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PLOOF

Can Rights be Enough? Depoliticization, Human Rights, and Climate Change

Abstract: Many see human rights as a valuable tool for fighting climate change. Relatively little attention, however, has been paid to the democratic implications of such an approach. This article examines the democratic impact of a human rights response to climate change through the phenomenon of depoliticization. Depoliticization, or the removal of an issue from politics, can undermine democracy by inhibiting collective deliberation and exercises of power. Climate change is especially susceptible to depoliticization in the form of narratives that reduce it to a scientific or economic challenge closed to democratic action and discussion. As attested to by its entanglement with neoliberalism and juridification, human rights discourse can encourage depoliticization; it can frustrate democratic exercises of power by demobilizing publics and impede democratic contestation by obscuring domination and predetermining what constitutes future progress. That human rights discourse can be depoliticizing, and climate change is easily depoliticized, makes a rights-based approach to climate change democratically risky. Making it riskier still is the opportunity this strategy creates for anti-democratic repoliticization: a depoliticized climate is ripe for far-right capture via green nationalism and environmental authoritarianism.

Keywords: climate change; depoliticization; environment; human rights; post-politics

Introduction

Scholarly interest in the intersection of human rights and climate change has burgeoned in recent years. Legal academics see human rights as a promising mechanism for pursuing environmental litigation (Heri, 2022). Philosophers turn to the language of human rights to navigate questions of climate and environmental justice (Woods, 2016). Public health researchers invoke human rights to capture the physical toll climate change takes on vulnerable populations (Levy and Patz, 2015). In short, it seems that approaching climate change as a human rights issue enjoys broad, multidisciplinary appeal.

Human rights and climate change can be interpenetrated in several ways. Climate change may be characterized as a violation of extant human rights when its effects undercut basic protections for life, security, and subsistence (Bell, 2011; Shelton, 1991). Procedural safeguards contained within human rights law

might be read as entailing ‘environmental rights,’ which can be applied to climate oriented legal action (Shelton, 1991; Aminzadeh, 2007). Alternatively, a new human right to the environment could be created, formulated, perhaps, as an entitlement to ‘climatic stability’ or ‘ecological space’ (Vanderheiden, 2008; Hayward, 2009; Shelton, 1991).

Several key questions pervade these otherwise very different proposals. One area of concern has to do with normative compatibility. Are human rights and environmental protection – combatting climate change included – underwritten by congruent social values or are the principles of one at odds with the other? To the extent that the language of human rights is anthropocentric, for instance, can it really be used to safeguard the planet as a whole (Woods, 2016)? Futurity is another point of contention. What are the implications of environmental human rights for intergenerational justice and generations yet to be born (Hiskes, 2009)? Does a focus on future generations’ environmental entitlements support or distract from who owes what to whom today (Humphreys, 2023)? Efficacy is a further consideration. To what extent is couching climate change as a human rights problem a winning strategy in court (Savaresi and Auz, 2019)? Can it in fact demonstrably yield either climate or environmental justice (Gellers and Jeffords, 2018)? Also at issue are a range of policy factors. What kind of environmental regulations is addressing climate change from a human rights perspective likely to generate? Does this judicial tactic yield the best policies or are other governmental bodies and agencies better placed to efficiently regulate the climate (Posner, 2007)?

Yet these debates leave one of the most important considerations raised by the application of human rights to climate change underexplored: what are the ramifications of this approach for democracy? This is the focus of my intervention. Essential to my analysis is the concept of depoliticization – or the removal of an issue from politics – which can undercut democracy by limiting public deliberation and stymieing collective exercises of power. Highlighting the ways in which the climate is uniquely susceptible to depoliticizing narratives, alongside the ways in which human rights discourse can encourage depoliticization, I suggest that presenting climate change as a human rights challenge is a democratically fraught proposition.¹ Inasmuch we want not only to redress climate change, but to preserve democracy in the process, a human rights strategy is a risky one.

¹ Following the lead of other theorists who take the language of human rights to be ‘a powerful discourse,’ I refer to it throughout in the singular (Woods, 2016: 334). In doing so, I do not suggest that there is one basic human rights practice from which, for example, a unified definition of human rights could be derived (Sangiovanni, 2018: 175). Instead, I use the singular to group together human rights’ many and multiform invocations and to register, via such multiplicity, the practical prominence of this linguistic paradigm.

The argument, in sum, is as follows: depoliticizing climate change can inhibit democracy; human rights discourse can be depoliticizing; therefore, a human rights approach to climate change can inhibit democracy. It is developed across four sections below. First, after expanding on depoliticization's prospective democratic deficit, I examine how climate change is especially vulnerable to depoliticization, detailing how its scientization and economization already contribute to this effect. Pivoting away from climate change, section two zeroes in on the depoliticizing potential of human rights discourse, which can impede democratic exercises of power by demobilizing the demos, and curtail democratic contestation by concealing domination and predefining progress. Sections three and four then turn to concrete examples of this discourse's capacity for depoliticization, tracking human rights' proximity to neoliberal thought and practice, on the one hand, and juridification on the other. Finally, section five registers a further practical, democratic concern: depoliticizing climate change by packaging it as a problem of human rights can create opportunities for the climate's anti-democratic repoliticization in the form of green nationalism and environmental authoritarianism.

The analysis takes a critical theoretical approach. By design, it focuses exclusively on critiquing the pitfalls of the application of a human rights framework to climate change without presenting a substitute schematic. The value of this way of proceeding lies in the primacy of diagnosis relative to prescription and of thought over 'pseudo-activity,' or the proffering of readily available but inadequate solutions that do not address a problem's full depth and scope (Adorno, 2005: 291). A human rights solution to climate change may constitute a form of pseudo-action insofar as it leaps to a convenient, seemingly operationalizable prescription without first developing a sufficient diagnosis of the problem. To avoid the charge of pseudo-activity, the human rights approach must wrestle with the entirety of the climate challenge, including its political dimensions. To willfully ignore the democratic risks of its proposal otherwise belies 'resignation' (Ibid.: 292): a silent admission that emancipatory collective mobilization may be both necessary and out of reach. The aim of my intervention, then, is not to offer an alternative, ready to hand if misdiagnosed fix, but to center a sidelined aspect of the climate challenge that deserves our thoughtful attention and problematizes the demand for immediate answers: what is the impact on democracy of a human rights response to climate change?

Finally, it is perhaps best to clarify two potential points of confusion upfront. In registering this democratic concern about a human rights answer to climate change, I do not stake out an anti-rights or anti-human rights position. As other political theorists have argued, the political significance of rights – their poten-

tial to be generative of emancipation or domination – is contextually specific (Brown, 1995). Accordingly, my intention is not to participate in any ‘argument for or against rights as such’ (Ibid.: 100). Rather, the goal is to elucidate the political dangers of applying a human rights idiom to climate change today. Second, and relatedly, my inquiry operates at the level of discourse. What is at issue are not human rights in the abstract, but the many practices in which the language of human rights is implicated. The claim is neither that human rights are inherently depoliticizing nor that they can only be conceptualized in depoliticized terms. Rather, the force of the argument hinges on their discursive potential to issue in depoliticizing outcomes.

Depoliticizing Climate Change

Depoliticization refers to the discursive removal of an issue from the realm of politics. When a subject is depoliticized, it is walled off from political contestation and framed as an unsuitable topic for deliberation. Depoliticization can take various forms but is often associated with what many theorists refer to as ‘post-politics’ (Maesele, 2015; Mouffe, 2005; Swyngedouw, 2014; Žižek, 2005). This is a political formation marked by the rejection of ideological disagreement or, put differently, a political formation that aims to foreclose politics. In lieu of disagreement, post-politics favors alleged consensus. Through claims about consensus, particular political demands and positions are presented as if they were instead universal and are thereby removed from collective debate. When a dominant position is couched as a point of fundamental agreement, the interests and presuppositions lying behind it become difficult to identify and challenge (Pepermans and Maesele, 2016). By framing specific political viewpoints as if they were held by all, post-politics affords remarkable normative power to ‘the consensus’ while also obscuring this power and insulating it from opposition. In this way, depoliticization and the post-political are generally destructive of democratic contestation.

Post-politics is further characterized by the embrace of expert-led social management. In this context, politics is a matter of ‘consensus-based governing and policymaking’ facilitated by ‘technical, managerial’ administration (Swyngedouw, 2011). It is conducted by ostensibly neutral experts who engage not in controversial decision-making, but in compromise, management, and technical problem-solving. This ensures that governance and policy remain firmly entrenched in and reproductive of the status quo, which becomes increasingly closed to dispute. By privileging expert-led management and administration, post-politics also rejects and discredits the public’s control over and enactment of politics. In the course of empowering expertise, buttressed by technocratic

and technological know-how, post-politics disempowers everyday citizens. As such, depoliticization and the post-political are often destructive not just of democratic debate, but also democratic exercises of power.

Climate change, and environmental concerns more generally, are especially prone to depoliticization. They are, in other words, particularly susceptible to being approached in ways that cut against democratic deliberation and exercises of power concerning what should be done and by whom. To begin with, their timing and character contribute to this vulnerability. Climate change is unfolding in an already established post-political moment in which ideological consensus is prized (Maesele, 2015). Moreover, the climate and environmental movements are qualitatively different from traditional emancipatory mobilizations in that they lack a clear subject of liberatory change. This indeterminacy can make contestation more difficult and facilitate climate change's depoliticization (Pepermans and Maesele, 2016).

Combining the themes of timing and character, climate change's urgency can also invite its depoliticization. Narratives emphasizing exigency refuse contestation by suggesting that there is no time for debate: pressing threats must be dealt with immediately. If there is no time to 'waste' deliberating among different responses to climate change, then competing proposals can – and perhaps even should – be pushed to the side. Urgency-based ways of emplotting climate change may also degrade contestation in a further way: in the face of its immediate threat, 'pragmatic short-term solutions' may be privileged over debate about more far-reaching, critical responses (Maesele, 2015).

Alternatively, substantive deliberation about how to navigate climate change is diverted and negated by climate denialism. Where skepticism about anthropogenic climate change has taken hold, 'scientific non-debate' over matters of fact supersedes political debate over how to respond (Maesele, 2015). Denying climate change depoliticizes it by drowning out discussions about how to organize society, polity, and economy more sustainably in favor of discussions about whether the phenomenon is in fact real.

Finally, commonplace assumptions about nature and the environment can contribute to the climate's depoliticization. It is not unusual, for instance, to refer to nature in the singular as if it were a distinct and uniform domain. Yet this shorthand may misleadingly suggest that it demands a singular, uniform political response, closed to contestation. If nature is one, fixed entity, then it might seem to merit one, fixed policy approach, obviating the need for discussion (Swyngedouw, 2011). By the same token, tendencies to see nature as an apolitical 'realm of necessity' beyond the reach of human agency may also invite

us to see environmental concerns, climate change included, as beyond deliberation (Hällmark, 2022).

Dominant ways of thinking and speaking about climate change illustrate and further its depoliticization. Climate change is often framed in consensual terms that shut down political contestation over how to redress it through the discursive mechanisms of *scientization* and *economization* (Carvalho et al., 2017). In the first of these registers, broached primarily as a scientific issue, climate change presents as a technological problem in need of a technological solution (Gorz, 2010: 45). The central question becomes, for example, how many parts per million of CO₂ can the atmosphere bear and how might this output be stanch-ed (e.g., IPCC, 2022a; IPCC, 2022b). Seen this way, the principal objective of climate politics is to reduce greenhouse gas emissions to net zero; governments are tasked with providing the necessary funding to reach this goal and matching public policy to the latest science (e.g., The Royal Society, 2021).

Framed as such, climate change is an issue for experts to solve through technological know-how and does not admit of democratic deliberation or decision-making. Such scientization reduces climate ‘policy-making to a matter of rationality claims and technocratic, expert-led decision making’ (Carvalho et al., 2017) and confines the role of citizens to heeding professional expertise. ‘Together we must,’ as the popular expression – invoked in a Biden administration executive order on climate change – urges, ‘listen to science’ (Executive Order No. 14008, 2021). Where the biophysical sciences stipulate the course of climate politics, the content of this politics is rationally predetermined, rendering debate about what should be done and by whom extraneous (Goeminne, 2010). If climate change is essentially a scientific challenge, such that scientific knowledge can supply its fix, then value-laden discussion over how to proceed is irrelevant.

Unsurprisingly, when climate change is conceived in this manner, solidaristic action tends to center not on the demos itself collectively exercising power, but on the empowerment of science and scientists. It is in this spirit, for instance, that activists have organized events like Extinction Rebellion’s 2019 ‘Listen to the Science’ march, which ‘featur[ed] 100 people in labcoats [sic],’ in order to ‘highlight the seriousness with which...government needs to tackle The Climate and Ecological Emergency’ (Extinction Rebellion, 2019). What is at issue is not publicly deliberating how to sustainably reorder our systems of collective life, but instead pressing officeholders to do what science dictates we must. Approached this way, scientized efforts to respond to climate change do not enable democratic debate or expressions of power so much as negate them through

recourse to the sciences' objective decrees.

Climate change is discursively depoliticized not only through scientization but also economization.² Looked at from the perspective of mainstream economics, it is seen as a market problem in need of a market solution. Here, the crux of the climate challenge is the achievement of environmentally sound economic growth. Adequately addressing the climate crisis is a matter of decoupling production and consumption from environmental impact so that capitalistic growth can be made 'green' (e.g., OECD, 2015; World Bank, 2018). Couched this way, the task of climate politics is to facilitate green growth through economic reforms such as taxing emissions and creating carbon markets (e.g., OECD, n.d.).

Here too climate change is framed as a challenge for experts, not the public, to contend with. Economization establishes a 'context in which technical, market-based policy responses' to climate change are 'justified by a logic of economic calculation' which citizens are asked to simply accept (Carvalho et al., 2017). William Nordhaus' 2018 economics Nobel Prize speech, later revised into article form, offers a rich demonstration. As the 'science of economics' makes clear, Nordhaus argues, emissions reduction is the 'only feasible and responsible' policy response to the 'climate change externality' (Nordhaus, 2019: 1991, 1998). Defining climate change as a market failure, economics establishes an 'inconvenient truth about climate-change policy' which is that 'it must raise the market price of CO₂' (Ibid.: 2003). Here, economics stipulates what must be done to repair the climate, thereby eliminating any need for democratic deliberation. In the face of established economic 'truth,' collective discussion about who should respond and how is immaterial.

Beyond nullifying public contestation, economization also deters collective exercises of power, in this case by reducing climate action to the making of individual, eco-friendly consumer choices. Nordhaus' logic is illustrative here as well. If the only prescription for climate change is to increase the market price of carbon, then not only must governments enact policies to this effect, but '[s]cientists' and those who 'understand the issue must speak up' such that 'people around the world...accept the gravity of...global warming' and the imperative that it be redressed through market corrections (Ibid.: 2013). The public should be made to appreciate the economic fact that climate change must be solved

² Scientization and economization may also intersect in various ways. For one, through the creation of technologies for measuring CO₂, scientific advances have enabled the 'construction of carbon equivalents,' a development that has in turn made carbon exchangeable and allowed for its 'marketization' (Methmann, 2011: 80; see also Goeminne, 2010: 208).

through the market and, ultimately, encouraged to individually participate in market-based solutions in their capacity as consumers. Among innumerable exhortations to ‘buy green,’ everyday people can act to correct the climate change externality by, for instance, buying and selling personal carbon credits. Thus, economization channels climate engagement not into the collective, public decision-making of citizens but the individual, private decision-making of consumers. Discursively framed as an economic or scientific concern, climate change appears to be closed to democratic deliberation and action by the demos, limited as it is to listening and consuming.

Even as the climate movement has gained popularity it too has contributed to the issue’s depoliticization. Mainstream as well as radical climate activism reinscribe depoliticization by emphasizing the theme of urgency, in some cases explicitly linking it to scientized formulations of climate change. Currently dominant, non-violent civil disobedience-based approaches, typified by groups like Extinction Rebellion, use the notion of ‘climate emergency’ to press for swift, government action targeting carbon emissions (Scheuerman, 2021; Extinction Rebellion, 2019). This depoliticizes climate change by suggesting that because time is running out, debating different paths forward is a luxury society can no longer afford, ‘thereby reducing climate politics to the depletion of a naturally limited carbon budget’ (Marquardt and Lederer, 2022: 739). Extinction Rebellion’s hourglass logo captures this visually, ‘illustrating the direct link between scientific evidence of a climate crisis with the amount of time left to respond’ (Marquardt and Delina, 2021: 3). Because climate science highlights time-sensitivity, climate politics must proceed in lockstep. More extreme activism also embrace the trope of ‘climate emergency’ to depoliticizing effect. Block and disrupt approaches to halting climate change highlight the need for urgency to marshal an avant-garde cadre of activists willing to carry out acts of eco-vandalism and -sabotage (Scheuerman, 2021; Malm, 2021). This form of activism contends that because time is of the essence, and states have been too slow to stop climate change, saboteurs must take matters into their own hands, thereby sidelining deliberation altogether.

There are environmental reasons to be cautious of climate depoliticization. Climate discourses that position people as passive non-participants can lead to disengagement (Carvalho et al, 2017). Ironically, by obstructing dissensus, depoliticizing discourses can also provoke ‘symptomatic outburst[s] of the political’ in the form of climate denial (Goeminne, 2012: 7).

But there are democratic reasons for concern as well. Climate depoliticization via scientization and economization largely undermines democratic contesta-

tion and exercises of power by curtailing what can be deliberated and done about climate change and by whom. This is not to say that climate science should be politicized, or that technical responses have no role to play. The point is instead that depoliticization – whereby dominant, allegedly neutral ways of conceptualizing climate change sideline competing understandings and silence non-experts – tend to incur a democratic deficit. Conceived of merely as a ‘matter of fact,’ climate change may cease to be a ‘matter of concern,’ over which the public can deliberate (Latour, 2004).³ Depoliticizing climate change also has the potential to devalue democratic politics itself. When climate change is seen not as a ‘sociopolitical’ but merely ‘technical’ challenge, it is easy to focus less on the ‘conditions’ and more on the ‘effects’ of political action (Stehr, 2013). This can in turn legitimate the use of anti-democratic means to accomplish environmental ends. Although climate change is both a technical and sociopolitical phenomenon, inattention to the latter can encourage a narrow focus on meeting material goals irrespective of their normative costs. If we care not just about putting a physical stop to climate change, but doing so without abandoning democracy, then we should be wary of its depoliticization.

Depoliticization and Human Rights

Having explained how depoliticizing climate change can be democratically problematic, I now turn to how the language of human rights can be depoliticizing. This is the focus of sections two, three, and four which set aside climate change in order to substantiate the claim that human rights discourse can engender depoliticization. Here, the focus is on how a human rights idiom can thwart democratic exercises of power by disbanding the demos, and can diminish democratic contestation by both masking domination and delimiting a fixed vision of the future. This does not mean that human rights are without salutary political potential but rather that their emancipatory possibilities sit alongside and merit analysis in conjunction with a parallel capacity for political obstruction. That human rights should be in this way Janus-faced is a function their ‘indeterminacy’ and, indeed, that of rights in general (Nicol, 2011: 229). It is for this reason that their political import should be understood contextually (Brown, 1995: 100), attention to which suggests that human rights discourse has for some time both contributed to and been mired in depoliticization (McLoughlin, 2016: 318).

Human rights discourse can discourage democratic exercises of power where it produces anti-political subjectivities and cultural orientations to politics. As

³ I owe this formulation to Noga Rotem.

political theorist Wendy Brown observes, human rights endeavors are often presented in apolitical terms as defenses of the ‘powerless against power’ (Brown, 2004: 453). Yet this discursive terrain, according to which helpless individuals must be shielded from domination and oppression, constructs atomized subjects in need of protection from power (Brown, 2004).⁴ Human rights discourse ‘draws a line between the space of the individual to choose how she or he wants to live and the space of politics’ (Ibid: 456). In so doing, it casts the most fundamental of all rights as the right ‘to be kept at a safe distance from others’ and insists that the personal must be actively safeguarded from the political (Žižek, 2005: 120).

By championing negative liberty, this mode of subject formation can underwrite a political culture in which freedom from politics is prioritized. In this way, Brown argues, human rights discourse ‘not only aspires to be beyond politics,’ but by characterizing people as ‘yearning to be free of...all collective determinations of ends,’ advances ‘implicitly antipolitical aspirations for its subjects’ (Brown, 2004: 456). What is notable about this political cultural outlook is what it rejects. In advancing an individualized form of freedom from, human rights discourse often forecloses collective forms of freedom to. It tends to offer no account of how people might exercise power themselves, rather than simply be insulated from it.⁵ Nor does it make space for efforts to do so as a solidaristic group, rather than as a mere aggregate of individuals. As such, Brown suggests, human rights can ironically function as mechanisms of ‘governance and domination’ (Ibid: 459). Seeking to protect people from abuses of power, human rights may contribute to their very ‘disempowerment.’⁶ Put otherwise, human rights discourse can hinder democratic control over and enactment of politics by dissolving the public itself.

Human rights can also further depoliticization by reducing possibilities for dissensus and disagreement. The discourse achieves this effect when it reinscribes and masks the authority of hegemonic political actors and interests. As many political theorists have remarked upon, because human rights effectively belong to those who cannot exercise them, they can generate a ‘right to inva-

4 Badiou, for one, takes this victimized subjectivity to be dehumanizing. Because people realize their humanity through political action, their primary construal as victims in need of protection is destructive of human being (Badiou, 2001: 10, 11).

5 On this point, see also: Meister (2011).

6 Among other expressions, such disempowerment is evident in the rise of a privileged class of human rights specialists. Formulated as a human rights issue, emancipatory politics consists of a series of ‘technical problems’ with technical ‘solutions’ (Marks, 2011: 71) to be provided by ‘enlightened, professional elites’ with expert “‘knowledge” of rights and wrongs’ (Kennedy, 2002: 117).

sion' in the name of humanitarian intervention (Rancière, 2004: 298). What this has too often meant in practice is that human rights are the 'right of Western powers [...] to intervene politically, economically, culturally and militarily in the [...] countries of their choice in the name of defending human rights' (Žižek, 2005: 128). Such intercessions may advance the objectives of Western states themselves not only by replicating liberal democratic government and expanding the reach of global capitalism, but also by invalidating any potential alternative (Brown, 2004; Kennedy, 2002; Žižek, 2005). Protecting human rights can therefore function as a justificatory 'veil' (Anderson, 2002: 19) for interventions that further the 'specific economico-political ends' of powerful states and negate the pursuit of other objectives (Žižek, 2005: 126).

Scholars have also characterized the way in which human rights conceal the deployment and re-inscription of Western power, thereby curtailing contestation, as an instance of neocolonialism. Read this way, the discourse's anti-political quality works to hide the cultural specificity of the norms it aims to advance. Attempting to universalize what is in fact a particular, 'European corpus of human rights,' delegitimizes would-be alternative frameworks concerned with rights beyond individual civil and political entitlements (Mutua, 2002: 6; Kennedy, 2002). This can amount to an 'imperial project,' with human rights discourse characterizing cultures that fail to clear its ideological bar as backward and authorizing the institution of Western norms in their stead (Mutua, 2002: 7, 8). More than this, by perennially assigning the 'same roles to the same sides,' efforts to secure human rights have often divided 'uncivilized' 'victims' from 'civilized' 'benefactors,' allowing the West to indulge in self-congratulation for its altruism (Badiou, 2001: 13). Seen from this vantage, the ostensibly apolitical project of advancing human rights can support, and just as importantly mask, what is in fact a neo-imperial Western imposition.⁷

Human rights discourse can also diminish public contestation by presenting its objectives and their achievement in fixed, unchallengeable terms. This is the case when it carries the predetermined assumptions first, that liberal capitalism is essential to realizing human rights (Žižek, 2005) and second, that their full realization would mark the "end of history" (Mutua, 2002: 3). Supported by liberal capitalism, the institution of human rights is often conceptualized as the final step of history's progressive march. Yet, while such belief lends a quasi-religious, 'evangelical' quality to human rights endeavors, it also hampers public debate over the pursuit of competing social, political, or economic goals (Ibid).⁸

7 On the instrumental use of human rights for the 'imperial control of foreign regimes,' see also: Guillhot (2005).

8 On the intersection of evangelicalism and human rights generally, see: Turek (2020).

Where human rights are the crowning accomplishment of human history – and can only be advanced by a singular political-economic configuration – debating alternative goals and paths forward is moot.

This status quoism, according to which the prevailing social order is beyond substantive dispute, has also been linked to human rights' narrow focus on abating harm. Rejecting the 'evil' of human suffering, human rights discourse has tended to avoid proffering any positive vision of the 'good,' collective efforts at which are assumed to necessarily lead to conflict and individual harm (Badiou, 2001). Yet this can generate a passive acquiescence to the world as it already more or less is. Read thusly, the dictum to merely redress suffering entails a conservative affirmation of the status quo that locates liberal capitalism outside the realm of contestation (Ibid.).

To be clear, human rights discourse need not have a depoliticizing impact everywhere and always. On the contrary, in some circumstances human rights can function as either a tool for or the substance of political contestation. They can be laid claim to by those who are excluded from them and used to challenge that very exclusion (Rancière, 2004) just as they can be the target of self-reflexive deliberation about who constitutes the demos (Benhabib, 2004). However, because human rights' political import is always situationally specific, neither of these politicizing prospects is guaranteed. In a wider post-political context where dissensus has already been minimized, it may be extremely difficult to deploy human rights talk to any insurgent or deliberative end (Rancière, 2004).⁹

On the other hand, some argue that human rights should be depoliticized. Protecting minorities from the demos, for example, by removing foundational entitlements from contestation, or allowing courts to intervene against oppressive majorities, may facilitate procedural democratic politics (Ely, 1980). Yet in practice this rationale is also regularly put to de-democratizing use. The imperative to stave off tyrannical demoi via the protection of fundamental rights can function as an alibi for the protection of powerful minoritarian interests from democratic control. It was on these grounds, for instance, that the U.S. Supreme Court ruled in *Citizens United* that the fundamental free speech rights of corporations – construed as a 'historically disenfranchised class' in need of protection from longstanding prejudice – trumped democratic efforts to limit

9 Benhabib's suggestion that, as paraphrased by Robert Post, we can in fact 'expect demoi increasingly to internalize cosmopolitan norms,' such that 'the principles of human rights are progressively incorporated into the positive law of democratic states,' itself bears an uncomfortable resemblance to depoliticizing assertions about human rights' fixed inevitability (Benhabib, 2006: 5).

corporate spending on political campaigns (Brown, 2015: 166).

Human rights may not be inherently depoliticizing, nor is the depoliticization of foundational rights always problematic. But the human rights paradigm *can* be depoliticizing, insofar as it hinders democratic contestation and exercises of power, and the depoliticization of foundational rights *can* hamstring democracy. Human rights discourse works to advance depoliticization to the extent that it cultivates anti-political subjectivities and political cultures inimical to public rule and curtails public deliberation, either by reinforcing and obfuscating hegemonic power or by prescribing a fixed future replicative of the present. Where consensus and expert rule already prevail, human rights can be expected to buttress both and exacerbate depoliticization.

The Human Rights-Neoliberalism Nexus

At the level of practice, human right's depoliticizing potential is evident in the discourse's relationship to neoliberalism. Neoliberal ideology reduces all normative questions to questions of economic rationality and translates 'every political or social problem into market terms' (Brown, 2006: 704). This has the depoliticizing effects of inhibiting democratic exercises of power and frustrating democratic contestation. Neoliberalism limits democratic power by both refusing any notion of the public and elevating expert-led social administration. Transforming 'socially produced problem[s]' into personal challenges with market-based solutions destroys public life and renders collective, sociopolitical responses inappropriate (Ibid.). Democratic interventions are replaced by technocratic, market adjustments, determined and implemented by professionals with suitable expertise. At the same time, neoliberalism obstructs contestation by naturalizing this full-scale economization. Presented as necessary, fixed, and correct, extant economic structures and the reductio to market rationality become difficult to substantively challenge or imagine otherwise.

Human rights intersect with neoliberalism and are entangled in its destruction of democratic power and contestation. Taking depoliticization to an 'unprecedented level' (Ibid.), neoliberalism is thought to have either co-opted the human rights paradigm or to share an elective affinity with it. Observing the mutual meteoric rise of both frameworks in the 1970s, historians like Samuel Moyn argue that human rights discourse is now the captive companion of neoliberal order. As various transformative sociopolitical projects faltered during this period, the more limited human rights goals of reducing poverty and meeting basic needs grew increasingly attractive (Moyn, 2010). Actionable and pragmatic, the aim of sufficiency replaced that of equality as the most that could be envisaged (Moyn, 2018, 1). However, as the last, minimal, utopian blueprint on offer,

human rights were vulnerable to co-optation and ultimately hijacked by neoliberalism (Ibid). To the extent that human rights now exclude any commitment to material equality, it has proven easy to subsume the discourse's emphases on material sufficiency and status equality under neoliberalism's banner (Ibid: 193, 202). Human rights can thus be characterized either as neoliberalism's 'powerless companion' (Ibid: 216) or as its 'weak and subordinate doppelgänger' (Moyn, 2018, 2: 151).

Others argue that the interconnection between human rights and neoliberalism goes even deeper; one has not been appropriated by the other, rather the two are fundamentally compatible. This likeness is attested to, first, by the success of neoliberal efforts to render human rights as 'human rights of capital' (Slobodian, 2018: 125). Early neoliberals zeroed in on the Universal Declaration of Human Rights' contention that the right to emigrate was foundational to all other rights, translating this into a right of movement not just for people but for their possessions (Ibid: 135). Formulated as such, the provision of human rights could be a means to neoliberal ends, with the infringement of capital movement amounting to no less than a rights violation (Ibid: 134). This perspective lives on, for instance, in bilateral investment treaties which – by authorizing capital's injection and withdrawal across borders at will – protect the interests of capital according to the 'principle of "human rights as business rights"' (Ibid: 145; see also Nichol, 2011).

Further illustrating their elective affinity, just as neoliberals took up the language of human rights, human rights organizations in turn embraced the logic of neoliberalism. Key to this perspective is the idea that competitive markets and individual rights are mutually reinforcing and that protection from state interference is essential to both. From the 1970s on, many human rights NGOs took this notion to heart and promoted civil and political rights alongside market liberalization on the understanding that each was a ballast to the other (Whyte, 2019). By adopting this rationale, according to which political interference in the market constitutes a rights violation, human rights groups undercut and delegitimated post-colonial calls for redistributive justice at odds with the tenets of neoliberalism (Whyte, 2018). Looked at this way, in lending 'moral prestige' to 'neoliberal counter-attack[s] on the struggle for post-colonial economic justice,' human rights played the role not of neoliberalism's helpless hostage but instead its 'fellow traveller' (Ibid.: 15).

Human rights have furthermore been tied to the contraction of the neoliberal state. On the one hand, human rights discourse can encourage the proliferation of NGOs which, 'stepping into the vacuum in social provision left by the with-

drawal of the state,' excuse and facilitate its retreat (Harvey, 2005: 177). Both evidencing and enabling the state's abandonment of public services, the growth of human rights NGOs incentivizes increased privatization alongside the state's further retraction. On the other hand, human rights discourse can also produce subjects well adapted to the state's withdrawal. Funneling discontent into juridical outlets, human rights discourse replaces demands for social change with demands for rights, and constructs subjects for whom freedom consists not of enacting social transformation but of claiming 'abstract legal entitlements' (Odysseos, 2010: 764). This allows the state to efficiently reduce its responsiveness to citizens to rights 'codification and...observance,' a singular focus on which may further aid its contraction (Ibid: 767).

Whether human rights are neoliberalism's hostage or accomplice, one is now tethered to and implicated in the other. Neoliberalism furthers depoliticization by negating the very notion of public power and naturalizing market rationality beyond contestation. Human rights discourse has been historically bound up in these developments. Attending to this entanglement highlights the possibility that applying a human rights perspective to climate change may have a depoliticizing impact.

Juridification and Depoliticization

In addition to its enmeshment with neoliberalism, human rights discourse's practical entanglement with depoliticization is also a consequence of its legalism. The proliferation of human rights discourse is just one instance of law's encroachment into ever more aspects of contemporary social, political, and economic life. Such encroachment, or juridification, impacts depoliticization. As law becomes both the framework through which more issues are seen, and the mechanism through which they are regulated, democratic deliberation can become increasingly irrelevant. At the same time, as law becomes the framework through which people are constituted and understand themselves, democratic exercises of power can be supplanted by abstract rights claims. Juridification has also led to the judicialization of politics whereby political power is reallocated away from majoritarian institutions in favor of judicial fora. Replacing political with adjudicatory decision-making, judicialization further enflames depoliticization by limiting democratic exercises of power. Participant to processes of juridification and judicialization, human rights' legalism can incline the discourse to depoliticization.

Through juridification, law becomes a primary paradigm through which society, polity, and economy are conceptualized and conducted. Law functions as the regulatory mechanism for a growing range of activities and increasingly

serves as the tool through which conflicts are resolved (Blichner and Molander, 2008). In this manner, juridification expands the boundaries of legal deliberation and determination by contracting the boundaries of political deliberation and determination (Jessop, 2014: 2012). At the same time, juridification encourages people to understand ‘themselves and others as legal subjects’ and is associated with the accrual of formal and informal authority to ‘legal system[s] and the legal profession’ (Blichner and Molander, 2008: 39). When it comes to human rights discourse, this is exemplified by the formation of subjects as not political, but legal persons more invested in claiming legal protections than exercising political power (Brown, 2004; Odysseos, 2010). Through juridification, formerly political concerns, inter-personal relations, and even subjectivities become instead legal ones, reducing opportunities for and interest in democratic deliberation and rule.

Juridification engenders judicialization and the transmission of power from legislative bodies to judiciaries (Hirschl, 2004). In this context, issues are not decided via majoritarianism, with its mechanisms of ‘persuasion, negotiation, bargaining, and tradeoffs’ (Silverstein, 2009: 2), but according to the assessments of judges and the dictates of legal procedure (Vallinder, 1994: 91, 92). This redistribution of power is accomplished in a variety of ways. Judiciaries may be empowered through judicial review (Vallinder, 1994: 92; Hirschl, 2004) or the expansion of judicial staff, norms, and working methods within administrative and policy making arenas (Vallinder, 1994: 93; Hirschl, 2006: 723). Judicialization can also occur through constitutionalism. Increasingly common in the later twentieth century, ‘new constitutionalism’ enshrines foundational rights – including human rights – within state constitutions such that they are judicially protected from legislatures (Nicol, 2011: 243; Shapiro and Sweet, 2002: 1). Alongside constraining legislative bodies relative to their judicial counterparts, this can further augment judicial power by converting political controversies into ‘constitutional issues’ requiring adjudication (Hirschl, 2006: 722). Finally, legal pluralism can contribute to judicial empowerment. Associated with globalization, transnational legal processes and actors have come to play a growing role in the workings of domestic law (Koh, 1996), in many cases even supplanting it (Tamanaha, 2008). By relocating public decision-making from sovereign state legislatures to transnational judicial institutions, legal pluralism increases judicial power.

Judicialization leads to depoliticization. It curbs democratic rule by taking power away from ‘politicians [and] the demos itself’ (Hirschl, 2008: 120). Historically, misgivings about majoritarianism led some to embrace judicialization as a necessary barrier to public rule (Vallinder, 1994: 93, 94). However,

there may also be a more specific reason for judicial power's contemporary growth. As democratizing trends have created more diverse constituencies over the course of the late twentieth and early twenty-first centuries, once marginal views may have come to pose a larger 'threat to established interests and hegemonic cultural, economic, and political worldviews' (Hirschl, 2004: 216). In this context, judicializing politics can be a way for elites to insulate themselves and their policy preferences from otherwise ascendant democratic majorities (Ibid: 11, 12; see also Harvey, 2005: 176, 177).

Divesting the demos of political power, judicialization invests it in de-democratized institutions instead. Decision-making power is relocated away from explicitly democratic spaces, in which citizens and their elected representatives can deliberate, and channeled toward politically insulated domains. 'Policy-making authority' is withdrawn from 'majoritarian decision-making arenas' and granted to judicial bodies (Hirschl, 2004: 16). This elevation of judiciaries, in which adjudicators are transformed into de facto lawmakers, can lead to the construction of 'juristocracies' (Ibid) in which judges function as 'super-legislators' (Shapiro and Sweet, 2002: 147, 148).

Judicialization can constrain democratic contestation in addition to democratic power. This can be seen from an institutional perspective. By sequestering debate in courtrooms and bureaucracies, judicialization makes substantive deliberation more accessible to powerful interests – capable of navigating and sustaining protracted legal processes – than to ordinary citizens. Judicialization's impact on contestation can also be appreciated doctrinally. Constitutionalist efforts, for instance, to protect fundamental rights from political incursion make it difficult to challenge or debate them by design (Jessop, 2014).

Human rights discourse is of a piece with juridification and judicialization. Legalistically oriented, it is amenable to the expansion of law via the constriction of politics and transference of power from legislative to judicial institutions. Human rights discourse's real-world capacity to issue in depoliticization is then twofold. Not only is this language bound up with neoliberalism it is also party to the broader displacement of politics by law, both of which challenge democratic contestation and rule.

In sum, the foregoing argument has been that approaching climate change from a human rights perspective may depoliticize it and impair democratic deliberation and action. Depoliticizing climate change can inhibit democracy. Climate change is easily depoliticized through scientization and economization, and its depoliticization can suppress democratic contestation and exercises of power. Human rights discourse can be depoliticizing. At an abstract level, this

is attested to by the paradigm's ability to demobilize publics, conceal and reinforce domination, and predetermine what constitutes progress. At a practical level, it can be seen in human rights' enmeshment with neoliberalism and juridification. If depoliticizing climate change can undermine democracy, and the language of human rights can be depoliticizing, then framing climate change as a human rights issue can undermine democracy.

Climate Depoliticization and Anti-democratic Repoliticization

Beyond the preceding argument, a human rights response to climate change may pose an additional risk to democracy inasmuch as it affects depoliticization. When climate change is not politicized democratically, it may be politicized for anti-democratic purposes instead. This is possible because climatic, and environmental considerations more generally, are politically indeterminate (Staudenmaier, 2011). They have been, can be, and in some cases currently are pressed into the service of nationalistic and authoritarian politics. Depoliticizing climate change, in other words, leaves it available for ugly repoliticization. More worrying still, because scientizing and economizing discourses downplay the sociopolitical aspects of addressing climate change relative to its technical features, depoliticization may also facilitate anti-democratic co-optation of the issue. Because human rights can be depoliticizing, this is cause for further concern about their application to the problem of climate change.

In the absence of democratic politicization, climate change can be laid claim to and politicized by nationalists. On this formulation, heightened material pressures pave the way for 'us versus them' narratives about who does and does not merit access to scarce resources. Across North America and Europe, some nationalists already frame climate change as a justification for closing borders and restricting immigration. In this repoliticizing framework, immigration threatens to ravage the already strained natural ecosystems of would-be host countries which must be protected from outsiders on environmental grounds (Gilman, 2020; Rueda, 2020). '[I]f you cared about the environment' argues far-right US commentator Tucker Carlson '...why would you want a crowded country? Isn't crowding your country the fastest way to despoil it, to pollute it...?' (quoted in Gilman, 2020). Here climate change is anything but a politically neutral phenomenon. It stages an inescapably political conflict between nationals and migrants, demanding that the first be safeguarded from the second for the sake of the planet.

Alternatively, where climate change is not politicized democratically, it may be politicized to authoritarian ends. In this context, material constraints are replotted as either a justification or legitimating pretext for strict governmen-

tal controls. Such environmental authoritarianism is underway in China, for instance, where addressing climate change has become a vehicle for the further concentration and entrenchment of state coercion (Li and Shapiro, 2020). Approached this way, ‘climate distress’ provides a rationale for the imposition of ‘top-down solutions without any mechanism for channeling public involvement’ (Rueda, 2020: 114). This has involved not only the expansion of the regulatory scope of the Chinese state but also the co-optation of non-state actors into its environmental agenda (Li and Shapiro, 2020). Here climate change is politicized not as a conflict between different groups of people but between nature and humanity. Where climate change endangers the wellbeing of its population, the state is authorized to use coercive tactics to combat it.

Depoliticization can open the door to these kinds of troubling means-ends calculations. Reducing climate change to a technical challenge centers the problem of its material resolution while sidelining sociopolitical questions about how this is to be achieved (Stehr, 2013). What matters above all else is meeting the physical goal of decarbonization. As such, climate depoliticization may go beyond simply impeding democratic contestation and rule; by suggesting that any imperative to protect democracy pales in comparison to protecting the climate, depoliticization can court anti-democratic sentiment. It is in this spirit, for example, that some have come argue for the necessity of ‘authoritarian environmentalism’ (Li and Shapiro, 2020). If slow acting, organizationally ‘cumbersome’ democracies cannot be counted on to solve the end all be all problem of climate change, then perhaps what is needed is ‘strong state’ intervention (Stehr, 2013: 58). Climate depoliticization can in this way feed into a logic of forsaking democracy in the interest of climatic repair.

Treating climate change as a human rights issue may present more than one risk to democracy. Where it aggravates depoliticization, a human rights blueprint for addressing climate change has the capacity to jeopardize democratic deliberation and exercises of power as well as create opportunities for the climate’s anti-democratic repoliticization. The fundamental question this approach raises is not whether human rights are normatively compatible with environmental protection; safeguard future generations; succeed in court; or furnish sound ecological policy. The question is rather, to the extent that framing climate change as a human rights problem may endanger democratic values and practices, is this a risk we are willing to take or a sacrifice we are willing to make?

Conclusion

The above does not provide an answer to this question but explains why it needs to be asked. Depoliticizing climate change can hinder democracy. Climate

change is uniquely vulnerable to depoliticization, and its depoliticization can cut against democratic contestation and expressions of power. Human rights discourse can be depoliticizing. This capacity is pronounced in post-political environments – including those typified by neoliberalism and juridification – in which the power of consensus sidelines disagreement, and public deliberation and rule are discouraged. Applying a human rights framework to climate change, then, can obstruct democracy. Insofar as it facilitates depoliticization, a human rights answer to climate change is worrisome not only because it may impede democracy but because it may incite anti-democratic repoliticization. By disregarding climate change’s political features, climate depoliticization can create a vacuum for, and even elicit, its nationalistic or authoritarian capture. Should those who care about democracy refuse to approach climate change as a political challenge, those with other commitments may do so instead.¹⁰

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¹⁰ Acknowledgements: I would most like to thank Jelena Belic for her critical engagement and sustained encouragement with this piece. Earlier drafts benefited greatly from the readership of Stefan Dolgert, David Lebow, Tim Meijers, and Noga Rotem. Many thanks also to the participants of the Leiden University Human Rights and Climate Change Conference and Leiden Workshop in Political Science.

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