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Human Rights and the Environment

Steve Vanderheiden

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Abstract and Keywords

This chapter assesses the prospects and limits of human rights as ethical constructs and political mechanisms for protecting against forms of environmental harm that threaten human well-being. Advantages of a rights-based ethical framework include the linking of ethical norms of environmental protection or stewardship with international law and commitments to promoting humanitarian objectives, which provide those norms with an institutional foundation and help narrow the gap between environmental imperatives and those with global justice imperatives and development objectives. It considers the role of recognized human rights in efforts to better guard against anthropogenic environmental harm as well as specifically environmental rights that have been proposed for inclusion alongside them, and it finds rights to confer more political advantages through the social empowerment of right holders and linkage with rights-protecting institutions than philosophical ones in clarifying or motivating the obligations of individual or collective agents.

Keywords: human rights, international law, environmental harm, moral responsibility, climate ethics, Stockholm Declaration, environmental rights, Responsibility to Protect

AS persons are threatened by heightened resource scarcity or degraded environmental conditions as the result of human activities, their human rights can be violated. Conceiving of this threat in terms of human rights and invoking rights on behalf of environmental protection focuses attention upon several key human interests and their vulnerability to anthropogenic environmental change. It also promises to mobilize several key legal and political powers, thereby empowering would-be victims of environmental harm to invoke such rights on behalf of stronger environmental protection, either themselves or through their advocates. Rights-based approaches to environmental protection combine the normative force of moral rights, which justify claims to certain goods or capabilities, and the political powers associated with legal rights, which mobilize procedural or institutional mechanisms designed to protect such rights.

But human rights-based approaches are also inherently limited as sources or expressions of value in environmental ethics. Foremost among such limits, human rights appeal to human interests alone and so are inescapably anthropocentric. While perhaps able to justify protection of ecosystems when the interests that are protected by human rights are at stake, thereby promoting the interests of nonhumans indirectly, their orientation toward important human interests prevents these approaches from recognizing nonhuman value in itself. In addition, human rights are, unlike domestic legal or constitutional rights, largely aspirational (Donnelly, 2002), as they lack the political mechanisms needed to ensure that the most vulnerable are protected from threats to the interests that such rights are meant to protect. Conversely, as human rights become positive law and come to more closely resemble domestic legal rights, or specifically environmental rights begin to be recognized, their protection relies upon an individualistic model of responsibility that is challenged by the nature of many environmental threats, frustrating their ability to instantiate strong norms of environmental protection.

Nonetheless, human rights offer several potentially valuable conceptual and political tools for environmental ethics and politics by linking environmental imperatives with those of international humanitarian law and politics, mobilizing legal and political mechanisms that are associated with human rights objectives, and empowering a broader constituency on behalf environmental protection than might otherwise be available through rival normative (p. 302) approaches. The sections to follow examine the moral foundations for human rights, their application to contemporary environmental problems such as climate change, several challenges for human rights law and theory posed by the nature of some contemporary environmental issues, and the potential advantages of viewing such issues through the lens of human rights.

1 Moral Foundations of Human Rights

Human rights are legally protected elements of international law, albeit of a softer form of law than most domestically recognized rights, depending for their legal foundation upon the treaties and conventions through which nation-states have endorsed them and pledged their protection. Their ethical foundation, however, rests upon the corresponding moral rights of protection against threats of harm or access to important goods, which share a similar structure with those legal rights. Human rights are held by all *qua* humans, regardless of national origin or citizenship, extending the protections that are granted through constitutional rights beyond national borders. They do so through treaties and other multilateral agreements by which states pledge their protection internally and their promotion abroad, in principle offering their protections even to persons residing within states that reject human rights conventions.

Originating in the early modern social contract tradition as natural rights, first declared as elements of positive law through the 1948 Universal Declaration of Human Rights (UDHR) and later expanded through a series of subsequent conventions, human rights

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prescribe norms of conduct in world politics, provide a mechanism for evaluating regimes and measuring social progress, and are sometimes asserted as conditions for post-Westphalian sovereignty (Buchanan, 1991). Since they are universal in scope, human rights are presumed to protect interests that are common to all, as well as being vulnerable to interference by others. In other words, they protect against wrongs, not merely bad outcomes for which none can be identified as responsible, and offer this protection through the combination of normative force designed to prevent such wrongs from occurring and remedial processes designed to intervene when they do occur. Human rights regimes, then, disseminate the norms that rights protect and enforce their prescriptive implications where necessary, utilizing various power resources in so doing.

In general, moral rights against anthropogenic environmental harm vest those protected by them with *prima facie* claims to injunctive relief against those responsible for degrading the environment or depleting natural resources in the manner connected to that harm, as well as to compensation for injuries that they are made to suffer. Recognizing this negative right provides a very strong, if not necessarily conclusive, reason for others to cease their involvement in harmful causal processes and to rectify any experienced harm for which they are responsible. In principle, the duties associated with this right are binding upon all, although the aggregative and indirect way in which one person's rights might be violated by the acts of others presents a problem for conventional rights theories, to be further discussed in the next section. The case for wielding human rights on behalf of environmental protection turns largely upon the value of the political power and normative force that human rights invoke, which some view as useful, given the difficulty in generating international (p. 303) cooperation on behalf of environmental problems such as climate change, which threatens several key interests that rights protect (Caney, 2008; Shue, 2011).

The moral rights upon which human rights against environmental harm are founded, then, are not against environmental harm itself, which can result from natural disasters or other events for which human causal agency cannot be clearly established. Rather, the rights protect against harm for which some human agent can be held responsible through their acts or omissions. The question of what counts as responsible human agency, without which rights cannot be violated, requires more discussion than is possible here. Following a standard for cases of rights against environmental harm based in *contributory fault* (Vanderheiden, 2008a), human rights remedies to environmental harm require the demonstration of liability on the part of responsible parties for any rights violation. Feinberg (1970a: 222) notes that this standard form of fault-based liability contains three main components, all of which are necessary conditions:

First, it must be true that the responsible individual did the harmful thing in question, or at least that his action or omission made a substantial causal contribution to it. Second, the causally contributory conduct must have been in some way faulty. Finally, if the harmful conduct was truly "his fault," the requisite causal connection must have been directly between the faulty aspect of his

conduct and the outcome. It is not sufficient to have caused harm and to have been at fault if the fault was irrelevant to the causing.

By this standard, environmental harm that results from excusable ignorance (Bell, 2011) may bring about morally bad outcomes but does not violate rights against harm, since agents cannot be faulted for causing outcomes that they could not have reasonably foreseen and thus avoided. Because moral rights involve claims against culpable others, they cannot be violated by purely accidental injuries, or those for which contributory fault cannot be established, since these are similar in structure to those resulting from natural causes. Wielding human rights against environmental harm is thus often complicated (Woods, 2010), for reasons to be explored next.

2 Challenges for Human Rights Approaches

Before considering reasons on behalf of viewing environmental harm through the lens of human rights, several reasons against doing so must be noted. In contrast with distributive justice-based analyses of environmental problems, which claim equal rights to environmental goods and services or assign remedial burdens for environmental protection in accordance with egalitarian principles, rights-based approaches rest upon sufficientarian principles (Miller, 1999), which often have lower thresholds for access or protection. Whereas rights protection requires that all have access only to that minimal set of resources necessary for their rights not to be violated, justice may require equal access to such resources. As this contrast is typically cast, rights are concerned with reducing absolute but not relative deprivation, focusing only upon the worst off, whereas justice is concerned with narrowing the gap between the best and worst off. Depending upon where thresholds for rights violations are set, human rights approaches may leave in place significant injustice, provided that these do not violate the rights of the affected.

(p. 304) Caney (2009), for example, argues for a human rights-based approach to climate change, noting that human rights to life, health, and subsistence are all threatened by human-induced climate change. In response to this threat, and contrasting his human rights-based approach to those rooted in economic cost-benefit analysis, Caney formulates three well-established human rights in negative terms, as protecting against threats to these three vital human interests that result from the acts of others. As he notes, “human rights represent moral ‘thresholds’ below which people should not fall” (2009: 71), but such thresholds may be lower than what would be required of distributive justice if applied to the same problem. Rights may tolerate relatively more inequality in the resource-sharing or burden-sharing dimensions of climate change mitigation efforts, compared with what is needed to avoid these rights from being threatened, and offer no reasons for preventing bad outcomes that fall short of violating rights.

Moreover, the negative formulation of such rights, along with the juridical framework that they invoke, requires the demonstration of causal relationships that are often elusive in the context of aggregative problems like climate change, with the fragmented agency

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and diffuse causality that it involves (Gardiner, 2011). Since climate change is only probabilistically related to the impacts that Caney cites, as it only raises the frequency and intensity of extreme weather events like storms and floods or intensifies chronic problems like drought and heat, it would be impossible to link any particular loss of life or threat to health or subsistence to any responsible action, policy, or party, given legal standards of proof. No one's emissions on their own produce discernible impacts on global climate, let alone any harmful weather event, and so cannot be causally linked to the deprivation in question (Sinnott-Armstrong, 2005). Even very large groups of relatively profligate greenhouse polluters, such as residents of developed countries, cannot be linked to specific human rights violations in the manner required of conventional legal right protections, since the phenomenon results from what humanity has done in total and over time. Absent some rights-violating act, or series of acts by an identifiable agent that can be clearly and directly linked to the harm or threat in question, the correlative duties associated with human rights claims are difficult to show as being violated, thus challenging conventional rights analysis.

In the context of global and aggregative environmental harm like that expected to arise from climate change, one could follow Caney's strategy in pointing to scientific estimates of total human impacts of climate change, arguing that x additional deaths from more frequent and intense weather events means x additional arbitrary deprivations of life, violating the human rights of those affected. Even if we cannot distinguish the anthropogenic drivers of particular weather events from otherwise similar events that would have occurred at lower atmospheric concentrations of greenhouse gases, one might reason, we can identify links between human action and the loss of life, which after all is the object of a human right to life. Although we could not say with any certainty *whose* life was lost as the result of the polluting actions that cause climate change, we could estimate the number of rights violations that a given level of warming was likely to cause, thereby showing climate change (and, by extension, the actions and policies that cause climate change) to be responsible for those additional losses of life (Nolt, 2011).

The problem with this approach is twofold. First, apart from several collective rights like those to self-determination, territory, and culture, most human rights protect individuals (p. 305) against threats to important human interests. The right to life is one such individual right, and it is violated when, as Caney notes, any person is arbitrarily deprived of his or her life. It cannot protect groups against deaths beyond normal mortality rates, such as those resulting from conflict or environmental change, while retaining its structure as an individual right. Indeed, rights against harm are inherently individualistic, rejecting the exercises in aggregation described earlier, which, as Rawls (1971) notes of utilitarianism, fail to take seriously the separateness of persons. While higher group mortality also entails additional individual deaths, the human right to life cannot be said to be violated by statistical deviation from normal group mortality rates. Even if climate change could be identified as the cause of x additional deaths within a group, this would not violate any right held by the group. If no identifiable persons can be shown to have lost their lives as the result of climate change, then climate change cannot be responsible

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for violating any identifiable person's right to life, where such identification would be crucial for granting standing or assessing damages to sufferers of climate-related harm.

Second, by engaging in this sort of aggregative analysis, the human rights approach does not appear to add clarity or scope to standard climate ethics analyses of wrongful climate-related harm. Deontological approaches resting on categorical prohibitions against causing avoidable harm to innocent victims already capture the same diagnosis and suffer from the same problems of distinguishing human-caused from naturally occurring deaths. Consequentialist approaches (Singer, 2004) can capture the wrongness of causing additional deaths but reject the inviolability of persons that is characteristic of rights theories. Distributive justice-based approaches to climate change likewise enjoy an advantage over rights theories, since they focus on allocations of resource shares or the manner in which climate change exacerbates existing inequalities, both of which are more amenable to the aggregative impact strategies noted earlier. Compared to showing that some set of like acts or policies caused some bad outcome, it is relatively easy to show that some person or group has emitted more than their just share of greenhouse gases, since this analysis need not link those excessive emissions to any particular effects. If the goal is to link offending actions or policies to the criteria that some normative theory uses to identify departures from their expressed ideal, rights-based approaches appear to be least well-suited for applications to climate change, with human rights offering little improvement upon the already murky links provided by its analysis through moral rights.

Another strategy for shoring up the causal links between the human activities that cause climate change and the interests protected by human rights involves the recognition of a kind of penumbra right, implied by human rights against harm, to a safe or adequate environment. By substantiating the role that environmental hazards can play in threatening existing human rights, such a right would formalize the need for protection against environmental threats, calling attention to the instrumental relationship that environment plays in human welfare. One influential formulation of such an environmental human right can be found in the Stockholm Declaration, from the 1972 UN Conference on the Human Environment, which declares:

Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

(p. 306) Elevating the interest in a safe or adequate environment to the status of a human right would confer several benefits. As Hayward notes of constitutionally protected environmental rights, which are applicable to human rights insofar as they obtain the status of legal rights, such protection

entrenches a recognition of the importance of environmental protection; it offers the possibility of unifying principles for legislation and regulation; it secures these principles against the vicissitudes of routine politics, while at the same time

enhancing possibilities of democratic participation in environmental decision-making processes (2005: 7).

Other human rights approaches are reductionist in valuing environmental quality only to the extent that it is instrumental to the protection of human interests or capabilities that through their status as protected are deemed to be inherently valuable (Holland, 2008), but guaranteeing a safe environment by right obviates the contingency associated with this instrumental relationship. Moreover, the text of this right as expressed here pairs the declaration of the right with a charge of responsibility for protecting it and refusing to wait for violations of the right to occur before ordering remedial action or limiting legal standing to those demonstrably harmed by particular environmental impacts, both of which bolster the right's ability to protect the interests around which it is designed.

3 Defending Human Rights Approaches

Despite these philosophical difficulties, human rights approaches offer legal and political resources, including institutional means of redress when persons are wronged by having their rights violated. With robustly protected legal rights, victims of environmental harm can pursue redress through the courts, often with the assistance of counsel funded by states or NGOs, and if successful have the backing of other state actors in obtaining their ordered remedies. Human rights rely upon "soft" law when not formally incorporated by states but nonetheless, in principle, offer legal and political protections against significant threats, whether through quasi-judicial bodies like human rights commissions or through the multilateral protection of states pledged with the UDHR and reaffirmed through the Responsibility to Protect (R2P) doctrine. Although less robust than legal or constitutional rights, human rights promise stronger protections than ethical proscriptions and prescriptions, which carry no sanction and thus are unenforceable, and at least attempt to bring practical enforcement to the protection against moral wrongs, aligning political power with the ends that render it legitimate.

Human rights are also important sources of norms in international politics by affirming the interests protected by them as universally held and crucial to human welfare, heralding those rights as the basis for evaluation of regimes and international institutions, and calling attention to humanity's most urgent threats. Even if not justiciable sources of legal power, the recognition of human rights against environmental harm may confer significant discursive benefits for the development of international environmental policy by linking resource depletion and degradation with other human rights imperatives. By treating environmental protection as a human rights issue rather than an economic one, as Caney argues, the case might more effectively be made for strong mitigation efforts even if these come at high costs, (p. 307) as rights protection is not subject to cost-benefit analysis. Human rights impacts, rather than economic costs, might more effectively be used to measure the impacts of environmental degradation and the benefits of protection and to highlight the human impacts of problems such as climate change, rather than the temperature targets that have served as the dominant objectives

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in policy debates (McInerney-Lankford, Darrow, and Rajamani, 2011). Linking environmental protection with human rights could help consolidate support for such protections within the human rights community by making rights protection a core objective, thus reducing worries about competition for scarce aid and development resources being diverted to nascent global conservation efforts.

In addition, human rights-based approaches may be more empowering for those suffering from environmental harm than are those based in moral suasion, given their characterization of that harm as infringing upon entitlements that can be *claimed* rather than relying upon those who are culpable also being conscientious. As Feinberg suggests, “having rights allows us to ‘stand up like men,’ to look others in the eye, and to feel in some fundamental sense the equal of anyone” (1970b: 252), for rights enable persons to make valid claims of entitlement when they are wronged by others, rather than limiting them to moral suasion or depending upon the sympathy or charity of others. Merely being in possession of rights, even without having to invoke them before the state (where claims may be dismissed), might therefore confer some salutary benefits upon would-be sufferers of environmental harm. This empowerment may be partly dependent upon the legal or political resources that protected rights also provide, when states recognize rights holders as having valid claims against each other as well as against the state itself, but issues also partly from the formulation of claims in terms of rights and persists even as such claims are officially denied. Being in the position to demand a remedy, as opposed to merely pointing out a morally bad outcome in which one is involved, implies an equal moral status that may embolden those accustomed to disadvantage to act on behalf of their interests rather than accepting harm visited upon them as inevitable or irresistible.

Human rights challenges under international law to the policies of carbon polluting states might also mobilize support for better domestic rights protections by faulting domestic policies for human rights violations abroad. For example, a 2005 challenge by the Inuit before the Inter-American Commission on Human Rights (IACHR) alleged that the United States was violating their human rights through its contribution to climate change, which has had some of its most palpable effects in the arctic regions of Canada, Alaska, Greenland, and Russia inhabited by Inuit people. According to the petition, climate change “caused by the acts and omissions of the United States” violated Inuit human rights “to the benefits of culture, to property, to the preservation of health, life, physical integrity, security, and a means of subsistence, and to residence, movement, and inviolability of the home” (Inuit Circumpolar Conference [ICC], 2005: 5). The petition was denied without prejudice in November 2006 but if accepted would have marked a significant victory for the Inuit as well as others vulnerable to climate-related harm. Included within the petition and within the IACHR’s authority to order were demands that the United States “adopt mandatory measures to limit its emissions of greenhouse gases and cooperate in efforts of the community of nations,” that it assess and consider impacts of domestic emissions on Inuit people “before approving all major government actions,” and that it develop and finance an a plan for Inuit people to adapt to changing climatic conditions (ICC 2005: 7–8). Again, the petition’s ultimate failure might give pause

concerning the strategy, but the potential for agenda setting and mobilizing support through human rights discourse ought also to be considered.

(p. 308) **4 Conclusions**

Human rights are typically viewed as aspirations rather than connoting any positive law, and indeed they are described as such in the Universal Declaration of Human Rights, which calls upon signatory states to “strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance.” While subsequent declarations of human rights through multilateral treaties are legally binding, in principle giving them the status of legal rights and requiring enforcement by signatory states no matter where rights violations occur, in practice they enjoy a significantly weaker status than domestic legal rights (Hiskes, 2008). Some of this relative weakness issues from institutional deficits at the global level, where the judicial equivalent to domestic constitutional rights and courts is lacking, thereby leaving the enforcement of human rights largely to the discretion of states rather than impartial legal authorities. Other sources of relative weakness are legal, as for example with the US reservation to the International Covenant on Civil and Political Rights declaring its provisions not to be self-executing, which denies petitioners access to US courts and rejects normal treaty requirements that its provisions also be made a part of domestic law.

While human rights law could potentially require state parties to human rights treaties and conventions to take on more strenuous environmental protection efforts as injunctive relief for current rights violations or in the interest of rights protection, it is only one of several sources of international law that already require large polluters like the United States to take meaningful action on international environmental problems such as climate change (Rayfuse and Scott, 2012). Although the United States avoided legally binding greenhouse emissions caps under the 1997 Kyoto Protocol by refusing to ratify the treaty, it is a signatory to the 1990 Rio Declaration, through which it committed to freezing its emissions at 1990 levels pending further policy actions, along with being party to the 1979 Geneva Convention on Long-range Transboundary Air Pollution, which offers another basis in international law for requiring greenhouse emissions controls. Linking human rights to climate change mitigation and adaptation efforts, or recognizing penumbra rights like the right to a safe or adequate environment, could build upon existing international law in further defining national obligations in and goals of international regulatory regimes. Moreover, linking rights against environmental degradation with those to development, which in some cases can be compromised by aggressive protections, can help to reconcile these competing rights (Vanderheiden, 2008b).

Although both the seriousness of climate change as a global policy concern and the urgency of action to prevent climate-related suffering suggest the connection to human rights, which are properly reserved for humanity’s greatest moral and political

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challenges, the upside of invoking such rights on behalf of climate change mitigation might best be seen as political rather than philosophical, and of the political upshots the primary benefits may reside in the recognition and empowerment of current and potential sufferers of climate-related harm rather than the legal mobilization of recognized political authorities. To be sure, there remain downside risks of a human rights approach, including potential damage to support for other human rights imperatives from linking it to politically unpopular if urgent policy issues, and compromise to the more ambitious egalitarian justice imperatives (p. 309) that rights approaches can only partly fulfil. Whether or not to ground such efforts in terms of justice, ethics, or human rights must be regarded in strategic rather than analytical terms, as the values or risks of various approaches turn less upon their ability to clarify the moral stakes involved and more upon their propensity for mobilizing an effective response, but these considerations may warrant at least some further work on human rights approaches, perhaps seeking to offer them as more directly normative than either analytic or authoritative, thus connecting recognized ethical commitments with nascent efforts to build those into the way the world confronts several looming environmental threats.

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Steve Vanderheiden

Steve Vanderheiden, Department of Political Science, University of Colorado Boulder

