11 Is climate change a human rights violation?

Catriona McKinnon and Marie-Catherine Petersmann

Summary of the debate

This debate considers whether climate change is a human rights violation and introduces students to normative political theory and the international human rights law (HRL) framework. **Catriona McKinnon** argues that climate change is already damaging a morally fundamental subset of human rights and will continue to do so in the future. All persons, present and future, have basic rights to subsistence and security and this generates a general duty for all people to work to create and support rights-respecting institutions. **Marie-Catherine Petersmann** challenges this position by highlighting the difficulties of applying the HRL framework to climate change which, by its very nature, is a collective action problem that cannot easily be linked to one duty bearer and one victim. Instead, she draws upon new insights from environmental humanities to offer a different way of thinking about co-responsible agents and beneficiaries of a safe climate.

YES: Because it undermines the right to life, to subsistence and to health (*Catriona McKinnon*)

Introduction

The political recognition of human rights is one of humanity's major moral achievements. At their most powerful human rights secure conditions in which every person has an opportunity to flourish. Taking human rights seriously places limits on what states and corporations can do to individuals and what individuals can do to one another. Human rights also compel states in particular to provide basic goods for people in need. International **human rights law** (HRL) aims to codify these duties. Three of the most fundamental human rights relevant to thinking about climate change are: *the right to life*; *the right to subsistence*, which secures access to goods necessary for survival such as food, clean water and shelter; and *the right to health*, which gives protection against avoidable illnesses and access to health care. Beyond HRL, the concern to ensure conditions in which these basic rights are protected has been characterised by the United Nations in terms of human security. The 1994 UN Human Development Report presents human security as embodying a 'concern with human life and dignity' and is focused on the importance of 'safety from the constant threats of hunger, disease, crimes and repression' (UNDP, 1994: 3).

Basic rights are a subset of human rights. Basic rights are rights without which people are unable to enjoy the full range of their human rights (Shue, 1996). Climate change

presents a large-scale, serious and accelerating threat to the security of basic rights. Because basic rights are a moral minimum for a life of human dignity they ought to be placed at the centre of policy responses to climate change. No policy response to climate change can be considered adequate unless it achieves human security. Basic rights are held by people presently living. Many scholars argue that the same rights will be held by all people in the future. The moral importance of basic rights compels all of us to do what we can to protect them.

I shall argue that what it means for this requirement to be met differs according to the situation of the individual, or group of individuals, in question. This means that it is legitimate for us to require states and other groups (such as corporations) that have done most to cause climate change, and who can best afford to take on these demands, to bear the greatest costs of mitigation and adaptation adequate to protect basic human rights now and into the future (see **Chapter 10**). In practice this means that rich states, global economic elites and fossil fuel multinational corporations must commit to action to achieve a zero-carbon global economy by 2050. They should do so in ways that do not thwart the economic and political development necessary to secure basic human rights for people in the world's least advantaged countries.

Threats to basic rights from climate change

For hundreds of years political philosophers have argued for the importance of rights (Campbell, 2019). Some thinkers have conceived of rights as natural or God-given. Others have seen a commitment to rights for all as the logical conclusion of seeing oneself as deserving of rights. And others have seen rights as necessary to protect distinctively human interests and needs. Despite their differences there are some key features of rights agreed upon by all theorists. First, that human rights are universal: all people have the same rights. Second, that rights are the foundation of human flourishing: political protection for rights provides each person with a platform on which to build a successful life, whatever that might mean to them. Third, human rights are a tool by which we can hold one another to account in the political and social lives we must share together: respect for one another's rights is a basic rule that makes social and political society fair and stable. Fourth, that one of the most fundamental rights we have is the right to life: perhaps the most serious harm that can be inflicted on a person is to be deprived of their life.

The right to life is a **basic human right**. It is a right without which no other right can be enjoyed. There is an array of such basic rights—for example, liberty, physical integrity, subsistence and health. It is the job of the state to secure these basic rights for all its members, supported by international institutions where appropriate. There is a large debate in political philosophy over whether state boundaries are justified at all if we take seriously the equal basic rights of all people. For example, **cosmopolitan** thinkers argue that national boundaries are morally irrelevant, in contrast to those who treat the nation state as a site of special duties between citizens (Armstrong, 2019). Climate change presents grave threats to the basic rights of people around the world. It endangers food security, increases the likelihood of certain vector-borne diseases, makes dangerous heatwaves and flooding more common and may displace millions of people. People living in poverty are most vulnerable. This includes people living in low-lying coastal areas and small island states, poor people in megacities and those in regions most prone to extreme weather events and drought.

It is important to notice that climate threats to basic rights extend beyond the lifetimes of everyone alive today. Facts about the rate of change in the climate system given different rates and concentrations of greenhouse gas (GHG) emissions mean that certain climate impacts would continue for hundreds of years even if we were to achieve zero carbon emissions today (see **Chapter 2**). Because progress towards zero carbon emissions is slower than this, and because global emissions are still rising, people for thousands—perhaps hundreds of thousands—of years hence will be impacted by cumulative emissions of GHGs in ways that could violate their basic human rights. The threats to basic rights created by climate change require people in the same time slice to find political solutions that deliver justice both to other members of their temporal cohort and to people they will never know in the perhaps distant future. This ethical duty is part of what makes the search for climate justice a 'perfect moral storm' (Gardiner, 2011).

Tackling climate change in a way that minimises the violation of the basic rights of present and future people, especially those most vulnerable, requires (as a minimum) aggressive mitigation to achieve a zero-carbon global economy as soon as possible (see **Chapter 7**). If the basic rights of all people are to be respected, this goal must be pursued in ways that do not stunt development in less developed countries (LDCs) (see **Chapter 1**). Without a commitment to mitigate in ways that enable poor people to escape poverty, the people of these countries will face a double threat of climate impacts which exacerbate their existing vulnerabilities and which trap them in a state of deep human insecurity. This outcome would be seriously unjust, now and into the future.

What do rights require in the face of climate change?

Basic rights correlate with the duties of all people at least to refrain from acting in ways that would violate these rights and sometimes also to act positively so as to ensure the rights are met. This poses a problem for thinking about how to achieve rights-respecting climate justice. Who is required to act in the face of climate change if we take basic rights seriously? And what sort of action is demanded by rights-based climate justice?

Accepting that every person has a duty to refrain from acting in ways that would violate any other person's basic rights does not get us very far in finding answers to these questions. No one person's emissions directly cause climate impacts that violate any other person's basic rights. Instead, and as a minimum, respect for the basic rights of people who will be worst and soonest impacted by climate change requires each of us to act in ways that will make the political, social and economic changes necessary for a zero carbon economy more likely. Depending on an individual's circumstances this could mean mounting a political protest, signalling the need for changes in consumption in rich countries by going vegan, taking fewer flights or merely voting for political parties that are committed to such changes.

Beyond the moral minimum owed by each of us to show respect for the basic rights of climate-vulnerable people, political philosophers have argued that some groups of people have a duty to shoulder more of the burdens of taking action on climate justice than others. Philosophers have argued that in virtue of how these groups of people are related in particular ways to climate change they have special duties to take rights-respecting action on climate change that go beyond the duty every person has not to violate the basic rights of any other person. Philosophers have captured these special duties by specifying principles which distribute the burdens of justice-promoting action on climate change in ways that fall most heavily on these groups. The principles are: the polluter-pays principle (PPP); the

beneficiaries-pay principle (BPP); and the ability-to-pay principle (APP). Most often these principles are applied to countries (see **Chapter 10**). Although not beyond dispute this makes sense given that countries are parties to the **Paris Agreement** (see **Chapter 12**).

Special duties

The PPP—the polluter-pays principle—asserts that those who have done most to cause climate change ought to do most to prevent it from violating the basic rights of present and future people. At a minimum, countries with high historical emissions should aggressively reduce their emissions to zero as soon as possible. If this is not sufficient to reduce cumulative emissions to a level at which threats to basic rights are averted, then these countries have duties to pursue **negative emissions** in order to keep the carbon budget within the necessary limits. Most IPCC scenarios for securing a 2°C target assume negative emissions, for example as a result of geoengineering through the use of bioenergy with **carbon capture and storage** (see **Chapter 7**).

Despite its intuitive force the PPP can be challenged. Climate change today and into the future is caused by the accumulation of GHGs in the atmosphere. CO_2 has a particularly long atmospheric lifetime. This means that climate change today and into the future is in part caused by emissions in the past. This supports an objection to the PPP: to assign special duties to people today in countries with historically high emissions would be unfair to those people. Present people in historically high-emitting countries are not the cause of climate change and have no special duties to take rights-respecting action on it. Parallels are sometimes drawn between this debate and the debate about reparations for slavery.

This objection to the PPP is countered by the BPP—the beneficiaries-pay principle. The BPP claims that people in countries that have benefitted from early carbon-intensive industrialisation ought to do most to secure the basic rights of people vulnerable to climate impacts. In contrast to the PPP the basis of the duty on this view is non-causal. The BPP asserts people who enjoy the advantages of early industrialisation—for example, better health, increased longevity, higher standards of education, time for leisure—have a special duty to ensure that people in LDCs can do the same. This commits them both to averting climate impacts that would violate the basic rights of these people and to creating opportunities for these countries to develop in ways that are consistent with keeping global warming below 2°C.

The BPP is vulnerable to the following criticism. Receiving a benefit creates a duty for a person if and only if that benefit was received willingly. Willing receipt of a benefit implies control over whether or not to receive it. In other words, if a benefit could not have been rejected it cannot be subject to willing receipt and so cannot serve as the basis of a duty on the part of the beneficiary. The objection is that this is exactly the situation of people in countries that have benefitted from early carbon-intensive industrialisation. No one has a choice as to the country and circumstances into which they are born. To assign special duties to people on the basis of features of their circumstances over which they have no control at all is deeply unfair.

The APP—ability-to-pay principle—takes an entirely different tack. It does not focus on who has caused the threat to basic rights from climate change, nor on whom is benefitting from it. Instead, it asserts that countries most able to take action to protect the basic rights of people vulnerable to climate change have a duty to do the most. The APP singles out countries that are wealthy, stable and have the capacity to stimulate the

creation and rollout of non-carbon based energy sources fit to meet the development needs of present and future people whose basic rights are most vulnerable to climate impacts. A country has the ability to take this kind of action when it can do so without creating new threats to basic rights at home and abroad as a result of that action. On this view, objecting that such action presents a threat to the 'way of life' of a country is irrelevant.

Objections to the APP often turn on how it lets polluters and lucky early industrialisers off the hook in principle. Climate change has been caused by the historical emissions of an identifiable set of countries and people in these countries continue to benefit from these emissions. A failure to make this clear in climate policy now could permit countries such as the USA and members of the EU to unfairly shunt some of the burdens of tackling climate change on to newly industrialising countries of growing wealth such as China and Brazil. The APP fails to correctly identify the source of the special duties of some countries to act on climate change so as to protect basic rights.

We are very far from global action on climate change that reflects any of the principles introduced above. One lesson to distil from these principles for the state we are in is as follows. There is a set of countries that can afford to make radical cuts to the emissions they generate today in order to enjoy the luxuries of consumer society. This set includes countries with high historical emissions, early industrialising countries and rich countries. Members of this set that refuse to sacrifice some of their luxuries, in order that climate-vulnerable people can stay alive, deliberately act in ways that deprive these people of the right to live. In other words, they kill them (Shue, 2001).

Conclusion

The lack of concerted rights-respecting policy on climate change makes it is easy to despair and give up. But there is a different way to see things: could the need for rights-respecting action on climate change be an opportunity for moral progress?

There are two questions we can ask about the vision of an ideal world in which the basic rights of the world's most vulnerable people take centre stage in climate policy (Cohen, 2009). First, how accessible is this state of affairs from where we are now? The scale of the climate challenge and the many obstacles to just climate policy can justify a gloomy answer to the accessibility question. But there is a second question: if we were to achieve this state of affairs where basic rights of the poor took centre stage, how stable would it be? Would the motivations and dispositions of people in a climate-just world sustain the institutions necessary to keep basic rights at the forefront of climate policymaking? Here, there is less cause for gloom. Tackling climate change in ways that protect the basic rights of those least able to protect themselves and least at fault for the threats they face would be a major moral accomplishment for humanity. It would mark out the generation that achieved it as having risen to one of the most dangerous challenges in human history in a way worthy of moral pride. We should articulate the legacy of rights-respecting institutions, policies and political culture that could be left by this action to give a positive answer to the stability question, despite our warranted pessimism about the accessibility of such a world.

NO: Climate change needs a relational, embodied and unbounded perspective (*Marie-Catherine Petersmann*)

Introduction

> The Anthropocene heralds a rupture within the modern imaginary, calling for modes of thinking in obligations beyond the coordinates that have hitherto defined that worldview.
>
> (Matthews, 2018)

As alluded to by Matthews in the quote above, answering the question of whether climate change is a human rights violation in the age of **the Anthropocene** requires new modes of thinking about how to live in the present and in the future with new obligations to others. In the first part of this essay, I argue that the international human rights law (HRL) framework is ill-adapted to respond to climate change for three main reasons.

First, a HRL approach to climate change is based on a victim/state binary where the rights holder is the victim and the duty bearer is the state. Fundamental co-responsible duty bearers—such as private corporations and individual consumers—fit uncomfortably in the HRL framework, even though their contribution to climate change is beyond dispute. Second, the individualistic nature of HRL is unsuitable for the collective action problem posed by climate change. The causal link requirement for the admissibility of human rights claims before regional and international human rights courts and tribunals limits the latter's judicial competence to clearly identifiable and directly harmed victims (see **Chapter 13**). The admissibility criteria set under HRL also exclude the extraterritorial implications that states' emissions of GHGs have on victims under the effective control of other states. Finally, the inherently anthropocentric nature of the HRL regime does not account for climate change induced interferences with any non-human and non-animal subjects. The collective action required to combat climate change stands in tension with both the individualistic and anthropocentric normative coding, as well as the admissibility criteria set under HRL.

Drawing on literature from 'new materialism' and Earth system law, the second part of this essay rethinks ways to address climate change from these 'relational' and 'interactional' perspectives. I cannot explore these conceptual models fully here, but instead will focus on their contribution in responding to the shortcomings of the HRL-based approach to climate change argued above by **Catriona McKinnon**.

Not enough: the limits of human rights for tackling climate change

The HRL apparatus posits nation states as *primary duty bearers* and individuals as *right holders*. States have a positive obligation to respect, promote and fulfil human rights. With few exceptions, a sense of 'enchantment' or general optimism is discernible in the literature among those who believe that strengthening HRL can contribute to tackling the problems posed by climate change. Yet the victim/state binary on which HRL relies is unable to account for collective problems such as climate change that affect and are caused by all living beings. This is, to some extent, recognised by human rights experts themselves. The Office of the High Commissioner for Human Rights (OHCHR) notes, for example, that: 'it is virtually impossible to disentangle the complex causal relationships linking historical

[GHG] emissions of a particular country with a specific climate change related effect, let alone with the range of direct and indirect implications for human rights'.[1]

Indeed, climate change results from actions taken by numerous actors across multiple states over extended periods of time. It is therefore impossible to identify one duty bearer and one right holder in a constellation where, to some extent, all states are implicated and where victims are dispersed throughout the globe. Both the causes (GHG emissions) and the effects of climate change (sea-level rise, floods, hurricanes, wildfires, water stress and so on) are transnational. Our conceptualisation of rights and how we seek to operationalise them is therefore not compatible with global problems of such scale (Lofts, 2018: 16–17). What is more, states are not the only responsible agents of climate change and the role of **non-state actors** such as private corporations, investors and consumers in contributing to climate change is beyond doubt (see **Chapter 10** and **Chapter 12**).

The victim/state binary characteristic of HRL means that only victims—or directly harmed individuals who can prove that their rights are infringed—have standing to lodge a complaint against the state in which territory or under whose effective control the violation occurred. Establishing causality in such circumstances requires three steps. First, a state must have contributed to climate change through its actions, omissions or negligence. Second, a specific climate change related harm must have resulted from that state's interference with the climate (see **Chapter 3**). Finally, this specific harm must have directly interfered with the human right(s) of the victim(s). These steps can be a challenging hurdle for claimants to overcome in relation to climate change. Since virtually all states have generated GHG emissions on their territories, the attribution of responsibility gets diluted over time. Given the geographical distances that occur between the source of GHG emissions and their effects, these requirements are close to impossible to fulfil. Thus, as commendable as the argument may be, the HRL paradigm 'cannot address the disjuncture between "victims" and their diffuse or distant "perpetrators" where "violations" are only predicted rather than known and rectifiable' (Tully, 2008: 221).

Likewise, specific climate change related harms that occur today or that will occur in the coming years result from—among other contributing factors—GHGs emitted over the past centuries by a multitude of actors. This reality is unsuited to the temporalities set by HRL. Under HRL, violations are usually established after the fact—once the harm has already occurred—or else high risks and threats thereof are clearly perceptible. In light of its reactive nature, HRL does not account for *prospective* events that can hypothetically harm potential victims. Thus, except at the rhetorical and discursive level, the HRL apparatus cannot effectively respond to projections about future impacts of climate change. While climate change requires anticipated benefits of mitigation—since the measures adopted today to reduce GHG emissions will alleviate climate change in the long run—the *ex post* individualised remedies offered by HRL are unfit for the purpose.

Furthermore, the jurisdiction of HRL instruments is limited to individuals or entities within states' effective control. In other words, states have no justiciable obligations to secure the protection of human rights in relation to climate change beyond their territorial boundaries and jurisdiction (see **Chapter 13**). Historically, developed countries carry the overwhelming share of responsibility for climate change—notably the two hegemonic powers of the nineteenth (Great Britain) and the twentieth (United States) centuries. Together these two countries accounted for 65% of all CO_2 emissions in 1900, 55% in 1950 and still 50% in 1980. Today, China, the USA, India, Russia and Japan together account for nearly 60% of global emissions.

Yet states that are most affected by climate change are often among those whose contribution to GHG emissions is most negligible. Small island developing states (SIDS), for example, face potential inundation by future rises in sea level, while their contribution to GHG emissions is very small. Looking at this issue from a HRL perspective would lead to the absurd scenario where citizens of SIDS can only seek redress for violations of their human rights from their governments, when the latter only contributed negligibly to GHG emissions. These governments are already facing adaptation measures proportionally much greater than states that contributed more to climate change, but are less vulnerable to its immediate effects. Highest emitting states are, thereby, insulated from the human rights claims of individuals living in states that are most vulnerable to climate change. As noted by Tully: 'a human rights orientation will ultimately affirm the primary responsibilities of those States with territorial or jurisdictional control over affected individuals without necessarily enhancing the environmental obligations of other [highest emitting] states' (Tully, 2008: 233).

Finally, individuals living in high emitting states are not all equally empowered to seek redress for violations of their human rights. Climate change affects especially the rights of vulnerable groups—such as indigenous peoples, the world's poor, women and youth—and these adversely affected people(s) might not possess the material and immaterial means necessary to trigger the HRL apparatus. At the same time, in case of a successful HRL complaint, the recognition, reparation and compensation for climate harms would only apply to the victim(s) within the legal jurisdiction. Individual remedy, however, is not sufficient to address the more systemic roots and collective burden of climate change.

Since HRL is not designed as a form of collective power or as a vehicle of popular governance, but only creates individual shields against the exercise of abusive power (Brown, 2004: 461), one must wonder what positive effects—except for the right-holder in question—HRL offers to combat climate change. Parties' argumentations in strategic litigation for climate change increasingly revolve around HRL articulations (Peel and Osofsky, 2018: 37). But the emphasis on the individual human being—or the 'self'—accentuates the rupture between the self and 'others'. These others may be people living in other states or continents, as well as other living and non-living beings not endowed with 'rights'.

Indeed, as HRL is by its very nature strictly anthropocentric—centred around the human being—non-human and non-animal beings fall outside the scope of consideration whenever they do not directly impact the human right(s) of the victim(s). If the quality of the human environment is taken into account by human rights courts when it directly interferes with the right(s) of the applicant(s), no HRL instrument provides an unconditional and justiciable protection of nature for its intrinsic value. In doing so, the HRL framework perpetuates the erroneous idea that the environment refers to something that surrounds and serves the human at its centre (Petersmann, 2018). If a stable climate cannot be effectively protected under a HRL framework, what alternative conceptual models exist to tackle climate change?

Beyond human rights 'enchantment': new materialism and Earth system law

While HRL has seemingly little to offer in effectively combatting the climate catastrophe we face, HRL language and institutions have monopolised global imagination among

those committed to action. Since the mid-2000s, the HRL rhetoric has become prominent in relation to climate change. A form of psychological 'enchantment' prevents international lawyers—and human rights lawyers in particular—from looking at global problems through any other prism than international (human rights) law. For Koskenniemi, 'lawyers are enchanted by the law that is familiar to them and the institutions and practices they are involved with; that makes them often unable to find a good solution to the problem they are faced with' (Koskenniemi, 2018).

This enchantment towards international HRL in international environmental law (IEL) —or the mainstreaming of HRL (Koskenniemi, 2010) in IEL—blinds international human rights and environmental lawyers to more suitable ways of re-envisioning our responses to climate change. If we take the critique set out above seriously, climate change cannot be addressed by only thinking about the 'self'—or one's own living conditions and interests framed as 'rights'—in light of the actions or omissions of one's state of residence and/or nationality. Instead, what is needed is a reconceptualisation of the currently predominant public law and state-centric approach to climate change that underpins both HRL and IEL. In this approach, the concepts of sovereignty, strict causality and *ex post* temporality are limiting meaningful, adaptive and foreseeable action.

The multidisciplinary field of *environmental humanities* provides important insights into how to respond to the shortcomings of a HRL-based approach to climate change. Environmental humanities address ecological problems from closely knit ethical, cultural, philosophical, legal, political, social and biological perspectives (Iovino and Oppermann, 2016: 1). Environmental humanities bridge the traditional dualisms between the social and the natural sciences, as well as between western and non-western and indigenous ways of relating to the natural world. Various theories have been developed that transcend the geographic and jurisdictional boundaries essential to HRL. These also transcend the human-nature divide—where humans are seen as subjects and the environment as a surrounding object—thereby decentring humans' rights in tackling climate change.

Following an ontological turn to materiality[2] in anthropology and philosophy (Vermeylen, 2017: 141), **new materialists** are calling for a similar emphasis on material objects across the humanities and social sciences, including in international (environmental and human rights) law. This has brought about a renewed interest in the embodiment of humans in a material world. The material world has for a long time been the central focus of **Actor-Network Theory** (Latour, 2005), which describes how the natural and the social worlds exist in constantly shifting networks of relationships. Through this prism, the dichotomy between nature and society—between human and non-human—that structures liberal legal imaginaries is suspended and traded for a relational ontology. New materialists emphasise humans' embeddedness in more-than-human natural processes and the inter-connectedness between all 'actants' (Latour, 2005: 71) as part of heterogenous assemblages. From this perspective, human laws—including HRL and IEL—are viewed as emerging from and situated in 'socionatures' or 'natureculture'. These notions posit the inseparability of nature and culture in ecological relationships that are both biophysically and socially formed (Haraway, 2003).

This approach strongly resonates with vulnerability theory and 'relational law'. An ecological vulnerability frame emphasises the 'vulnerability of the entire living order' (Kotzé, 2019: 62) and the 'interdependency of the human body with a complex array of nonhuman and trans-human systems' (Harris, 2014: 126). These frames require us to think about the embodied nature of the individual—or the individual's material embodiment in socionature. They conceive of an individual's protection from a relational

perspective that takes account of not only the individual, but also its web of vital relationships.

As the definition of the word indicates, to 'relate' does not only mean 'to stand in relation to' but also 'to feel sympathy for or identify with'. A relational approach accounts for a much wider set of relations in comparison to the strict causality demanded by HRL. Similarly, since all states share an ecological vulnerability—even though they are differently vulnerable to climate harms—a relational law perspective revisits the notion of state sovereignty that is central to a HRL-based approach to climate change. HRL invokes and reinforces the image of the territorially bounded autonomous liberal state by describing the scope of state obligations as (extra)territorial. In contrast, relational law views states' obligations as shared in light of responsible relationships across borders, whether transboundary, transnational or global. It highlights the necessity of international cooperation for problem solving (Seck, 2019: 176).

Based on similar premises, *Earth system law* is another conceptual model that comprehends the Earth system as consisting of complex, evolutive and adaptive biophysical and socio-political arrangements that are inextricably interconnected (Kotzé, 2019). Here, the human-environmental relationship is underpinned by an 'interactional' ontology, in which social and ecological components are considered to be distinct, but interacting within a system. From an Earth system perspective, climate change should not be tackled in isolation, but through integrated modes of polycentric, reflexive and multi-scalar global law and governance (Biermann, 2014). Earth system law therefore embraces complexity, instability and unpredictability of socio-ecological systems, against the traditional legal precepts of order, certainty and predictability. Some argue in favour of enhancing the resilience of socio-ecological systems (Folke, 2006: 259). This entails an enhancement of the capacities of socio-ecological systems or assemblages to transform themselves in light of external stresses and to adapt to constant non-linear and unpredictable changes. What matters, in essence, is not the security and stability of individual parts within a system—as is the case from a HRL perspective. Rather what matters is the system's capacity to learn from previous experience and to take pre-emptive measures to address prospective changes.

These relational and interactional paradigms provide new doctrinal and technical tools to address climate change. They overcome the false dichotomies between society and nature, subject and object, animate and inanimate and duty bearer and rights holder, that are entangled in HRL discourse and practice. Here, all living and non-living subjects—as interconnected and co-responsible actants within the Earth system—play a role, regardless of a direct causal relationship to the harm caused or endured. From this perspective, we move past the rigid and narrow victim/state binary of HRL into a 'dis-anthropocentric' alliance of entangled agents that work with, through and across material agencies that comprise the world (Iovino and Oppermann, 2016: 13).

Conclusion

The 2015 Paris Agreement refers to climate change not as a human rights violation, but as a 'common concern of humankind'. This does not mean that climate change has no impact on human rights. That climate change will lead to many human rights infringements is no longer debated. Against this background, recalling the negative impacts that climate change has on human rights is key to articulating a moral or normative case for

action on climate change. What is debated, however, is whether climate change should be *framed* as a human rights violation.

In this essay, I have argued that addressing climate change through a HRL prism is counterproductive in light of HRL's individualistic nature, its strict admissibility criteria and its inherently anthropocentric frame. HRL oversimplifies the causally complex problems posed by climate change by being too reductive in its reliance on a vocabulary of 'violators' and 'victims' (Pedersen, 2010: 250). The universalisation of HRL as a framework to pressure states to combat climate change has diverted resources and focus away from radically different and more productive strategies capable to bring about Earth system justice in relation to climate change. Against this backdrop, more voice and space should be granted to discourses stemming from environmental humanities and new materialist theories. These resist the modern binaries of human/non-human, nature/society, subject/object, animate/inanimate or state/victim which circumscribe the western legal imagination.

Imperative calls for action against climate change need not necessarily be framed as rights. Other paradigms that acknowledge and emphasise the relational, embodied and unbounded situation we are in can offer more appropriate and 'down to earth' vocabularies and technologies to orient ourselves in this new climatic regime (Latour, 2018). To promote Earth system justice, a change in how we use the law—and for what purpose—is required. We need one that abandons the sovereign-centric and territorially and human-bounded approach characteristic of HRL and shifts towards legal materialism, vulnerability theory and relational law. Instead of hubristic faith in techno-managerial salvation—in light of which climate change could be solved through science and technology—more humility is required to apprehend our life as part of nature (Hulme, 2014). In Argyrou's powerful words:

> [w]hat is needed above science is something that captivates people's full being—a system of values, a moral story, an ontological master narrative within which the ecological crisis becomes not only visible but also relevant and meaningful.
>
> (Argyrou, 2005: 48)

As argued in this essay, this further necessitates the acknowledgement of both our vulnerability to and our dependency upon a complex web of material relations. Humbly embracing these two premises leads us to revisit central paradigms of order, certainty and predictability of and within the law. The material networks we are part of are in constant evolution and so should our understanding of law and justice. They should strive for frequent adjustment to the perpetual transformation of the human and non-human networks we are embedded in that determine Earth's life support systems.

Further reading

Bell, D. (2013) Climate change and human rights. *WIREs Climate Change*. **4**(3): 159–170.

This review article explains the attractions of a human rights approach to climate change. Bell proposes three main arguments connecting human rights and climate change: that there is a human right to a stable climate; that anthropogenic climate change violates basic human rights to life, health and subsistence; and that there is a human right to emit greenhouse gases.

Climate Equity Reference Project. https://climateequityreference.org/

This website explains this long-term initiative which provides scholarship, tools and analysis to advance global climate equity—as a value in itself and as a realistic path towards an ambitious global climate regime. The website also includes an on-line Climate Equity Reference Calculator that allows users to interactively explore user-defined implementations of the global climate effort-sharing framework.

Dietzel, A. (2019) *Global Justice and Climate Governance: Bridging Theory and Practice*. Edinburgh: Edinburgh University Press.

This book evaluates the global response to climate change from a cosmopolitan justice perspective. Investigating the role of states, cities, corporations and NGOs in the post-Paris Agreement era, Dietzel illustrates that climate justice theory can be used to assess and compare both state (multilateral) and non-state (transnational) climate change governance—in other words, that theory and practice can be bridged.

Humphreys, S. ed. (2009) *Human Rights and Climate Change*. Cambridge: Cambridge University Press.

This inquiry into the human rights dimensions of climate change looks beyond the potential impacts of climate change to examine the questions raised by climate change policies: accountability for extraterritorial harms; constructing reliable enforcement mechanisms; assessing redistributional outcomes; and allocating burdens, benefits, rights and duties among perpetrators and victims, both public and private.

McKinnon, C. (2012). *Climate Change and Future Justice: Precaution, Compensation, and Triage*. London: Routledge.

Climate change creates unprecedented problems of intergenerational justice. This book explores the question: What do members of the current generation owe to future generations in virtue of the contribution they are making to climate change? McKinnon applies the important principles of democratic equality to the most serious set of political challenges ever faced by human society.

Wewerinke-Singh, M. (2019) *State Responsibility, Climate Change and Human Rights under International Law*. Oxford: Hart Publishing.

The Paris Agreement is the first multilateral climate agreement to refer explicitly to states' human rights obligations in connection with climate change. This book offers an analysis of the legal issues related to accountability for the human rights impact of climate change. It explains when and where state action relating to climate change may amount to a violation of human rights and evaluates various avenues of legal redress available to victims.

Follow-up questions for use in student classes

1. What protection does the 2015 Paris Agreement on Climate Change give to people's basic rights in the face of worsening climate change?
2. Why do we think that we are required to respect the basic rights of future people when these people do not yet exist?
3. Why are the admissibility criteria set under the human rights law framework difficult to fulfil for alleged climate change-induced human rights violations?
4. Does human rights law provide effective remedies to climate change impacts—such as sea-level rise in small island developing states—caused by greenhouse gases emitted by China or the USA?

Notes

1 Report of the OHCHR on *The Relationship Between Climate Change and Human Rights*, UN Doc.A/HRC/10/61 (15 January 2009), para 70.
2 The 'ontological turn to materiality' refers to a theoretical movement in the social sciences which emphasises the study of material objects, instruments and embodiments in how ideas and institutions come into being and influence.

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