon some pertinent criminological issues. It is not a commentary on the ails of our cities or on the current

overwhelming garbage crisis. "It is [not] a tale … full of sound and fury/Signifying nothing,[1] nor does it represent pondering over the paralyzing feeling of trying—ineffectively—to make a positive difference with respect to our complicated sharing of the world with the omnipresent waste that we—humans—have created. Rather, it is a story of *transformation*. It is an attempt to see "things" as they could be. To paraphrase Hayward and Schuilenburg, it is an attempt to create in order to resist (Hayward and Schuilenberg 2014). One aim of the present paper is also to represent a transformative experience for the observer from a behavioral perspective. Indeed, art extracts and presents the essence of things and learning from it—and perhaps from the visual in general—may be more effective and prone to generalization (Preminger 2012). So, in this sense, it is a hopeful tale—and a serious one.

The art presented here is assemblage art. All artwork is made with found objects. These were either dumped in the street, on paths in city parks, or are the product of acts of vandalism. Assembled objects become "something" other than their individual components, thanks to language—a title. At times there is no title, Which *in itself* is a title. The real vanishes into the concept, as Jean Baudrillard (2016) suggested. The matter collected is transformed, yet not redeemed. Their shapes as well as their source—waste or destruction—can now be seen and confronted, no longer avoided. There is no implicit search for atonement of its previous state as "garbage which, in the end, is a consequence of living.

2. The Pieces

All pieces presented are assemblages of found waste, nature "left-overs or parts collected at the site of vandalization acts (see Figure 1). They are the product of an encounter between artist and object. The encounters, as all real encounters, are fortuitous and unexpected. As in all meetings, the one between artist and object requires attention and curiosity. Their use as material wishes to underscore the continuity between the world and art, between *out* and *in*. It is impossible to tell which detail of the stumbled-upon *thing* was the critical detail which captured the artist's attention—sheet metal, automotive parts, colored cloth from a tailor's sample book, the head of a saint (presumably Saint Anthony), a fish net, a shoe sole, a key latch, broken glasses, an iron bar, part of an old gate. It is nearly impossible to say why a given piece was assembled with another and any interpretation, as all interpretations, can only be ex post and based upon what the observer wishes to see, or thinks she/he sees (See Figures 2–10).

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[1] Macbeth. Act 5, Scene 5. William Shakespeare.

Figure 1. Vandali. Photo by Agricubismo®. All figures are property of the author/artist and protected by copyright (Agricubismo®). www.agricubismo.com.

Figure 2. Secondo Avviso (Second warning).[2] Photo by Agricubismo®.

[2] The top sign, hand-made by someone, says: The woods are not a dump. The bottom sign—an official one—says: garbage dumping is forbidden.

Figure 3. Blown in the Wind. Photo by Agricubismo®.

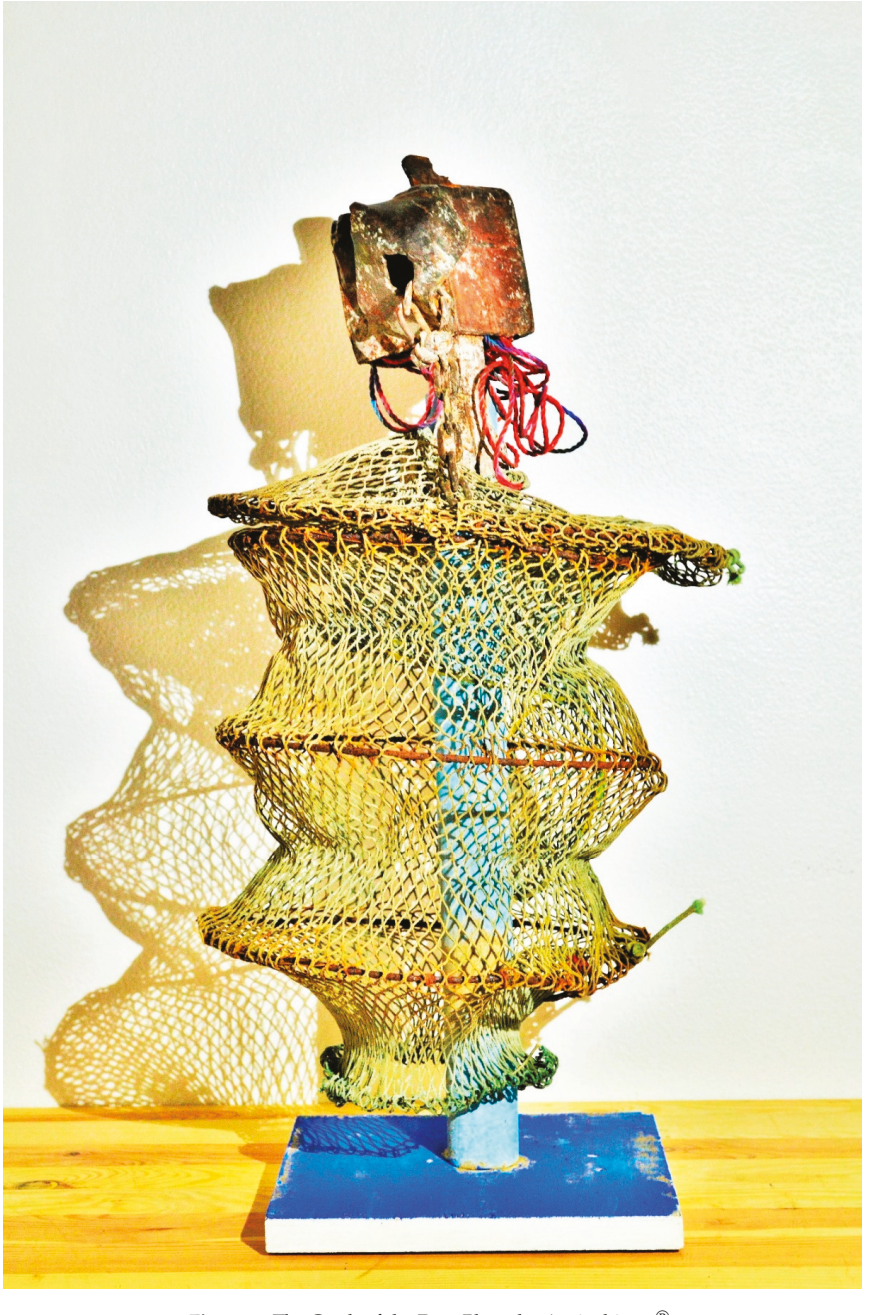

Figure 4. The Catch of the Day. Photo by Agricubismo®.

Figure 5. Another Man's Shoe. Photo by Agricubismo®.

Figure 6. Man with Glasses. Photo by Agricubismo®.

Figure 7. Untitled. Photo by Agricubismo®.

Figure 8. Notte in Oman. Photo by Agricubismo®.

Figure 9. Perhaps a Bull. Photo by Agricubismo®.

Figure 10. Une saison en Enfer. Photo by Agricubismo®.

3. Cultural Background

Inevitably, some prolegomena are necessary to introduce the reader to the "matter" at hand, for this is an account of the transformation of matter, of dumped waste, illicitly abandoned garbage, vandalized property found in the parks or on the streets of a large European metropolitan area—Rome, Italy—not an eco-city, and far from ideal from an ecological perspective (Horowitz 2018). An eco-city, in fact, is a city "modelled on the self-sustaining resilient structure and function of a natural eco-system" (ecocitybuilders.org). In other words, it is a sustainable city the goals of which are, amongst others, minimizing material and energy consumption, improving mobility and maximizing the mental well-being and community health of its inhabitants, fostering environmental and human health through the proper management of emissions and noise pollution (Mersal 2017). It is obvious that the vast majority of contemporary urban settlements cannot be considered eco-cities, and the paradox is that, vis à vis the alleged global increase in awareness and worry relevant to the state of planet Earth, as evidenced by the constant media coverage of environmental issues, many contemporary cities seem to be succumbing to a sort of "battle fatigue", considering that over half of all humans live in urban areas and that in OECD (Organisation for Economic Co-opertaion and Development) countries there has been a per capita increase in municipal waste production of 35% (Gutberlet 2016).

More than fifty years ago, Sontag (1966, p. 13) called attention to the fact that "ours is a culture based on excess, on overproduction; the result is a steady loss of sharpness in our sensory experience. All the conditions of modern life—its material plenitude, its sheer crowdedness—conjoin to dull our sensory faculties". Those few lines contained, perhaps, the essence of our current predicament as citizens and as humans—a lack of attention to our surroundings, material overproduction and crowdedness. It is quite possible that most contemporary *shared pains* stem from these three elements, in combination or alone.

Undoubtedly, we are embedded in a culture of perpetual social emergency, as evidenced by the chronic, unrelenting and daily bombardment of primarily negative and catastrophic information and prognostications. If it bleeds, it leads, goes the saying relevant to fear-based information. The bombing is through, among others, social media, petition websites and targeted advertisements, which do not only advertise goods but also information, or what is purported to be information. Also, while today's certainty is tomorrow's mistake, the omnipresent images of social disorganization, social disorder, and ecological deterioration may have aftereffects ranging from mass hysteria and fear to apathy, with

social activism somewhere in between. The iconic threats and warnings do not always translate into a general call to arms, particularly in areas of the world where social cohesion stops at the nuclear family level (Chiesi 2009; Graziano 2014), and the sense of community is weak at best, most notably in large urban areas.

It seems, furthermore, that all too often, social problems are relegated to the level of personal responsibility or, to put it another way, that what once seemed as an issue for a/the community to address has become the province or responsibility of the individual. What is evident—de facto—is the disappearance of organized collective politics in many western countries (Hayward and Schuilenberg 2014). What were mass gatherings and demonstrations up to the 1970 s, and which characterized protest or even jubilation in the face of the end of public hardship—such as the end of a war—have been replaced in many instances by the pressure of a computer key or even more commonly by the use of a smartphone which now contains personal information including political and social orientation. Indeed, 39% of Americans have performed at least one political activity via social media (Rainie et al. 2012). Irrespective of the belief in the authenticity of a virtual community, the web and its pervasiveness, alongside the seeming imperative for its use as a primary source of information, but also for imbuing a sense agency, would seem to represent, in practice, a methodological individualistic approach to social affairs. The internet provides users with the belief that one can be an actual agent of social transformation, for example, through online petition participation and, for some, "civic engagement may be changing shape rather than decaying" (Bimber 2003). The paradox is that the freedom implicit in the supposed complete control of one's participatory behaviors via "social" media coincides with a lack of interpersonal and affective encounters typical of the social arena. The latter are necessary communal ingredients protecting not only from loneliness and anonymity, but also from the very social disengagement the new media intends to overcome. "Social" media deprives individuals of the tangible interpersonal responsibility inherent in face-to-face confrontation, diminishing reliance on actual behavioral mechanisms underlying choice and judgment and reducing, therefore, the effect of the consequence of one's decisions. Furthermore, reliance on social media and online activity for political action may not be risk-free and may lead to covert social control which may not be as evident as one exercised in a face-to-face situation. One recent European example is the Rousseau platform of the populist Italian Five Star Movement, an online "space" purported as being an avenue for direct democracy (Stockman and Scalia 2019).

Citizens are treated and considered as consumers and agency, allegedly, now comes through what we consume—and eat (Johnston 2007), in a way proving Feuerbach right. Indeed, regardless of the actual meaning of the German philosopher's phrase, "*Der Mensch ist was er isst*" (man is what he eats), what we eat tells us—first and foremost—and others something about where we stand in the social arena (Brisman 2009). What we purchase and how we dispose of it does as well. Recycling is promoted as "right" and "doing the 'right' thing" is "good"—with few questions asked. Who does not remember John Water's 1994 movie, *Serial Mom*, in which Kathleen Turner, while cross-examining Mary Jo Catlett, asks her whether or not she recycles, and the condemnation of the public on learning she does not? Such irreverent irony seems to be common in dealing with waste issues, sadly, as also illustrated in the 1969 movie *Alice's Restaurant*, directed by Arthur Penn and based on Arlo Guthrie's autobiographical talking blues song, "Alice's Restaurant Massacree" (often known just as "Alice's Restaurant"). In it, Arlo and his friends, after a sumptuous Thanksgiving dinner, decide to remove all the garbage from the deconsecrated Trinity Church in Great Barrington, Massachusetts,[3] where his friend Alice and her husband live and where the dinner took place. When they arrive at the local dump, they find it closed for the holiday and hence decide to throw the rubbish down a cliff, to join another pile someone else had previously dumped—a not uncommon phenomenon (Cialdini et al. 1990). In searching the crime scene, the local police find an envelope addressed to Guthrie, who is subsequently arrested

[3] Current home of The Guthrie Foundation (https://guthriecenter.org/).

for littering. The scene of the illegal dumping site is actually quite funny, and its intent is surely to underscore the absurdity of some law enforcement attitudes. Nonetheless, the meticulous tracing of the culprit is something that would be very much welcome in some parts of the world, where illegal dump sites abound and where not much can be done about them or the items within them that have been designed to become obsolete (Brisman and Nigel 2013; Ferrell 2013). Indeed, illegal dumping is thought to be, at times, associated with the inability to access alternative/legal options (Brandt 2017), as was the case for Arlo Guthrie and friends, who found the local dump closed for the Thanksgiving holiday. However, this is unlikely the case for the vast majority of situations.

The two movies reflect well different social agendas relevant to different historical moments in recent U.S. history. In spite of the irony, or perhaps thanks to the irony, what emerges, particularly from John Water's 1994 film, is that consumer behavior can be political (Stolle et al. 2005) and that our own agency is connected with our consumerist practices in what can be conceived of as life-style politics (Ward and Vreese 2011).

4. Illegal Dumping, Vandalism, and Social Deviance

Illegal dumping occurs when items determined to be waste, such as appliances, auto parts, construction and demolition debris, furniture, household trash, scrap tires, and yard waste, are disposed of in nonpermitted areas (see Figure 2) (United States Environmental Protection Agency 1998, cited in Brandt 2017). Vandalism, in turn, may be defined simply as a deliberately mischievous or malicious destruction or damage of another's property. The way the vandalistic act may be perpetrated may vary.

"Illegal dumping" and "vandalism" are both considered to be socially deviant behaviors. It is beyond the scope of this article to expand on the motivations for either or for the ways in which various acts or omissions come to be defined as "illegal dumping" or "vandalism". That said, some clarifications are necessary.

Social deviance takes on different forms, has different purported roots, and many (tentative) solutions, but can be understood as the violation of group norms. Generally speaking, such norms are implicit and/or explicit shared rules of conduct corroborated by social approval and disapproval (Elster 1989). They represent codes and understandings relative to what we expect others to do and what others expect of us (Young 2015). Normative social behavior theory (Rimal and Real 2005) provides a framework to explain how social norms influence behavior. It distinguishes between two types of social norms: descriptive and injunctive. *Descriptive norms* are personal perceptions about the prevalence of a given behavior, i.e., our understanding of what most people do. *Injunctive norms*, as the term suggests, have an admonition quality and may be understood as a social pressure to conform. Injunctive norms may affect behavior in light of a threat of social sanctions and disapproval. What is noteworthy is that, under a cognitive overload during which one needs to attend to many stimuli at once, there is a limitation to norm formulations. Furthermore, and perhaps more importantly, in situations of cognitive overload, should a cognitive deliberation be necessary, the influence of descriptive norms on behavior increases (Melnyk et al. 2011).

In fact, deviance per se implies a frame of reference to which a given group agrees (Jetten and Hornsey 2014), and its meaning may change in time and place according to changing circumstances. Today's deviance may indeed be tomorrow's norm. Likewise, a deviant behavior in one country may be a normal, accepted—or, indeed, *expected*—behavior in another. An example of this is the case of illicit substances (Carliner et al. 2017) or other morally and ethically charged socially relevant situations, such as assisted suicide and euthanasia, which straddle the fence between legality and criminality (Grosse and Grosse 2015; Palermo 2000). As with other terms relative to social behaviors, "deviance" is often used interchangeably with quite diverse constructs, such as "delinquency" or "crime", although these terms are also social constructions subject to debate.

Regardless, the "waste emergency", brought about, in part, by illegal dumping and littering, proves to be an obstacle to a healthy life (Chitewere et al. 2017). This is experienced on a daily basis

for many humans across the globe in industrialized and less-industrialized countries alike. Similarly, vandalism is so pervasive in some areas that we have come to normalize it as intrinsic to urban—but also rural—life. So, it is not surprising that many may look at individual and collective efforts to address illegal dumping and vandalism with cynicism or consider them ineffective (Wapner and Willoughby 2005) in the absence of—obviously—much-needed political intervention. We dump or litter where there is uncollected garbage, although that is not always the case (Dur and Vollaard 2013). The apparent carelessness related to the fate of waste may, indeed, be an objective form of learned social helplessness of sorts, stemming from a case of the choice of the lesser evil in light of the overabundance of collective obstacles which, as citizens, most of us confront on a daily basis, or, in light of the common lack of trust in some countries, in the agencies and institutions which are to effectively and efficiently manage waste. People and settings within a given community, after all, are interdependent (Levine and Perkins 1987).

A lack of trust can be based at times, such as in the case of the city of Rome, on scandalous and corrupt behaviors within the same agencies (Raimo 2016). To choose to *look the other way* may well represent the outcome of a form of "social and community burnout", applying the criteria for burnout as described in the healthcare literature: exhaustion, feelings of cynicism and detachment, and a sense of ineffectiveness resulting from chronic forms of stress (Maslach and Leiter 2016). All of this can translate into, if not helplessness, most certainly a feeling of impotence and a generalized feeling of a lack of agency (Swann and Jetten 2017). Indeed, the current anomic state of many European societies (Steenvoorden 2015)—the sense of breakdown in political and interpersonal trust as well as in moral standards on many levels—alongside the perceived lack of effective political leadership could very well explain a sense of pointlessness which could underline and further compound the lack of community participation.

The normalization of a wrongful behavior could also be formulated simply from a perspective of inattention—or one of progressive habituation (Haines 2005), or it may represent the progressive deterioration of the idea of "community". All this seems to be occurring, paradoxically, in the face of a widespread notion, be it factual or not, that the world is more connected globally either in light of social media or because of the acceleration of communication. Both provide an idea of relatedness in spite of an absence of real human contact, and clearly it is the *real* human contact that makes the difference in readily observable behaviors, as is the management of our immediate environment.

5. Conclusions

As Boris Groys contends, "contemporary art manifests its own contemporaneity . . . here and now . . . being able to capture and express the presence of the present" (Groys 2010), and our here and now is one of overabundance and waste.

In the present context, art functions as an attention-inducer. This is not dissimilar, although with a different medium, from the work of artist Sharon Daniel (2013), where art is used as a "context-provider", exploring the new potentialities of seeing and thinking (Pali 2014).

As Baudrillard (2016, p. 26) wrote, "everything that disappears seeps back into our lives in infinitesimal doses, often more dangerous". Indeed, nothing could be more true in the case of waste. Through the presentation of assemblages made with waste, there is a wish to challenge a hasty attitude towards leftovers and to demonstrate that discarded "things" still have the capacity to become, with Walter Benjamin, *dialectic images* (Benjamin 2002). In fact, in our everyday dealings, what we look at, even without a title, is still *something* or, in the case of others, *someone,* and yet titles and labels abound, representing ways to categorize but also to control. Indeed, without language, it would be impossible for one to provide descriptions of phenomena to others (Palermo 2018).

Labels describe and, to a certain extent, provide relief from the anxiety intrinsic in the unknown. Humans seem to require and enjoy cataloguing and categorizing the world. No area of human experience is spared this basic need for classification and ordering.

The approach to found matter is similar, in a way, to Natali's call to "visualize and reconstruct a system of symbolic and physical mediation with the territory one inhabits" (Natali 2016). The extraordinary coincidence with regards to Natali's perspective in his work is further evidenced by the following: "The object under observation is thus being explored, inspected and reassembled in a new form [. . .]. Taking on a perspective that renounces the positivistic pretension of representing *directly* the 'objects' observed is totally unavoidable. These 'objects' will in fact be the result of what was re-created [. . .] in an open dialogue with the observed reality" (Natali 2016, p. 35). Of course, the term *object* (of inquiry) refers to different concepts (people, situations, things). Nonetheless, the principle governing the exploratory and transformative approach is the same.

Yet indeed, given the source of the materials, it can also be seen as another way to think about *space, place and crime* as it has been suggested relative to street art and graffiti (Young 2017). The political, social and even criminological ramifications of the work presented are inevitably inherent in light of the origin of the assembled pieces. The choice of medium implies, in fact, a specific relation to contemporary society, and hence has a natural political implication (von Hantelmann 2010).

It is one man's iconic attempt to resist what is a progressive decline in the "habitability" of public spaces. It is a material way to alert and awaken to a symbolic "politics of memory" reified in art work (Le Roy 2017). It is a call to action cognizant of the fact that the focal point of any impulse for change is always in the now (Le Roy 2017) even if what is being used to create art are pieces of personal histories. As Esther Pasztory effectively wrote, "all things are related to each other in a vast chain of formal transformations" (Pasztory 2005, p. 103).

Broken parts become a new whole, and also herein lies a symbolic connection with the world of deviance as far as the obvious possibility for change and transformation, relevant to broken lives and broken communities.

Rather than "undoing the world of things", as philosopher and art historian Max Raphael considered the aim of art (Berger 1980), here destroyed or dumped things are assembled, and the pieces can symbolically and "totemically" represent [contemporary] collective identity. This is the world we live in, and while life may be always political, in this case, it is considered primarily as a sensory experience with political aftereffects. This is not "constructivist" art, by this intending art created for social purposes as was for the original conception of the constructivist movement (De Micheli 1977). Its social impact or connection is a consequence of the "where" and "what" of the makings, not the "why". The "why" lies in the inevitability of looking, seeing, touching, feeling, smelling, carrying—in other words, the inevitability of life.

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