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HUMAN RIGHTS AND CLIMATE CHANGE

EDITED BY STEPHEN HUMPHREYS,
CAMBRIDGE UNIVERSITY PRESS, 2010

*Marc A. Schulz**

Editor Stephen Humphreys compiles several articles in a book that encompasses different theories of human rights topics as it affects climate change. Humphreys uses these articles collectively to raise questions based on human rights, starting with a broad view towards developing human rights-based methodologies that adequately address climate change. Subsequently, Humphreys highlights important climate change issues involving human rights and proposes solutions to its accompanying problems.

In his introduction, Humphreys' well-defined and ostensibly effort-less argument is that human rights principles may not provide clear-cut answers to the multifaceted and unique problems facing human rights and climate change. Humphreys identifies five plausible reasons for skepticism in evaluating whether a human rights approach will help create policies aimed at successfully combating climate change. These five points can be summarized as follows: (i) the human rights at issue are often very difficult to enforce; (ii) extraterritorial responsibilities are hard to institute; (iii) local accountability is similarly tough to establish; (iv) emergency conditions limit the application of human rights law; and (v) rights may conflict because human rights protect others besides those who are potentially harmed by climate change.

While accountability for climate change may be difficult to establish on a local level, it is neither unreasonable nor difficult to expect reform internationally, and I agree that achieving this goal cannot occur unless we first start addressing the problem locally. The duty falls on those most capable to demonstrate to others that taking responsibility for one's own actions is monumental to combating climate change. Altering the way climate change is viewed must, in my opinion, correspondingly begin at the local level before a change in perception will occur on the international level. Consequently, complex, multi-layered issues underlie Humphreys' arguments that, after delving into them, do not appear as straightforward as I initially thought.

Part I, "Rights Perspectives on Global Warming," begins with Humphreys' article entitled *Competing Claims; Human Rights and Climate Harms*. Humphreys discusses how moral and legal obligations can help facilitate change, emphasizing obligations and requiring assistance from pri-

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vate companies. One major obstacle to employing human rights principles globally is the role of corporations because of the enormous intricacies and substantial problems involved in weighing and assigning liability to corporations. Taking responsibility for one's actions must begin at the most basic levels to effectuate change, and it therefore becomes essential to creating circumstances that enable the application of human rights principles to adequately deal with climate change.

Another equally important issue that Humphreys identifies is the emission of dangerous greenhouse gases, otherwise known as GHG. Instead of living in a world where overall emissions must be limited by assuming everyone has an equal right to emit such gases, Humphreys argues it is vital to employ a human rights-based approach that distinguishes between the use of carbon fuels and other GHG sources to fulfill basic human needs from those used to further plush lifestyles. According to Humphreys, viewing the former as a fundamental right is useful in trying to balance excess GHG use among some with the continued need for future GHG use by others.

The next article, Simon Caney's *Climate Change, Human Rights and Moral Thresholds*, hypothesizes that human rights provide a set of "minimum moral thresholds to which all individuals are entitled, simply by virtue of their humanity, and which overrides all other moral values," and that these thresholds provide a framework to assess the distribution of the burdens individuals must deal with in stopping climate change. Caney's theory can help alleviate excess GHG use by recognizing the existence of certain inalienable rights that cannot be abridged by financial or other economic incentives.

In *Equitable Utilization of the Atmosphere: A Rights-based Approach to Climate Change?*, Dinah Shelton favors utilizing state sovereignty as part of the solution to climate change. Shelton uses arguments enunciated in *Massachusetts v. EPA*,¹ where the U.S. Supreme Court recognized Massachusetts' standing on the basis of its sovereign right as *parens patriae* to protect the health and welfare of its citizens from the harmful actions of others in the absence of federal regulation. Shelton recommends applying such principles at an international level. I expect countries to take advantage of this reasoning as it may provide smaller countries a recourse mechanism to contest those countries who fail to appropriately consider the well-being and safety of bordering nations and its citizens in its actions.

Conversely, Sam Adelman contends in *Rethinking Human Rights: The Impact of Climate Change on the Dominant Discourse* that state sovereignty is a major source of the climate change problem. As areas previously

¹ 549 U.S. 497 (2007).

regulated by the state become privatized, Adelman argues that the state escapes regulation and liability. The creation of a market in carbon emission reductions is, according to Adelman, the current leading answer to climate change. A “cap and trade” method could only effectively address the problem, however, if two things occur: (1) a cap on GHG emissions from large stationary sources and all fuels, and (2) a cap on other GHG emissions from new vehicles. Curtailing GHG emissions from large stationary sources is important in reducing the overall emissions because a cap and trade scheme enables those who still depend on GHG emissions to continue using those sources of energy, albeit at an increased cost. Correspondingly, those who reduce their current GHG emissions are rewarded by trading their remaining cap allowance to anyone willing to pay. Imposing a cap on new vehicles provides a means of decreasing GHG emissions from cars, allowing the focus to shift to other major sources of GHG emissions.

I found Peter Newell’s editorial, *Climate Change, Human Rights and Corporate Accountability*, persuasive. As Newell observes the key roles that private corporations play regarding their responses to climate change, he asks whether human rights norms and law may supply effective tools to ensure the accountability of corporations for their contributions to climate change. I consider corporate responsibility necessary in developing practical solutions to global climate change because of the powerful resources and influences of corporations. Humphreys’ argument that corporations must be accountable for their actions correlates with Newell’s observations regarding the key roles of corporations because taking into account corporate responsibility is essential to generating human rights-based approaches that effectively address climate change.

Part II of Humphreys’ book, “Priorities, Risks and Inequalities in Global Responses,” discusses a variety of topics. To begin, Philippe Cullet scrutinizes the Kyoto Protocol, examining the agreement’s “flexible” mechanisms – emissions trading and the clean development mechanisms. Cullet describes the concept of “differential treatment” under the Kyoto Protocol, referring to circumstances “where, because of pervasive differences or inequalities among states, formal legal equality and reciprocity are sidelined to accommodate extraneous factors.” Interestingly, Cullet views this differential treatment as a main reason why climate change is now a major concern to the international community. According to Cullet, the Kyoto Protocol is vulnerable because the responsibility of reducing GHG emissions currently rests on the few countries classified under the agreement as “developed countries.” Only when accountability at the local level becomes a major concern and enforcement is rigorously implemented can the perception change at the international level.

Cullet's assessment reveals that the Kyoto Protocol thus far has been unaccommodating to the needs of helpless persons or to developing countries. To address this issue, we must focus more attention towards developing countries, because as they industrialize and unavoidably increase their own GHG emissions, they pose great risks to reducing current and future emissions. Implementing the "cap and trade" system previously discussed should prevent currently industrializing countries from increasing GHG emissions in two ways. First, the cap will be set lower for developing nations than for developed states since developing countries currently emit fewer GHGs. This cap serves to reduce the overall current and future GHG emissions. Second, because these developing countries will be unable to pay the penalty for exceeding the cap, they will be forced to trade excess cap space to developed countries. As a result, developing countries will be forced to find alternatives to GHGs, and one way to accomplish this goal is to use the money received for their excess cap space to develop their states without emitting any GHGs.

According to Humphreys, "an international market in emissions reductions" must inevitably be at the core of any modern solutions to climate change. Nonetheless, Humphreys identifies the difficulty facing developing countries; that is, in a relatively short amount of time, no one will be allowed to increase GHG emissions under a trading system, not even those developing countries lacking fundamental, basic resources such as food, shelter, clean drinking water, and essential health services.

Adopting some variation of the "cap and trade" method is imperative to adequately address climate change. As Cullet argues, we must limit this notion of "differential treatment" because only when individuals are viewed on an equal level can change successfully begin to occur. Accountability at the local level must equally be the main focus and also must be strictly enforced to effectuate change at the international level.

Climate Change and the Right to the Highest Attainable Standard of Health, by Paul Hunt and Rajat Khosla, demonstrates how the right to health under climate change covers an array of issues, including access to timely and suitable medical care as well as the fundamental right to a safe environment. Hunt and Khosla maintain that states, in their duty to protect health rights, must take logical steps to slow down and undo climate change.

When viewing climate change from a human rights perspective, it becomes clear that climate change disproportionately affects economically disadvantaged people. These peoples are the least likely to contribute to the climate change problem because they are more dependent on others to survive. However, those more fortunate are not as concerned with the human rights of those in a less advantageous position because they constantly add

to and exacerbate the harms attributed to climate change without contemplating the consequences of their actions. Only when communities become more focused on fundamental human rights when discussing climate change, such as the right to a safe environment, will the disparity between such individuals decrease, allowing people to become more accountable for their actions.

Frances Seymour's article, *Forests, Climate Change and Human Rights: Managing Risks and Trade-Offs*, illustrates another major issue concerning climate change: deforestation and forest degradation. Seymour suggests that forest preservation and conservation are indispensable when adjusting to climate change in different areas around the world. Forests will soon become, according to Seymour, an even more important and sought-after resource than ever before, which may have dire consequences for those who currently rely upon and depend on forests. Forest degradation is typically caused by timber cutting, and is responsible for the disappearance of wetlands. Deforestation is pivotal to climate change because it affects ecosystems in various ways, like creating run-offs and soil erosion, "dead zones" in the oceans, change in riverbeds and rain patterns, and the melting of permafrost. Addressing these problems associated with forest degradation and deforestation is paramount because of the enormous impact forests have on humans as well as the environment.

Human Rights and Vulnerability to Climate Change, by Jon Barnett, recognizes climate change as a fundamental human rights interest. Using case studies from East Timor, China and the South Pacific atolls, Barnett observes how the deprivation of human rights safeguards in certain countries can aggravate feelings of helplessness towards climate change, rendering citizens ill-prepared to survive a changing climate.

The effects of economic and social vulnerability in the context of natural disasters surrounding climate change is examined by John C. Mutter and Kye Mesa Barnard in *Climate Change, Evolution of Disasters and Inequality*, with a particular focus on Hurricane Katrina in New Orleans and Cyclone Nagris in Myanmar. Natural disasters affect climate change and pose a unique set of problems for nations not only because of their unpredictability, but also for the immense and long-term impact they may have on the environment.

Recently, the United States has been hit hard by an onslaught of tornadoes. According to the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce, 305 tornados touched ground between April 25 and April 28, 2011 alone.² Arguably, the increase of GHG emissions into the environment has played a role in the formation of these

² http://www.noaaews.noaa.gov/2011_tornado_information.html.

tornadoes because increased GHG emissions creates warmer air, and tornadoes are generally formed when cold air meets warm air. As the environment becomes exposed to warmer air more often, the earth is now experiencing more frequent and ferocious tornadoes. Therefore, decreasing the overall GHG emissions released into the environment is central not only to preventing future climate change issues, but also to reducing the magnitude of such consequentially occurring natural disasters.

Based on Humphreys' excellent compilation, the reader can easily conclude that societies can take three specific forms of action to adequately deal with climate change. First, societies must prevent damaging activity, or at the very least, cease making the problem worse. Second, societies must mitigate the harm already done to the environment, either by modifying the way damaging activities occur to minimize negative effects, or by finding some other way to offset unavoidable impacts. Finally, all societies must adapt to the now-modified environment, learning to live with nature, ideally finding an alternative way to realize any functions, values, or ecosystem services that may have been lost or damaged from change climate. Humphreys concludes the compilation with his own vision of establishing a necessary balance between climate change and human rights. The challenges emphasized in his collection are more than a simple effort to generate intellectual propositions to effectively utilize human rights in addressing the escalating problem of climate change. They come together to form a unique protocol that may be understood as a "global" language to proactively create meaningful world change.