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Climate Ethics

Ethical Analysis of Climate Science and Policy

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The Significance of Understanding Inadequate National Climate Change Programs as Human Rights Violations

By [Rock Ethics Institute](#) on July 7, 2008 2:47 AM | [3 Comments](#)

I. Introduction

Human rights are often thought of as applying to such things as rights to a fair trial or protection from torture. Environmental problems have rarely been understood to trigger human rights violations, yet there is a growing interest in potential links between climate change and human rights issues. This post examines whether nations who are responsible for human-induced climate change should be understood to create human rights violations and what is the significance of classifying climate change inaction as a human rights problem.

This post summarizes a longer examination of this subject that will soon be published. (Brown, 2008).

If the lack of adequate national action on climate change can create human rights violations, this could: (1) limit excuses that nations sometimes have used for their unwillingness to reduce their greenhouse gas emissions; (2) potentially make nations defendants in tribunals that have been created by human rights regimes; and (3) transform international climate change negotiations by limiting the scope of debate.

Since the end of WWII, the global community has seen an expansion of human rights regimes, yet thus far no existing human rights regime has been applied to human-induced climate change although one case brought by the Inuit Indians is currently pending before the Inter-American Commission on Human Rights. (Inuit Petition, 2005) This is so despite the emergence of a strong scientific consensus that has attributed the human release of greenhouse gases as the cause of existing and future harms to human life, health, and interests, matters that clearly fall within the scope of protection of human rights law. For this reason, we must ask: "Should climate change be understood to trigger violations of human rights?"

In a summary manner, this post examines:

- The history of the human rights regime development;
- The relevance of existing human rights regimes to climate change;
- Extending human rights regimes to include protection against climate; and,
- Conclusions

II. Human Rights Regime Development

Human rights are understood to be the "rights that exist because one is a human being (Donnelly, 2003, 10). They are understood to apply to everyone equally. They originate from the conviction that all humans should be able to enjoy a life of dignity. The Preamble of the Universal Declaration of Human Rights (Universal Declaration), the founding document of modern human rights legal regimes, declares that "the inherent dignity... of ...all members of the human family is the foundation of freedom, justice and peace in the world." (UN, 1948). In a similar way, other human rights treaties acknowledge that the protection of basic human dignity is the foundational basis of human rights recognition. (Shue, 1980. 13).

The gradual identification of human rights eventually recognized in the Universal Declaration and its progeny has evolved over the last several centuries and can be found in many lines of thought, religious traditions, and legal documents. (Donnelly, 2003). The scope of human rights protections has gradually evolved through history. Many societies initially recognized human rights only for their members, but history shows a gradual broadening of rights protections as ancient religious texts condoning cruelty and slavery were reinterpreted. (Donnelly, 2003, 73), (Ishay, 2004, 5, 7)



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Secular recognition of human rights is more recent (Ishay, 2004). The Magna Carta and eighteenth and nineteenth century philosophical writings mentioned "natural rights," Jefferson cited "inalienable rights to life, liberty, and pursuit of happiness," and the Declaration of the Rights of Man and the Citizen reflected Grotius, John Locke, Hobbes, Jean-Jacques Rousseau and the baron de Montesquieu, among others. (Ishay, 2004).

The greatest expansion of human rights emerged out of political struggles of those who were oppressed by their governments in the last few centuries (Donnelly, 2003, 67), (Ishay, 2004). This expansion culminated in several United Nations documents that constitute the foundation for other human rights regimes.

The Universal Declaration in 1948, a "soft law" document, led to binding international law in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) as well as numerous regional human rights regimes. The Universal Declaration, ICESCR, and ICCPR are considered to be the foundational documents comprising an international bill of human rights. The Universal Declaration has been accepted by most nations of the world, and about 75% have ratified the latter two (Stanford, 2007).

From this, the following can be concluded:

1. Recognition of specific human rights evolved over a long time as economies based on industry and trade created opportunities for common people (Ishay, 2004). For this reason, eventual express recognition of climate change as triggering human rights violations is plausible provided that human-induced climate change interferes with rights expressly identified in human rights regimes or otherwise prevents the enjoyment of human life with basic dignity.
2. If climate change threatens matters protected in existing human rights regimes, it is possible these regimes could be used to protect those who are vulnerable to climate change.
3. If existing human rights regimes are determined to not be viable to protect people vulnerable to climate change damages because of legal limitations of existing regimes, human rights claims could still have a moral force even if there is no current legal remedy, provided that climate change interferes with the human ability to have a life of basic dignity. Moreover, express expansion of human rights regimes to protect people vulnerable to climate change is also an option in the event that existing regimes prove not to be viable climate change remedies.
4. Because rights are pre-legal, legal recognition of human rights by legislative action is not a condition for their ultimate acknowledgment. Precedents for finding human rights violations in the absence of express legal recognition were established by prosecution of the Nazis after World War II and NATO's action in Kosovo (Doyle and Gardiner, 2003).

III. The Relevance of Existing Human Rights Regimes to Climate Change

According to the consensus climate change science view as articulated by the Intergovernmental Panel on Climate Change, human-induced climate changes is already harming and will continue to harm with greater intensity human life, health, food security, plants, animals, and ecosystems upon which humans depends. Without doubt, climate change threatens not only human dignity but life itself especially to those most vulnerable to climate change.

To determine whether human-induced climate change triggers human rights violations under current human rights regimes it is helpful to examine whether the harms created by climate change interfere with rights expressly recognized by these existing regimes. Although there are additional legal issues that need to be examined to determine the applicability of existing human rights regimes to climate change, a strong claim can be made that inadequate climate change policies should trigger human rights violations provided climate change interferes with rights expressly identified by existing human rights regimes. The following rights are identified in the foundational international human rights regimes that are relevant to harms created by climate change.

1. The Universal Declaration of Human Rights recognizes the following rights which are jeopardized by the types of harms created by climate change:

- Life, liberty, and security of person. (Article 1)
- Right to an effective remedy by national tribunals for violations of fundamental rights. (Article 8)
- Full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations. (Article 10)
- Freedom from arbitrary interference with privacy, family, home or correspondence. (Article 12)
- Freedom from being arbitrarily deprived of property. (Article 17)

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- Right to a standard of living adequate for the health and well being of one's self and one's family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (Article 25)
- Rights to a social and international order in which the rights and freedoms can be fully recognized. (Article 28) (UN, 1948)

2. The International Covenant on Economic, Social and Cultural Rights identifies the following rights protections relevant to climate change damages:

- The right of everyone to an adequate standard of living for self and family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties must take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. (Article 11)
- The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take the measures needed:

1. To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
2. Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

- The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for prevention, treatment and control of epidemic, endemic, and occupational and other diseases (Article 12) (UN, 1966a)

3. The International Covenant on Civil and Political Rights identifies the following rights relevant to climate change damages:

Inherent right to life, to be protected by law (Article 5).

- Right to be protected from arbitrary and unlawful interference with one's privacy, family, and home (Article 15) (UN, 1966b).

In addition to these international agreements on human rights, numerous regional human rights regimes exist that also expressly identify rights that are jeopardized by climate-change caused damages. And so, human-induced climate change can interfere with human rights expressly recognized by most human rights regimes, even though climate change is not expressly identified by these existing regimes as triggering human rights violations.

As mentioned above, the mere identification of these rights in relevant human rights regimes that appear to be infringed by climate change does not guarantee that these existing regimes can be used for climate change protection purposes. There are additional legal issues that need to be considered to determine whether these regimes provide a remedy for climate change damages, however, this legal analysis is beyond the scope of this post. There are, for instance, jurisdictional issues, questions of proof, and authority of the relevant forum that need to be considered before it can be determined whether any existing human rights regimes could provide a remedy for climate change damages.

However, a strong moral argument can be made that inadequate climate change policies trigger human rights violations even if it is determined that existing regimes do not provide an adequate legal remedy for climate change caused infringements of recognized rights once it is established that rights recognized by existing regimes are infringed by climate change.

IV. Extending Human Rights to Include Climate Change Protections

For the sake of argument, if we assume that existing human rights regimes do not provide a

viable remedy for climate change damages, what arguments can be made that human rights protections should be extended to protect against climate change damages? To answer this question, it is helpful to examine arguments that are sometimes made in opposition to any proposed extension of human rights protections to cover new matters not currently recognized by existing human rights law.

- Relativism and Cultural Imperialism

Some have argued that those who have tried to seek protection for new matters not expressly identified in human rights regimes such as, for instance, rights of disabled people to have access to public buildings and transportation are guilty of "relativism." That is, according to such arguments, advocates of rights for disabled people are extending a concept that might be accepted by some cultures but not others, therefore certain rights to disabled people cannot be classified as "universal" human rights. In a similar fashion, calls for rights recognition of a women's right to choose abortion have been resisted on grounds of relativism, namely that rights to abortion are not universally accepted around the world. A similar argument to relativism is also frequently made that expansion of human rights to some cultures that don't recognize the rights in question is a form of "cultural imperialism." To counter these arguments of "relativism" and "cultural imperialism," proponents of expanded universal human rights point out that rights theory has evolved and will probably continue to evolve. The failure of some cultures to currently recognize human rights is not a sufficient basis for rejecting all extensions of human rights. The question that should be examined is whether interference with the right amounts to an infringement of basic human dignity, not whether the right is currently universally recognized. The fact that such protections are not currently recognized is not the final determinant of whether the rights should be acknowledged. That is, according to the well accepted ethical maximum, the "is-ought dichotomy," what "is" cannot define what "ought" to be. The appropriate question for extending human rights into new subject matters is whether the offensive behavior prevents enjoyment of basic human dignity.

However in the case of climate change, extending human rights protections to provide protection against climate change damages, arguments of "relativism" or "cultural imperialism" are inapplicable because climate change threatens matters which are already acknowledged as entitled to universal human rights protection, that is life itself, basic physical security, health, and adequate food, among others. Climate change threatens matters of rights protection that are not in controversy, rights to life and security, matters upon which all other rights claims are built.

- Difficulties in Assigning Duties

One argument against extending human rights to new areas arises when it is not clear who has the duty to guarantee the enjoyment of the rights. Yet, under human rights theory obligations to guarantee the enjoyment of human rights are assumed to apply to all parties that have the ability to guarantee their enjoyment. Since governments have the ability to limit greenhouse gas emissions within their jurisdiction, under human rights theory, governments have responsibility to take action to limit climate change causing behavior if climate change triggers human rights violations. That is, governments along with others are appropriate duty holders to prevent climate change damages because they have the ability to do so. Even if others can be argued to create human rights violations due to excessive greenhouse gas emissions levels, governments have duties to limit greenhouse gases within their jurisdiction. Moreover, under the United Nations Framework Convention, a treaty adopted by almost all countries of the world, nations have an express duty to reduce emissions to prevent dangerous interference with the climate system. (UNFCCC, art 3) Therefore, nations have duties to limit emissions within their jurisdictions to their fair share of global emissions that will not create damages to others.

V. Conclusions

A strong case can be made that nations who exceed their fair share of safe global greenhouse gas emissions violate the human rights of others. How a "fair share" is determined is an ethical question beyond the scope of this post but a matter that will be the subject of future posts. Yet, without doubt some large emitting nations are beyond their fair share of global emissions no matter what distributive justice theory is used to determine any nation's fair share. This can be concluded with high degrees of confidence because global emissions need to be reduced by large amounts (between 60 and 90 percent) to prevent catastrophic warming and some nations are emitting much higher levels of emissions than other both on a per capita and total tons of emissions basis.

According to human rights theory, if climate change caused harm violates human rights, all governments have duties take action to reduce greenhouse gas emissions within their jurisdictions to that nation's fair share of global emissions. Further, according to human rights theory, all persons whose rights are violated by climate change may demand protection from those nations who are exceeding their fair share of global emissions for as long as greenhouse gas emissions interfere with basic human rights.

If climate change can trigger human rights responsibilities, the duty to reduce national emissions to any nation's fair share of global emission is not diminished because of justifications that have

sometimes been used by some nations for not reducing their emissions such as cost-benefit analysis or the fact that not all nations have agreed to reduce their emissions.

For this reason, if climate change damages interfere with human rights, the international debate about national responsibility should be limited to what is each nation's fair share of safe global emissions. Therefore, understanding climate change as triggering human rights violations should transform the subject of future international climate change negotiations even if no existing human rights tribunal has jurisdiction to provide a remedy for climate change caused damages. This is so because very strong moral claims can be made that climate change interferes with human right enjoyment even if existing human rights regimes prove to not be viable remedies for climate change because of legal initiations of these regimes.

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References:

1. Brown, Donald, 2008, The Case for Understanding Inadequate Climate Change Strategies as Human Rights Violations, in L.Westra, K. Bosselmann and R. Westra eds., Reconciling Human Existence with Ecological Integrity, Earthscan,
2. Donnelly, Jack, 2003, Universal Human Rights, In Theory and Practice, Second Edition, Cornell University Press, Ithaca and London.
3. Doyle, Michael and Ann Marie Gardner, 2003, Introduction: Human Rights and International Order in Jean-Marc Coicaud, Michael W. Doyle, and Ann Marie Gardner, eds., The Globalization of Human Rights, United Nations University, Tokyo, Japan
4. Inuit, 2005, Petition to Inter-American Commission on Human Rights, <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionSummary.pdf>
5. Ishay, Micheline, R. 2004, The History of Human Rights: From Ancient Times to The Globalization Era, University of California Press, Berkley, Los Angeles, London
6. Shue, Henry (1980), Basic Rights, Subsistence, Affluence, U.S Foreign Policy, Princeton University Press, Princeton N.J.
7. Stanford University, 2007, Stanford Encyclopedia of Philosophy < <http://plato.stanford.edu/entries/rights-human/#regional>> (visited on November 30, 2007)
8. United Nations, (UN) 1948, Universal Declaration of Human Rights (UDHR) UN Doc. A/RES/21. < www.hrweb.org/legal/udhr.html> (visited, Nov. 30, 2007)
9. United Nations (UN), 1966a, International Covenant on Economic, Social, and Cultural Rights, < www.unhcr.ch/html/menu3/b/a_ceschr.htm> , (visted Nov. 30, 2007)
10. United Nations (UN), 1966b, International Covenant on Civil and Political Rights, <www1.umn.edu/humanrts/instrree/b3ccpr.htm> (visited Nov. 21, 2007)
11. United Nations (UN), 1992, United Nations Framework Convention on Climate Change Nations, UN Document, A:AC237/18

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3 COMMENTS

[rpauli](#) | July 7, 2008 8:27 PM | [Reply](#)

The Inuit case you referred to is before US Federal District Court
 From the Kivalina v. ExxonMobil filed complaint
<http://www.climatelaw.org/cases/country/us/kivalina/Kivalina%20Complaint.pdf>

p.69

The Conspiracy Defendants have engaged in agreements to participate in the intentional creation, contribution to and/or maintenance of a public nuisance, global warming. The

Conspiracy Defendants participated and/or continue to participate in an agreement with each other to mislead the public with respect to the science of global warming and to delay public awareness of the issue so that they could continue contributing to, maintaining and/or creating the nuisance without demands from the public that they change their behavior as a condition of further buying their products. At all times the Conspiracy Defendants were concerned that the public would become concerned by global warming and that the growing concern would force a change in the Conspiracy Defendants behavior which would be costly. Delaying these costs was the major objective of the conspiracies described herein.

270. The Conspiracy Defendants have committed overt acts in furtherance of their agreements. The Conspiracy Defendants have participated in an agreement with each other to mislead the public with respect to the science of global warming, either individually or through their various industry fronts or trade associations, and have included overt acts that furthered their intentional creation, contribution to and/or maintenance of a public nuisance, global warming...

RELIEF REQUESTED

Plaintiffs request that this Court:

1. Hold each defendant jointly and severally liable for creating, contributing to, and maintaining a public nuisance;
2. Hold the Conspiracy Defendants jointly and severally liable for civil conspiracy;
3. Hold each defendant jointly and severally liable for concert of action;
4. Award monetary damages on the basis of joint and several liability according to proof;
5. Enter a declaratory judgment for such future monetary expenses and damages as may be incurred by Plaintiffs in connection with the nuisance of global warming;
6. Award attorneys fees;
7. Award costs and expenses; and
8. Award such other relief as this Court deems just and proper.

mstrong661 | July 8, 2008 9:31 PM | Reply

Can you explain why the global sea ice is growing as attested to by the University of Illinois cryosphere satellite data? This is especially true of Antarctica, where ice content is at an all-time high since measured.

Link: <http://arctic.atmos.uiuc.edu/cryosphere/>

How can a gas, (a trace gas like Carbon Dioxide) impact climate if it is only .03% of the atmosphere?... when water vapor, the largest "greenhouse" gas not controllable by man, dwarfs CO2 by a hundred-fold?

After looking at all of the IPCC members and their flawed data, I just can't help to shake my head at the fact that the latest data about global cooling never gets any press. Some of the IPCC scientists need to look at the lack of sun-spot activity as the reason global ice is growing and winters are colder the past few years.

I am sure this comment will also not be published, just like my previous two because it runs counter to "consensus over apparently flawed climate data presented by the IPCC.

Climate Ethics | July 13, 2008 8:50 PM | Reply

First, we get so much spam, that sometimes we miss valid comments and they get trashed. (Seriously, we got A LOT of spam.)

Second, we do not choose to get into debates about scientific findings on this site. For what we consider to be well grounded perspectives on interpreting climate science issues, we ask you to please refer your inquiry to <http://realclimate.org>.

Third, the preceding comment reflects nothing about the article above, so we typically choose not to answer such posts. If you want to debate the ethical issues of this entry, please, let us do so.

That being said, it's a well known hypothesis that warmer moister air over Antarctica will increase levels of sea ice in the region through increased levels of precipitation in the form of snow. Again, I state that this is currently a hypothesis, not a fact and this does not mean that major ice sheets in the region are not still threatened to split off and melt. And, this does not mean that sea ice in the Antarctic *is* actually on the increase.

Further, the U of Illinois historical pictures of the cryosphere demonstrate quite well the differences in sea ice thickness in the Arctic. For example, compare Sept 12 1979 with Sept 12 2007, around the time sea ice is at its lowest and you will be able to see a stark difference.

<http://igloo.atmos.uiuc.edu/cgi-bin/test/print.sh?fm=09&fd=12&fy=1979&sm=09&sd=12&sy=2007>

In addition, looking at this graph, <http://arctic.atmos.uiuc.edu/cryosphere/IMAGES/global.daily.ice.area.withtrend.jpg> you can see that the global mean of sea ice is on the decrease, with the last three years existing almost entirely below the mean line since 1979. So, I'm not sure where precisely the interpretation that global ice is on the rise comes from based on the data and website you refer to.

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