

Beyond the State: Climate Change, Human Rights, and the Environment

Introduction

The past few decades in global history will almost certainly go down as decades of disappointment. The most existential crisis of our time which literally threatens the survival of the human species in any decent, organised form – climate change – has not only been inadequately addressed, but has wittingly been permitted to aggravate. Any crisis of this scale ought to give us the greatest possible pause and provoke us to rethink all we do because it “changes everything.”¹ What I want to take a few steps towards rethinking in this essay is the contemporary paradigm of human rights. While there is some controversy among human rights theorists as to what precise place environmental concerns hold within human rights, the overall point is inarguable that the climate crisis threatens the enjoyment not only of human rights, but also of all human life.²

My main argument is that in light of climate change, we need to think of a paradigm of human rights beyond the state. Contemporary approaches to human rights, regardless of their orientations, are fundamentally reliant upon the state for enforcement and fulfilment to the extent that a non-statist paradigm for human rights seems difficult even to imagine. My argument is motivated both by the history of the development of the modern state and contemporary efforts to address climate change through inter-state cooperation, especially using a human rights framework. Given how dependent human rights are upon the state, we must take account of the latter’s historical development to understand what restrictions and possibilities it imposes.

In the first section of this paper, I show how various approaches to human rights are all strung together by their understanding that human rights essentially depend upon the state. I discuss how both theoretically and practically, this weddedness between states and human rights is problematic, not least because human rights are, at least in theory, universal and inalienable. The main point here is that both principally and practically, we have good reasons to seek non-statist interpretations of human rights.

In the second section, given this essay’s focus on the environment and the state, I provide a brief environmental history of the modern state, arguing that there has existed a symbiosis between states and fossil fuels: states aided the rise of fossil fuels because of military and economic advantages, and conversely, fossil fuels helped create modern states and international geopolitics. While institutions of the modern state have several environmental consequences, I focus here on fossil fuels given their centrality to climate change. An important point I stress here is that it is insufficient to understand “the state” as the literal governing apparatus; instead, we ought to include those institutions within the ambit of the state which would collapse to unrecognisable forms without its assistance. Seen this way, we understand how crucial the state has been in facilitating the emissions of private corporations and its complicity in environmental destruction.

¹ Klein, *This Changes Everything*.

² For an exposition of various arguments regarding the relation between the environment and human rights, see Bell, “Climate Change and Human Rights.”

In the third section, I review important issues a human rights framework faces when tasked with redressing climate change, along with a short history of the same: the system of sovereign nation-states has unequivocally failed to address climate change in any meaningful way, and concomitantly, the statist paradigm of human rights has fallen short in severe ways. In the fourth section, I recommend a few possibilities as to how we can both imagine and take concrete steps towards a non-statist paradigm of human rights. I must emphasise that I don't intend for these recommendations to be implemented literally anywhere; they are savage simplifications, the task of which is not policy-formation but the suggestion of possibilities. Hopefully, it is a stimulating start to thinking about human rights beyond the state.

The essay is motivated by the fact that nowhere do the tensions of human rights' dependence upon the state have greater stakes than with regard to the environment. Here the issues of sovereignty, territoriality, prosecution and accountability are become matters of survival. Faced with a crisis of such proportions, human rights must suggest concrete ways forward to build a more sustainable, more caring world.

Human Rights and the State

Despite the unarguable universality of human rights, both theoretically and historically, human rights have been inextricably tied to the state. The reason for this is rather simple: human rights are not natural in the sense that they are a given condition, and thus always require fulfilment, implementation and enforcement. Regardless of whether one views human rights minimally³ – as a lower bound for what we ought to uphold – or maximally – as the view of an exalted utopia –, the understanding remains that human rights require enforcement and implementation.

As a result of the recognition that human rights are not a given, much of the theoretical literature has sought to understand what place exactly do they hold in social and legal realms, which actors they involve, and how they relate different members in a polity or society. After the Universal Declaration of Human Rights (UDHR), several theorists espoused a 'vertical' view of human rights, namely that they create legal obligations which the state ought to uphold with respect to individuals and social actors. The prominent jurist Thomas Buergenthal, for instance, argued that "the international law of human rights is defined as the law that deals with the protection of individuals and groups against violations by governments of their internationally guaranteed rights..."⁴ In effect, this vertical view suggests that only states can either violate or uphold human rights. Scholars dissatisfied with this view have put forth a 'horizontal' view of human rights, arguing that other social entities other than states may also violate human rights, thus necessitating a law which also places obligations on private actors such as corporations and businesses.⁵

³ Cohen, "Minimalism About Human Rights."

⁴ Buergenthal, *International Human Rights in a Nutshell.*, p.1

⁵ For a critique and exposition of this horizontal view of human rights, see Knox, "Horizontal Human Rights Law."

Regardless of whether one views human rights as a series of obligations between states and people, or extends the frame to argue that groups in civil society too have human rights obligations towards each other, both these approaches hold that the state is the overarching actor which needs to guarantee these rights and provide legal enforcement.⁶ Developments in human rights law and theory after the UDHR only augmented this understanding of states as the sole guarantors of human rights. For instance, important frameworks such as the “respect-protect-fulfil” trichotomy took the state to be the only third party which may either respect, protect or fulfil human rights.⁷

In addition to theoreticians, this conception reflexively governs the sensibilities also of the practitioners of human rights. The International Justice Resource Centre, for instance, explains that “only governments are in a position to put in place the laws and policies necessary for protection of human rights and to regulate private and public practices that impact individuals’ enjoyment of those rights. Therefore, we think of national governments (“States”) as the guarantors, or violators, of human rights.”⁸ In Human Rights Watch’s primer on the topic, it notes that the “duty to enforce international human rights law rests primarily with governments themselves” and that governments alone may “protect and promote human rights by prohibiting violations...”⁹

The fact that the theoretical imagination of human rights revolves around states also follows from the modern history of the idea. Despite exalted visions for a universalist utopia rising phoenix-like from the ruins of the Second World War, human rights in their very inception remained profoundly wedded to the state. Lest we forget, the founding document of contemporary articulations of human rights (the UDHR) was subject to the approval of member “states” in the United Nations. Even besides this simple structural observation, participants formulating the human rights canon in the 1940s explicitly understood human rights as a feature of the system of nation-states, in contrast to any transcendental legal doctrine. As Samuel Moyn notes in his outstanding history on the subject, only very rarely in the 1940s “were human rights understood as a departure from the persistent framework of nation-states that would provide that better life.”¹⁰

However, the notion’s seeming ubiquity ought not to evidence its conceptual and practical competence. To claim on the one hand that there are certain rights which are inalienable and universal and on the other that those rights are fundamentally dependent upon states poses some obvious problems, not least of which is the manifest tension in universalist rights being dependent upon highly particular political structures for fulfilment. Simultaneously, however, the challenges posed by a statist understanding of human rights are more concrete than any identifiable conceptual tension. Perhaps the clearest of practical issues which ensues is the conflict between state

⁶ For an analysis of how even ‘horizontal’ human rights are reliant upon the state, see Lane, “The Horizontal Effect of International Human Rights Law in Practice.”

⁷ Karp, “What Is the Responsibility to Respect Human Rights?”, p.86; also see Karp, “The Concept of Human Rights Protection and the UN Guiding Principles on Business and Human Rights.”

⁸ International Justice Resource Centre, “Overview of the Human Rights Framework.”

⁹ Human Rights Watch “What Are Human Rights?”

¹⁰ Moyn, *The Last Utopia.*, p.44

sovereignty and the enforcement of human rights¹¹; if sovereignty is understood as the ultimate authority of the state within a given polity¹², the application of international standards to this authority diminishes that authority and thus seems to undercut state sovereignty. As Richard Falk argues with characteristic clarity, “the state system imposes drastic limits on what can be done at the international level to improve respect for human rights...”¹³

Especially in the post-war years, when formerly colonised peoples were fighting for self-determination and sovereignty, the imposition of certain standards upon their governance ran the barefaced risk of human rights being upended from a global Panglossian dream into a wretched imperial instrument. On several occasions, this is precisely what happened: the colonialist language of civilization was replaced by the lexicon of human rights, thereby being employed as little more than a pretext for domination.¹⁴ Of course, the instrumentalization of human rights has not been free from other ideological and hegemonic battlegrounds. For instance, much of the human rights discourse in the latter half of the twentieth century arose not from any moral concern, but due to cold-war rivalries: the United States sought to paint itself as the pioneer of justice in contrast to the oppressors of the Soviet Union.¹⁵ Although the state is the locus for upholding human rights, the state almost always finds ways to bend them to its own interests. Taking the argument further, it is the state from which people most often require protection. When it comes to human rights, as Sonia Cardenas has argued, the history of states is “Janus faced.”¹⁶

Besides the issue of statist hypocrisy, perhaps the most pressing question which emerges from the statist paradigm of human rights is: what about the stateless? Sure, in theory even the stateless ought to be able to enjoy their human rights to the fullest extent possible. However, in fact, without a state to enforce or fulfil human rights, the stateless are often the worst victims of human rights abuses and suffer from the absence of entity willing to protect such rights.¹⁷ The problem found its most eloquent expression in Hannah Arendt’s famous essay where she argued that the tragedy of the twentieth century was that some people did not even have “the right to have rights”,¹⁸ i.e., they belonged to no state or political community willing to uphold their human rights. Despite being over seven decades old, Arendt’s points have not lost any of their relevance. Faced with challenges such as the refugee crisis and climate change which transcend the borders of the nation-state, the statist paradigm of human rights has been left wanting in significant ways.¹⁹

¹¹ For an exposition of these tensions, see Benvenisti and Harel, “Embracing the Tension between National and International Human Rights Law” and Delbruck, “International Protection of Human Rights and State Sovereignty.”

¹² This has been the predominant argument about sovereignty in Western political thought; for a charming and short intellectual history of the term, see Philpott, “Sovereignty” especially p.357-358. Moreover, perhaps the most invidious argument about sovereignty was made by Carl Schmitt, who argued that sovereignty is the ability to make a decision “on the exception”, i.e., when we run out of rules. See Schmitt, *Political Theology*.

¹³ Falk, *Human Rights and State Sovereignty*., p.157

¹⁴ See for instance, Ibhawoh, *Imperialism and Human Rights*.

¹⁵ Foot, “The Cold War and Human Rights.”

¹⁶ Cardenas, “Human Rights and the State.”

¹⁷ Gessen, “‘The Right to Have Rights’ and the Plight of the Stateless | The New Yorker.”

¹⁸ Arendt, *The Origins of Totalitarianism*., Chapter 9

¹⁹ For a discussion of the contemporary relevance of Arendt’s ideas, see Kesby, *The Right to Have Rights*. For how the system of nation-states conflicts with the human rights of migrants and refugees, see Bosniak, “Human Rights,

The point which deserves emphasis here is that both theoretically and historically, the statist paradigm of human rights proves inadequate in significant ways. The theoretical tension between the universality of human rights and the particularities of the state finds practical reflection in the plight of the stateless and the trouble resolving problems which transcend particular borders. Moreover, the implementation of human rights is historically contingent upon the particular trajectories and interests of states, like the US during the cold war. Far from any quixotic dream, human rights when operated by states are instrumentalised in the favour of one or another objective.

Fossil Fuels and the Modern State

If human rights are as intricately tied to the state as I suggest, an understanding of the history of states is crucial to understanding their dispositions, interests, possibilities and limitations. In this regard, to understand modern states' capabilities with respect to climate change, one would do well to investigate the history of fossil fuels and the environment.

While one may trace back environmental deterioration as far back as one pleases²⁰, most historians tend to agree that the onset of the industrial revolution, the invention of the steam engine and the transition to coal as a predominant source of energy in the early nineteenth century mark the critical environmental moment of modernity. The nineteenth and twentieth centuries brought, as one historian put it, "something new under the sun."²¹ This is perhaps the only era in the historic record which one can point to as the provenance of a dramatic rupture in the geological history of the planet, demonstrably caused by human beings.²² Coal and the industrial revolution were not the only major events in the transition to fossil fuels, however. The veritable increase in greenhouse gas emissions towards the final few decades of the nineteenth century also resulted from the increasing employment of petroleum-based fuels like oil. In both these transitions, from biofuels (mostly wood) to coal and from coal to oil, the state played a crucial role.

Prevalent ideas about the industrial revolution in the early nineteenth century state that this period saw a grand transition from a *dirigiste* to a *laissez-faire* economy, and at best, the state set up legal institutions like property and investor rights which served as basic prerequisites to unleash the wonders of private industry and innovation. This is hardly true. At the time, the state took a far more active role in economic affairs and the industrial revolution. As Lars Magnusson has convincingly argued, the state was neither absent nor a mere guarantor in these processes; instead, it assumed a proactive role in impelling the direction the industrial revolution undertook, financing, regulating and organising how emergent coal-powered machinery was employed. This is not

State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention."

²⁰ For an elaborate environmental history, see Radkau, *Nature and Power*.

²¹ McNeill, *Something New under the Sun*.

²² Ritchie and Roser, "CO₂ and Greenhouse Gas Emissions.", see figure titled "Annual total CO₂ emissions, by world region."

particularly surprising because economic supremacy and the capacities for wealth production at the time – as they are now – were inextricably tied to military dominance.²³

Similarly, the state played a profound role in the development of oil as a major energy source in the world. Although innovations in petroleum-based machinery were slowly but steadily progressing in the latter half of the nineteenth century, oil assumed a prominent position as a source of fuel mainly in the military context of the world wars and the transition of the American navy-fleet from coal to oil because of several advantages conferred by the latter. In short, significant federal investments and state control of oil resources in the United States in the pre-war period and oil's central strategic importance in the second world war propelled a fossil fuel besides coal to take centre stage.²⁴ Simultaneously, the increasing prevalence of oil led to the proliferation of socio-political forms of organisation predicated upon supposedly infinite supplies of oil.²⁵

The point about the socio-political implications of oil is crucial because as much as states aided the process whereby fossil fuels became the primary energy-source for the world, the reverse is also true: fossil fuels employed in capitalist economies were central to the formation of the modern state. The argument may be taken even further: given the centrality of oil in American hegemony, the entire distribution of international power among the post-war international system of nation states rested upon access to, and control of, oil resources.²⁶ An energy system predicated upon fossil fuels has been a constitutive factor of state formation and state power across the nineteenth and twentieth centuries.²⁷

I do not mean to undermine the importance of technological innovation and other factors in the transition to fossil fuels. What I wish to stress is the significance of the remarkable symbiosis between states and fossil fuels over the past two centuries. It is especially important to remain cognisant of this history because quite besides an academic exercise investigating the origins of fossil fuels, it has crucial implications on contemporary states' relationship to environmental matters.

One may point out that not states, but private corporations are responsible for a majority of greenhouse gas emissions in the past century. While this is factually correct, it is a great mistake to downplay the role states have played in corporations' environmental malfeasance. Most elementarily, corporations are essentially creations of – and entirely dependent upon – the state, without which they would undoubtedly be reduced to unrecognisable forms. As David Ciepley writes, “As a rights-bearing, property-owning entity, the corporation depends upon government for its very existence.”²⁸ Moreover, even besides the framework of environmental and corporate law which the state dutifully enforces being tilted towards private corporations, to date the state actively subsidises fossil fuel extraction: as of 2019, fossil fuel subsidies stood at an outstanding

²³ Magnusson, *Nation, State and the Industrial Revolution.*, see particularly chapters 3-5

²⁴ Shulman, “Science Can Never Demobilize.”

²⁵ McNeill, *Something New under the Sun.*, Chapter 10; for a fascinating account of how oil-based combustion engines won the battle against electric, battery-operated engines, see Black, *Internal Combustion.*

²⁶ Painter, “Oil and the American Century.”

²⁷ See Mitchell, *Carbon Democracy.*

²⁸ Ciepley, “Neither Persons nor Associations.”, p.242

\$4.7 trillion.²⁹ Undoubtedly, while the nature of the contemporary relationship between states and fossil fuels are complex, a significant element in this regard is that geopolitics remain significantly centred around fossil fuels.³⁰

This raises numerous questions – and doubts, for that matter – for those seeking to mobilise a statist paradigm of human rights. What impact does the historic dependence of states on fossil fuels have on their efforts to transition away from fossil fuels? Are the geopolitics of the contemporary nation-state system conducive to such change? Perhaps most pressing, can states whose power rests in intricate ways on fossil fuel-based political economies avert environmental catastrophe in time? I cannot claim to have any definitive answers to these questions, but believe that these are the ones we ought to be discussing, especially in context of an evaluation of inter-state climate and human rights commitments and all concomitant imbrications.

The Environment and Human Rights

While there is something of a debate among theorists as to what place exactly the environment may hold within a human rights framework³¹, the general point is quite inarguable that without adequate action to alleviate the environmental crisis, not only the right to life but perhaps life itself might be lost. Common sense suggests the matter at hand is not one of principle but strategy: how might a human rights framework be best employed to avert the worst of climate change? In addition to the broader history outlined above, answering this question requires an understanding of the obstacles from which the employment of a human rights framework towards environmental ends have suffered in the past few decades.

The subtleties and complexities of a crisis as expansive as climate change poses several challenges to a framework accustomed to unambiguously proclaiming universal rights. Most conspicuous of these challenges is the difficulty to trace responsibilities and link cause to effect. As the seminal report of the Office of the High Commissioner at the United Nations put it, “it is virtually impossible to disentangle the complex causal relationships linking historical greenhouse gas 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.”³² Such struggles are particularly exacerbated due to the fact that the temporal scales on which climate change unfolds well exceeds lifetimes. If we are at present suffering the ramifications of what began two hundred years ago, how can one discern if an action in the present will bring suffering onto the generation living in 2300? How can the perpetrators of that action be held responsible? The complexity of our ecology

²⁹ Coady et al., “Global Fossil Fuel Subsidies Remain Large.”

³⁰ On the geopolitics of fossil fuels and renewables, see Thompson, “The Geopolitical Fight to Come over Green Energy.”

³¹ For an evaluation of various approaches to the question of whether environmental concerns may find a place among human rights, see Bell, “Climate Change and Human Rights.”

³² “Report of the Office of the UN High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights (A/HRC/10/61) - World.”

betrays discrete ascriptions of environmental responsibilities, a fact which challenges a human rights framework reliant upon a clear determination of violation and subsequent accountability.³³

Other obstacles restricting the mobilisation of substantial environmental action through a human rights framework have to do more explicitly with human rights' dependence upon the state. First, contemporary states' strict territorial jurisdiction is in tension, if not outright contradiction, with formulating a solution to a problem which exceeds all territorial distinctions, a problem widely known in the human rights discipline as 'extraterritoriality.' The most contentious issue extraterritoriality raises is how we can deal with acts conducted within a particular state which have detrimental effects on other states. Does the installation of an oil rig in the United States violate the human rights of the citizens of Tuvalu on the grounds that their island is on the verge of submersion? While there are legal precedents which provide some guidance, no coherent consensus has developed among human rights theorists to answer such questions beyond truisms.³⁴ Second, in the same ways as the territorial responsibilities of states leaves the stateless defenceless, there are no clear answers with regard to what may be done when issues fall within the sovereign jurisdiction of no particular state. Third, and somewhat relatedly, wouldn't international environmental obligations infringe upon the imperative of state sovereignty?³⁵

The usual solution among human rights theorists to problems of extraterritoriality is to invoke states' obligations to cooperate with each other and coordinate a collective response³⁶, in accordance with Article 55 and 56 of the United Nations Charter which emphasise the need for joint action to promote "universal respect for, and observance of, human rights and fundamental freedoms for all..."³⁷ Accordingly, with at least the implicit expectation of seamless inter-state cooperation, much attention has been devoted to understanding climate treaties as human rights documents, or integrating human rights into contemporary climate treaties.³⁸

If this sounds too good to be true, it's because it is. Despite several rounds of international climate negotiations from Rio in 1992 to Kyoto in 1997 to Paris in 2016 as part of which states were obliged – at least in principle – to reduce their emissions and facilitate a more sustainable world, emissions have increased annually for the past 50 or so years. The space between where the world is and where it needs to be "describes more of a chasm than a gap."³⁹ Climate negotiations have always been caught up in bitter politics which inevitably culminate in an inertia favouring the status quo over any kind of meaningful change. Even the few environmental victories along the way have not resulted from any enlightened realisation about the prospective end of the world,

³³ Knox, "Linking Human Rights and Climate Change at the United Nations.", p.377-378

³⁴ For a discussion of such problems and associated legal precedents, see van der Vyver, "The Environment."; for an exposition of the arguments surrounding extraterritoriality, see Atapattu and Schapper, "Human Rights and the Environment.", Chapter 13

³⁵ van der Vyver, "The Environment.", p.88

³⁶ Knox, *The Paris Agreement as a Human Rights Treaty.*, p.336

³⁷ UN Charter, Article 55 and 56

³⁸ Knox, *The Paris Agreement as a Human Rights Treaty.*; "OHCHR | Integrating Human Rights at the UNFCCC."; "Rights in a Changing Climate."

³⁹ Hersher, "Greenhouse Gas Emissions Are Still Rising, U.N. Report Says."

but only when certain environmental policies aligned with the interests of states.⁴⁰ To say that a human rights approach emphasising joint action to mitigate the climate crisis has failed would be an understatement. Instead, as Sam Adelman argues, environmental failures are a searing indictment of the “sovereign rationality” among states which governs the globe.⁴¹

Beyond the State

So far, I hope to have shown that human rights are so fundamentally tied to the state that it seems difficult to try to imagine them otherwise. The argument that without states there would be no possible way to enforce human rights – and thus de-facto no human rights – is rather curious because historically, states have been the most prolific violators of human rights. This is only one contradiction among many which emerge from a doctrine which on the one hand proclaims universality but on the other relies entirely upon territorially delimited entities for fulfilment.

In few areas are the contradictions of the statist paradigm of human rights clearer than in the case of climate change. The modern state and the international system of politics for more than a hundred years has been wrought upon fossil fuels and even private actors in the present most responsible for emissions are either substantially supported by, or are entirely creatures of, the state. In this case, it ought to bring no surprises that treaties and climate negotiations between states, despite the inclusion of human rights obligations within them, have not borne significant fruit. To depend upon states to uphold and enforce environmental human rights seems like tasking a thief to guard the treasure. What might those who still believe in human rights learn from this history? Especially in an environmental context, can we think of a practice of human rights beyond the state?

Understanding that the state is neither the best steward of the environment nor the supreme manager of resources is a crucial step in this direction. In fact, study after study shows that areas managed by indigenous people enjoy a far better environment than those managed by states.⁴² Studies also suggest that key to such success are low levels of extraction and practices which amount to regenerative, rather than extractive, ways of managing common resources.⁴³ Given the divergence between the results of state and indigenous management of the environment, one possible approach a human rights framework may adopt is to emphasise that, on procedural grounds, areas of crucial environmental importance are simply off-limits for any kind of state intervention. Decisions in such areas would be made not by states, but other groups and members of society. This seems particularly relevant with regard to areas of fossil fuel extraction, where several local communities which relatively harmoniously managed resources were brutalised by the state and corporations.⁴⁴

⁴⁰ Finley, “Global Borders and the Fish That Ignore Them” in Bsumek, *Nation-States and the Global Environment*.

⁴¹ Adelman, “Rethinking Human Rights” in Humphreys and Robinson, *Human Rights and Climate Change*.

⁴² Gorodetsky, “Indigenous Peoples Defend Earth’s Biodiversity—but They’re in Danger.”

⁴³ Sengupta, Einhorn, and Andreoni, “There’s a Global Plan to Conserve Nature. Indigenous People Could Lead the Way.” - The New York Times.”

⁴⁴ See for instance Frynas, “Corporate and State Responses to Anti-Oil Protests in the Niger Delta.”

Many such movements, both popular and scholarly, are already underway to protect indigenous sovereignty, which a human rights framework may incorporate and improve.⁴⁵ This is not to romanticise or exoticize indigenous practices: the elementary but crucial point is that instead of the centralised bureaucracy of a state or the unaccountable hierarchy of private corporations, more democratic modes of environmental management promise significantly better results. For instance, municipal ownership of electricity grids in many areas, like Hamburg in Germany, has proven to be both cheaper and offers a more seamless transition to renewables.⁴⁶

Such an understanding of human rights is not entirely alien to the academic literature either. Jennifer Corrin, for example, has proposed a human rights approach which is neither vertical nor horizontal, but lateral.⁴⁷ That is, instead of depending upon state structures, we must seek to find ways in which human rights concerns may be expressed within local socio-political modes of organisation since these are more enduring and have wider appeal, in contrast to the top-down impositions of the state.

Undoubtedly, even these approaches have several drawbacks. Most elementarily, to claim indigenous or local sovereignty seems paradoxically to depend upon the state for enforcement. This is certainly true, but nonetheless is a start in finding other ways to manage and protect the environment besides the state. Second, and perhaps most importantly, if extractive corporations retain their wealth and immense power and the state relinquishes all responsibility with regard to some regions, it might in turn leave inhabitants of those regions defenceless: effectively a re-run of colonisation. This brings me to another useful way in which human rights with respect to the environment may look beyond the state.

One of the greatest benefits of applying a human rights framework to any situation is the informational obligations it places upon relevant actors to allow for fact-finding teams and investigators to assess the situation. Moreover, it may also provoke research by groups to establish important and pertinent facts.⁴⁸ Recall that my earlier argument highlighted that it is a mistake to see corporations and similar private actors as entirely separate from states because they depend upon the state for their existence and operation. If this is the case, given that modes of environmental management besides the state seem immediately implausible, a human rights framework might elicit research into the precise ways by which the state directly or indirectly supports private players who flout environmental necessities and systematically increase emissions: how states provide direct subsidies, support a framework of environmental law biased in favour of private corporations, grant privileges to private players not accorded to ordinary citizens, etc.

This is a concrete way in which a human rights framework may account for and untangle the precise historical mechanisms whereby states have been the key players in the rise and rise of fossil fuels, to the detriment of the global environment. Research provoked by framing issues

⁴⁵ Shrinkhal, “‘Indigenous Sovereignty’ and Right to Self-Determination in International Law.”; Coombe, “Protecting Traditional Environmental Knowledge and New Social Movements in the Americas.”

⁴⁶ Vasagar, “German Grids Restored to Public Ownership.”

⁴⁷ Corrin, “FROM HORIZONTAL AND VERTICAL TO LATERAL.”

⁴⁸ “OHCHR | HRC Commissions of Inquiry, Fact-Finding Missions and Other Investigations.”

through the lens of human rights could help identify, and hopefully eliminate, the means by which states support private actors and their polluting activities. This in turn could prevent the situation whereby moving beyond the state means in fact retracting state support to the vulnerable while maintaining it for the powerful, among several other ensuing benefits.

Conclusion

What are human rights, anyway? While one may morally or metaphysically argue that they are an innate condition of all human beings, it is an incontrovertible fact that at present human rights are not a given, natural condition. They require fulfilment and realisation. The very reality that human rights are not automatic shows us that they are essentially a set of promises we make to each other: the promise that we will not let anyone go hungry, or anyone work an undignified job, and so on; above all, the promise that we will look after each other.

Do we really need states to make such promises to each other? The history of states and human rights shows that not only is the state superfluous – in that we perhaps might not need the state to make such promises – but is even actively detrimental. This seems to me to be particularly true with respect to the environment, where despite immanent doom, states have led us to worse than nothing. If human rights were supposed to constitute the foundation for a utopia, state action, in and outside of a human rights context, with regard to the climate crisis has left us in the deepest of dystopias, for what is a dystopia if not the inability to avert catastrophe even when we can confidently predict its arrival?

The climate crisis is a problem of such existential scale that we sincerely ought to rethink most of our lives, including – as the thrust of this paper has been – the statist paradigm of human rights. I admit that the propositions I made in the previous sections are crude simplifications which certainly cannot be implemented in the form in which I have presented them. My task, however, was not to formulate a detailed blueprint but to suggest possibilities as to how a human rights framework may take stock of the history of states' violations of human rights – particularly their sordid environmental history –, how it may conceive of itself beyond the state, and how it may take steps towards the same.

Moments of change and crisis are moments filled with uncertainty and fear, but also with possibilities. I am sure that many will still contend that a conception of human rights beyond the state seems implausible or impossible. And granted, we have no real idea what non-statist human rights would look like. But this is only another way of saying that the task requires imaginative and political courage, a courage which has never been more necessary in the history of the species.

References

- Akande, Dapo., Jaakko. Kuosmanen, Helen. McDermott, and Dominic. Roser. *Human Rights and 21st Century Challenges: Poverty, Conflict, and the Environment*. Oxford: Oxford University Press USA - OSO, 2020. <http://pi.lib.uchicago.edu/1001/cat/bib/12374117>.
- Arendt, Hannah. *The Origins of Totalitarianism*. New ed. San Diego: Harcourt Brace, 1985.
- Atapattu, Sumudu, and Andrea Schapper. "Human Rights and the Environment: Key Issues." Routledge & CRC Press. Accessed April 10, 2021. <https://www.routledge.com/Human-Rights-and-the-Environment-Key-Issues/Atapattu-Schapper/p/book/9781138722750>.
- Bell, Derek. "Climate Change and Human Rights." *WIREs Climate Change* 4, no. 3 (2013): 159–70. <https://doi.org/10.1002/wcc.218>.
- Benvenisti, Eyal, and Alon Harel. "Embracing the Tension between National and International Human Rights Law: The Case for Discordant Parity." *International Journal of Constitutional Law* 15, no. 1 (January 1, 2017): 36–59. <https://doi.org/10.1093/icon/mox002>.
- Black, Edwin. *Internal Combustion: How Corporations and Governments Addicted the World to Oil and Derailed The Alternatives*. 1st ed. New York: St. Martin's Press, 2006.
- Bosniak, Linda S. "Human Rights, State Sovereignty and the Protection of Undocumented Migrants under the International Migrant Workers Convention." *The International Migration Review* 25, no. 4 (1991): 737–70. <https://doi.org/10.2307/2546843>.
- Bsumek, Erika Marie. *Nation-States and the Global Environment: New Approaches to International Environmental History*. New York, NY: Oxford University Press, 2013.
- Buergenthal, Thomas. *International Human Rights in a Nutshell*. 2nd ed. St. Paul, Minn.: West Pub. Co., 1995. <http://pi.lib.uchicago.edu/1001/cat/bib/2327308>.
- Cardenas, Sonia. "Human Rights and the State." Oxford Research Encyclopedia of International Studies, March 1, 2010. <https://doi.org/10.1093/acrefore/9780190846626.013.52>.
- Ciepley, David. "Neither Persons nor Associations: Against Constitutional Rights for Corporations." *Journal of Law and Courts* 1, no. 2 (2013): 221–45. <https://doi.org/10.1086/670254>.
- Coady, David, Ian Parry, Nghia-Piotr Le, and Baoping Shang. "Global Fossil Fuel Subsidies Remain Large: An Update Based on Country-Level Estimates." IMF. Accessed April 10, 2021. <https://www.imf.org/en/Publications/WP/Issues/2019/05/02/Global-Fossil-Fuel-Subsidies-Remain-Large-An-Update-Based-on-Country-Level-Estimates-46509>.
- Cohen, Joshua. "Minimalism About Human Rights: The Most We Can Hope For?" *Journal of Political Philosophy* 12, no. 2 (2004): 190–213. <https://doi.org/10.1111/j.1467-9760.2004.00197.x>.
- Coombe, Rosemary J. "Protecting Traditional Environmental Knowledge and New Social Movements in the Americas: Intellectual Property, Human Right, or Claims to an Alternative Form of Sustainable Development." *Florida Journal of International Law* 17, no. 1 (2005): 115–36.
- Corrin, Jennifer. "FROM HORIZONTAL AND VERTICAL TO LATERAL: EXTENDING THE EFFECT OF HUMAN RIGHTS IN POST COLONIAL LEGAL SYSTEMS OF THE SOUTH PACIFIC." *International & Comparative Law Quarterly* 58, no. 1 (January 2009): 31–71. <https://doi.org/10.1017/S0020589308000857>.
- Delbruck, Jost. "International Protection of Human Rights and State Sovereignty." *INDIANA LAW JOURNAL* 57 (n.d.): 13.
- Falk, Richard A. *Human Rights and State Sovereignty*. New York: Holmes & Meier Publishers, 1981. <http://pi.lib.uchicago.edu/1001/cat/bib/395799>.
- Foot, Rosemary. "The Cold War and Human Rights." In *The Cambridge History of the Cold War: Volume 3: Endings*, edited by Melvyn P. Leffler and Odd Arne Westad, 3:445–65. The Cambridge History of the Cold War. Cambridge: Cambridge University Press, 2010. <https://doi.org/10.1017/CHOL9780521837217.022>.
- Francioni, Francesco. *Environment, Human Rights and International Trade*. Oxford: Hart, 2001.
- Frynas, Jędrzej George. "Corporate and State Responses to Anti-Oil Protests in the Niger Delta." *African Affairs* 100, no. 398 (2001): 27–54.

- Gessen, Masha. “‘The Right to Have Rights’ and the Plight of the Stateless | The New Yorker.” Accessed April 11, 2021. <https://www.newyorker.com/news/our-columnists/the-right-to-have-rights-and-the-plight-of-the-stateless>.
- Gorodetsky, Ray. “Indigenous Peoples Defend Earth’s Biodiversity—but They’re in Danger.” National Geographic, November 16, 2018. <https://www.nationalgeographic.com/environment/article/can-indigenous-land-stewardship-protect-biodiversity->.
- Grear, Anna., and Louis J. Kotzé. *Research Handbook on Human Rights and the Environment*. Research Handbooks in Human Rights. Cheltenham: Edward Elgar Pub. Ltd., 2015. <http://pi.lib.uchicago.edu/1001/cat/bib/12242250>.
- Hajjar Leib, Linda. *Human Rights and the Environment*. Brill, 2011. <http://pi.lib.uchicago.edu/1001/cat/bib/12485689>.
- Hersher, Rebecca. “Greenhouse Gas Emissions Are Still Rising, U.N. Report Says.” NPR.org. Accessed April 11, 2021. <https://www.npr.org/2019/11/26/782586224/greenhouse-gas-emissions-are-still-rising-u-n-report-says>.
- Hoffmann, Stefan-Ludwig. *Human Rights in the Twentieth Century*. Human Rights in History. Cambridge: Cambridge University Press, 2011. <http://pi.lib.uchicago.edu/1001/cat/bib/11826884>.
- Humphreys, Stephen., and Mary Robinson. *Human Rights and Climate Change*. Cambridge: Cambridge University Press, 2010. <http://pi.lib.uchicago.edu/1001/cat/bib/8147871>.
- Ibhawoh, Bonny. *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History*. Albany, NY: State University of New York Press, 2007.
- Johnston, Barbara Rose. *Life and Death Matters: Human Rights, Environment, and Social Justice*. 2nd ed. Walnut Creek, CA: Left Coast Press, 2011.
- Journal of Human Rights and the Environment*. Cheltenham, U.K.: Elgar Journals, 2010. <http://pi.lib.uchicago.edu/1001/cat/bib/9031999>.
- Karp, David Jason. “The Concept of Human Rights Protection and the UN Guiding Principles on Business and Human Rights.” In *Human Rights Protection in Global Politics: Responsibilities of States and Non-State Actors*, edited by Kurt Mills and David Jason Karp, 137–58. Global Issues Series. London: Palgrave Macmillan UK, 2015. https://doi.org/10.1057/9781137463173_7.
- . “What Is the Responsibility to Respect Human Rights? Reconsidering the ‘Respect, Protect, and Fulfill’ Framework.” *International Theory* 12, no. 1 (March 2020): 83–108. <https://doi.org/10.1017/S1752971919000198>.
- Kesby, Alison. *The Right to Have Rights: Citizenship, Humanity, and International Law*. Oxford: Oxford University Press, 2012. <http://pi.lib.uchicago.edu/1001/cat/bib/9277257>.
- Klein, Naomi. *This Changes Everything: Capitalism vs. the Climate*. Toronto: Knopf Canada, 2014.
- Knox, John H. “Horizontal Human Rights Law.” *The American Journal of International Law* 102, no. 1 (2008): 1–47.
- Knox, John H. “Linking Human Rights and Climate Change at the United Nations.” *Harvard Environmental Law Review* 33 (n.d.): 22.
- Knox, John H. *The Paris Agreement as a Human Rights Treaty. Human Rights and 21st Century Challenges*. Oxford University Press. Accessed April 11, 2021. <http://oxford.universitypressscholarship.com/view/10.1093/oso/9780198824770.001.0001/oso-9780198824770-chapter-16>.
- Knox, John H., and R. Pejan. *The Human Right to a Healthy Environment*. Cambridge, United Kingdom: Cambridge University Press, 2018.
- Ksentini, Fatma Zohra. *Human Rights and the Environment: Final Report*. [Geneva]: United Nations, 1994.
- Lane, Lottie. “The Horizontal Effect of International Human Rights Law in Practice: A Comparative Analysis of the General Comments and Jurisprudence of Selected United Nations Human Rights Treaty Monitoring Bodies.” *European Journal of Comparative Law and Governance* 5, no. 1 (March 22, 2018): 5–88. <https://doi.org/10.1163/22134514-00501001>.
- Magnusson, Lars. *Nation, State and the Industrial Revolution: The Visible Hand*. London: Routledge, 2009. <http://pi.lib.uchicago.edu/1001/cat/bib/7840221>.

Manual on Human Rights and the Environment. 2nd ed. Strasbourg: Council of Europe Publishing, 2012.

May, James R., and Erin Daly. *Human Rights and the Environment: Legality, Indivisibility, Dignity and Geography*. Vol. VII. Elgar Encyclopedia of Environmental Law ; Cheltenham, UK: Edward Elgar Publishing, 2019.

McNeill, J. R. *Something New Under the Sun: An Environmental History of the Twentieth-Century World*. 1st ed. New York: W.W. Norton & Company, 2000.

Mitchell, Timothy. *Carbon Democracy: Political Power in the Age of Oil*. Verso Books, 2013.

Moyn, Samuel. *The Last Utopia: Human Rights in History*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2010. <http://pi.lib.uchicago.edu/1001/cat/bib/11232705>.

“OHCHR | HRC Commissions of Inquiry, Fact-Finding Missions and Other Investigations.” Accessed April 11, 2021. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/COIs.aspx>.

United Nations. “OHCHR | Integrating Human Rights at the UNFCCC.” Accessed April 11, 2021. <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx>.

International Justice Resource Center. “Overview of the Human Rights Framework,” June 13, 2011. <https://ijrcenter.org/ihr-reading-room/overview-of-the-human-rights-framework/>.

Painter, David S. “Oil and the American Century.” *Journal of American History* 99, no. 1 (June 1, 2012): 24–39. <https://doi.org/10.1093/jahist/jas073>.

Philpott, Daniel. “Sovereignty: An Introduction and Brief History.” *Journal of International Affairs* 48, no. 2 (1995): 353–68.

Radkau, Joachim. *Nature and Power: A Global History of the Environment*. 1st English ed. Washington, D.C.: German Historical Institute, 2008.

United Nations. “Repertory of Practice of United Nations Organs — Codification Division Publications.” Accessed April 11, 2021. <https://legal.un.org/repertory/art56.shtml>.

ReliefWeb. “Report of the Office of the UN High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights (A/HRC/10/61) - World.” Accessed April 10, 2021. <https://reliefweb.int/report/world/report-office-un-high-commissioner-human-rights-relationship-between-climate-change-and>.

Center for International Environmental Law. “Rights in a Changing Climate: Human Rights Under the UN Framework Convention on Climate Change (Dec 2019).” Accessed April 11, 2021. <https://www.ciel.org/reports/12281/>.

Ritchie, Hannah, and Max Roser. “CO₂ and Greenhouse Gas Emissions.” *Our World in Data*, May 11, 2020. <https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions>.

Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. University of Chicago Press ed. Chicago: University of Chicago Press, 2005.

Sengupta, Somini, Catrin Einhorn, and Manuela Andreoni. “There’s a Global Plan to Conserve Nature. Indigenous People Could Lead the Way. - The New York Times.” Accessed April 11, 2021. <https://www.nytimes.com/2021/03/11/climate/nature-conservation-30-percent.html>.

Shelton, Dinah L. *Human Rights and the Environment*. Elgar Research Reviews in Law. Cheltenham: Edward Elgar Pub. Ltd., 2011. <http://pi.lib.uchicago.edu/1001/cat/bib/12241691>.

Shrinkhal, Rashwet. “‘Indigenous Sovereignty’ and Right to Self-Determination in International Law: A Critical Appraisal.” *AlterNative: An International Journal of Indigenous Peoples* 17, no. 1 (March 1, 2021): 71–82. <https://doi.org/10.1177/1177180121994681>.

Shulman, Peter. “‘Science Can Never Demobilize’: The United States Navy and Petroleum Geology, 1898–1924.” *History and Technology* 19, no. 4 (December 1, 2003): 365–95. <https://doi.org/10.1080/0734151032000181095>.

Thompson, Hellen. “The Geopolitical Fight to Come over Green Energy.” *Engelsberg Ideas* (blog), March 5, 2021. <https://engelsbergideas.com/essays/the-geopolitical-fight-to-come-over-green-energy/>.

“UNBISnet,” January 21, 2019. <https://web.archive.org/web/20190121232151/http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=14O243550E15G.60956&profile=voting&uri=full=3100023~!909326~!676&ri=1&aspect=power&menu=search&source=~!horizon>.

- Vasagar, Jeevan. "German Grids Restored to Public Ownership," November 25, 2013.
<https://www.ft.com/content/2f3b0b1e-4dee-11e3-8fa5-00144feabdc0>.
- Vyver, Johan D. van der. "The Environment: State Sovereignty, Human Rights, and Armed Conflict Advancing the Consensus: 60 Years of the Universal Declaration of Human Rights." *Emory International Law Review* 23, no. 1 (2009): 85–112.
- Human Rights Watch. "What Are Human Rights?," September 15, 2014.
<https://www.hrw.org/news/2014/09/15/what-are-human-rights>.
- Zarsky, Lyuba. *Human Rights and the Environment: Conflicts and Norms in a Globalizing World*. London: Earthscan, 2002.