

Climate Justice: Human Rights and Animal Rights.

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ABSTRACT

This is an inter-disciplinary human rights-based essay, developed through the academic disciplines of law and philosophy. The article examines the effects of climate change on human rights, with a short intervention in the discussion by animal rights-based considerations. From a human rights legal perspective, climate change can become the ultimate human rights violator, threatening in an incomparable way to fully destroy the fulfilment of several internationally protected human rights, like the rights to health and life, rights to food, water, shelter, and property, rights associated with livelihood, and with migration. It is critical to understand that the worst effects of climate change are firstly felt by those individuals and groups whose rights protection is already insufficient. The present article highlights these risks and advocates for their consideration. This essay is asking questions such as: *'What are the consequences of climate change on Human Rights?'* *'What is the role of Human Rights in the Climate Justice field?'* *'Why are Animal Rights voices not included in these debates?'*

Climate change when viewed from a human rights standpoint, is an unprecedented source fountain of human rights violations. My objective is to illuminate this area of study by critically examining the relationship between Climate Justice and Human Rights, while taking the reflections presented a step further, by including animal rights voices in the debate. There is a duty upon all academia to engage in Climate Action and contribute to the further development of Climate Justice – and this is where this essay intends to pay a small contribution, by advocating for a rights-based approach to climate change.

Keywords: Climate justice, human rights, environmental law, animal rights, philosophy, law.

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PROLEGOMENA:

2020 has been marked by the global pandemic and the unprecedented existential threat to humankind.

It is inevitable if not inescapable, to open this climate justice essay with a short reflection on Covid-19, since it is written during the pandemic, and because this case can be proven to be instrumental in advocating for climate justice. As an ancient Greek saying states: «OYDEN KAKON AMIGES KALOU», which translates to English as: “there is no bad without some good”. In that sense, humanity through this collective tragedy and the common existential threat is also offered some precious lessons, like for example, a better understanding of the human’s place in the cosmos which is challenging the traditional anthropocentric standpoint of law.

The most important lesson, however, should be that Covid-19 is more than a deadly virus. It is a symptom of the deteriorated health of our planet, brought about by humanity’s defective relationship with nature, and fueled by a thorough unethical capitalist “bulimia” that affects even the international law-making process. Human rights law is said to belong on the top of the “ladder” in any body of law, due to its moral power. This is why human rights law can offer the tools and provide its know-how to develop the means that can lead to the application and flourishing of climate justice. Law is frustratingly limited in its reach when reflecting on ideas without actual legal manifestation through positive law. However, philosophy knows no limits when looking at the ideal, and what the law should ideally bring into this world. Therefore, in combination, philosophy and law, enables legal scholars to push for positive legal change, by presenting arguments that enrich the legal scholarship and aid in the further development of legal science. In an ideal world then, where fairness and justice will be fully realized, it is environmental protection that should be on the top of the “ladder” in any body of law, sharing a much-needed absolute protection with animal rights which have been unfairly and negligently silenced to date.

It is objectionable to discuss climate justice without including animal rights on the table of negotiations. This essay by identifying this defectiveness of the law-making process intends to form a contribution towards repairing this wrong. On the bright side, academia has come a long way in using human rights language to argue for environmental and green crimes². From a critical legal studies point of view however, the actual development of this frame of international law has been rather slow and disappointing³, especially if one considers the softness of the United Nations Framework Convention on Climate Change (hereinafter UNFCCC) and the inability of the UN to reach political consensus, move climate action, and deliver the human rights promises of its mandate. Although the climate change science is clear, and even though climate scientists rang

² See Scalia, V. (2015). The European Court of Human Rights and Environmental Crime. Study in the framework of the EFFACE research project, Catania: University of Catania. URL: <https://efface.eu/european-court-human-rights-and-environmental-crime> (Accessed Oct. 2019).

³ See: UN CLIMATE STATEMENT / 15 DEC, 2019, ‘Statement by the UN Secretary-General António Guterres on the Outcome of COP25’, URL: <https://unfccc.int/news/statement-by-the-un-secretary-general-antonio-guterres-on-the-outcome-of-cop25> (Accessed Dec. 2019).

repeatedly the red alarm bells and warned humankind repeatedly about the dangers we are facing collectively: human societies globally continue to rely on fossil fuels, and the international legal order continues to allow the exploitation of natural resources, which is common knowledge that cause irreparable damages and anthropogenic harms on our home planet (For example deep sea mining, logging, pollution and so on).

What the climate justice field needs at this stage to get a step closer in delivering its promises of Equality and all that this entails, is real political climate action that will translate to strong legal measures and protection of the environment as rights holder. It should be obvious even in the untrained legally eye, that human rights entail much more legal power than animal rights in the current global justice order. It is undeniable on the other hand, that international Courts proved inadequate so far in prosecuting green crimes, and are offering very little if none protection to animal rights, a legal reality that is unfair, outdated, and requires radical legal change.

Some argue that moving closer to an ecocentric implementation of international law in practice is the right thing to do and will produce a fairer legal system.

This essay intends to stress that law by nature evolves with the demands of the times; and thus, from a legal point of view the basic rights of every living being to exist and live a life in dignity —free from harm and suffering— should not apply only to humans, but to all living organisms which include animals and natural objects, and surely, what is right and fair, or who and what is entitled to rights and rights protection cannot and should not be valued in a cost-benefit economic way. It is absurd to allow trade rules to trump freedom from cruelty or torture when for example there are conflicts between animal welfare and free trade rules.⁴ Jurisprudence and moral philosophy have an important role to play in clarifying what is essential in our conduct with our world, whether we talk about our organized political societies or our home planet. It is true that international human rights law largely ignores questions relating to the protection of animals since this body of law which is mirroring the foundations of criminal law is deeply anthropocentric. However, there are windows of opportunity for legal scholars to creatively use the existing legal tools available in the human rights world, by highlighting for example that a dignified life which is the cornerstone of human rights legal theory, cannot be conceived fully without the protection of animals and the environment. It is an underlying thesis of this essay, that a dignified life's prerequisite should be identified as the fair and moral co-existence with other species and the protection of our natural habitat, for the current and future generations.

To make my point clearer, consider the case of wars and the disastrous effects on wildlife animals⁵:

⁴ See for example: *R. v Minister of Agriculture, Fisheries and Food, ex parte the Royal Society for the Prevention of Cruelty to Animals and Compassion in World Farming Limited*, 1995. This case started in the High Court in England and was then referred to the European Court of Justice.

⁵ "Over the last 50 years, certain species have been vanishing at a very high rate because of wars, with often disastrous effects on the food chain and on the balance of nature." Anne, Peters, *Studies in Global Animal Law*, Springer Nature, 2020, p. 172.

“It is time to recognize that those who pollute or destroy the natural environment are not just committing a crime against nature but are violating human rights as well.”⁶

Furthermore, Principle 1 of the Stockholm Declaration which established a foundation for linking human rights, health, and environmental protection, is declaring that: *“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”⁷*

The above-mentioned statements are intended to set the floor for this essay’s discussion, by emphasizing that no reasonable woman could live a life of dignity in an inhabitable environment, destroyed planet, or simply put, in a world where the suffering of animals goes unpunishable by law. This essay argues that an environment of quality, which must include the protection of animal⁸ welfare, is a prerequisite for having human rights, ensuring justice and the rule of law; while all these essentials are threatened to be fully destroyed by climate change; which is another justification for the urgent necessity of developing the field of climate justice.

MAIN BODY

WHAT IS CLIMATE JUSTICE?

Climate justice is an attempt to serve justice by legally reflecting on global warming as an ethical, legal, and political issue, instead of dealing with climate change as – only – an environmental one. As scholars, lawyers, and activists, we engage with climate justice, by linking the effects of climate change to the important ideas of environmental justice and fairness. We do so by examining topics such as equality, human rights, collective rights, intergenerational justice, and the historical responsibilities for climate change, under the flexible, evolving, and inclusive umbrella of climate justice.

A fundamental driving force of climate justice is the fact that those who are least responsible for climate change suffer its gravest consequences, with animals being the less fortunate in this case since even in the climate justice terrain their suffering is not efficiently acknowledged to date. This paper plans to serve as a small contribution to repairing this continuing injustice, by giving voice to animal rights issues relevant to our discussion. Climate justice is a form of environmental justice, which in theory means that: All species should have the right to access and obtain the resources needed to have an equal chance of survival and freedom from discrimination, or as a minimum requirement, that all living beings are entitled to exist free from harm.⁹ As a movement, climate justice advocates are working from the grassroots up to create solutions to our climate and

⁶ Toepfer K., Executive Director of the United Nations Environment Programme, addressing the 57th Session of the Commission on Human Rights in 2001.

⁷ Stockholm Declaration of the United Nations Conference on the Human Environment, 16 June 1972, U.N. Doc. A/CONF.48/14/Rev.1 at 3 (1973).

⁸ See the Animal Welfare Amendment Bill, which was passed in 2015 in New Zealand following the Animal Welfare Act 1999, which specifically recognizes animals as sentient. (<http://www.legislation.govt.nz/act/public/2015/0049/latest/DLM5174807.html> (Accessed April 2020)).

⁹ Anderson, Elizabeth, 2004, “Animal Rights and the Values of Nonhuman Life”, in *Animal Rights: Current Debates and New Directions*, Cass R. Sunstein and Martha C. Nussbaum (eds.). Oxford: Oxford University Press, chapter 13. doi:10.1093/acprof:oso/9780195305104.003.0014

energy problems, with the ultimate goal of ensuring the rights of all people to live, learn, work, play and pray in a safe, healthy and clean environment.

The inadequate commitment of academia to climate justice research must be addressed and counteracted. It is interesting to see the huge difference in the amount of funding that in recent years goes to research about climate change denial, than towards climate justice. This could be explained by looking at which industries are being negatively affected by climate justice, and who are the holders of capital in our world today.¹⁰ It seems to me that one way of moving change is by enriching the international literature with scholarly studies of the highest possible standards, aimed to develop a better, stronger, and more effective climate justice field. Allow me to say that this is an active contribution that academia can achieve, only through collaborations with interdisciplinary teams of scientists. To better understand what climate justice entails, it is necessary if not useful to consider the United Nations Framework Convention on Climate Change¹¹. The objective of the UNFCCC is to “stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”¹² While it is important to stress that any attempt to understand what climate justice is, must be introduced in the form of a rights-based approach to climate change. Human rights and climate justice should be viewed as interconnected links of the same chain of fairness. It is critical to apply a human rights-based approach to guide global policies designed to address climate change. To better understand what could constitute the essential attributes of a human rights-based approach, it would be useful to consider some of the elements described by the Human Rights Council and the UN.

For example, the elements of good practices under a rights-based approach include the following:

- “As policies are formulated, the main objective should be to fulfil human rights.
- The *rights-holders* and their entitlements must be identified as well as the corresponding *duty-bearers* and their obligations to find ways to strengthen the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.
- Principles and standards derived from international human rights law – especially the Universal Declaration of Human Rights¹³ and the core universal human rights treaties¹⁴, should guide all policies and programming in all phases of the process.”¹⁵

CLIMATE CHANGE AND HUMAN RIGHTS

¹⁰ Brulle, R.J. Institutionalizing delay: foundation funding and the creation of U.S. climate change counter-movement organizations. *Climatic Change* 122, 681–694 (2014).

See also: <https://www.climateactionproject.org/blog/climate-denial-machine-how-fossil-fuel-industry-blocks-climate-action>; <https://www.scientificamerican.com/article/dark-money-funds-climate-change-denial-effort/> (Accessed Jan. 2020).

¹¹ UNFCCC: The United Nations Framework Convention on Climate Change, 1992. (PDF): https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf (Accessed Jan. 2020).

¹² UNFCCC, Article 2, (PDF). The United Nations Framework Convention on Climate Change. (Accessed Jan 2020).

¹³ The Universal Declaration of Human Rights: the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (*General Assembly resolution 217 A*) PDF: <https://www.un.org/en/universal-declaration-human-rights/> (Accessed Dec. 2019).

¹⁴ For a full list of human rights treaties see: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (Accessed Dec. 2019).

¹⁵ Source: Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, p. 9. PDF: <https://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf> (Accessed Jan. 2020).

We know today that human rights and climate change are linked in numerous ways. This essay highlights the three main ways this interconnected linkage blooms:

1. Firstly, as explained briefly in the prolegomena of this essay: climate change has implications for the real satisfaction of the full range of human rights, especially for the most vulnerable people.
2. Secondly, a failure to act and incorporate human rights into climate action can undermine people's rights; and activate duties of responsibility.¹⁶
3. Thirdly, the integration of human rights into climate change policies can improve effectiveness and result in benefits for people and the planet.

It seems to me that these three keyways are providing us with all the justifications needed to engage with human rights-based research in the climate change stadium.

Climate change is undermining the fulfilment of several internationally protected human rights, like the: rights to health and life; rights to food, water, shelter, and property; rights associated with livelihood and culture; with migration and resettlement¹⁷; and with personal security in the event of a conflict. The worst effects of the ecological drama that threatens to bring the end of human rights are likely to be felt by those individuals and groups whose rights protections are already insufficient. Many new terminological constructions are gaining ground in the international literature in the field of environmental crimes, health, and human rights, which, if viewed from the same utilitarian standpoint, share a common essence, and that is the message they all try to communicate, which is that climate change is being caused by human activities and is calling for attributing responsibility to the countries, companies or individuals that have direct links with the caused harms.¹⁸

To start grasping the complexities involved in the practice of this field of law, one needs to look at the UNFCCC, where terms like "intergenerational justice", and "historical differentiated responsibility", have risen.

The underlying questions in this part of my essay, ask:

- What are the human rights repercussions of climate change, and how does the extensive organization of international human rights law and knowledge convey that phenomenon?
- Where does international human rights law overlap with or provoke duties under the embryonic climate regime? Where should human rights essentials challenge climate change strategies?

¹⁶ See: "OHCHR | COP21: "States' human rights obligations encompass climate change" – UN expert". (Accessed Jan. 2020).

¹⁷ See: European Council Doc. 7249/08 Annex, climate change and International Security, Paper from the High Representative and the European Commission to the European Council (March 2008).

¹⁸ UNFCCC Article 3: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed Party Parties should take the lead in combating climate change and the adverse effects thereof."

The human rights world is offering us a complete and useful infrastructure of legal procedures, and a well-tested set of legal tools that we can now apply to climate justice since the relationship of climate change with human rights has gained ground, and scientists have provided strong justifications for these claims to be standing strong. For example, the effects of climate change on the enjoyment of the basic human rights of future generations are now indisputable. Nonetheless, the climate change denialists are still in existence, and as it seems, they are better organized (if not better funded and supported) than the advocates for climate justice. There is indeed a duty upon all academics engaging in this area to counter-argue using stronger scientific arguments and find more effective ways to communicate this knowledge with the world, to expose the dangers and double standards of this precarious trend. This could result in real climate action by the political elements of the climate justice field, which are continuing to block the implementation of legal frameworks like the UNFCCC, due to the free-market economy and trade rules considerations. At this point, we need to reflect on one of the lessons that Covid-19 has offered to humanity, and that is, by disregarding any economic rules or obstacles, governments, and politicians around the world, in fulfilling their duty to protect the public's health and their right to life, they activated extreme measures, paused their economies, and enforced quarantines. It is interesting to reflect on the hypothesis of whether the same line of reasoning should and could be applied to climate justice. The burden of proof, in this case, would fall on proving the urgency of the threat on humanity, and whether humankind is facing certain extinction, like climate change advocates declare as modern "Cassandras". When the predictions and hypothesizing are replaced by the death toll rising, like in the case of the current pandemic, it's more likely to see real political action harmonized with climate action. The problem, however, is that by that time, humanity would have already failed to act on climate, and it will most likely be too little too late!

In resolution 45/94 the UN General Assembly¹⁹ evoked the logic behind the Stockholm²⁰ conference in declaring that: "all individuals are entitled to live in an environment adequate for their health and well-being". The UN asked its member states to join forces in their struggles for safeguarding a healthier environment. Almost half a century after the Stockholm Conference, the connections that were founded by these opening declarations have been reconstructed and developed in various ways in international legal instruments, presented in decisions of human rights bodies, and the relevant case law precedent. The common paramount that has utility in our discussion, is that in their majority, these legally valuable data have all been constructed on a rights-based approach to the topics. On that train of thought, we need to understand environmental law, protection, and rights, as pre-conditions for the actual satisfaction of internationally guaranteed human rights. An

¹⁹ See <https://undocs.org/en/A/RES/45/94> (Accessed May 2019).

²⁰ Ibid 9.

illustrative example of the ways that climate justice is a precondition for human rights is the realization that humans which are the entitled species requiring protection under the human rights doctrine, cannot survive without clean water, air, and a clean environment, so since we are talking about a case where humans are subjected to an existential threat, then the simplest way to understand the urgency of protecting the environment as a human rights issue, would be to say that no human right can be realized in an inhabitable environment. It seems out of place to talk about freedom of expression or other second or third-generation rights, when fundamental first-generation human rights are at stake, like the right to life. This line of reasoning could kill two birds with one stone, by providing strong justifications to both anthropocentric philosophers and ecocentric advocates and escaping the misguided binary dichotomy of our comprehension of the law as either anthropocentric or ecocentric. As well as identifying the right line of questioning this field, since it seems to me, we are wasting resources and brain power in asking the wrong questions. Like, who is valuable enough to be entitled to rights and protection, instead of asking what is of value in life that is in need of protection from the anthropogenic harms.

Environmental protection is therefore a fundamental device in the delivery and safeguarding of the Universal Declaration of Human Rights.

The majority of human rights law was created before environmental protection became a matter and subject of international concern. For example, the UDHR 1948 was created in the aftermath of WWII and dealt with the known injustices which emerged from the barbarities of war, which can partly explain the lack of environmental protection language in human rights law. The most obvious exceptions are the rights to life and to health, which are included in many human rights instruments, with some references to the environment. For example, The International Covenant on Economic, Social and Cultural Rights²¹ guarantees the right to safe and healthy working conditions and the right of children and young persons to be free from work harmful to their health. The right to health in article 12 of the Covenant expressly calls on state parties to take steps for the improvement of all aspects of environmental and industrial hygiene and the prevention, treatment, and control of epidemics and other diseases.

To proceed, it will be useful to consider that human rights and science are both gaining value and becoming the main protagonists in climate change litigation. There is a steady development of the global trends in climate change strategic litigation, which, in practice, has the effect of strengthening the connection between climate change and human rights.

²¹ See: (Art. 7 b, and Art. 10-3): The International Covenant on Economic, Social and Cultural Rights (16 December 1966), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (Accessed Feb. 2019).

There is also an increase in the number of important recent climate change cases, against governments and/or private entities, which have employed rights-based arguments, marking a “rights turn”²² in climate change litigation. For example, *Ashgar Leghari v. Federation of Pakistan*²³ was the first case where a human rights basis for litigation on climate change was accepted, notwithstanding the obstacles presented by the problematic causality, and extra-territoriality. In this 2015 case, a Pakistani court produced a ground-breaking decision by accepting claims that it was the government’s failure to address climate change that caused the violations of the claimant’s rights.

The term “climate justice” was originally defined as actual legal action on climate change; it is interesting to see the number of the relevant case law, which, according to a 2017 UN report²⁴, there were, at the time the report was published: 894 identified ongoing legal actions globally.

A human rights basis for litigation on climate change has had increasing significance for courts in case law, despite the problems that arise from the need to establish causality. The new lawsuits that recent reports are analyzing are also illustrative of these advancements in the process of establishing a causal link between a particular source of emissions and climate-related harms of environmental crimes. Climate change litigation continues to evolve with the demands of our time, and we can observe a continuous geographic expansion of these legal cases. There are now cases all around the globe, with the majority being filed in the Americas, alongside Asia, the Pacific region, and Europe.

It should be noted that no report²⁵ has managed to provide data about the impacts of climate change litigation in the climate justice project efficiently, which leads us to the conclusion that there is a need for greater assessment and thorough legal research on the effects of these legal actions beyond the courtroom.

The terrain of climate change has an inherent crucial urgency, that justifies the calls for further academic research through a multidisciplinary methodology, as well as for a deeper examination of the links between climate change and human rights claims, equity for future generations, as well as of the problems arising from the questions on sustainable development, and the vulnerability principle.

Unlike the international human rights regime, the UNFCCC and the Kyoto Protocol do not include express provisions for remedial measures for individuals, groups of individuals, or communities in case of particular environmental harm. While the UNFCCC includes in its mandate the “protection of the climate system for the benefit of present and future generations of humankind”, it is not designed to offer human rights protection,

²² Peel, J., & Osofsky, H. (2018). A Rights Turn in Climate Change Litigation? *Transnational Environmental Law*, 7(1), 37-67.

²³ *Leghari v. Federation of Pakistan*, (2015) W.P. No. 25501/201. See the facts and decision here: <http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/> (Accessed Jan. 2020).

²⁴ THE STATUS OF CLIMATE CHANGE LITIGATION: A GLOBAL REVIEW, 2007, ISBN: 978-92-807-3656-4. Published by the United Nations Environment Programme and Columbia Law School’s Sabin Center for Climate Change Law in New York. See <http://wedocs.unep.org/handle/20.500.11822/20767?show=full> (Accessed June 2019).

²⁵ See: <http://www.lse.ac.uk/GranthamInstitute/climate-change-laws-of-the-world/> (Accessed May 2020).

humanitarian aid, or redress to individuals or communities, for environmental harms. From a legal perspective, one could argue that this is the first inadequacy of the law in question, while it is a fact that this law has great problems in practice due to its nonbinding nature, however, it generated several useful and progressive legally speaking concepts, like: “intergenerational equity”, “sustainable development” and the “precautionary principle”.

It seems necessary to test the assumption that sustainability and climate change policies form a symbiotic relationship. Much of the recent interest in the human rights dimensions of climate change has been sparked by the problems rising from Inuit²⁶ and the Small Island States. In their 2005 petition, the Inuit argued that the effects of climate change could be accredited to acts and omissions of the U.S. and violated their fundamental human rights, such as the rights to the benefits of culture, property, the preservation of health, life, physical integrity, security, and a means of subsistence, and to the residence, movement, and inviolability of the home²⁷. These rights, it was claimed, are protected under several international human rights instruments²⁸. Yet, the Commission declined to review the merits of the petition. Notwithstanding the unsuccessful outcome of the petition, the whole legal action managed to succeed in stirring and fueling the debates over the links between climate change and human rights and led to a “Hearing of a General Nature” on human rights and global warming.²⁹

No reasonable legal mind can deny that the human rights enforcement and complaint procedures can only be beneficial as utensils, in restoring inadequate environmental rights safeguarding: ‘as compared to efforts to incorporate a right to environment in human rights treaties...’³⁰ This is a way to escape the obstructions arising from abstract questions such as: ‘what is meant by a healthy environment’ and so on. As it has been stressed numerous times in this paper, we have at our disposal the know-how, the tools, and procedures of the human rights world, which is a better-structured body of supporting institutions for the implementation of these rules; and at the end of the day, there is a more efficient way to administer justice, since victims can file a complaint, be heard, and seek redress, and that is what the human rights international legal body can offer in the climate justice world.

Some legal scholars advocate for the need to re-focus on the procedural and substantive rights and the paramount role they are playing in linking human rights and the environment. In doing so, one needs to look no further than the freedom of information provisions enshrined in Principle 10 of the Rio Declaration and other human rights instruments, such as Article 10 of the European Convention on Human Rights and Fundamental

²⁶ Watt-Cloutier, S., *Climate Change and Human Rights*, HUMAN RIGHTS DIALOGUES: “ENVIRONMENTAL RIGHTS”, (2004).

²⁷ See <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf> (Accessed Sep 2019).

²⁸ American Declaration on the Rights and Duties of Man, 1948, OAS Resolution XXX, OEA/Ser.L.V/II.82 doc.6 rev.1.

²⁹ See: <http://www.cidh.org/Comunicados/English/2007/8.07eng.htm> (Accessed Sep. 2019).

³⁰ R. Picolotti & D. Taillant, *Linking Human Rights and Environment*, University of Arizona Press, 2003, p. 1.

Freedoms.³¹ Substantive rights also provide a legal basis for litigation based on environmental concerns as illustrated by the use of Article 8 (right to privacy) of the European Convention of Human Rights.³² Even these scholars, however, admit that to speak of ‘a human right to the environment’, is a rather problematic argument, especially when we take into account the ‘balancing it with other human rights.’³³

It should also be highlighted those human rights appear to have a more evident role in each succeeding rights-sensitive suggestion on climate change. The relevant negotiations of the law-making global organs have developed discussion agendas based predominantly on a utilitarian philosophical basis, and with a consensus built upon a seemingly mutual understanding of the issues in question, which it seems to me are dependent on cost-benefit and other welfare hypothesizing paths, instead of fairness, ethics, and justice. To date, it is observable that the negotiating States have utilized human rights language principally for its normative value, and to boost paradigms of distributional justice, but without admitting its status as applicable positive international law.

Ideally, the current attitudes should employ human rights vocabulary to support a fairer international climate justice system. However, we still need to work on undertaking an examination of the in-depth specific human rights damages arising from climate change and to guarantee the inclusion of human rights rules into the relevant climate change law.

At the end of the day, politicians call for human rights to move uncertain action on climate change policies, instead of supporting climate justice action to prevent human rights costs.³⁴

Scanning for human rights language is undeniably not the strongest tool for analysis and examination since it is rather a poor diagnostic tool. However, the preliminary findings of such an analytical exercise are indicative of the unjustified absence of human rights dialectal in climate change law, which is a well-established legal structure that as all the evidence suggests, ought to be part of the climate justice regime with a more active role. All the requirements for justifying such inclusion are present in the climate change phenomenon, for example, the harm to human beings’ rights enjoyment by acts that could otherwise be avoided. Climate change has a human source, since it is partly anthropogenic, and this contributory connection makes climate change an area of study uniquely suitable for human rights assessment. My main argument is that human rights law is applicable because the human-made impacts of climate change cause human rights violations.³⁵ The human

³¹ See: *Guerra vs. Italy*, no. 14967/89, ECHR 1998.

³² See: *López Ostra vs. Spain*, no. 16798/90, ECHR 1994.

³³ R. Picolotti & D. Taillant, *Linking Human Rights and Environment*, University of Arizona Press, 2003, p. 22.

³⁴ The adaptation funding calls, as ‘compensation’ for harms inflicted by the actions of the Annex I countries. In this line of reasoning, they call for Human Rights as an ethical rather than legal imperative. See, for example, Oxfam International, ‘Adapting to climate change: What’s Needed in Poor Countries and Who Should Pay’ (2007) 104 *Oxfam, Briefing Paper*.

³⁵ Office of the United Nations High Commissioner for Human Rights, [Understanding Human Rights and Climate Change](#). Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change

rights context redirects the analysis of the phenomenon in its essential effects on humankind, and since climate change is about suffering, is connected with the harm humans are doing to nature, and with more concrete 'green' crimes. Numerous populations experience the adverse effects of warming temperatures, yet few solutions have been available to them to date. The human rights regime can offer solutions to these injustices, by providing the raw materials for constructing an inter-connected climate justice legal structure.

In summary, the future of climate justice depends on the inclusion of human rights, green crimes, and animal rights on the table of negotiations. We need immediate action in order to prevent disaster scenarios. The human rights regime can offer climate justice the best possible framework for accountability, law-enforcing tools, individual and collective justice claims, and the real and actual implementation of environmental law. Climate change discourse should not be guided solely by environmental law, politics, or in the worst-case scenario by economic interests. As human-inflicted harm to other human beings, it must be addressed as bearing responsibility, and in my view, criminal law and 'green criminology', could also serve as another path to ensuring and restoring justice in the climate justice arena. If we bring human rights standards into our climate justice's future development, then it will be easier to identify those that are under threat and how to protect them. Climate change texts show us a myriad of failings in our existing established design, including the lack of human rights mechanisms. Tackling these drawbacks will involve reform of the global policies, from information-gathering and collective decision-making, and from law-making to practice and enforcement, to resource distribution.

According to the Universal Declaration of Human Rights, 'everyone is entitled to a social and international order in which [their] rights and freedoms ... can be fully realized'.

Climate change interrupts this process and the realization and enjoyment of fundamental human rights.

Human rights, by essence and definition, place limits and barriers to what governments and powerful corporations can do. This is what human rights can bring to the climate justice arena and accordingly contribute to tackling, preventing, and minimizing climate change's harmful effects on humankind, our planet, and all living beings. This is why we should include in the discussion the relevant animal rights voices, and work towards including these arguments in the legal realm.

Things should be called by their name, and the fact is that today we are witnessing the ultimate violation of the human rights of the most vulnerable people. It has been scientifically proven that the area of climate change has an inherent crucial urgency; that climate change and human rights claims are strongly connected; that equity for future generations is a defining legal principle; as well as the necessity to acknowledge clearly, firmly,

and decisively, that the ultimate human rights violation of humankind's known history will be the only thing 'flourishing' due to anthropogenic climate change.

CLIMATE CHANGE AND ANIMAL RIGHTS

It should be made clear, that climate change is not threatening only humanity. Climate change embodies a unique risk to animal life on planet Earth, caused by a single species: Humans (*Homo sapiens*) the highly intelligent primates that have become the dominant species on Earth. "It is well-known that humans will suffer greatly as a result of the continuous climate change over the coming decades and centuries, but the calamitous effects on other animals are often downplayed."³⁶ It is important to understand that climate justice does not refer to the natural occurrence of climate change. We know that nature is on a constant path to change, since the time the ancient Greek philosopher Heraclitus, by observing nature, stepped into a constantly changing river, and said the famous philosophical maxim: "Ta panta rei kai ouden menei", meaning in nature and in life "everything changes and nothing stays the same" it is the natural occurrence and expectable rule of life. However, climate justice is about the damages, harms, and suffering imposed on our planet, and everything that climate entails, like the environment, animals, and non-human animals alike. We need to clarify this and highlight the necessity to address these legal inconsistencies and push for the development of climate justice fairly, by making sure that we include in all discussions, law-making processes, and policy formulations, all affected parties, like animals and non-human animals alike. The problem is that non-human animals and the environment, do not have a seat on the law-negotiating tables, since only humans have their voices heard in the law-making process; consequently, the duty to protect the wellbeing of animals and the environment, falls fairly upon humanity. Therefore, this essay is putting forward these issues and dedicates these last pages to animal rights-based considerations relevant to climate justice, to highlight the gap in international law about these topics, and by underscoring the lack of global regulation, to advocate for the improvement of these inadequacies in the global justice project.

It is not rocket science, to predict that animal health and welfare will be subjected to negative effects and suffering, either directly (e.g. increased risk of heat and cold stress) and/or indirectly (e.g. destruction of suitable habitat, decreasing quantity and quality of food and water, disease, and risk of flood, fire, drought), and so on.³⁷ The present essay, will not discuss any of the problems arising from the normalization of the cruelty-related suffering humans are imposing on animals due to the ways we use them for work, for food, or any other purposes. In this essay, the main issue to be discussed is the lack of animal rights voices in the climate justice

³⁶ Thornes, T., (2016). *Animals and Climate Change*. *Journal of Animal Ethics*, 6 (1):81-88.

³⁷ Lacetera, N., (2019) [Impact of climate change on animal health and welfare](#). *Animal Frontiers* 9:26–31.

field of study. Climate justice needs to address the speciesism characterizing most human-made laws and justice, and challenge the anthropocentric framework of human rights law, to offer alternative ways for the legal tools to improve, evolve, and become the ideal, fair rules of law that they were destined to be. It seems absurd having to discuss the reasons and justifications behind such an argument, since law must be free from politically fueled ideologies or opinions, and aim only to be fair, just, and in accordance with the rule of law. In this sense, animal rights-based considerations, and the protection of animal welfare needs no further justifications from a legal point of view. What is needed at this point, is further advocacy, supported by interdisciplinary research to stir the discussions on climate justice, and in that way ensure animal rights-based voices are included on any table of policy designing, of political negotiations, and law-making processes as part of the development of climate justice. Human rights experts, scholars, and advocates have an extra duty to use their skill set and know-how to assist in the process of including animal rights in the climate justice arena. Human rights and climate justice have gained much ground during the last decade, and now, it is time we take a step forward into the future by adding to any human rights-based work on climate change, apart from the inclusion of environmental law, the unfairly muzzled animal rights dimension, to assist climate justice, develop to the fair system that it was destined to become.

Every living being, every animal, and non-human animal alike will feel the effects of climate change, since climate change harmfully disturbs both land and water environments. "It is expected that many animals have and will continue to suffer and die from these effects."³⁸ From a utilitarian point of view, since animals can experience suffering, and since this suffering is caused by humans, then humans have an obligation to protect the welfare of animals and prevent their anthropogenic suffering. Speciesism³⁹ from a critical legal studies standpoint, needs to be identified when found into law since it violates the rule of law, justice, and fairness. Consequently, any legal rule that was developed according to this philosophical theory, should be labelled as *ultra vires*, to repair the injustices that derive from such a legal rule and restore justice for the current and future generations, mirroring climate justice's mandate. The legal world should, at last, recognize the critical necessity to address and mitigate climate change through approaches including evidence-based policy, legislation, litigation, emission-reducing technologies, and structural changes⁴⁰. Where climate change mitigation strategies pose animal welfare risks, these risks must also be carefully considered, alongside human rights-based assessments and environmental law tools. The common legal practice to date, excluded all animal rights voices, from a rights-based analysis of climate change, but this wrongdoing needs to be addressed and counter-

³⁸ Fey SB et al (2015) Recent shifts in the occurrence, cause, and magnitude of animal mass mortality events. Proceedings of the National Academy of Sciences 112:1083–1088. doi:10.1073/pnas.1414894112.

³⁹ See: Singer, Peter. *Animal Liberation*. New York, N.Y: New York Review of Books, 1990.

⁴⁰ Frank S et al (2019) Agricultural non-CO 2 emission reduction potential in the context of the 1.5°C target. Nature Climate Change 9:66. doi:10.1038/s41558-018-0358-8.

acted, and this essay aims to form a contribution in this direction. Undeniably, the soft law that animal rights are being developed within offers little resources to a legal researcher or advocate, but this reality should not deter us from engaging with this kind of research questions. Although there has been some relevant research in the area, mainly for agricultural/livestock animals, the available literature is rather poor, and inadequate, and it does not deal with these questions holistically, by including all living beings and animals, that lack the opportunity to have their voices heard.

Nonetheless, the existence of animal rights protection laws around the world is a reality that fails to include the value of every living being, since these laws are mainly dealing with livestock, companion animals, animals in captivity, or other animals that have been subjected to cruelty and suffering from either hunting or for entertainment purposes, which is a rather narrow view of the animal kingdom and life on earth other than humanity. This is a fault that it is a matter of time to change. The lack of international consensus on these issues, and the absence of international law, is at least condemnable. This is why I chose to include these questions in my research and contribute to keeping the debates alive and raising awareness of animal rights.

A promising example is the **Universal Declaration on Animal Welfare (UDAW)**⁴¹, which is a proposed intergovernmental agreement to recognize that: animals are sentient; to prevent cruelty and reduce suffering; and to promote standards on the welfare of animals such as farm animals, companion animals, animals in scientific research, draught animals, wildlife, and animals in recreation. If UDAW gets endorsed by the UN, just like the Universal Declaration of Human Rights, then it can form the basis or blueprint for the further development of this legal field in the national legal systems and consequently the legal rules it will give birth to, will offer strong positive laws, with a set of principles that will acknowledge: the importance of the sentience of animals, and the human responsibilities towards them.

Animal rights are gaining ground in international law, and it is important to highlight that animal welfare is an ethical, legal, and at the same time scientific concept, whose lack of protection in international law, is at least condemnable. This is a global problem that requires global regulation, and international law is the best possible system to ensure the protection of animal rights by mirroring human rights law.

For example, anthropocentrism and the “the socially constructed boundary between animals and humans has been shifting and seems blurry.”⁴² This is an optimistic way of viewing the reality of international animal rights protection, however, the climate justice project can push for the legal protection of animal welfare and rights as part of the environmental protection measures and policies in an ecocentric fashion. It is a matter of time for animal rights to be fully protected and respected by the international legal order, and this can only happen

⁴² Anne Peters (2016). Global Animal Law: What It Is and Why We Need It. *Transnational Environmental Law*, 5, pp 9-23.

through collective climate action and advanced advocacy for animal rights. In conclusion, although there is no hard-law treaty protecting⁴³ animal rights, there are national laws and NGO declarations, and moral philosophy which indicate a way forward for international legal scholars. Some voices argue that human rights advocates should join forces with animal rights activists to push for a positive legal change of the current legal frameworks that block and delay the manifestation of climate justice. Human rights defenders and animal rights advocates can learn from each other and under the unifying cause that the climate justice movement offers to our world, to protagonist in the development of climate justice. Animal rights exist only as a gap in international law; thus, global animal law regulations could be fairly developed within the fast-evolving field of climate justice.

CONCLUSION

Over the past 30 years, the European Court of Human Rights played an important role in “greening” human rights law. Although from a climate justice critical perspective, what the ECHR has done so far is too little too late, on the bright side however it is now well-known, recognized and accepted, that environmental damages and protection can be treated and viewed as human rights issues, which is a huge step forward for the climate justice movement. The contribution of legal philosophy and scholarship in the evolution of international law must not be overlooked. The role of legal scholars in pushing for positive legal change in the field of green crimes and international criminal law has been pivotal. Legal scholarship has been instrumental in exposing the inadequacies and shortcomings of law and in providing the necessary tools for dealing with the new green crimes, environmental harms and climate wrongs that derive from abusing natural resources and the unregulated exploitation of our planet due to treating nature as a bank of infinite resources; while at the same time legal scholarship can magnify the impact that law can have in restoring justice by prosecuting international green crimes.

International courts like for example the International Criminal Court or the European Court of Human Rights, will not be able to escape their duty to become the guardians of environmental rule of law forever, since they will need to evolve just like law with the demands of our times, and thus to ensure justice, fairness, and the protection of all life, which in our modern legal understanding must include the protection of the environment. It should be common logic by now, that humans cannot live a life in dignity without “green” in their lives, and thus, the never-ending discussions attempting to discover whether there is value on the anthropocentric or more value on the ecocentric applications of law, are becoming obsolete in light of the realization that the

⁴³ Sparks, T. (2020). Protection of Animals Through Human Rights: The Case-Law of the European Court of Human Rights. In: Peters, A. (eds) Studies in Global Animal Law. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, vol 290. Springer, Berlin, Heidelberg.

Anthropos is part of the ecosystems that the ecocentric approach is aiming to protect, and hence even the ecocentric approaches entail anthropocentric considerations. It seems to me that in most cases we ask the wrong questions, this is why we are presented with insufficient justifications and disappointing answers.

Climate change will be responsible for the end of human rights if the international community fails to act as fast and effectively, as they did during the challenging times of the *Covid-19* pandemic. The seriousness and urgency involved in this arena is a matter of life and death for all parties involved in this essay's discussion, like humans and non-human animals alike, nature and ecosystems. There is an urgent need for inter-disciplinary research in this area, to produce studies of the highest possible standards to eliminate once and for all the conspiracy theories and climate change denial machine that create absurd obstacles in communicating the type of climate emergency our world is under and thus block climate action. Furthermore, to enrich the international literature with scientific articles that should address environmental justice approaches and provide analysis of the exposure of different vulnerable groups – like indigenous peoples, people in poverty, women and children to name but a few of the most vulnerable people in our societies and expose the intersectional unequal risks that these vulnerable groups are threatened by due to environmental and public health harms. What is needed in the climate justice field is to analytically examine climate change harms from a social justice perspective, which ought to be based or better understood as a human rights-based-approach to climate change.

My research on climate justice, human rights, and animal rights aspire to illuminate our problematic understanding of climate change, climate justice, and the harms threatening humanity and future generations, with attributing the necessary respect and value to animal rights considerations. Scholars tend to forget when dealing with these issues, that the humankind is not the owner of this planet and all life forms. Although we tend to conduct ourselves as the entitled owner and protectors of this world, we need to keep it real and acknowledge that the protection we offer is basically against our own kind. Because in the case of climate justice, we do not care about all kinds of natural phenomena or disasters – we care about allocating responsibility to cases where the anthropogenic harms and 'green crimes' result in suffering and contribute to the severity of climate change. For example, the man-made environmental disasters, like: The Dust Bowl, Ecocide in Vietnam, Catastrophe at Chernobyl, The Oil Crisis, Dying Oceans, and the list, sadly, goes on and on. These are harms not only of environmental nature but also of social and legal relevance. Legal experts must advocate against the manipulation of international law's principles, or omissions by law-making organs in the international ring. The human rights regime cannot be applied selectively to newly emerging legislation since it has the mandate of being a superior source of international legal principles. To dismiss human rights arguments from treaty negotiations, when harm to their enjoyment is entailed, is not acceptable by legal theory. Neither to continue with non-binding political agreements, in cases where the threat of harm to humankind is of

incalculable magnitude and range. If a new law is found to be infringing human rights, then it is an ultra vires law and is deemed to be void. There is a great amount of power entailed in the human rights rules, and we need to acknowledge and utilize that force of justice. Surely, a human rights-based political analysis of the international negotiations on climate change cannot offer direct solutions, however, it is necessary to examine them, understand what works and whatnot, and work harder to empower human rights.

Climate change must be addressed in earnest urgency, for the well-being of humankind and future generations. It is critical to ensure that climate change and justice are reconsidered and conceived in a broader manner, which goes beyond the environmental and economic dimensions that have been central to the existing regime. Giving a central place to human vulnerability, and incorporating human rights language in climate change law, is crucial. However, what can be distilled from my essay, is that there is a need to widen the scope and definition of vulnerability, to include all the vulnerable affected parties to this case, like animals and non-human animals alike. This could be accomplished by a wider re-evaluating of differential treatment in the climate change regime, and by ensuring that it better reflects people's and animals' vulnerabilities in the future. The need to produce more in-depth human rights research about climate change needs no further justifications. Climate justice is becoming an integral part of the human rights system, and on this co-dependent relationship is where this article attempted to focus. It seems to me that the only way forward is to foster the evolution of human rights, by pushing for the necessary changes in the international legal world to include topics such as mining, deforestation, ocean degradation and green crimes as violations of human rights, as well as by allowing for the much-needed inclusion of animal rights claims in the international climate justice legal arena.

In summary, I examined whether the future of climate justice depends on the presence of the human rights regime within its workings, while I attempted to conduct a spherical analysis by considering the arguments for and against such an inclusion. The findings of this research concluded that yes, the future of climate justice does depend on whether human rights are an integral part of the climate justice movement. My essay aspires to appeal to legal experts, climate justice scholars, and human rights practitioners, and ultimately to contribute to academia, law, philosophy, and global justice, by filling the gap in the currently available knowledge. But the essence of my interest with this topic of research lies also in acknowledging the duty imposed upon all academia, to dedicate our skills and assist the climate justice field of study to gain the intellectual power that is to-date misplaced, and hopefully to witness a reversal of the climate inaction, which is unjustifiably inactive. It may be easier to grasp the current world reality, by admitting that what climate justice advocates are faced with is an anemic state of the international diplomacy's negotiations; and consequently, work to support the positive development of this type of justice by offering academically sound fuel for further and constructive dialogues

on these matters, by providing well-researched publications that no denial machine could contaminate and devalue.

In closing this paper, I need to add this final reminder to all of us: it is our duty to do whatever we can now to stop emissions both collectively and on a personal level. By adjusting our lifestyles in respect and harmony with the natural environment that we live in, for example, by consuming less meat, energy, and natural resources, and by realizing the policies and suggestions of the scientific community about renewable technologies. We need to digest that the alternative to these small sacrifices that we are called to take is certain extinction, and no other argument can trump this sentence. However, it is imperative to understand that personal responsibility cannot be compared to mass environmental damages, since this kind of logic is fundamentally misleading and dangerous. The severity of mass environmental harms, committed by the Fossil Fuel industry, by oil companies, by armed conflicts or unregulated exploitation of natural resources for profit, cannot be compared with forgetting to switch the light off or closing the water tap. In criminal law we know that crimes are punished differently according to their severity, and it is this realization that should be enough to guide our understanding of this field, since not all humankind is responsible for the oil spills by oil companies nor for the worst effects of climate change that are being felt by the least responsible for this climate crisis. The question that is born at this point however, "Who is responsible for the climate crisis?" is a question that could form the basis for a follow up essay, since it is a very important question that requires very careful examination.

It is interesting to realize that even now, while the world is under the threat of a deadly virus and the extreme measures imposed on human rights due to the pandemic, some critical legal voices characterized the virus as the cure for racism and the "great equalizer", due to the indiscriminatory nature of its reach. This is a very interesting way of looking at things and could be proven to be very useful for human rights theory and law. It is true, that through the common response by governments across the globe, citizens accepted that the only way we can mitigate the risks to public health is by accepting the drastic measures of home isolation, the prohibition of free movement, and travel controls, that made Nature the number one consideration in any public policy and recognized the fragility of the human condition within the cosmos. So, through these extreme measures, we can see the lawmakers and governments, placing nature above any human-made "natural" law implying the superiority of humans and our natural birthright to dominate our planet through violence and use of power. What we are witnessing is the natural evolution of law from its anthropocentric understanding to the inevitable fairer theory of ecocentrism in practice. The utopia here is not about the idealistic demands for justice, but about the short-sightedness of capitalists to understand that they are also susceptible to extinction, while it makes no sense to produce goods when there will be no buying taking place, (no consumers to consume).

The biggest challenge facing humankind today can be summarized in the dilemma of making deep societal and personal changes to either evolve or vanish. Scientists –including me— for the last decades have pointed out that climate change is threatening our planet, and our existence, and promoted immediate climate action. However, these recommendations-warnings met a collective denial boosted by climate denialists’ propaganda which as it has been proven has been financed and funded by the big oil companies⁴⁴ who have immediate interests to continue to pollute and destroy the planet in the name of extra profit and good business.

All the science in the world has proven to not be convincing enough for the political leaders of our world that failed to-date to take strong and immediate climate action and make the necessary changes for protecting the public health, human rights, the rights of future generations, and our home-planet. For example, going through the development of environmental law, like the famous UNFCCC⁴⁵, we can observe the inadequate commitment of the lawmakers to protect our planet. Going through history’s lessons, we can observe that the greatest steps forward for humankind were taken after big disasters. Take for example the Universal Declaration of Human Rights⁴⁶ which was established after the 2nd World War, because of the barbaric crimes against humanity. Our whole political systems today, are based on ideas of power and violence, however, “If we don't do things differently, -after COVID- we're finished” warns leading naturalist Dr. Jane Goodall.⁴⁷

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⁴⁵ See, UN General Assembly, *United Nations Framework Convention on Climate Change: resolution / adopted by the General Assembly*, 20 January 1994, A/RES/48/189, available at: <https://www.refworld.org/docid/3b00f2770.html> [Accessed 15 April 2020].

⁴⁶ See: UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.un.org/en/universal-declaration-human-rights/> [Accessed 10 March 2020].

⁴⁷ World Economic Forum article, Written by Harry Kretchmer, “We're ‘finished’ if we don't change after coronavirus, warns naturalist Jane Goodall”, 17 Jun 2020, www.weforum.org, (Accessed on April 2020).

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