

Illegal hunting special issue

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Introduction

The deliberate illegal killing of wildlife poses a profound challenge to the legitimacy of regulatory regimes and to a global agenda for bio-conservation, such as the EU Habitats Directive, the US Endangered Species List, and the IUCN listings of threatened wildlife species [1]. Illegal hunting is undertaken by a wide swath of rationales across diverse cultural and offender profiles, ranging from the more prosaic drivers of thrill-seeking, trophy-hunting and ignorance of regulation to systemic socio-political drivers [2]. In the latter, illegal hunting is the denunciation of newly enacted wildlife policy that is seen to criminalize customary livelihood or lifestyles practices [3]. Indeed, illegal hunting often manifests resentment on the part of hunters toward state or supranational protection directives for wildlife that has previously been fair game, and their illegal hunting of protected species thereby becomes symbolic of defiance [4, 5]. To be sure, illegal hunting is not always a conscientiously motivated crime of dissent over policy injustice, nor are its apologists – often in the form of recalcitrant, remote, fringe or outport hunting communities – unanimously resolved of the righteousness of breaking the law. As the papers in this special collection illustrate, illegal hunting is a multi-faceted and complex phenomenon encompassing a range of behaviours, motivations and neutralizations [6]. It is celebrated, hushed up, and normalized across different contexts.

One shared predicament nevertheless appears to be in hunters' sober recognition they are in a precarious position in modernity being policed not only by a new breed of environmental law enforcers and prosecutors [7, 8], but also by the broader public

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behind conservation policy, animal rights and species justice concerns [9]. Here, illegal hunting poses a threat also to their societal position. All kinds of hunting now require not only legal, but also moral tolerance, and hunters cannot afford to lose the moral backing of contemporary environmentalism and be at risk for green policing [7]. The potentially socially contaminating effects of illegal hunting require any non-compliance that takes place to proceed according to an intricate social calculus [10]. For example, when hunters illegally kill protected wildlife, they frequently act in accordance with norms and extenuating circumstances provided by their informal institution but hunters' adherence to such norms may be at variance with more universal values and dominant societal norms which legislatures and policymakers feel obligated and justified to uphold. In this special issue, the calculus behind illegal hunting is taken to be normative and social, rather than the cost-benefit rational choice model endorsed by positivist criminological research and socio-legal discourse [11, 12]. This means illegal hunting may make sense within communities that are especially protective of their local landscape usurped by new values or for new agendas [13]; as part of social movements mobilized on the basis of conservative agrarian values [14]; or as part of an episodic drifting toward rationalizations that neutralize their deviance [15] undertaken both individually [16] and in affinity groups in their communities [17]. In this way, while the motivation to illegally hunt can be understood as rational, the full picture behind the crime is attained only once we move away from individual-level theoretical frameworks toward seeing illegal hunting as the result of a more complex interplay of law, legitimacy (and perceived legitimacy) and morality in hunting communities.

It is on this theoretical ground that the following special issue lays to bare illegal hunting as a phenomenon. Illegal hunting is not a crime that takes place in a self-contained total institution, even if hunters in modernity sometimes insist upon forming as sovereign a jurisdiction into which the reach of the law is not welcome [10] and its legitimacy may be contested from a socio-cultural perspective where it attempts to do so. The customs and norms of hunting communities exist in dialectic with the state system of laws. Further, wildlife is no longer a 'private good', inasmuch as it ever was – indeed, for most of history the public has objected to the privatization, enclosure and appropriation of *res nullius* or *ferae naturae* in Roman Law [21–22], who belong to no one – conservation directives have explicitly redefined wildlife as a public good for future generations. It is no longer the local hunting community's consumptive resource to govern autonomously, but it is seen to be of shared value—indeed even a commodity—to a global community, and often also to command intrinsic value as a subject-of-a-life. The result is that hunters, farmers, ranchers, shepherds and rural residents now experience their local wildlife appropriated by supranational conservation agendas [23] or national directives where states consider the wider public good in protecting wildlife against the local interests and 'rights' of particular groups [24]. Accordingly, hunters may find that they can no longer hunt or manage populations of protected species without oversight of law enforcement, ENGOs and the public and that what they may perceive as traditional rights and cultural practices have now become tightly regulated.

How hunters cope with this shift constitutes the core focal point of this special issue. The shift itself is neither uniform nor overnight. It can take a variety of guises as demonstrated here, from neo-liberal colonialist discourses that criminalize customary livelihood practices, to public pressure to ban traditional forms of sport hunting, to a

global bio-conservation agenda privileging the conservation or reintroduction of allegedly problematic large carnivores over the needs and interests of agrarian communities. Whatever the particular problem constellation, hunters now have to accommodate majoritarian policy decisions over public good of wildlife and legislative systems pervaded by wildlife trust doctrines, whether they like it or not. The dialectic in which the customary norms of hunting communities co-exist or fray with state policy is generally manifested in one or several of three ways: first, in a complementary style where informal norms and formal rules mutually reinforce one another. In this collection, authors Peter Lyhne Højberg, Martin Reinhardt Nielsen and Jette Bredahl Jacobsen explain, for example, how legal responses to wolf predation in Denmark include some communities adapting to problem wolves and mitigating their impact commensurate with a hunting culture which accepts some losses from predators. While Højberg et al.'s article also considers the irreconcilability of hunters' and wolves' interests, it indicates the variance which exists in community norms and hunting community responses to conservation management rules. The second dialectic may be in a substitutive style where the informal and formal rules are functionally equivalent to each other, existing parallel. Jessica Bell Rizzolo, Meredith Gore, Jonah Ratsimbazafy and Andry Rajaonson contribute with a discussion of wildlife poaching in this volume that concludes that the rules of the *fokonola* (indigenous people) "yield more robust prescriptiveness of norms than the MNP [Madagascar National Parks], and that the MNP would be the intermediary institution (or mediator in statistical terms) of the effects of the *fokonola*". Third and finally, the dialectic may proceed in a conflicting style, where the two systems of rules are incompatible or even irreconcilable [25]. The latter dialectic is dominant in the articles of this special issue, as manifested in illegal actions. They also address conflicting theoretical notions of crime, deviance and the legitimacy of wildlife laws. A strict socio-legal approach would determine that an act which contravenes a law is a crime [12]. But Matza and Sykes [15] and Sutherland [26] identify mechanisms through which individuals and communities learn or adopt different perspectives on what constitutes a crime, legal absolutism notwithstanding [24].

The challenges for our authors in this issue have been threefold. First, it has been to ascertain the particular grammar of their respective case studies of illegal hunting. In what specific junctures, contexts, or for which particular species do hunters manifest willingness to, tolerance of, or neutralization of illegal hunting? Indeed, there seems to be a taxonomic bias where negative attitudes toward particular wildlife are concerned [27], and there also appear certain thresholds beyond which hunters are not prepared to be 'pushed' by state regulation in relation to their perceived customary rights or in relation to their sense of social recognition. In identifying these, a second interrelated challenge has been how to position illegal hunters on a spectrum of criminality. Even if they themselves rationalize the crime in ways by appeal to community norms, how do their arguments for non-compliance stand up to the court of scholarly, public and criminal justice judgment? In brief, what mediates whether illegal hunters are mere criminal-minded poachers, or dissenters who operate in a gap between law and legitimacy where wildlife policy is seen as illegitimate, elitist or unjust? Contributions engage critically with hunters' claims of entitlement to illegally hunt, and attempt to triangulate these with political rights and with the degree of disenfranchisement experienced and/or perceived by the hunting community.

The third and final challenge for our authors has been of a methodological nature: to elicit attitudes, confessions or candid reflections regarding illegal hunting one needs to proceed carefully, a minefield that has been navigated by recent scholarship [28–31]. In our special issue, authors with empirical contributions show similar ingenuity in using indirect interview techniques. Indeed, surveying about illegal hunting is a double-edged sword: not only is illegality a threatening topic which at times becomes a contested notion, but, as has been observed, there is an element of taboo to talking about popular public causes like conservation, animal rights and species justice in the present climate that necessarily put hunting respondents on edge.

Through navigating between, but also facing these challenges head on, contributions in this special issue elucidate three key insights to the illegal hunting phenomenon. The first is that the cultural criminologist claim that illegal hunting may be principally the continuity of traditional livelihood or lifestyle practices, in fact merits much closer examination than previously given. For example, while Peterson et al. convincingly argue the hegemony of neo-liberal colonialism has indeed *de facto* criminalized indigenous forms of natural resource harvesting, often alongside of presenting the hunting forms of foreigners are stewarding practices in the same context, Angus Nurse shows the problems of invoking the tradition defense to legitimate illegal hunting. Using tradition as a cosmic sanction for questionable animal practices is increasingly scrutinized by animal rights scholars [32], to the point of declaring that liberalism's endorsement of multiculturalism and, with it, cultural traditions of hunting, is bad for animals [33]. Yet hunting proponents, like the Anti-Hunting Ban coalition engaged with by Angus Nurse, routinely fashions arguments that take a foothold in liberal and civil rights, such as people's right to traditional customs integral to the preservation of their cultural identity and accepted by international human rights instruments [34]. Taken further, both Mari Pohja-Mykrä and Lyhne Højberg et al. raise the issue of illegal hunting of now protected wolves in Finland and Denmark respectively, where an implicit rationale for the crime appears to be a sense of betrayal by the state over the loss of traditional, and to some classes of hunters, an integral condition of life. Our contributors thus consider the extent to which the hunting community is recognised as a distinct subculture whose unique values are owed protection by legislators and legal systems. But the concept of the 'invented tradition' as a means of legitimizing criminalized forms of hunting and recreational animal exploitation may also need to be considered [35]. Angus Nurse's examination of hunting culture and human rights discourse considers conflicting perspectives on animals' and hunters rights. Tradition arguments notwithstanding, a question remains concerning the extent to which the lifestyles and cultural expression of hunters are protected within legal systems such their non-compliance of and resistance to state interference constitutes rightful resistance.

The second key insight imparted pertains to the wildlife itself: specifically, its essentialist characteristics, any pathological behaviors of transgressing into human territories, or basic inter-specific interactions as understood and ascribed by illegal hunters [27], but also the premises around its management. The wolves discussed by Pohja-Mykrä and Lyhne Højberg et al. may be subject to vitriolic resentment by hunters, especially in Finland, because their legal protection is seen as appropriation from the local community to a remote alliance of conservationist actors in society [23]. Hence, responsibility for the wolf as part of the common fauna is eroded, and it

becomes seen as a ward of the state, or a coddled pet of ENGOs: “As you know, wolves are the property of the State” [22]. This is also reflected in hunters’ reflections about the morphology and behavior of the protected wolf as compared to the wolf of old: it is seen as compromised, semi-domesticated and hybridized [22, 36], embroiled in metaphors over artificial nature. In Madagascar, Bell et al. find community taboos, or *fady*, which often pertain to the species’ specific attributes, protect certain species from hunting in a way that outside regulation cannot as successfully hope to do. Here, then, informal rules for hunting communities may hold genuine conservation value [37]. Hence, when outside systems of rules encroach on informal institutions or, worse, as in Peterson et al. when whole paradigms destabilize the ways in which communities have practiced natural resource harvesting, the implications may be both an eroded management regime [38] and the impaired legitimacy of state regulation.

The third and final insight that comes through in a reading of all contributions is that the solution to and mitigation of the illegal hunting problem is in large part contingent on more in depth understandings of systemic drivers. But, importantly, they show that no mitigation approach, whether stricter deterrence, punishment or more accommodating hunting law, is ideal. The accommodation argument is that conceding some limited, restricted and controlled legal hunting of protected species back to hunters will preclude them from engaging in illegal hunting. This is often the argument taken by hunters themselves, though it is recently challenged on the basis that legal culls, rather than open up for acceptance of the animal by giving back hunting rights, may send a signal from the regulatory regime that the species has gone down in value and is now fair game [39]. Yet English anti-hunting ban protesters contend the fox is best served when it is allowed to constitute a cultural icon through traditional English fox-hunting, since they will have a stake in its protection, and Nordic hunters are adamant licensed hunting of wolves will reinstate a sense of responsibility, respect and ownership of the wolf that has been lost with its categorical legal protection.

Our authors engage with all of these ideas, with a strong thematic focus on hunters’ resistance toward social change and law. In doing so their contributions aim to transcend the neo-positivist deterrence doctrine that sees illegal hunting purely as a problem for justice systems to control and instead moves towards theoretical and practical orientations that see illegal hunting as a complex multifaceted societal challenge associated with socio-political and cultural change across various scales. Our contributors approach the issue of illegal hunting from varying disciplinary perspectives which include discussion of: rural-urban divides; the impact of globalization and globalized and regional policy on use of natural resources; the commodification of hunting that has resulted from the increased alienation between majority society and nature; and rising distrust of public authorities. Underlying all of their contributions are notions of conflict and values: conflicts of loyalty, conflicts between urban- and rural-based values over the acceptance and valuation of wildlife, and conflict between law enforcement perspectives and the criminalization of lifestyles. Illuminating the various modalities in which contemporary illegal hunting takes place is a challenging task for a range of academic fields, not just criminology and legal studies. We posit the intersections between hunters’ resistance and failures of state powers merit particular attention. As our authors demonstrate, such a state or institution can take the constellation of a colonial power or ideology (as in Peterson et al.), an EU-led nature conservation or animal rights alliance (as in Pohja-Mykrä, Nurse, and Lyhne Højberg et al.), or National

Park Services backed by international biodiversity ENGOs (as in Bell et al.). Hunters' defiance in the face of such institutions either renege on promises made or democratic deficits behind law-making, for example, hints at a Dworkian and a deliberative disobedience justification respectively for their non-compliance as dissent [40] in a way that invites political theory onto the field of wildlife crime. We hope this collection advances the debate and scholars and managers come to appreciate the normative dimensions of illegal hunting as not just a criminal justice issue, but an issue of social justice.

References

1. Duffy, R. (2010). *Nature crime: how We're getting conservation wrong*. Yale University Press.
2. Forsyth, C. J., Gramling, R., & Wooddell, G. (1998). The game of poaching: folk crimes in Southwest Louisiana. *Society and Natural Resources*, *11*(1), 25–38.
3. Holmes, G. (2007). Protection, politics and protest: understanding resistance to conservation. *Conservation and Society*, *5*(2), 184–201.
4. Nurse, A. (2011). Policing wildlife: perspectives on criminality in wildlife crime. In *British Criminology Conference*, *11*, 38–53.
5. von Essen, E., & Allen, M. P. (2015). Reconsidering illegal hunting as a crime of dissent: implication for justice and deliberative uptake. *Criminal Law and Philosophy*, 1–16.
6. Sykes, G., & Matza, D. (1957). Techniques of neutralization: a theory of delinquency. *American Sociological Review*, *22*, 664–673.
7. Nurse, A. (2013). Privatising the green police: the role of NGOs in wildlife law enforcement. *Crime, Law and Social Change*, *59*(3), 305–318.
8. White, R. (2012). Ngo engagement in environmental law enforcement; critical reflections. *Australasian Policing*, *4*(2), 7–12.
9. Benton, T. (1998). Rights and justice on a shared planet: more rights or new relations? *Theoretical Criminology*, *2*(2), 149–175.
10. Okihiro, N. R. (1997). *Mounties, moose, and moonshine: the patterns and context of outport crime*. Toronto: University of Toronto Press.
11. von Essen, E., Hansen, H. P., Nordström Källström, H., Peterson, M. N., & Peterson, T. R. (2014). Deconstructing the poaching phenomenon: a review of typologies for understanding illegal hunting. *British Journal of Criminology*, *54*(4), 632–651.
12. Situ, Y., & Emmons, D. (2000). *Environmental crime: the criminal justice System's role in protecting the environment*. Thousand Oaks: Sage.
13. Enticott, G. (2011). Techniques of neutralising wildlife crime in rural England and Wales. *Journal of Rural Studies*, *27*(2), 200–208.
14. von Essen, E., Hansen, H. P., Nordström Källström, H., Peterson, M. N., & Peterson, T. R. (2015). The radicalisation of rural resistance: how hunting counterpublics in the Nordic countries contribute to illegal hunting. *Journal of Rural Studies*, *39*, 199–209.
15. Matza, D., & Sykes, G. M. (1961). Juvenile Delinquency and Subterranean Values. *American Sociological Review*, *26*(5), 712–719.
16. Eliason, S. L. (2004). Accounts of wildlife law violators: motivations and rationalizations. *Human Dimensions of Wildlife*, *9*(2), 119–131.
17. Pohja-Mykrä, M., & Kurki, S. (2014). Strong community support for illegal killing challenges wolf management. *European Journal of Wildlife Research*, *60*(5), 759–770.
18. Marvin, G. (2007). English foxhunting: a prohibited practice. *International Journal of Cultural Property*, *14*(03), 339–360.