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Human Rights and Climate Change: Evolving Intersections and Critical Perspectives

Since their recognition and institutionalization in the aftermath of World War II, human rights have been understood as protecting the fundamental interests of human beings worldwide against serious threats. Although the range of threats can be very broad, international human rights law has tended to focus on those that originate in actions or omissions of states concerning those who find themselves under their jurisdiction (Gibney, 2022). It will come as no surprise, then, that the major international human rights instruments, including the International Bill of Rights, make no references to environmental threats, which are often transboundary in nature. Instead, the existence of environmental goods, which are essential for the enjoyment of human rights, has been taken for granted (Woods, 2016). This assumption has been challenged by the accelerating climate change trajectory, brought to a broader light by the 1990 IPCC report (IPCC, 1992). The 1990 IPCC report, as well as the subsequent ones, have shown that the increasing degradation of the environment seriously threatens various aspects of human (and non-human) well-being. Is the state-centred international legal human rights infrastructure suitable to address this distinctive environmental threat?

Initially absent from climate change action and discourse, human rights concepts have increasingly permeated climate governance at multiple levels since the mid-2000s. This evolution can be traced back to advocacy efforts by Indigenous Peoples, small island states, and activists. The 2005 Inuit petition to the Inter-American Commission on Human Rights alleging U.S. contributions to global warming violated their rights was a pioneering attempt to frame climate

change as a human rights issue (Hohmann, 2009; Jodoin et al, 2020). This was followed by the 2007 Malé Declaration from small island states requesting climate change be addressed through the UN human rights system (Knox, 2009-2010). These efforts triggered engagement by the UN Human Rights Council (UNHRC), the UN Office of the High Commissioner for Human Rights and treaty bodies on the human rights implications of climate change. The UNHRC has adopted a slew of resolutions recognizing climate change as a threat to human rights enjoyment and calling for a rights-based approach. UN mandate holders have produced extensive analyses on issues like the rights to life, health, food, water, housing, self-determination, and a safe environment in the climate context (Jodoin et al, 2021).

Such observations have been theoretically supported too - moral and political philosophers have been arguing that anthropogenic climate change violates at least several human rights including the right to life, private and family life, health, subsistence, and culture (Adelman, 2009; Bell, 2011; Caney, 2010; Schapper, 2018; Shue 2020). Building on these developments, the Paris Agreement in 2015 was the first multilateral climate treaty to reference human rights, albeit in preambular language. Select climate finance mechanisms and non-state certification schemes have also incorporated human rights standards to varying degrees. Complementing these institutional developments is a growing body of domestic and international human rights litigation invoking climate change arguments (Keller and Heri, 2022). These court cases have led to notable victories for plaintiffs in some cases (Peel and Osofsky, 2018).

However, operationalizing human rights in climate governance remains challenging and contested. Tensions stem from debates around the normative and conceptual scope of human rights, their perceived Western bias, questions over their ability to address systemic injustices, and concerns that they may impede urgently needed cooperation through adversarial framings. Some scholars believe that these difficulties are rooted in human rights normative foundations, arguing that human rights are typically understood as claim rights of individual human beings that correlate with the duties of identifiable agents. Anthropogenic climate change, as is well known by now, results from what many agents have done in total and over time (Bodansky, 2010; Humphreys, 2009; Leib, 2011; Sinnott-Armstrong, 2010; Vanderheiden, 2015). However, there are critics who argue that using human rights as a vehicle for confronting climate change is problematic at a deeper level. They caution that rights frameworks are inherently anthropocentric and constrained by the systemic promotion of socio-economic structures underlying environmental degradation. From this view, addressing root injustices requires more transformative approaches beyond re-

formist rights advocacy (Grear, 2018; Fregoso, 2014; Gonzalez, 2015). Therefore, there remains significant disagreement not only about what kind of human rights approach to climate change is suitable but whether human rights have a productive role to play at all.

Valid or not, these concerns have proved not to be an obstacle to the increasing use of human rights language in the climate movement, in international fora as well as courtrooms. Not only are human rights still seen as a powerful mobilizing tool (Wewerinke-Singh et al., 2023), but they are also perceived as being suitable in providing legal remedies for harm as the rise of human rights-based climate litigation against states and corporate agents shows. This does not show that the problems mentioned above have been fully overcome. But it does show that despite the concerns, there is room for optimism about the potential of human rights. This optimism builds on one of the distinctive features of rights, including human rights, namely what Raz terms ‘dynamism’ – their ability to evolve by responding to emerging threats (Raz, 1984).

This special issue, comprising five contributions, sheds light on different aspects of such human rights evolving in response to the distinctive threat of anthropogenic climate change. The contributions address the range of issues that have been overlooked in philosophical and legal debates.

To begin with, the intertemporal dimension of climate change challenges the dominant understanding of the concept of harm. To understand in what ways anthropogenic climate change affects, and possibly violates, human rights, we need to understand the temporal dimension of harm resulting from climate change. In the first contribution, Belic explores a form of harm that informs one of the few absolute human rights - the prohibition of inhuman treatment. She challenges the legal approach that defines inhuman treatment in terms of the severity of suffering. She argues that inhuman treatment instead involves a distinctive kind of wrong - substantial diminishment of individual autonomy. In the context of climate change, inhuman treatment constitutes taking away the options necessary for leading an autonomous life. By focusing on the issues triggered by the Agostinho case before the European Court of Human Rights, she argues that children and young adults are indeed exposed to inhuman treatment since anthropogenic climate change is taking away their future.

In the second contribution, Vaha also takes a normative approach to the notion of harm but from a more collectivistic perspective. She illuminates different ways in which past harm induced by colonial history has been transformed into contemporary climate vulnerability. To be able to capture the colonial roots of the present climate vulnerability, climate justice cannot be limited to the responsi-

lity for GHG emissions only. It needs to account for a broader historical responsibility for colonialism as well. Therefore, climate justice must include corrective justice and reparations for past harms that are exacerbated in the context of climate change in order to provide a remedy for loss and damage.

Two contributions further expand the scope of the special issue by examining how different theoretical considerations play out in more legalistic approaches to anthropogenic climate change. Bookman and Petel focus on under-investigated issues concerning the considerations of distributive justice in human rights-based climate litigation. By taking a comprehensive approach to distributive justice that includes its three prominent dimensions - international, intergenerational and intra-generational, they show that judges in the relevant cases are reluctant to engage with issues of intergenerational justice. They further argue that a normative stance concerning the insufficient consideration of intergenerational justice depends on the model of judicial intervention one endorses. Bookman and Petel's analysis highlights the challenges of fully incorporating principles of distributive justice, particularly intergenerational justice, within the constraints of the current judicial system and legal frameworks.

Another contribution also focuses on the role of the judiciary, albeit from a very different perspective. In her contribution, Khadim explores the potential contributions that non-climate litigation relying on constitutional environmental rights can make to climate mitigation efforts. She analyses court cases concerning resource extraction to show various ways in which this emerging form of litigation can address at least some of the downsides of human rights-based climate litigation, thus complementing it. In particular, Khadim sheds light on the effects more collectivistic and ecocentric interpretations of environmental rights can have not only on the outcomes of court proceedings but also on climate action broadly understood. Her work suggests that a broader interpretation of environmental rights, beyond a strict focus on individual human rights, may open up new avenues for climate litigation and more effective climate action.

These four contributions rest on the assumption that a human rights approach has a productive role to play when addressing the problem of anthropogenic climate change. The final contribution by Ploof, however, asks us to exercise some caution in endorsing a human rights approach to climate change. By revisiting longstanding debates concerning the relationship of human rights to neoliberalism as well as its possible depoliticizing effects, Ploof articulates several negative implications that pursuing a human rights approach to climate change, especially via judicial mechanisms, can have on democratic contestation as the main source of legitimation of existing state institutions. In particular, she argues that the

depoliticizing nature of the rights-based discourse may open the door to anti-democratic re-politicization via the rise of green nationalism and environmental authoritarianism.

In summary, the five contributions point to important avenues for further investigation of human rights and climate change, ranging from substantive conceptions of harm and wrong that these rights are meant to protect against, to the gap between narrower interpretations of human rights and distributive dimensions of climate change, to the potential of collectivistic and ecocentric reinterpretations of environmental rights, to conclude on a more cautious note that not all cards should be placed on human rights given the risks this may pose for democratic processes. The contributions take a critical stance towards the existing accounts of human rights while proposing new ways forward in further developing this valuable concept as a part of the response to what is probably the most significant threat to human rights ahead of us - the threat of anthropogenic climate change.

As the global community continues to grapple with the urgent need for effective climate action, engaging critically with the role and limitations of human rights in this context is crucial. The insights offered by the contributions in this special issue underscore the importance of ongoing interdisciplinary research and collaboration to navigate the complex intersection of human rights and climate change. By exploring innovative conceptual, legal, and practical perspectives, this special issue aims to advance the dialogue and contribute to the development of more comprehensive and equitable responses. Ultimately, protecting the fundamental interests of present and future generations in the face of an unprecedented global challenge requires a nuanced understanding of the evolving relationship between human rights and climate change, as well as a commitment to continuous critical reflection and adaptation.¹

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