CRIMINALITY, RISK AND ENVIRONMENTAL HARM

*Rob White**

Social regulation is frequently framed in terms of the notion of risk. This article demonstrates how the social processes which shape risk construction are inseparable from questions of power and politics. The article begins by contrasting the ways in which street crime and environmental harm are conceived and responded to by state and private agencies and institutions. It then provides an extended discussion of the context, mechanisms and limitations of environmental regulation under late capitalism. It is argued that acknowledgment of the relationship between dominant class interests and state power is central to understanding the particular manner in which risk is constructed and acted upon in relation to environmental harm.

Introduction

Environmental harm is a contentious issue. It is contentious mainly and precisely because of differences in material class interests which surround production and consumption in contemporary capitalist society.[1] These differences are, in turn, manifested in various ideological frameworks , which provide reference points for how the 'environment' is defined, and how 'harm' is conceived.[2] Social goals involving 'nature' are thus subject to contestation at the level of broad philosophical standpoint (e.g. anthropocentric versus ecocentric orientations) and at the level of immediate social consequences (e.g. financial rewards versus pollution impacts). The conflicts around each reflect substantial differences in social location, class interests and material resources.

The regulation of environmental harm is likewise subject to considerable debate and, at times, intense social conflict. Central to many discussions of environmental harm — among regulators, lawyers and criminologists, as well as activists — is the concept of 'risk'.[3] The aim of this article is to explore how the concept of risk is used in relation to environmental regulation. In

---

* Rob White is Associate Professor in Sociology/Law at the University of Tasmania.

1 S Beder (1997) *Global Spin: The Corporate Assault on Environmentalism*, Scribe; D Pepper (1993) *Eco-Socialism: From Deep Ecology to Social Justice*, Routledge.

2 M Halsey and R White, 'Crime, Ecophilosophy and Environmental Harm' (1998) 2 *Theoretical Criminology* 2, pp 345–71.

3 N Low and B Gleeson (1998) *Justice, Society and Nature: An Exploration of Political Ecology*, Routledge; J Hannigan (1995) *Environmental Sociology: A Social Constructionist Perspective*, Routledge.

order to highlight the class biases in the nature and dynamics of regulation as applied to the environment, the article compares the ways in which the concept of 'risk' is applied to street crime (essentially, working-class criminality), and to environmental harm (essentially, corporate criminality, but also related to the structures of consumption flowing from capitalist production). The point of this investigation is to demonstrate the centrality of class questions in any discussion of 'risk', and to illustrate the ways in which regulatory processes and structures are inextricably bound up with specific class projects.

The contribution of the article is twofold. Firstly, the intention is to demonstrate that the construction of risk is a *social process* — one which is inherently related to specific structures and institutions of social power. The term 'risk' has many different uses and definitions, depending upon the practical area of application or area of expertise (e.g. economic cost-benefit, criminological risk factors, ecological assessment, legal liability, insurance actuarialism). For present purposes, the intention is not to explore the multiple concepts of risk *per se*, but to show the ways in which risk terminology is deployed as a means to secure particular social ends. The specific meaning of the concept will be determined by the practical and analytical context within which it is used. Secondly, arising from this analysis, the article attempts to provide some indication of possible *strategic* questions and directions for environmental regulation into the future. The article attempts to provide a broad perspective on the regulation issue, rather than to provide detailed analysis of specific laws or regulatory practices.

The relationship between risk and social power is evident in the ways in which the technologies and knowledges of risk are mobilised by 'reality definers' to deal with perceived harms. These in turn reflect particular class interests. The question of regulation, therefore, cannot be fully appreciated without due attention being given to the overall structure of power relations (and implicit knowledge claims) pertaining to what it is that is being regulated. It will be argued, for instance, that 'risk' as it is construed in the case of street crime is founded upon and inextricably linked with the legitimation of state violence against certain segments of the population, as a means to forestall particular kinds of behaviour and activity. In the case of environmental issues, 'risk' assessment and management have a different character. Specific instances of environmental harm may be identified as being worthy of sanction by the state (e.g. in relation to pollution, disposal of toxic waste); however, the limitations of prosecution and enforcement provide some indication of the underlying economic rationale of such interventions.

It has been suggested by some that the destruction of nature in global terms has progressed to the stage whereby hard-to-manage dangers (i.e. those that have escaped or neutralised the control requirements of industrial society) prevail over and above those decision-dependent risks that can — at least in

principle — be brought under control.[4] The difficulty with this formulation, however, is that it ignores the active manner in which 'risk' construction itself contributes to the problem. This is an important sub-theme of this article, for it will be argued that the lack of adequate control over and regulation of environmentally sensitive practices is ingrained in the very logic of the economic and political system. The production of uncontrollable environmental 'outcomes' is thus partly fostered by the ways in which risks are calculated and conceived in the first place.

Law, Criminality and Risk

What is to be regulated and how it is to be regulated are essentially issues of state and class power. Such questions thus presume a particular role for the state in (capitalist) society — a role which is basically directed at preserving and reproducing the class relationships of that society (i.e. relations between working class and capitalist class; private ownership of the means of production). The state in capitalist society is thus, by definition, a capitalist state and this necessarily frames the manner in which the state will intervene in regulating particular kinds of behaviour and transactions.

Law has a particular, and privileged, position in the exercise of state power. The law is both the means of, and legitimation for, the exercise of state power in ways which, at both instrumental and structural levels, maintain and perpetuate the interests of the dominant class. This is not to reduce all legal activity and law-related behaviour to simple, direct economic interests. The law is much more complicated in practice than this view would suggest.[5] Thus, for example, there have been a number of historical and contemporary instances where the law has been used against sections of the capitalist class or state agencies to the benefit of less powerful groups. However, such instances — exceptional as they are — thereby reinforce the myth that the law is somehow socially neutral, and that the role of the state is principally as benign protector of citizens' interests and rights. The point is that this balancing of competing interests (between classes and within classes) generally occurs within a framework of property relations which limits and shapes the exercise of state power within narrow political confines.[6]

From a class perspective, the law is structurally bound to reflect the broad interests of the capitalist class. It does so ideologically, through promulgation of the notion of 'equality before the law' and the construction of the abstract legal subject, and it does so practically, through technical, procedural and administrative means which subvert the political and social meaning of

---

4 U Beck (1996) 'World Risk Society as Cosmopolitan Society? Ecological Questions in a Framework of Manufactured Uncertainties' 13 *Theory, Culture & Society* 4, pp 1–32.

5 S Hall and P Scraton (1981) 'Law, Class and Control' in M Fitzgerald et al. (eds) *Crime and Society: Readings in History and Theory*, Routledge and Kegan Paul/Open University Press, pp 460–97.

6 See, for example, E Meiksins Wood (1995) *Democracy Against Capitalism: Renewing Historical Materialism*, Cambridge University Press.

particular kinds of social harm.[7] It is the latter with which this article is particularly concerned.

It is important, as well, to acknowledge that, while the law in general serves to maintain class hegemony, it is simultaneously the site of class conflict and an arena for class struggle. The struggles about, within and against the law thus have important ramifications for the nature of social change and the processes of social reform. In other words, the law is strategically important in the overall struggles over meaning and values, distribution of societal resources and material class interests.

For present purposes, the class character of state intervention will be examined by looking at the ways in which 'risk', as a concept, has been mobilised in relation to different types of criminality. To set this into context, it is necessary to recognise that, by and large, criminalisation in relation to the propertied classes fundamentally reflects the regulatory requirements of managing the capitalist economy. By contrast, the regulation of non-propertied classes relates fundamentally to questions of order and control — that is, to management of the effects of class-based inequality and impoverishment.[8]

Street Crime

The targets of state intervention in the case of 'street crime' tend to be working-class people, in particular places, exhibiting certain behaviours. The matrix of risk construction relating to crime of this nature is centred upon control and management of the marginalised sections of the working class — the so-called 'surplus populations'.[9]

Social control in this instance is designed to forestall potential acts on the part of particular population groups. The technical focus is on past behaviour and predicted behaviour, based upon selective actuarial data.[10] That is, control, surveillance and intervention are based upon *membership* of 'high-risk' groups. They are not necessarily based upon actual deeds. To put it differently, it is the group profile which frames the way in which specific individuals are targeted for prosecution for particular types of criminal offences. The criminalisation process is thus directed at *populations* (i.e. aggregates) rather than individuals (i.e. specific offenders). This is because the pattern of specific offences cannot be explained apart from the collective shared realities of working-class life; thus particular groups come to be collectively identified in and through the category 'criminal'. The result is that

---

7 See P O'Malley (1983) *Law, Capitalism and Democracy*, George Allen & Unwin; E Pashukanis (1989) *Law and Marxism: A General Theory*, Pluto.

8 See R White and J van der Velden, 'Class and Criminality' (1995) 22 *Social Justice* 1, pp 51–74.

9 See S Spitzer, 'Toward a Marxian Theory of Deviance' (1975) 22 *Social Problems*, pp 638–51; D Greenberg (ed) (1993) *Crime and Capitalism: Readings in Marxist Criminology*, Temple University Press.

10 See M Feeley and J Simon (1994) 'Actuarial Justice: the Emerging New Criminal Law' in D Nelken (ed) *The Futures of Criminology*, Sage, pp 173–201.

who you *are* becomes more important than what you *do*. The key targets for such intervention are working-class people (including those from a variety of minority ethnic and indigenous backgrounds, who are often especially marginalised from mainstream institutions).

Pre-emptive Action

The class biases in approaches to street crime are apparent across different parts of the criminological enterprise and criminal justice system. Crime prevention, for example, typically is expressed in terms of 'risk' and 'protective' factors which specifically apply to particular social groups and social locations. The role of the expert (criminologist, security analyst, police commander) is to define the appropriate 'situational' measures (e.g. target hardening, use of closed-circuit surveillance cameras) which best match the 'hot spots' or 'outsider' groups which have been identified as being most problematic. There is usually little questioning of the social composition (the class character) of those who are deemed to warrant such official scrutiny, the reasons for working class criminality or the techniques to be deployed against them.

Institutionally, recent efforts to control (working-class) populations have been shaped by several factors. The adoption of neo-liberal policies by governments, for example, has been associated with efforts to reduce and reconfigure state spending on welfare and the social infrastructure (e.g. via budget cuts and work-for-the-dole programs). This has simultaneously put pressure on the state to spend more money on containment strategies, in order to manage the effects of economic restructuring (i.e. increasing poverty). These are manifest in the building of more prisons, the extension of police powers and the passing of ordinances which sharply curtail the use of public spaces (e.g. 'anti-gang' type legislation). The order of the day is pre-emptive action, as seen in developments relating to zero tolerance policing, increasing use of surveillance cameras in public spaces and preventive detention of alleged offenders.

These developments have been accompanied by mutually reinforcing popular discourses or ideologies. For instance, 'security' is essentially being privatised. Responsibility for managing 'risk' has been individualised, in the sense that each person is deemed to be responsible for their own safety and security needs. People are thus exhorted to purchase security in much the same way as any other commodity (e.g. home alarm systems). This is reinforced by the demands of insurance companies to ensure that adequate security systems are in place, as a precondition to the claiming of benefits.

Meanwhile, those against whom we are protecting ourselves are recognisable in the ideological form of the 'underclass'. The 'ordinary' citizen is clearly demarcated from the 'other'. Conservative theories and perspectives, and media portrayals of deviance and criminality, reinforce the idea that the 'criminal' is typically of a certain appearance and background.[11] The cry is for

---

11 See R White and F Haines (1996) *Crime and Criminology*, Oxford University Press; Feeley and Simon (1994).

stronger 'law and order', with an emphasis on order. Under such circumstances, issues of due process, legal rights and social justice disappear. The common sense of law and order demands that action be taken, now, to minimise the *potential* harm of populations (e.g. Indigenous people) most likely to engage in criminal activity and uncivil behaviour.[12] Risk targeting is thus directed at the most vulnerable and powerless sections of the population, whose 'master status' is generally defined in terms of the 'outsider'.

Management of Working-class Offenders

Dealing with specific offenders has likewise been influenced by renewed focus on populations. Actuarial justice in this instance tends to revolve around the concept of 'dangerousness', which in turn is defined through appeal to socially constructed 'risk definers'.

In some cases, the push for better, more efficient administrative mechanisms has been associated with reducing judicial discretion in the assessment of cases and handing down of appropriate penalties. The specific characteristics of an offender, or of an offence — traditionally the fulcrum of criminal justice practice and just deserts philosophy — are increasingly being supplanted by appeal to 'sentencing matrixes', based upon statistical categorisation and 'objective' judgmental criteria. These trends are also reflected in the introduction of 'mandatory sentencing' legislation in places such as the Northern Territory and Western Australia. Again, what counts here is not the personal circumstance of the offender, but the population classification to which they belong. Punishment is thus transformed from a social process involving human actors to a technical exercise resting upon the pillars of quantitative methods and administrative expertise. But the targets remain the same: working-class people.

The application of 'risk management' techniques is ingrained in the very processes of 'correction' and 'containment' characteristic of modern penology. While ostensibly the goals of rehabilitation or deterrence underpin contemporary correctional theory and practice, the administration of corrections is largely driven by strategies based upon prediction models and risk profiles.[13] The ways in which offenders are dealt with after sentencing reflect a primary concern to incapacitate the 'dangerous'. This may or may not be accompanied by rhetorical appeal to the classical aims of punishment. At a practical level, however, they tend to revolve around extending the range, force and intensity of social control.

This is demonstrated, firstly, in the use of imprisonment as a means to incapacitate members of identified 'risk' populations. Recent years have seen a considerable expansion of private institutions and punishment for profit, as well as expansion of state activity across a broad spectrum of surveillance and community-based programs.[14] Ideologically, such intervention has been

12 R Hogg and D Brown (1998) *Rethinking Law & Order*, Pluto.

13 Feeley and Simon (1994).

14 N Christie (1993) *Crime Control As Industry: Towards GULAGS Western Style?* Routledge.

justified and legitimated through the casting of the problem of crime in individualistic terms: each person is seen to be fully responsible for their actions.

Secondly, accompanying the increase in numbers of people subject to state controls of this nature has been the introduction of new ways of managing and controlling the target populations. In theoretical terms, this has been construed as taking the form of the application of techniques which attempt to 'normalise' the deviant, and to produce self-disciplined subjects through imposition of a framework of micro-penalties which shape the offender's time, activity, behaviour and emotional state.[15] But, more than this, the success of such approaches is seen to lie in the efficiency of case-management (with respect to community corrections) and unit-management (with respect to prisons) techniques in gaining knowledge about offenders, managing details of their lives, and instilling self-management ideologies. In a nutshell, the correctional enterprise is about controlling 'risk' and managing 'risk populations'. The end and the means are identical — that is, to incapacitate significant sections of the working-class and Indigenous populations.

Specific jurisdictions will obviously vary in approach and ideological orientation. Nevertheless, how 'risk' is constructed in relation to street crime does highlight several features of modern criminal justice practice. The expansion of actuarial forms into the criminal justice sphere, in particular, has had major social implications. In essence, they tend to foreclose discussion of how and why certain populations are constructed and identified as 'risk' categories in the first place. The emphasis is not on the causes of crime, but its control. Thus issues of social marginalisation, the criminalisation of the marginalised, and the direction of the weight of coercive social power are ignored or not deemed to be relevant. So too, administrative efficiency demands that issues of public accountability, human rights and social justice be relegated to matters of secondary importance — if they are to be dealt with at all. The prime edict is to impose 'order' and to control the 'dangerous'. This approach to risk, therefore, is concerned with techniques for identifying, classifying and managing groups, which are sorted according to levels of dangerousness, and which in the main are driven by concerns to control and manage working-class criminality.[16]

Environmental Harm

The rationale, and processes of risk categorisation with regard to environmental harm are very different. The targets of risk assessment and management in the case of 'environmental harm' tend to be *activities and events*. The matrix of risk construction relating to activity in this sphere is centred on the facilitation of production in ways which maximise profit

15 See M Foucault (1977) *Discipline and Punish: The Birth of the Prison*, Penguin.

16 Feeley and Simon (1994).

opportunities for those who own and control the basic means of production in capitalist society.

Social control in this instance is meant to ensure a balance between economic needs and environmental sustainability. 'Nature' is seen as a resource to be managed for human purposes. Regulation is designed to forestall any economically undesirable destruction of this valuable resource, and to prevent or minimise the harm to human beings arising from specific activities.[17] The focus is on rectifying the damage from past events (e.g. factory pollution) or reducing future harms (e.g. disposal of radioactive waste). At the centre of this process is scientific knowledge and expertise. The main ideological rationale is *sustainable development.*

Risk Assessment

The anticipatory role of environmental risk assessment is complicated from the start by the ingrained difficulties of prediction in relation to the environment. Ecological systems are by their very nature complex. Furthermore, given the focus on 'nature', any criteria of prediction will be based upon speculative, indefinite criteria. Importantly, such assessments rarely — if ever — take into account the past record of companies and individuals who wish to undertake activity affecting particular environments.

Increasingly, environmental assessments have become more reliant upon administrative procedures which spell out in detail the methods and specific criteria allowed in such reviews.[18] In a similar vein, such assessments are reliant upon specific types of 'research' and particular authorised forms of 'expertise' in undertaking such work. While sometimes presented as a scientific process, environmental assessment is frequently riven by debate over the legitimacy of certain data, and people, associated with the process. Furthermore, in many cases, impact and risk assessment is itself able to be effectively bypassed by the imposition of special legislation or ministerial fiat. As a process, therefore, it can be seen to be simultaneously depoliticised (via exclusion of non-scientific evidence and alternative values-based criteria) and political (through the central role of government administrators and politicians in determining validity or applicability).

An important aspect of environmental assessment, as a procedure, is that it invariably involves the *compartmentalisation* of risk. That is, it is limited, by and large, to specific types of activities and projects. It is not concerned with the 'whole picture', in the sense of wider ecological complexities and connections. This is partly due to the fact that it tends to be framed within the terms of 'sustainable development' — an ideological stance which precludes serious discussion and action around alternative value positions which often

---

17 D Harvey (1996) *Justice, Nature and the Geography of Difference*, Blackwell.

18 N Harvey (1998) *Environmental Impact Assessment: Procedures, Practice and Prospects in Australia*, Oxford University Press; S Marsden, 'Importance of Context in Measuring the Effectiveness of Strategic Environmental Assessment' (1998) 16 *Impact Assessment and Project Appraisal* 4, pp 255–66.

put into question the very basis of present interactions with, and exploitations of, the environment.[19]

Political argument over the environment has, however, led to the generation of a new range of legal concepts.[20] These include, for example, cases where certain types of environmental action have been stopped on the basis of preservation of intergenerational equity (e.g. leaving something for our children), through to the development of varying interpretations and applications of the precautionary principle (e.g. basing decisions on proof of 'safety' and proof of 'unsafety'). The precise outcome of any environmental assessment process is contingent upon a range of factors: the mobilisation of expertise; popular interest and activism; the view of judges and magistrates regarding the application of, and conflicts between, diverse legal concepts; the role of bureaucratic structures in circulating information and arranging suitable timeframes and forums for decision-making; and so on. In other words, the nature of environmental assessment is intrinsically ideological and political.[21] It is a class-bound process, and as such reflects the balance of class forces at any one time, in relation to specific areas and events.

What compounds — and in some cases confounds — the assessment of environmental risk is the complexity surrounding the task. Who is going to pay for the scientific research and expert testimony? How are we to judge between environmental/ecological principles and baseline economic criteria? Should risk assessment incorporate concerns about the financial risks taken by companies who wish to invest in particular types of productive activity? The increasingly complex nature of risk assessment, coupled with proposals to increase this complexity (due to the overlapping assessments which, ideally, should be carried out — social, economic, environmental, legal) ensure that issues of power and control will remain central to the process.

For example, the privatisation of risk assessment (and environmental monitoring and testing) is being sought by those governments concerned to limit internal state expenditure on such work. At the same time, the phenomenon of 'commercial confidentiality' is such that the public often does not know what has been agreed to by companies which have 'passed' the environmental assessment checklist. Finally, the politics and complications surrounding environmental assessment give even greater impetus for the streamlining of such procedures, thereby restricting further the input and scrutiny of 'outside' interests.

Management of Corporate Environmental Crime

Environmental victimisation can be defined as specific forms of harm which are caused by acts (e.g. dumping of toxic waste) or omissions (e.g. failure to provide safe drinking water) leading to the presence or absence of environmental agents (e.g. poisons, nutrients) which are associated with

19 Pepper (1993); Halsey and White (1998).

20 B Robinson (1995) 'The Nature of Environmental Crime' in N Gunningham et al. (eds) *Environmental Crime*, Australian Institute of Criminology, pp 9–18.

21 Hannigan (1995); Low and Gleeson (1998).

human injury.[22] The management of these forms of victimisation is generally retrospective (after the fact) and involves a variety of legal and social responses.

The response of the state to these kinds of harm are guided by a concern with environmental protection, which is generally framed in terms of ensuring future resource exploitation, and dealing with specific instances of victimisation that have been socially defined as a problem. Risk management in this case is directed at preventing or minimising certain destructive or injurious practices into the future, based upon analysis and responses to harms identified in the present. The ways in which the state reacts to such harms is based upon classifications of harm and wrongdoing as defined in legislation, including criminal law.[23] The target of such legislation is specific acts and events, usually relating to pollution.[24]

The methods of risk management in this instance tend not to rely upon coercion *per se*. Indeed, strong arguments have been put forward against the use of criminal law, in particular, in dealing with specific incidents and corporate practices. This is because of the limits inherent in the use of criminal sanctions against the more powerful groups in society.[25] For example, corporations have considerable financial and legal resources to contest prosecution, making such prosecutions enormously expensive to run. Technical difficulties of prosecution (such as rules of evidence, multiple offenders, etc.) and the financial and human resource constraints of state legal machinery (e.g. regulatory bodies such as the police, environmental protection agencies and corporate watchdogs) preclude the use of criminal prosecution except in the most extreme or 'winnable' cases. There is, therefore, considerable discretion in prosecution and sentencing decisions.

Acknowledgment of these kinds of difficulties has fostered the development of new legal concepts relating to corporate liability and compensation.[26] Be this as it may, there are nevertheless persistent difficulties in prosecution of the powerful, whose use of the law is intrinsic to the maintenance of their dominant class position. The complexity of legal argument, and a political environment which sees environmental protection in the context of economic development, means that, generally speaking, the state is reluctant to proceed too far in either scrutinising or criminalising those sectors directly involved in productive economic activity.

Alternatively, given the limitations of criminal prosecution, it has been argued that the best way to regulate corporate misbehaviour as this pertains to

---

22 C Williams, 'An Environmental Victimology' (1996) 23 *Social Justice* 4, pp 16–40.

23 G Bates (1995) *Environmental Law in Australia*, Butterworths.

24 See N Gunningham et al. (eds) (1995) *Environmental Crime*, Australian Institute of Criminology; G Heine et al. (eds) (1997) *Environmental Protection: Potentials and Limits of Criminal Justice*, UNICJRI.

25 F Haines (1997) *Corporate Regulation: Beyond 'Punish or Persuade'*, Clarendon Press.

26 See Gunningham et al. (1995).

environmental issues is through the use of civil and other remedies.[27] These may involve various forms of 'self-regulation', educational programs and the use of tort law in dealing with, and preventing, harmful activity. The idea is that persuasion, rather than coercion, is the best way to regulate harmful practices affecting the environment, and that criminal law only be used as a means of last resort.

One of the key issues of environmental 'risk management' in relation to existing harmful practices is the matter of benchmark information — that is, what criteria are to be used to evaluate whether or not environmental harm has occurred, whether or not a particular body is responsible for this harm, and whether or not this can be remedied using existing technologies or whether it is something we have to 'live with' given certain economic imperatives? This raises the issues of the role of 'expert opinion', and of public advocacy, in assessing the nature and dynamics of environmental harm and victimisation. It also raises issues of class interests and environmental philosophy (i.e. the values and analyses that should drive the assessment process), and the place of third-party public interest groups in determination of what is harmful and what ought to be done about it. The import of these matters will be explored more fully below.

The ways in which risk is construed and responded to with respect to environmental harm is socially patterned in ways which reflect and protect the interests of capital. The basic assumption underlying regulation is that the point is to reduce the impact that development is having on specific environments (e.g. via EIA procedures), rather than to challenge the nature of development itself (i.e. issues of material class interests).

There are strong pressures to render the issue of 'risk' in the field of environmental law and regulation to a matter of specialist expertise and legal-technical knowledge, although this varies from jurisdiction to jurisdiction.[28] The emphasis is not on the generic causes of environmental harm (since this immediately raises the issue of control and ownership over the means of production/destruction), but on how to regulate specific instances of actual or potential harm. Insofar as this is the case, it assumes that such issues can only be dealt with within the framework of 'sustainable development', and as such, that control ought to be exercised on a rational, scientific basis which calculates cost-benefit in economic, rather than ecological, terms.

Given this, the question of resource allocation to environmental assessment and management, and issues pertaining to public accountability, tend to be skewed in the direction of less intervention and less transparent processes of regulation. The latter are thus conceived as impediments to the exploitation of the environment, although it is conceded that specific instances of harmful activity do warrant curtailment, since they can undermine public confidence as well as limit the availability of resources (for economic purposes) into the future.

---

27 Gunningham et al. (1995); P Grabosky, 'Green Markets: Environmental Regulation by the Private Sector' (1994) 16 *Law and Policy* 4, pp 419–48.

28 Hannigan (1995).

Regulation and Environmental Harm

As the foregoing discussions have illustrated, the concept of 'risk' must be analysed in terms of specific fields of endeavour, and in relation to different social projects. Acknowledgment of the relationship between dominant class interests and state power is central to understanding the particular manner in which risk is constructed and acted upon. The crucial difference in how risk is acted upon in relation to street crime, and in relation to environmental issues, lies in the corporate interests and power structures which shape the risk construction process. This can better be appreciated by elaborating on some of the themes identified above, taking environmental harm as our key focus.

Neo-Liberalism and Late Capitalism

One of the hallmarks of late capitalism is the further concentration of economic power into fewer and fewer hands. The legal system is premised upon the protection of private property rights, and the facilitation of capital accumulation. The law, and definitions of harm, maintain class relations through a process of universalising rules of behaviour which protect the interests of the capitalist class (e.g. laws relating to private property, public order, etc.), which regulate and set parameters on legitimate capitalist business practices in the interests of capital in general (e.g. insider trading), and which serve to legitimate the legal system generally (e.g. appeals to the rule of law).[29] The complexities of the law (as manifested in the areas of taxation, property, company, tort, equity and trusts, copyright and patents, etc.) are designed precisely to enhance the ability of capital to secure the optimal conditions for increasing the rate of profit. Regulation is necessary in order to ensure the smooth running of the system.

The concentration of economic power at a global level, as manifested in the large transnational corporations, will obviously have an impact in the determination of what is deemed to be harmful or criminal, and what will not. It also means that, particularly in the case of environmental issues, the international character of capital and the trans-border nature of the harm make prosecution and regulation extremely difficult. This is the case even where national legal mechanisms have been put into place to minimise environmental harm and to protect specific environments. Not only do the powerful have greater scope to shape laws in their collective interest, they have greater capacity to defend themselves individually if they do break and bend the existing rules and regulations.

The disparities in social wealth and power are evident, as well, in the legitimacy granted to different forms of state intervention. This may take the form of economic assistance to the 'free market', which involves enhancing private corporate welfare (via tax breaks and financial subsidies) while simultaneously reducing benefits and services to the bulk of the population (via welfare cuts and adoption of user-pays principles). It also takes the form of reducing state regulatory intervention in the 'business' arena, while

29 White and van der Velden (1995).

simultaneously dealing with the deterioration of the social and economic conditions of the majority of people through expanding state intervention and deploying highly coercive measures against the less powerful (who have fewer resources with which to resist these measures).

The media have an important role in these processes. For example, they are key players in public understandings and portrayals of 'criminality' and law and order 'common sense', which target the marginalised sections of the working class, and in particular ethnic minorities and Indigenous people.[30] Meanwhile, corporate control of the media, accompanied by the proliferation of public relations campaigns, conservative think-tank 'analysis', professional lobby and advocacy groups and manufactured 'grassroots' organisations, have been influential in 'green washing' the environment debate.[31] Such interventions on behalf of corporate interests have a number of implications for the kinds of activities viewed as legitimate, regardless of real environmental effect, and for the regulatory role of both state and private institutions.

Analytically, it is essential to distinguish institutional risk-profiling mechanisms (in the sphere of mainstream criminal justice) as 'classifiers' of risk, not 'constitutors' of risk.[32] This is because the constitution of 'risk identities' (i.e. the specific population groups in question, such as indigenous people) rests upon material differences within the population, and it is these which bring them to the attention of those whose job it is to develop criminal risk classifications. The classification of risk on the basis of material position in the social structure also explains why 'risk' is not constructed in terms of 'corporate behaviour' (and the histories of the companies), but rather in terms of the 'objective' natural world of the environment. The 'offenders' in this case occupy powerful and privileged positions. They are respectable, and respected. There is, then, no *prima facie* reason why they should be pre-constituted in risk profile mechanism as being 'dangerous' or a 'threat'. Rather, the 'risk' classification focuses on the inanimate and non-human, and their potential in furthering the interests of economic development and profitable business now and into the future.

The commodification of security, assessment, monitoring and social regulation, as this applies to street criminality, serves the interests of private capital directly, in the form of profit-making via the creation and realisation of surplus value (e.g. privatisation of prisons). However, given that the object of business activity in relation to the environment is to commodify nature, to transform natural resources into exchange-values, there is no incentive to inhibit this process through stepped-up regulatory measures. Where such measures are introduced — which in itself may be profitable to particular

30 Hogg and Brown (1998).

31 Beder (1997); T Athanasiou (1996) *Divided Planet: The Ecology of Rich and Poor*, Little, Brown and Company.

32 G Rigakos, 'Critical Reflections on Social Theory, Actuarialism and Risk Society' (1998) 8 *The Critical Criminologist* 3, pp 17–19.

private assessment bodies — the point is to facilitate resource extraction and exploitation, rather than to minimise it.

In the context of neo-liberal policies and globalised capital relations, the relationship of the state to private interests is ultimately contingent upon baseline economic criteria. Where environmental harm has occurred, for example, there are a number of issues which impinge upon the capacity and willingness of the state to enforce compliance or prosecute wrongdoing. Some of these include threats of litigation by companies against the state or third-party critics on the basis of 'commercial reputation'; a paucity of independent scientific expertise (related to cuts in the number of state regulators, the buying off of experts by companies and funding crises affecting the research direction of academic institutions); the complexities associated with investigation and action in relation to transnational corporate environments (e.g. formation of international cartels, potential threats to future investment, monopolisation of particular industries, such as water); and state reluctance to enforce compliance due to ideological attachments to privatisation and corporatisation, and the notion that the less state intervention there is, the better.[33]

Private and Public Regulation

It is striking that risk assessment in relation to street crime features tendencies which are virtually opposite and diametrically opposed to the trends in the area of environmental harm. The tendency in mainstream criminal justice, for example, has been for increased surveillance and the intensification of state and private policing and intervention. This has involved basic invasions of personal privacy, and concerted efforts to restrict freedom of movement, residence and assembly, based upon group membership. It has emphasised the use of coercion and force as a first resort via zero tolerance-type policies and policing practices. Actuarial methods have been utilised in order to better manage population groups, places and behaviours. The state has had a central, but by no means exclusive, role in these processes.

The role of the state in the case of environmental protection is much more circumscribed. The tendency has been to emphasise efficiency and facilitation, rather than control. At a practical level, the costs of monitoring and enforcement of compliance in relation to the traditional regulatory standard-setting and role of government are seen as problematic. So too, the complexity of procedures and issues has been accompanied by efforts to streamline processes and reliance upon expert-based advice, rather than full community discussion. This fits nicely with neo-liberalism in that, in supporting economic development, the state can cut costs and encourage business growth by narrowing the scope of its purview and involvement in regulation. This can take several different forms, such as cuts in state resources allocated to environmental audits (e.g. botany mapping) or the censoring of scientific information which may be publicly sensitive for

33 See R White, 'Environmental Criminology and Sydney Water' (1998) 10 *Current Issues in Criminal Justice* 2, pp 214–19.

specific industries (e.g. fishing, forestry, mining) or for private contracted partners of government (e.g. water treatment plants, power station operators).

The apparatuses of the state, influenced by the machinations of and pressures on the governing political parties, are nevertheless called upon to ostensibly protect citizens from the worst excesses or worst instances of environmental victimisation — hence the introduction of extensive legislation and regulatory procedures designed to give the appearance of active intervention, the implication being that laws exist which actually do deter such harms. The existence of such laws may be encouraging in that they reflect historical and ongoing struggles pertaining to certain types of capitalist activity. However, how or whether they are used once again begs the questions of the relationship between the state and the corporate sector, and the capacity of business to defend its interests through legal and extra-legal means.

Many businesses, for example, can gain protection from close public or state surveillance through the very processes of commercial negotiation and transaction. These range from appeals to 'commercial confidentiality' through to constraints associated with the technical nature of evidence required. For example, there is often difficulty in law of assigning 'cause' in many cases of environmental harm due to the diffuse nature of responsibility for particular effects, such as pollution in an area of multiple producers (e.g. mining companies). Furthermore, it has been pointed out that: 'Evidence frequently can only be collected through the use of powers of entry, the ability to take, analyse and interpret appropriate samples and a good knowledge of the processes or activities giving rise to the offence.'[34] Such powers impinge upon the 'private' property rights and commercial interests which are at the heart of the capitalist political economy.

There are clear social differences in the ability of the powerful, in relation to the less powerful, to protect and defend their interests. This is evident in how the powerful are able to manipulate rules of evidence, frustrate investigatory processes, confuse notions of accountability and to forestall potential prosecution by ostensibly abiding by and complying with record-keeping procedures.[35] The expense of legal remedies in dealing with environmental harm is further complicated by the ways in which companies contest the domains of contractual and legal responsibility, and by use of the notion of 'privileged information' as a means to restrict access to needed evidence. Privacy, in this instance (and counter-posed with that of the working class), is more likely to be assured.

Further to this is the relatively recent phenomenon of the use of law suits, by companies against environmentalists, individual citizens and community groups. Such use of civil court action has been described as 'Strategic Lawsuits Against Public Participation' or SLAPPs. The point of such suits is not to 'win' in the conventional legal sense. Rather, it is to intimidate those who might be critical of existing or proposed developments. Thus: 'The cost

34 Robinson (1995) p 13.

35 See Gunningham et al. (1995).

to a developer is part of the cost of doing business, but a court case could well bankrupt an individual or environmental group. In this way the legal system best serves those who have large financial resources at their disposal, particularly corporations.'[36] This kind of pre-emptive action has already been used as a means to silence critics of prison privatisation in Australia. It can be used as well to limit public participation around issues of urban development and environmental regulation. Claims of defamation, and for damages to company reputation and potential profits, associated with environmental and social campaigns against certain developments have started to feature more prominently in the corporate arsenal. Public discussion and attempts to more strictly regulate corporate activity become even more difficult in such an intimidatory atmosphere.

The practical difficulties inherent in prosecuting powerful organisations, combined with commitments to economic growth models of development, also translate into the ideology of 'self-regulation'. This is sustained by theoretical work which speaks about the importance of encouraging trustworthiness by individual companies and by industry associations.[37] This perspective on corporate regulation rests on the idea of enlisting 'private interests' in regulatory activity via 'inducements' (e.g. by creating new commercial opportunities, such as alternative energy sources, air pollution technology; earning a good reputation among consumers for environmental responsibility; and adopting waste minimisation programs which mean more efficient production). Thus persuasion — not coercion — is to be the key regulatory mechanism. Part of the difficulty with this is that it tends to ignore the issue of the size and market power of firms and the role these play in the setting of and compliance with regulatory standards and norms.[38] Other problems exist as well.

Not only are there intrinsic difficulties associated with the idea of large organisations attempting to regulate themselves (i.e. issues of self-interest), but it also belies the systemic effect of such 'self-regulated' behaviour. Whether or not one sees regulation in terms of criminal or civil remedies, there is the larger issue that much of the present regulation debate has fostered a culture based around the 'regulation' of inherently anti-ecological activities.[39] That is, current regulatory apparatus, informed by the ideology of 'sustainable development', is largely directed at bringing ecological sustainability to the present mode of producing and consuming — one based upon the logic of growth, expanded consumption of resources and the commodification of more and more aspects of nature.

To put it differently, it is important to distinguish (and make the connection between) specific instances of harm arising from imperfect operation (such as pollution spills) and systemic harm which is created by

---

36 Beder (1997).

37 See Grabosky (1994); and, for examples, Haines (1997).

38 Haines (1997).

39 M Halsey (1997) 'Environmental Crime: Towards an Eco-Human Rights Approach' 8 *Current Issues in Criminal Justice* 3, pp 217–42.

normatively sanctioned forms of activity (e.g. clearfelling of Amazon forests). The first is deemed to be 'criminal' or 'harmful', and thus subject to social control. The second is not. The overall consequence of this is for the global environmental problem to get worse, in the very midst of the proliferation of a greater range of regulatory mechanisms, agencies and laws. This is partly ingrained in the way in which environmental risk is compartmentalised: specific events or incidents attract sanction, while wider legislative frameworks may set parameters on, but nevertheless still allow, other ecologically harmful practices to continue.

It is this disjuncture between systemic critique and specific practices that is also at the heart of analysis of 'risk' and environmental victimisation. Thus, at one level of analysis, it can be asserted that there is a basic 'equality of victims', in that everyone is threatened in the same way by depletion of the ozone layer, the greenhouse effect and so on.[40] These risks are inherent in the global system of production and consumption; as such, there is the implication that they are outside the control possibilities of modern society, if not impossible to address.

Nevertheless, it is also the case that there are patterns of 'differential victimisation' (e.g. poor people suffering disproportionately from pollution). This implies a differential capacity at a personal level to escape or limit the effects of environmental damage (e.g. by moving to a safer neighbourhood). Environmental regulation in this context is to some extent dependent upon the political engagement of those subjected to the worst forms of environmental victimisation.[41] The specificity of the harm, coupled with the consciousness and action of those most affected, are thus the spurs to regulatory intervention.

At a company level, the minimisation of environmentally destructive behaviour may make good economic sense if it is linked to the conservation of future exploitable resources (i.e. sustainable development) or to enhancing market share through 'green consumerism' (e.g. selling unbleached toilet paper). Conversely, and simultaneously, there is much benefit to gain by engaging in harmful practices, and thus creating environmental risk (e.g. by moving to environmentally unregulated areas or states) if suitable social and political conditions obtain. In other words, the specific actions of corporations and businesses are dictated by *economic* criteria, not ecological concern.

Competition and the imperative to increase the rate of profit are the driving forces of the global economic system. Within this broad political economic framework, the issue of environmental regulation is inextricably bound up with private interests, rather than social need or ecological balance. Given this, 'risk' discourse must necessarily be restricted to self-generated uncertainties which are manufactured in the economic decision-making process itself.[42] Whether certain types of development are allowed to proceed, or to continue, is contingent upon particular features of the activity, and the immediate social context within which debate is occurring. However, the

40 Beck (1996); U Beck (1992) *Risk Society*, Sage.

41 See Williams (1996).

42 Beck (1996).

decision-making process itself is grounded in certain assumptions about the legitimacy and centrality of economic development over and above that of ecological sustainability *per se*. Compromise and conflict around environmental issues is generally based upon a calculated weighing up of factors (e.g. protection of certain species, projected economic outcomes, employment opportunities) within the context of this developmental logic. The result is global ecological crisis.

Strategic Intervention

This article has provided a critical perspective on the diverse ways in which 'risk' is conceptualised in relation to different types of social activity. It has demonstrated that the concept of risk, and interventions based upon this, are inseparable from questions of social power. The position of the powerful and the less powerful in society, and the processes of social control in relation to each, highlight the ways in which state intervention is mobilised differently according to different social (i.e. class) interests. One implication of this analysis is that regulation — whether it be directed at street crime or environmental harm — is and can never be simply a matter of finding technical solutions to what are, essentially, political problems.

We conclude this investigation by briefly indicating areas of research, analysis and action which warrant further consideration. Some of the measures described below (such as proposals for 'right to know' legislation) have emerged from and directly reflect the practical difficulties associated with using the law, and in particular criminal law, in dealing with environmental harm.[43] The theoretical, rather than purely pragmatic, justification for such measures, however, arises from sociological analysis of capitalist society, as well as taking into account the experiences of legal practitioners.

Eco-Philosophy and Regulation

An important part of research and practice in environmental regulation is to clarify the basic philosophical premises of the regulatory project. As illustrated elsewhere, the definitions of environmental harm and its regulation are based upon particular assumptions concerning the relationship between human beings and 'nature'.[44] *An anthropocentric or ecocentric perspective will provide very different answers to the questions of definition and regulation*. The first of these, the anthropocentric perspective, is inextricably linked to capitalist exploitation of both human beings and the environment.[45] In a very real sense, we need to move toward wider ecological visions of production and human relationships with nature. This has major implications for the design and use of appropriate or relevant legal discourses and

---

43 See Gunningham et al. (1995); Heine et al. (1997); A del Frate and J Norberry (eds) (1993) *Environmental Crime: Sanctioning Strategies and Sustainable Development*, UNICRI.

44 Halsey and White (1998).

45 Pepper (1993).

intervention strategies. In essence, eco-philosophy is about debates and decisions over the moral framework of rights and justice pertaining to the environment. Recognition of these competing frameworks opens the door to their contestation at both an ideological and courtroom level. But any such contestation must be based upon a politics of rights which appreciates fully how social transformation necessarily takes place in relation to, and within the context of, class power and late capitalism as a generalised mode of production.[46]

Democracy versus Administrative Mechanisms

The tendency toward ever more complex administrative machinery and sophisticated assessment procedures not only generates pressure toward government by fiat, but it also takes decisions out of the hands of ordinary people. The ideal, as Benton argues, is that: 'In general, forms of regulation based on collective decision-making, itself deriving from fully informed and inclusive dialogue, are to be favoured against measures which reduce questions of life quality to questions of technically calculable economic cost.'[47] The *democratisation of environmental regulation*, however, demands that there be reform across a number of domains. For example, there is a need for 'right to know' legislation which will provide access to information concerning the activities of both private companies and state agencies. There is also a need for legal affirmation of (and protection from) the right of people to participate in public debate and public action without the threat of malicious and gratuitous law suits being used against them.

Public Accountability

In a similar vein, it is vital that any decisions regarding environmental assessment and management be *open to public scrutiny*. The importance of independent audits of specific projects, of specific businesses and of specific government agencies, cannot be underestimated. Adoption of 'whistleblower' legislation designed to protect those who reveal 'confidential' and 'sensitive' information in the public interest is also important. These can act as both a sanction for non-compliance and an incentive to be more environmentally responsible.[48] Work is needed to critically evaluate the actions of companies engaged in environmentally sensitive activities (e.g. Ok Tedi in Papua New Guinea), government departments which engage in production-related activities (public utilities) and government departments which have the legal brief to monitor compliance and enforce laws (such as endangered species,

---

46 See J Fudge and H Glasbeek, 'The Politics of Rights: A Politics with Little Class' (1992) 1 *Social & Legal Studies*, pp 45–70.

47 T Benton, 'Rights and Justice on a Shared Planet: More Rights or New Relations?' (1998) 2 *Theoretical Criminology* 2, p 172.

48 S Edmonds (1995) 'The Environmental Audit as a "Sanction" or Incentive under the Victorian *Environmental Protection Act* 1970' in Gunningham et al. (eds) *Environmental Crime*, Australian Institute of Criminology, pp 189–202.

fisheries, parks and wildlife). The creation of an Office of Environmental Ombudsman has also been mooted as one means to provide such audits. However, the issues of political support, institutional independence and financial resources (i.e. government funding) ensure that such an Office would be contentious from the start.

Expertise and Knowledge Claims

Discussion of environmental harm inevitably will be accompanied by *contesting claims to knowledge*. It is essential to develop specific types of expertise (e.g. legal, scientific, sociological) in areas such as investigation, detection, evidence gathering, enforcement, public advocacy and policy development. This is particularly so for environmental regulators.[49] More than this, however, analysis of the 'legitimacy' of expert knowledge, often linked to questions of who one works for (e.g. employees of government departments, private corporations, environmental groups), is important. The weight assigned to expert testimony and public pronouncement is frequently and pre-emptively defined according to narrow legal criteria or media-driven images. The place and role of expert knowledge in environmental debates deserves close scrutiny. Issues of professionalism, rights of disclosure, specialist expertise, credentialism and determination of the status of different kinds of knowledge and expertise all warrant further consideration.

Role of Third Parties

It is essential that there be *third party access to legal cases*, in terms of direct participation and with regard to the giving of evidence. This has proven to be effective in a number of instances. For example, the Philippine Ecological Network was given standing to file a class suit on behalf of itself and future generations (on the basis of inter-generational responsibility), in a case (which the Network won) centring on the revocation of logging licences because of deforestation and how this affected the right to a balanced and healthful ecology.[50] Information (via 'right to know' provisions and environmental ombudsman offices), as well as legal status, is required to enhance and extend the use of citizen suits of this nature.

Eco-rights

It has been suggested, as well, that rights discourse be expanded to include a wider range of human and environmental concerns, that *environmental and community rights* need to be reconceptualised as, for example, 'eco-human rights'.[51] These new rights could be protected in various ways, such as in the

---

49 J Norberry (1994) 'Environmental Offences: Australian Responses' in D Chappell and P Wilson (eds) *The Australian Criminal Justice System: The Mid 1990s*, Butterworths, pp 156–70.

50 G Van Bueren (1998) 'Combatting Child Urban Poverty — Human Rights Approaches', presented at the Youth in Cities Conference, Germany, October.

51 Halsey (1997).

form of specific rights legislation, like a Bill of Rights. This implies a political process in which discussion and debate take place over concepts such as 'the common good' and 'common property'. Such a tactic would necessarily involve major questioning of the legal and social basis of 'private property', and the rights attendant to this concept as these have developed historically within bourgeois law.[52] The struggle for 'eco-rights', however, must involve a realistic assessment of the limitations of specifically liberal democratic rights as the platform upon which to build a politics of transformation. In particular, caution has to be taken to construct the struggle over rights in ways which do not undermine the counter-hegemonic project, and which, in the end, simply affirm and reproduce the basic inequalities of late capitalism, and the ideologies which sustain these.[53]

Internationalisation of Action

Given the global nature of production and trade relations, and the enormous power of transnational capital, there will need to be considerable attention given to the use of international law and supra-national regulatory action, as well as international struggles on the part of non-government organisations, to address issues of environmental harm. Strategies based solely within particular nation-state contexts are limited by the mobility and economic power of capital on a world scale. A coordinated and international network of action is required if ecological issues are to be addressed adequately. At the same time, there is much to be learned from the examples of enlightened judicial practices and decisions made elsewhere, which can be drawn upon in arguing cases in the Australian context.

Conclusion

The concern of this article has been to contrast two areas of risk-based state intervention, and then to tease out the implications of this comparison for how environmental harm is conceptualised and acted upon. The construction of risk is a social process. As we have seen, depending on its focus, it is informed by very different logics and purposes. It may be about the management and control of people, or it may be directed at management of resources. Either way, consideration of risk involves, first and foremost, analysis of class power — and the ideologies and values, administrative and bureaucratic structures, control mechanisms and legal practices which pertain to this.

There is no doubt that environmentally friendly legal reforms have taken place and that, in specific areas of application, they have had a positive impact. However, the sheer quantity of environmental legislation is not the only — and certainly not the best — measure by which to judge the effectiveness of environmental regulation. After all, the environmental crisis continues to deepen day by day. The questions which this article pose are:

---

52 See B Fine (1984) *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques*, Pluto Press.

53 See especially Fudge and Glasbeek (1992).

why is this the case, and what can we do about it? The answers to these cannot be found in technical aspects of law and legal procedure, but in analysis of the dominant power relationships which underpin the overall regulatory framework. Central to the strategic use of the law, therefore, is analysis of the ways in which mass mobilisations and mass campaigns form an integral part of the movement towards social transformation.[54]

References

Athanasiou, T (1996) *Divided Planet: The Ecology of Rich and Poor*, Little, Brown and Company.

Bates, G (1995) *Environmental Law in Australia*, Butterworths.

Beck, U (1992) *Risk Society*, Sage.

—— (1996) 'World Risk Society as Cosmopolitan Society? Ecological Questions in a Framework of Manufactured Uncertainties', *Theory, Culture & Society* 13(4), pp 1–32.

Beder, S (1997) *Global Spin: The Corporate Assault on Environmentalism*, Scribe Publications.

Benton, T (1998) 'Rights and Justice on a Shared Planet: More Rights or New Relations?', *Theoretical Criminology* 2(2), pp. 149–75.

Christie, N (1993) *Crime Control as Industry: Towards GULAGS Western Style?* Routledge.

del Frate, A and Norberry, J (eds) (1993) *Environmental Crime: Sanctioning Strategies and Sustainable Development, UNICRI/Australian Institute of Criminology.*

Edmonds, S (1995) 'The Environmental Audit as a "Sanction" or Incentive under the *Victorian Environment Protection Act 1970'*, in N. Gunningham et al. (eds) *Environmental Crime*, Australian Institute of Criminology.

Feeley, M and Simon, J (1994) 'Actuarial Justice: the Emerging New Criminal Law', in D. Nelken (ed) *The Futures of Criminology*, Sage.

Fine, B (1984) *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques*, Pluto Press.

Foucault, M (1977) *Discipline and Punish: The Birth of the Prison*, Penguin.

Fudge, J and Glasbeek, H (1992) 'The Politics of Rights: A Politics with Little Class', *Social & Legal Studies* 1, pp 45–70.

Grabosky, P (1994) 'Green Markets: Environmental Regulation by the Private Sector', *Law and Policy* 16(4), pp 419–48.

Greenberg, D (ed) (1993) *Crime and Capitalism: Readings in Marxist Criminology*, Temple University Press.

Gunningham, N, Norberry, J and McKillop, S (eds) (1995) *Environmental Crime, Conference Proceedings*, Australian Institute of Criminology.

Haines, F. (1997) *Corporate Regulation: Beyond 'Punish or Persuade'*, Clarendon Press.

Hall, S and Scraton, P (1981) 'Law, Class and Control', in M Fitzgerald, G McLennan and J Pawson (eds) *Crime and Society: Readings in History and Theory*, Routledge and Kegan Paul/Open University.

---

54 Thanks are due to John van der Velden, Michelle Gabriel, Bob White and an anonymous reviewer for comments and suggestions on earlier drafts of this article.

Halsey, M (1997) 'Environmental Crime: Towards an Eco-Human Rights Approach', *Current Issues in Criminal Justice* 8(3), pp 217–42.
Halsey, M and White, R (1998) 'Crime, Ecophilosophy and Environmental Harm', *Theoretical Criminology* 2(3), pp 345–71.
Hannigan, J (1995) Environmental *Sociology: A Social Constructionist Perspective*, Routledge.
Harvey, D (1996) *Justice, Nature and the Geography of Difference*, Blackwell.
Harvey, N (1998) Environmental Impact *Assessment: Procedures, Practice and Prospects in Australia*, Oxford University Press.
Heine, G, Prabhu, M and del Frate, A (eds) (1997) *Environmental Protection: Potentials and Limits of Criminal Justice*, UNICJRI.
Hogg, R and Brown, D (1998) *Rethinking Law and Order*, Pluto Press.
Low, N and Gleeson, B (1998) Justice, *Society and Nature: An Exploration of Political Ecology*, Routledge.
Marsden, S (1998) 'Importance of Context in Measuring the Effectiveness of Strategic Environmental Assessment', *Impact Assessment and Project Appraisal* 16(4), pp 255–66.
Meiksins Wood, E (1995) *Democracy Against Capitalism: Renewing Historical Materialism*, Cambridge University Press.
Norberry, J (1994) 'Environmental Offences: Australian Responses', in D Chappell and P. Wilson (eds) *The Australian Criminal Justice System: The Mid 1990s*, Butterworths.
O'Malley, P (1983) *Law, Capitalism and Democracy*, George Allen & Unwin.
Pashukanis, E (1989) *Law and Marxism: A General Theory*, Pluto.
Pepper, D. (1993) *Eco-Socialism: From Deep Ecology to Social Justice*, Routledge.
Rigakos, G (1998) 'Critical Reflections on Social Theory, Actuarialism and 'Risk Society', *The Critical Criminologist*, December.
Robinson, B (1995) 'The Nature of Environmental Crime', in N Gunningham et al. (eds) *Environmental Crime*, Australian Institute of Criminology.
Spitzer, S (1975) 'Toward a Marxian Theory of Deviance', *Social Problems* 22, pp 638–51.
Thompson, E (1975) *Whigs and Hunters: The Origins of the Black Act*, Allen Lane.
Van Bueren, G (1998) 'Combatting Child Urban Poverty — Human Rights Approaches', paper presented at Youth in Cities Conference, Marbach Castle, Germany.
White, R (1998) 'Environmental Criminology and Sydney Water', *Current Issues in Criminal Justice* 10(2), pp 214–19.
White, R and Haines, F (1996) *Crime and Criminology*, Oxford University Press.
White, R and van der Velden, J (1995) 'Class and Criminality', *Social Justice* 22(1), pp 51–74.
Williams, C (1996) 'An Environmental Victimology', *Social Justice* 23(4), pp 16–40.