

# The Case For A Victimology of Nonhuman Animal Harms

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## Abstract

For the last twenty years 'victimology', the study of crime victims and victimisation has developed markedly. Like its 'parent' discipline of criminology, however, very little work has been done in this field around the notion of environmental victimisation. Like criminology itself, victimology has been almost exclusively anthropocentric in its outlook and indeed even more recent discussions of environmental victims - prompted by the development of green criminology - have failed to consider in any depth the victimisation of nonhuman animals. In this paper, we examine the shortfall in provision for and discussions of nonhuman animal victims with reference to Christie's (1986) notion of the 'ideal victim' and Boutellier's concept of the 'victimalization of morality'. We argue that as victimology has increasingly embraced concepts of victimisation based on 'social harms' rather than strict legalistic categorises, its rejection of nonhuman victims from the ambit of study is no longer conceptually or philosophically justified.

Victimology; Victims; Green criminology; Animal law; Animal studies; Speciesism

This paper outlines the theoretical contours of a proposed expansion of victimology to include non-human victimisation. In so doing it will explore the concept of nonhuman animals as victims of crime before moving on to address philosophical arguments in favour of their inclusion within this lexicon and the notion of victims' rights being applied to nonhuman animals. The paper will end by sketching out some proposals for the scope and role of a non-human victimology. These proposals are intended to act as a starting point for further exploration and discussion, particularly for considering the relationship and role of academic, philosophical, organisational and activist concerns.

To this end, we begin with defining key terms, considering crime and harm that may impact on nonhuman animals, and situate our discussion in the wider field of green criminology. We then briefly summarise the development of the (sub-)discipline of victimology and introduce the concept of the 'ideal victim' (Christie, 1986); applying this to the idea of nonhuman animal 'victims'. We then present Boutellier's (2000) victimalization of morality to further justify including nonhuman animals in the remit of victimology. Following this conceptual discussion, we consider the key questions of this paper: Why should we include nonhuman animals in the discipline of victimology; and Why might we exclude them? Finally we conclude our thesis by starting to set out what a nonhuman animal victimology might look like, and the contributions that it may be able to make.

Throughout this paper we refer to nonhuman animals as distinct to human animals. The use of non-speciesist terminology remains fraught with difficulties. Some authors prefer the term animals other than humans, but both alternatives suggest an othering, whereby humans are distinguished from all other species, which themselves are conflated into one entity (Beirne, 2007). As a result, many writers present this problem, only then to revert to the use of ‘animals’ and ‘humans’ ‘for ease’. Here, we will continue to use nonhuman animals and humans, as the distinction is important, albeit we recognise this terminology is not entirely satisfactory.

It is further important to ensure readers are aware that in law (in most jurisdictions) nonhuman animals cannot be classed as victims of crime. As (usually) nonpersons, nonhuman animals cannot be classed as offenders either; although interestingly this has not always been the case. There is an extremely long history of ‘animal trials’ whereby nonhuman animals were tried in both ecclesiastical and secular courts, facing punishments the same as those dispensed to humans. There are writings regarding nonhuman animals being constructed as ‘offenders’ (or offender-like entities subject to punishment by formal orders or tribunals) as far back as ancient Greece, with further examples from the ninth century (Evans, 1906). Specific trials (in some circumstances with nonhuman animals represented by lawyers) are recorded from the mid-thirteenth century through to the nineteenth and even early twentieth centuries (globally) (Evans, 1906; Girgen, 2003) and usually involved either groups of ‘pests’ (rodents, insects and so forth) who had damaged crops or individual (mainly domesticated) nonhuman animals, such as pigs, cows, donkeys and dogs, that were charged with crimes including infanticide, murder, theft, trespass and bestiality (Evans, 1906). Of particular note is the fact that there are examples of nonhuman animals being acquitted, or having their sentences mitigated (e.g. because of youth or evidence of ‘good virtue’), suggesting the “trials were not merely for show” (Girgen, 2003: 109). Ostensibly such trials no longer exist, and nonhuman animals are not seen to possess the moral agency to be criminally culpable. However, as Girgen (2003) goes on to argue, nonhuman animals, particularly dogs, *are* still ‘punished’ for their ‘crimes’, but are no longer afforded the right to a fair trial; for example as is the case with dog attacks on humans or even simply being of a particular breed (see, for example, the UK Dangerous Dogs Act 1991, as amended in 1997) for which the ‘punishment’ is usually execution (‘destruction’).

Although nonhuman animals cannot legally be victims of crime, this does not mean they do not suffer harm as a result of both legal and illegal activities. The nature and degree of harm (which in some cases we may refer to as ‘injury’ or ‘suffering’), and the extent to which it may be recognised as such, varies, but we contend that:

Some *crimes* exist that involve nonhuman animals as direct targets, for example (in the United Kingdom) docking of dogs tails, (Animal Welfare Act 2006, s6); causing, attending or videoing dog fighting (s8); illegal hunting, for example of foxes under the Hunting Act 2004; importation of protected endangered species (Control of Trade in Endangered Species (Enforcement) Regulations 1997 as amended by COTES

(Enforcement) (Amendment) Regulations 2005 and 2007); killing, injuring or taking a wild bird (Wildlife and Countryside Act 1981, as amended); and sexual intercourse with an animal (Sexual Offences Act 2003, s69). Other *crimes* exist that indirectly cause suffering to nonhuman animals, such as discharging of poisonous, noxious or polluting matter into various types of waters (Environmental Permitting (England & Wales) Regulations 2010); illegal logging (through the destruction of habitat); and as part of wider family (domestic) abuse (e.g. Ascione, Weber & Wood, 1997). Similar types of behaviour are also criminalised in many other parts of the world, including the USA (under Federal and/or State law) and Canada.

Many *harms* exist that involve nonhuman animals as a target or sufferer, including hunting (particularly ‘canned’ hunts), the most intensive forms of farming (e.g. battery laying), general issues of neglect and poor husbandry that are not criminalised and, as above, more indirectly when environments (habitats or the biosphere generally) are damaged.

Many more acts (and omissions) take place that result in harm or suffering for nonhuman animals, but the degree, acceptability or even ‘necessity’ of the harm is viewed by many as justifiable. Yet, if we were to take a species justice/animal rights perspective (as opposed to a traditional anthropocentric one) the fact that some degree of harm or interference has occurred would be unarguable. This may include physical injury, emotional suffering, stress, fear, an inability to exhibit natural behaviour or a foreshortening of natural life span. Examples of these more contentious harms are numerous, such as farming (meat, dairy, wool, fur and so forth), vivisection, ‘pet’ breeding and keeping (particularly of birds and reptiles), confinement in zoos, use in circuses or for other forms of ‘entertainment’, racing (or other sports) and showing (e.g. dogs).

These crimes and harms impact upon a substantial number of nonhuman animals. For example, in the UK, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) is responsible for bringing most animal cruelty/welfare prosecutions. Their 2012 report shows 1,830 cases reported to their prosecution department (involving 2,777 people). In the same year they secured 2,441 convictions in the Magistrates’ Court, resulting in 1,086 people being found guilty (with a further 472 people receiving formal non-statutory cautions). Most of these cases were brought under the Animal Welfare Act 2006 (RSPCA, n.d.). Of course, the nature of offences that harm nonhuman animals is such that the vast majority will never come to the attention of official bodies, thus this figure will be a small proportion of the actual number of incidents of cruelty or neglect that occur.

Also in the UK, the Royal Society for the Protection of Birds (RSPB) records reported incidents of protected bird persecutions (from members of the public, UK Police Forces and various other interest groups). These are categorised as Unconfirmed (an illegal act may have taken place), Probable (the most likely explanation is an illegal act has taken place) or Confirmed (an illegal act has taken place, determined by reliability of witness and usually supported with evidence, such as post-mortem information) (RSPB,

n.d.). In 2012, the RSPB recorded 442 reported incidents (across all categories), which they believe to be “only a fraction of the number of incidents” (p12), again due to the very dark figure of unknown and unreported crimes committed against nonhuman animals.

Other estimates regarding the extent of harmful activities impacting on nonhuman animals include:

US research carried out by Ascione et al. (1997) suggested that of pet-owning women entering shelters, 71% reported physical harm or threats to family ‘pets’.

Animal Aid (2014) report that in the UK, 1,000 million animals (excluding fish) are killed for food each year. The number of fish “are killed in such vast numbers that they are counted in tonnes” (online). For the USA, the Animal Liberation Front (n.d.) have compiled totals from USDA slaughter statistics showing that in 2008: 35,507,500 cattle; 116,558,900 pigs; 9,075,261,000 chickens; 69,683,000 layer hens; 9,005,578,000 broiler chickens and 271,245,000 turkeys were killed in the USA for food. This amounts to over 18 billion animals killed domestically. When factoring in those killed elsewhere and imported for food to the USA, plus fish and shellfish, they claim the number in 2008 to reach 80 billion lives.

Home Office (2012) statistics on scientific procedures carried out on living animals in Great Britain show 3.79 million procedures started in 2011 (the number of nonhuman animals affected is not recorded, though the report states the numbers are relatively equivalent, with individuals only being double counted if they have completely recovered and then been used for a further procedure). Figures for the USA are not comparable as they exclude a number of (the most used) species, such as mice; but the Guardian (2008) reported estimates by Animal Aid and the Dr Hadwen Trust of about 115 million nonhuman animals used in scientific research worldwide in 2005.

Estimates on the value of illicit wildlife trade are extremely difficult, but are in the billions of US Dollars (see, e.g., Ong, 1998; Damania and Bulte, 2001; National Wildlife Crime Unit, 2008). The number of nonhuman animals this equates to are not known but, as one small example, the World Wildlife Fund (n.d.) reports a 5000% increase in rhino poaching in South Africa (from 2007 to 2012), with more than 900 rhinos poached in 2013.

Finally, nonhuman animals are harmed during periods of war and their aftermath. For example, Project Mkonzo records and campaigns on animals affected by landmines. The last update they provide records 3,627,000 animals killed or injured by such devices across 41 countries (Project Mkonzo, 2003).

We therefore contend that these harms (and their ‘victims’) can no longer be ignored by victimologists, and it is to this argument that we now turn.

## THE DEVELOPMENT OF 'VICTIMOLOGY'

The term 'victimology' as an academic label is usually attributed to Frederick Wertham (1949) or sometimes to Benjamin Mendelsohn (Kirchhoff, 1994). Rather than entering into an exaggerated debate concerning victimology's status as an individual 'discipline' in its own right, the term is adopted in this paper simply as a convenient and well-used descriptor for specialist investigations into criminal and (less frequently) non-criminal victimisations, usually on the part of criminologists and sociologists. Early victimologists largely focused on the so-called 'precipitation question', whereby criminal victimisation was attributed to the choices and lifestyle of victims themselves. This perspective dominated academic discussion of victimisation up until the late 50s and early 60s (von Hentig, 1948; Mendelsohn, 1956; Wolfgang, 1958; Amir, 1971; Fattah, 1992). At this point, Schneider (1991) argues that victimology was set off in two directions: as a discipline concerned with human rights, and also as a sub-discipline of criminology concerned specifically with (again, *human*) victims of crime.

Like the broader 'victims movement' itself (see Hall, 2009) victimology has been far from a unified sub-discipline. The 1970s saw disputes arise between victimologists who focused on the provision of services to crime victims, and those who were interested in broader, research-driven victimology (van Dijk, 1988). Conflict also arose between 'positivist victimology', which employs scientific methods (such as victimisation surveys) to examine criminal victimisation specifically, and 'general victimology', which encompasses wider victimisations: including war and, of particular relevance to the present research, natural disasters (Cressey, 1986; Spalek, 2006). Walklate (1994, 2007) and Young (1997) have each highlighted the continuing tensions between various groups of victimologists. In addition, from its outset victimology has shared a common trait with the study of nonhuman animal rights and nonhuman animal abuse in that its activist and academic branches have frequently overlapped. Speaking of Gloria Egbuji, the Nigerian lawyer and campaigner for victims' rights, Jan van Dijk (1998), himself a major figure in the proliferation of victimology across Europe, notes:

Like many of us, our Nigerian colleague resists to be qualified as either researcher or activist. Most of us are happy to wear both hats. (p.2)

Despite the initial divergence of foci and aspirations amongst victimologists, as the view gradually developed that victims of crime were being neglected in many criminal justice systems throughout the world, the study of crime victims took centre stage (Maguire, 1991). A major facilitator of this process was the Norwegian academic Nils Christie (1977) who argued that the criminal justice system of many countries, having become over professionalised, effectively 'stole' conflicts from their 'rightful owners', meaning victims and offenders. Over the next twenty years, numerous research projects concerning victims' marginalised role within the criminal justice process would reinforce the prominence of victims of *crime* as the key concern for most commentators (Shapland et al, 1985).

The field of 'zemiology' (the study of social harms, which developed as a critique of positivist criminology and its focus on officially labelled 'criminal harm') has continued to address victimisation through social harms beyond crime and the traditional confines of criminology (Hillyard, 2006). However, much of victimology (and criminology) continues to be centred on notions of victimisation espoused by official sources, often through the criminal law. It is important to note that this focus is not based on any inherent limitations of criminology as a discipline or the theories it promotes. As noted by Matthews and Kauzlarich (2007):

Most criminological methods and theories can be applied to behaviors independent of whether those behaviors are officially defined as crimes. In short, criminological theory attempts to explain behavior – and that behavior may or may not be criminal, but is likely deviant in some way. (p.53)

For McBarnet (1983), it is victimologists themselves (rather than victimology or criminology) who are partly to blame for this state of affairs. By concentrating their attention predominantly on traditional notions of victimhood (with particular emphasis on rape victims) the author argues that researchers in the field have somewhat played into the hands of governments wishing to derive political capital from victims, and from punitive criminal justice responses:

Indeed, *politically*, victimology has contributed to the strengthening of the state's role. It has set itself up as engaging not just in academic debate but in "affirmative action for the victims of crime", and, like traditional criminology before it, its too-ready acceptance of official definitions of criminal and victim have reinforced rather than questioned the status quo. (p.302, emphasis in original)

These sentiments take on an added dimension when applied to the issue of nonhuman animal abuse, because such discussion may often concern harms that are not officially recognised by the state as *criminal*, or at least where the question of criminality is unclear (see Larsen, 2013).

Elias (1983, 1986) and Rock (1990) go further to argue that society's narrow conception of victimisation is brought about by selective definitions of crime, constructed for political purposes and, in the case of environmental degradation, we might add *economic* purposes. For Garland (2001), this is because the traditional measure of criminal justice effectiveness, the system's ability to control crime, has become redundant at a time of falling public confidence in these systems. In the face of this growing public concern that little can actually be done about crime, Garland argues that governments deny their failure by turning to ever more punitive policies: such as mandatory minimum sentences and 'three strikes' legislation. Victims, so goes the argument, are used by governments to justify such measures by reference to their 'need' to be protected and have their voices heard. Such ideas may overly simplify the complex interaction of social processes that lead to activities being labelled as 'deviant', but the point remains very significant in the context of the present discussion, which is grounded on the marked absence of nonhuman animal victims from the academic and policy agendas.

Such arguments have led to the development of so-called 'critical victimology' and its expanded notions of victimhood beyond simple, criminal classifications (Hough, 1986; Dignan, 2004). In many ways nonhuman victims fall squarely within the category of "real, complex, contradictory and often politically

inconvenient victims” (Kearon and Godey, 2007:31) with which the critical critique is so concerned. This is particularly so given the reality, as introduced above, that not only does nonhuman animal suffering often derive from entirely *legal* activities, there may in fact be very sound economic and/or political justifications for a company or a state to passively allow such activities to continue, or even actively promote them (Walters, 2006). Of course, as noted by Ruggiero and South (2010), such political and economic decisions are heavily influenced by power inequalities, which are another feature of the critical school and are particularly espoused by so called ‘radical’ victimologists:

[T]he high status of those causing the most harm who (like other powerful offenders) frequently reject the proposition that criminal definitions should apply to them while constantly striving to persuade legislators that the imposition of norms of conduct on them would be detrimental to all. Powerful actors whose conduct impacts on the environment possess the ready-made rationalisation that a law imposing limits to the harm they cause would implicitly endanger the core values underpinning economic development and therefore be damaging to the collective wellbeing. (p.246)

Partly in response to such radical criticisms of the status quo there has been a marked expansion of official notions of victimhood over the last decade in many jurisdictions. For it is the case that following a strictly legalistic (black letter) approach, victimology would arguably be limited to only those cases where the offender has been formally adjudicated against through recognised criminal proceedings. However, for traditional forms of crime, applying the label of victim has not been seen as particularly problematic, even when there has been no formal determination that a criminal offence has actually taken place (that is to say, no offender has been found guilty) and victimology has traditionally recognised as victims those individuals who have never reported their victimisation to the police. Indeed, more recently this expansion has included friends and family of homicide victims and witnesses of crime as well as resulting in the greater recognition of domestic violence as a pervasive social problem (see Association of Chief Police Officers, 2008).

As set out here, however, a broader conceptualisation of victimhood *has* proven problematic, for those who have suffered because of white collar and corporate crime, groups or communities and unborn children. This is also the case for offences where causation is difficult to prove and harm is difficult to quantify (or may rely on contentious evidence) and those victimised by acts or omissions that are not (yet) criminalised. Where such notions of victimhood prove problematic for ‘traditional’ victimology, they may find their home within critical victimology. Thus it is within this approach that recent calls to consider (human) victims of environmental crimes and harms seem to fit (see Hall, 2013). We believe this expansion should also include crimes and harms that affect nonhuman animals, who should consequently be recognised as victims of such.

## **NONHUMAN ANIMALS AS 'NON-IDEAL' VICTIMS**

Even when recent expansions of the notions of victimisation discussed in the last section are taken into account, the application of victimological enquiry to *nonhumans* is still almost non-existent. With the recent development of green criminology as a distinct study of environmental crime and social harms (Hillyard and Toombs, 2003) some victimologists have begun discussing the concept of victimisation as a consequence of

environmentally destructive activities (see Hall, 2013). In a very early contribution Williams (1996) for example defines environmental victims as follows:

...those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or omission. (p.35)

As well as restricting such victimisation to legally proscribed activities, this definition is typical of the admittedly scant green victimological literature in that it is also entirely anthropocentric: failing to take account of the harms perpetrated against nonhuman animals as a result of environmental crime or harm.

It is not unusual to see claims that human ‘victims’ with certain characteristics have been ignored, neglected or left voiceless. Indeed, in a seminal contribution to the victimological literature, Nils Christie (1986) famously argued that the victims movement, and in particular the attention paid by policy makers to victims of crime, was in fact limited in focus to those victims displaying ‘ideal’ characteristics. Such characteristics included being weak, being a stranger to a ‘big and bad offender’, carrying out an innocent activity and cooperating with the authorities. So are nonhuman animals excluded from victimology because they are non-ideal victims? It would seem not. In most cases, nonhuman animals would be perceived as ‘weak’ compared to humans (certainly from a sentience and power perspective); they would often be victimised by strangers, although not in the case of those reared for food or kept as companion animals (when they could actually be perceived as vulnerable, in the same way a child would be); and they would generally be recognised as engaging in ‘innocent activity’ and being blameless (except in the case of retaliation for crop damage or actions to reduce threats to human safety). Of course they cannot co-operate with authorities, but neither would they obstruct them. In very simple terms, then, it seems nonhuman animals, especially those socially constructed as ‘cute companions’ worthy of protection and care could quite easily be viewed as ‘ideal victims’.

However, such was the anthropocentric bias of academic study in this area that even Christie did not problematize the fact that the ideal victim is of course also human. It appears, therefore, that nonhuman animals are not afforded victimhood *purely* because they are not human. Thus the notion of the ideal victim and the discipline of victimology are inherently speciesist. This is amplified by the dominance of Western thinking in victimology as a discipline, reflecting very often the perspective of the global north. By comparison, other parts of the world culturally ascribe a great deal more worth to animals and concepts of nature in general: leading to the incorporation of such concepts as protected entities in jurisdictions including Ecuador and Bolivia. Thus a (nonhuman) victimology developed from such a perspective may look very different.

Even when consideration of harm to nonhuman animals has been factored in to discussions of environmental damage, there is often an underlying deference to human needs. Take for example the major leak of highly toxic methyl isocyanate gas in December 1984 from a gas plant in Bhopal (India) owned by the Texas-based Union Carbide Corporation. This incident has become a major rallying point for



commentators and activists debating the social and legal responses to corporate environmental damage, and yet there has been little written about the long-term impact of the gas on nonhuman concerns and in particular water supplies in the area and the knock-on effects on the local nonhuman animal population. Dhara and Dhara (2002) draw on official published and wider accounts to argue that:

More than 4000 animals died within minutes of exposure to the gas and almost 15,000 animals suffered the toxic gas effect while surviving (over three times the officially announced total). (p401)

Specifically this breaks down to 790 buffaloes, 270 cows, 483 goats, 90 dogs and 23 horses. Yet it is notable (and perhaps unsurprising) that even these figures are actually utilised by Dhara and Dhara (2002) as part of a wider argument to demonstrate the potential effect on *human health* of the use of pesticides in India.

From an eco-centric perspective we can further contend that nonhuman animal and plant life is often seen as an ‘acceptable’ cost of industrial and commercial practices. Certainly the impacts upon nonhuman animals are deprioritised, even in much green criminological writing. Beirne (2007) has commented on this disregard for the harm befalling nonhuman animals and plants by reference to the language used (even by environmentalists) to render nonhumans ‘the other’. This includes more obvious examples of referring to humans as ‘human beings’ whereas nonhuman animals are simply ‘animals’, to the more subtle phraseologies that “hinge on animals’ master status as the property of humans” (p.63). Beirne here gives the example of the terms ‘fisheries’; ‘laboratory animals’; ‘pets’ and ‘race horses’. Nurse (2013a) takes a slightly more positive view, drawn from Arluke and Sanders (1996), in arguing that social views on nonhuman animal harm change over time and, as such, reflects a social constructivist perspective of the issue:

Such attitudes change over time so that animal harm may become an issue of core importance in public policy when the public demands that it should be, or is considered to be a fringe issue at other times (Arлуke and Sanders 1996). (p.200)

At the same time, however, Nurse also expresses the view that “Public policy on animal harm is predominantly concerned either with animal protection or welfarism rather than animal harm as an aspect of criminal justice” (p.210). Thus, from a criminological perspective, the victimisation of nonhuman animals as well as the environment itself is not being recognised in the same manner as human victimisation; that is to say, it is not deemed worthy of the ‘criminal’ label. Indeed, it has already been stated that even when there are acts or omissions that result in harm to nonhuman animals that *are* criminalised, nonhuman animals are not legally, or even socially (except rarely) constructed as the ‘victims’ of these crimes.

The above notwithstanding, it is worth emphasising the point that for non-human victims of (environmental) harm not all nonhuman animals are equally ignored by policymakers. In a revealing commentary Nurse (2013a) contends:

Informal rules, embedded in specific practices and nuances might dictate, for example, that in some inner-city police areas most animal harm (except possibly wildlife crime and the trade in endangered species) is seen as being a low priority for

police investigation whereas in rural areas (such as Scotland where rarer birds such as the golden eagle and the osprey are seen as being part of Scotland's heritage or those parts of the United States where California condors or bald eagles hold special cultural significance) considerable police and criminal justice resources may be directed at those offenders who seek to exploit wildlife resources. (p.231)

In another recent example the outcome of a conference taking place in Helsinki in May 2010 on *Cetacean Rights: Fostering Moral and Legal Change* received widespread international media attention when the group of "experts in philosophy, conservation and animal behaviour" called for the recognition of a 'non-human persons' status for dolphins, whales and porpoises via a Declaration of Rights for Cetaceans (Hue and Anton, 2011: p.76). The text of the draft document sets out a number of rights including cetaceans' right "to the protection of their natural environment" and to be free from "disruption of their culture" (p77). A similar Declaration is proposed by the Great Ape Project (GAP, n.d.). Although such declarations are (at present) only thought-exercises, they firstly illustrate the kinds of questions a genuinely non-anthropocentric approach to 'environmental rights' might foster and secondly raise questions as to why certain species have been singled out for special attention. In practice, there has also been some recognition of 'rights', special protection or personhood for great apes in New Zealand and the Balearic Islands (Nature Neuroscience, 2007; Taylor, 2001) and dolphins in India (Coelho, 2013), whilst Switzerland, Austria and Germany all recognise nonhuman animals as beings rather than things (Associated Press, 2002; Natrass, 2004).

Such developments provide us with a timely reminder that even those seeking to challenge anthropocentricity can fall foul of what may be termed hierarchical speciesism (or differentiation): the ordering of species by how important, sentient, human-like or even 'cute' they are; those higher in the hierarchy receiving more protective attention. This has been called the 'Bambi effect' (Ferreday, 2011). Key examples of such ordering (and concomitant welfarism) include the 'most' sentient species (cetaceans, primates, some birds) compared to the 'least' (such as fish and insects) and those given more privileged status (companion animals) followed by those given the most protected status (endangered species, particularly 'iconic' animals (or 'flagship' species (WWF, n.d.)) compared to those who are most objectified (e.g. food). It is clear then that, to adapt Orwell, all (nonhuman) animals are unequal, but some are more unequal than others. Hierarchical speciesism not only affects policy related to, and regulation and criminalisation of, harm but it is also something of which a nonhuman animal victimology must be mindful. Of course, outside the debate presented here, this attitude also affects non-animal species (flora) and the biosphere more generally.

From this we can draw the conclusion that from an anthropocentric perspective some nonhuman animals are more 'ideal victims' than others: or rather not all nonhuman animals are equally without worth to all humans. Notably though the worth they do have tends to be based entirely on human prejudices and social/cultural labelling. These observations also highlight that geographical location will also impact upon the degree of victimisation suffered by different species: a point which is equally true of human victims (Hall, 2013).

The question though remains as to what justifications exist for the widespread prioritisation of human suffering and harm to humans in both the green and mainstream criminological literatures. Indeed, even if their nonhuman status makes animals non-ideal victims, this in itself should not be grounds for exclusion from (a green critical) victimology. In fact part of the reason for *including* nonhuman animals (and other excluded groups) is the role victimology can play in increasing awareness of the extent and nature of harm experienced by, the characteristics of and the impact on such under-represented and ‘hidden’ groups (to which we will return later).

## **NONHUMAN ANIMALS, RIGHTS AND THE VICTIMALIZATION OF MORALITY**

Beirne and South (2007) argue that if society is going to concern itself with *some* environmental harms, then the impact on nonhuman animals cannot be separated from this endeavour:

Animals of course live in environments, and their own well-being – physical, emotional, psychological – is absolutely and intimately linked to the health and good standing of their environments. (xiii-xiv)

This implies that whenever we are talking about harm to the environment we are necessarily talking about victimisation of nonhuman animals. In these terms the continued anthropocentric bias of victimology, and certainly green victimology, seem unjustifiable. This view is in fact supported by the more philosophical literature surrounding the increased recognition of victimisation. In particular, we might look to the philosophy of Hans Boutelier (2000) who argues that, as the processes of globalisation and secularisation go on, common standards of morality decline but common appreciation and sympathy for the impacts on those who have suffered harm remains: and that this becomes a barometer for shared moral values. Boutellier refers to this as the ‘victimalization of morality’. Boutellier’s thought itself is anthropocentric (based on the suffering of *humans*) but it could be argued that there is no reason why the focus on harm - ‘the suffering of others’ - cannot equally apply to a greater appreciation of the suffering of other *species* and indeed harm to the environment itself. Certainly on this point there is arguably greater public awareness of the damage being done to the nonhuman components of the environment than at any time in the recent past (Molloy, 2011). This was exemplified recently by the widespread public outrage expressed at the killing of a healthy giraffe ('Marius') and four lions at Copenhagen zoo (Independent, 2014). Certainly the plight of *certain* nonhuman animals (see above) also attracts much more media attention, with some instrumental impact on social attitudes. For example, media coverage of food production practices is thought to influence demand for some meats in the US (Tonsor and Olynk, 2010).

The extension of Boutellier's thought to the suffering of nonhuman animals is predicated on an important assumption: that the harm to nonhuman animals is as significant (in philosophical terms) and worthy of attention as that suffered by humans. We have already noted above that in many cases the underlying assumption of both law makers and commentators is in fact that this is not so, and that anthropocentric concerns (economic, social and political) are rightly prioritised over nonhuman animal victimisation. Challenging this position requires drawing on a vast quantity of philosophical and sociological

literature in which the notion of 'animal rights' is discussed and debated. It is not the purpose of the present paper to offer an extensive review of this field. Nevertheless, these perspectives do support the argument that victimology must become concerned with nonhuman as well as human harms, especially if nonhuman animals in fact have 'rights' in the same way as humans. In approaching animal rights one preliminary issue to emphasise is that, whilst often 'the environment' and 'nonhuman animals' are amalgamated into a single issue in green criminological writings, in fact there are arguably wide conceptual differences between the development of the animal rights (or, for some, 'animal abuse') movement on the one hand and 'environmentalism' on the other. As noted by Beirne (2007), whilst the two areas ostensibly have much in common:

The task of finding in the area of animal abuse common ground between environmentally- (or ecologically-) based green criminology and an animal-centered animal rights theory, worthwhile as it might be, is not altogether a straightforward one. (p.56)

Beirne goes on to classify animal rights and animal abuse perspectives into three broad groups: always acknowledging that this represents a vast oversimplification of what is actually a very diverse movement (on which, see Munro, 2012). The first of the three perspectives Beirne emphasises is the utilitarian argument - which gives animals rights on the basis that they are "sentient beings who can suffer and feel pain" (p.67) and thus in keeping with the utilitarian philosophy of maximising pleasure whilst minimising pain, humans should not inflict pain upon them. This is contrasted to the 'animals as moral patients' argument whereby animals are conceived as 'subjects-of-a-life' and, whilst they are not capable of 'doing right or wrong' themselves, in moral terms they are equivalent to human infants, the mentally ill and young children by reason of their ability to suffer. Thus, it is argued, failing to respect the rights of nonhuman 'moral patients' whilst preserving the lives and avoiding harm to human moral patients would be arbitrary and thus unjust. Thirdly, Beirne discusses the feminist perspective of animal rights, which holds that the failure of both the utilitarian and moral patients understanding of this concept is their dismissal of purportedly 'un-masculine' traits of sentimentality and emotional attachment to animals. This "effectively equates 'sentimental' and 'emotional' with 'irrational' and all three traits with 'less than male' and 'female'" (p.71). In contrast, it is argued that from a feminist perspective such traits are perfectly acceptable as moral justifications for the recognition of animal rights. All variants of animal rights approaches can be critiqued, and they have clearly proved at best problematic and at worst of little interest to policy makers, particularly within most legal jurisdictions. Even within the 'animal rights' movement there are significant differences of opinion, notably between the welfarist/protectionist and abolitionist approaches (see, for example, Francione and Garner (2010)). Further, where countries have made moves towards securing protective provisions for nonhuman animals, or granting them status other than objects, these provisions almost invariably display hierarchical speciesism.

It is clear that there is much in the above summary which links animal rights arguments to the development of green criminology and victimology along critical lines. Certainly if it is 'harm' we are

discussing rather than 'crime', the utilitarian and moral patients arguments offer clear reasons why 'harm to animals' is as significant as 'harm to humans'. Yet, legal protection of rights has still not been granted to nonhuman animals. We do not see this as an insurmountable problem (a point to which we will return later), but this does mean that our call for their recognition as victims of harm (and even more so crime) cannot solely be predicated on a rights-based argument.

It should finally be noted here that, as also discussed by Beirne (2007), the above philosophies of nonhuman animal rights do not neatly map onto the eco-centric concern with non-living aspects of the environment such as the oceans, atmosphere and so on. Nor indeed would the above perspectives cover flora and thus issues like biopiracy, genetic modification, diversification of crops and so on, unless they were defined as capable of 'suffering'.

### **WHY INCLUDE NONHUMAN ANIMALS WITHIN VICTIMOLOGY?**

Just because we may be able to present a case against the exclusion of nonhuman animals from a (green) critical victimology, does not of course mean we *must* include them. To argue this, we must show some benefit of inclusion and the appropriateness of the victimological endeavour to nonhuman animals and the harm they suffer. In this section we consider both these issues.

Our first consideration must be: what is the purpose of victimology? We have already briefly set out the development of this discipline, but in very simple terms it seems there are three key areas within, and contributions of, victimology. Firstly, victimology is the study of victims. It seeks to increase knowledge and understanding of the nature, extent and impact of victimisation. It would clearly be beneficial to learn more about these issues with respect to harms affecting nonhuman animals. Doing so would further our understanding of under-researched crimes and harms and their targets, offenders, 'victims' and the inter-relatedness of these across *all* species.

Secondly, victimology is concerned with the operation of the criminal-justice system as it relates to victims; and the rights of these victims. This is probably the most contentious area with respect to inclusion of nonhuman animals, most notably because only humans can (currently in most jurisdictions) be formally and legally granted the status of 'victim', and because of the lack of recognised protected rights afforded to nonhuman animals (as set out above). However, it is our contention that as they undoubtedly suffer harm (individually and/or as a species) from acts and omissions *already criminalised*, then there is a strong argument for at least a greater recognition of these impacts when cases do end up before the courts. Further, as Nurse (2013b) has suggested, there is a need for 'wildlife offences' to be mainstreamed in terms of enforcement and the wider criminal justice system.

This need not require the conferment of the legal status of victimhood, rather it could take the form of a quantification of the impact of harms on individual ('victim') animals and, where appropriate, the species as a whole. For example a number of European countries determine the level of fines (or compensation) for illegal trading in endangered species by the severity of the impact on the traded species (i.e. higher fines for

the most at risk species) (Garstecki, 2006). This, and other impacts of the crime, could be presented to the court in the form of ‘victim’ impact statements from recognised experts or accredited animal advocates, the latter of whom could also feasibly bring cases on behalf of targeted species or individual nonhuman animals suffering legally proscribed abuse (such as Antoine Goetschel, a recognised legal advocate for nonhuman animals in the Swiss Canton of Zurich). Such impact statements, much like existing victim impact statements in the UK (Hall, 2009), might report the physical pain and effects on natural behaviour experienced by nonhuman animals that have been physically abused or severely neglected or criminally misused (such as cases of dog fighting). They might also set out the longer-term effects of acts on (particularly endangered) species; which might be useful for sentencers who cannot be expected to be fully cognisant of these. Finally, nonhuman animals may be afforded a role in court proceedings through the consideration of some form of compensation or restitution from offenders, put towards protective or conservation efforts (as is the case for CITES-related crimes in Finland, for example (Garstecki, 2006)).

Finally, research in the field of victimology helps inform policy and activism. Both the previous endeavours should lead to more informed policy (based on how much a problem something is, what types of harms are actually being caused, who is involved, and so forth) and to awareness-raising about harms experienced by nonhuman animals. Where (activist) victimologists then wish to argue for policy change (potentially including criminalisation), this would be more informed and evidenced.

On this point, Munro (2012) provides a concise review of arguments for and against the greater cooperation and interaction between academics (specifically social movement scholars) and social activists in many areas, but within the animal rights sphere in particular. Despite the numerous practical and theoretical hurdles, Munro's conclusion is that:

[T]heir [social movement scholars] academic ‘tool kit’ might prove to be more useful than the philosopher’s more abstract concepts and reasoning; this would certainly be the case in the everyday practice of activism where strategy and tactics are of paramount importance...It is surely logical that social movement theories and concepts are enhanced by a scholar’s engagement with activists whose ‘practical knowledge’ provides empirical credibility for what otherwise is often perceived as esoteric, abstract theory (p.515).

Methodologically, this closer synergy between value-laden activism and academic debate is already present in the environmental crime literature: both in relation to the regulation of environmental harm and in terms of the collecting of more quantitative data on the subject.

To summarise, as a field of enquiry, as an informer of policy, and as an activist movement, we believe some form of inclusion of nonhuman animals in a critical victimology is defensible. We do not believe that nonhuman animals should be excluded just because they may be precluded from legal conferment of victim status, or because of a lack of consensus on whether they should be afforded legally recognised rights or the form these rights would take (or to whom these rights should be granted). This does not mean all victimologists would agree with this argument, or that there should be a focus on nonhuman animals equal to

that of humans. However, we wish it to be recognised that as victimology remains an activist and academic discipline, who should be included as worthy of study need not, indeed should not, be determined by the practices of governments or formal systems of justice. Indeed, if this were the case then, as already mentioned above, a strict application would exclude all those ‘victims’ for whom an offender had not been found guilty, all those who did not report the ‘crime’ they experienced and all those who suffered harm that was not yet criminalised. It would also preclude all those ‘victims’ in countries where State action is not taken against acts criminalised in other jurisdictions (including marital rape, homophobic violence, domestic violence and so forth).

## **WHY EXCLUDE NONHUMAN ANIMALS FROM VICTIMOLOGY?**

A number of arguments against the inclusion of nonhuman animals may, however, also be proposed. It is our contention that these arguments are unlikely to be insurmountable, given what we have considered above. Indeed, it is likely the case that the most convincing arguments will be those coming from a traditional, legalistic application of victimology interested in the ‘usual suspects’ of crime and victim rights within criminal justice systems. Yet as we have seen, victimology has shown a willingness to include non-ideal victims, witnesses, families and victims who have been affected by corporate, state and international crime (or at least, critical victimology has). We recognise that, at least in the foreseeable future (most) nonhuman animals will not be granted legally protected rights or personhood, however we are not (here) arguing that they should, or that they need to for victimology to be concerned with the harm they suffer.

We have identified other (non-rights based) issues that may lead to resistance to the expansion we call for, but again we do not feel that these alone justify the continued anthropocentric focus of victimology. We do acknowledge, however, that these are issues that cannot be ignored and may limit the extent of nonhuman animal victimology or the interest and attention it may garner. These issues are presented here.

Firstly, there may be an understandable concern that expanding the scope of victimology to include nonhuman animals (or even human victims of harm, such as environmental victims) may be seen as an ‘opening of the floodgates’. If victimology becomes too diverse a discipline, might this result in a loss of its focus and meaning, and in consequence its activist and policy-influencing impact? Does paying attention to victims of harm and non-traditional victims (including nonhuman animals) mean that victimology will be taken less seriously? There is no reason why this should occur, but it is possible. It may also be the case that it could lead to greater division, fragmentation and marginalisation within the discipline.

Further in relation to this issue, we have predominantly discussed nonhuman animals as one entity, yet of course there are millions of different species of animal life. We have also critically recognised the existence of what we have termed hierarchical speciesism, to which a non-speciesist, inclusive, critical victimology should take care not to fall foul. We recognise that for many people it may be easier to accept the notion of some nonhuman animals as victims than others. For example, victimhood may be more easily comprehended in relation to ‘higher order’ species (such as cetaceans and primates), those that can be most

readily anthropomorphised and those to whom society tends to give protected status. It may be much harder to conceive of this notion for species *perceived* as dangerous or disease-carrying (for example, spiders, snakes, rodents), those constructed as food, tools, test subjects or clothing, those used for entertainment, those considered to have the least sentience (e.g. fish and insects) and even those that are thought to be ‘ugly’ (see O’Callaghan, 2013). Compare, for example, the outrage relating to a case in the UK of a woman who microwaved a kitten (BBC, 2014), but not over the boiling alive of lobsters for food. It is true that seeking to protect *all* nonhuman animals from *all* forms of harm, or for our purposes, classifying all nonhuman animals that experience harm as victims is a perhaps admirable but unachievable aim, but again this should not be grounds for a blanket exclusion of nonhuman animals, nor of particular species on the grounds of how they are constructed or labelled, as to do so would be speciesist.

The second issue to be addressed is that of balance, which has also been raised by Hall (2013) in relation to environmental victims. Recognising more entities as victims, giving victims more of a voice and more ‘rights’ (or whatever we may refer to these as) will likely impinge on the rights and activities of other players, notably individual offenders, but also, in some cases, corporations, organisation, states and even other (potential) victims.

For example, an increase in ‘rights’ and protections for farm animals would likely impact on the practices and profits of farmers and food suppliers (thus the pockets of consumers). Greater regulation or banning of nonhuman animal vivisection (as has occurred in the European Union for cosmetics testing) would impact on vivisectors, animal laboratories, suppliers of ‘test-subjects’ and, if suitable alternatives were not available, potentially the safety of consumers of cosmetics, household products and drug treatments. A total ban on bushmeat trade would significantly impact on subsistence hunters. Seeking to protect the habitat of wild nonhuman animals could limit the building of much needed housing or agriculture for humans. Even spending resources, on protecting endangered species for example, may mean reducing resources available for policing of traditional crimes, thus impacting humans’ safety and security. Further, offenders whose actions harm nonhuman animals could find themselves receiving harsher sentences or paying restitution if awareness of the impact their crimes had on these ‘victims’ was increased.

However, we again feel that these issues, whilst important, do not preclude a nonhuman animal victimology. Firstly, we are not arguing for a nonhuman animal bill of rights. Secondly, achieving a balance between the interests of all parties is something that victimology has always had to consider. Thus, although this may raise conflicts previously not (or under-) explored, this should be part of the discipline’s contribution. That said, particularly where these conflicts antagonise human and nonhuman animal interest and where they involve economically and politically powerful groups, this will not be an easy task.

Thirdly, and related to the above, a focus on nonhuman animals as victims *may* (as part of the third element of victimology: policy and activism) result in increased controls over identified harmful activities. These controls could take the form of stricter regulation and bans on the use of (certain) nonhuman animals, which would again impinge on the freedoms and profits of others (organisations and individuals alike), as



discussed above. They may also result in criminalisation of previously legal activities, which may be problematic. This would lead to net-widening, drawing more people into the criminal justice system, a concern voiced by Hall and Farrall (2013) in the context of the criminogenic nature of climate change and society's responses to it. Also, a desire to invoke the perceived moralising and deterrent effects of criminal law (and prosecution) may mask the fact that harm may be better reduced through improvements to enforcement and the use of alternative mechanisms (Nurse, 2012; Wellsmith, 2012).

Finally, there may be a very real concern that considering nonhuman animals as victims may be seen as minimising or belittling the harm experienced by 'real' victims of crime. Similar responses are elicited when antispeciesists equate the suffering, exclusion and prejudice aimed at nonhuman animals to that experienced by marginalised human groups (e.g. women, ethnic minorities) or compare wide-scale (legitimised) abuses, such as factory farming, with genocides or slavery (as exemplified in the title to Spiegel's 1989 (revised in 1997) book: *The Dreaded Comparison*). The same could be said for when criminal terminology is used to describe what humans do to nonhuman animals, such as murder or rape (the latter referring to insemination of farmed animals on a 'rape rack').

Again, from an anthropocentric (and practical) perspective, this concern is understood. However, as noted above, philosophically the notion of prioritising the suffering of non-humans is also problematic. This brings us back to the concept of the 'ideal victim'. Such an attitude reinforces the notion that some victims are more deserving than others, or that some sufferers of harm should be allowed the victim status – thus the attentions of victimology – whilst others are not worthy and should remain voiceless and hidden. It is our contention that one of the contributions of which (critical) victimology should be most proud is in seeking to paint a more accurate picture of the nature and extent of victimisation and harm, unfettered by the narrow political, legalistic, power-defined (and, here, anthropocentric) conceptions of crimes and victims.

## **WAYS FORWARD FOR A NONHUMAN ANIMAL VICTIMOLOGY**

The construction of victimisation is a deeply integrative social process. Much as human victims of more recognised and researched criminal behaviours were ignored by criminologists for many years, so too have nonhuman animal victims tended to receive significantly less attention in the existing victimological sphere. Pursuing a victimology that might remedy this is of course fraught with difficulties. After all, nonhuman aspects of the ecosystem cannot be interviewed or put in a focus group. One might argue that incorporating the work of or interviewing 'experts' in various forms of animal rights and so on might to some extent stand as proxy but, by definition, this remains the *human* view and, as White (2011) observes, the objectivity of even traditional scientific knowledge grounded in positivism must be questioned in this area. A recent mock ecocide trial conducted at the University of Essex in 2012 may offer some insights into addressing these laminations. The experiment has been called a success both in terms of it signifying the feasibility of the crime of ecocide and for its involvement of representatives acting for nature (birds, wild spaces, and so on) in a restorative justice forum (Rivers, 2012).

It is clear that in deciding *what* to study, any nonhuman victimology must be wary of falling into the trap of representing only those nonhuman victims courting public sympathy by reason of 'cuteness' or a 'bambi effect', as to do so will replicate the mistakes pointed out by critical victimologists in relation to the overlooking of victimisation by the powerful. In line with the above example from Essex, it also seems likely that nonhuman victimology, like mainstream victimology before it, will be concerned with examining how alternative criminal justice paradigms (including restorative justice and the use of impact statements) may enhance social reaction to nonhuman victimisation. We recognise that a nonhuman victimology and responses to nonhuman harm may look different in different jurisdictions, and that some cultures may be more readily equipped to include nonhuman animals in their systems of justice and dispute resolution and we welcome further consideration of this as a contribution to moving this debate forward.

Our contribution here is to propose that a nonhuman animal victimology would:

Study nonhuman animals as the victims of crime and harm, establishing the nature of such acts, their prevalence, the characteristics of those involved (both victims and offenders), the relationships of different harms committed against nonhuman animals (and to harms caused to humans and the environment) and the impact of these behaviours on their victims.

Study the role of and responses to nonhuman animals in the criminal justice system. This would also include looking at methods to enhance this role and appropriate means of resolving disputes, whilst ensuring a balance of the 'rights' of all those affected.

Inform policy-making and advocacy/activism in relation to legal and illegal harms that impact upon nonhuman animals.

## **CONCLUSIONS**

In the context of growing understandings of the impact of human activity on nonhuman animals, coupled with the broader development of a 'green' criminology based on social *harms* rather than *crimes*, we have argued in this paper that victimologists will increasingly find themselves compelled to consider the impacts of crime and other harms on nonhumans. From an anthropocentric perspective this may simply be because, in discussing environmental harm in particular, the separation of human and nonhuman impacts is very problematic. From a more philosophical perspective, however, we have argued that the assumption that impact on humans is palatably and necessarily more worthwhile a topic of study than that on nonhumans may be robustly challenged, and in fact also represents underlying power inequalities within society that have been the subject of both critical criminologist and victimologist critiques. In this paper we have offered some of the mechanisms by which theory and practice from the victimological literature and associated policy arena may be extended to include nonhuman suffering. This initial attempt to grapple with the many

difficult and challenging issues will of course need to be built significantly towards the construction of a truly nonhuman victimology and we make a call for further research to this end.

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