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Climate Change and Human Rights: Unpacking the Issues

DANIEL M. BODANSKY
Emily and Ernest Woodruff Chair
in International Law
University of Georgia School of Law
bodansky@uga.edu

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Climate Change and Human Rights: Unpacking the Issues

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Global warming is expected to contribute to many human wrongs: disease, malnutrition, flooding of coastal communities.¹ But does every human wrong violate a human right? Should we conceptualize climate change not only as an environmental problem – the preeminent one of our time – but also as a human rights violation?

Since climate change first emerged as an international issue in the mid-1980s, it has been addressed primarily through inter-state negotiations, aimed at reaching agreement on reciprocal cuts in national greenhouse gas emissions. In the 1990s, these negotiations seemed to be making progress. States adopted the U.N. Framework Convention on Climate Change (UNFCCC) in 1992 and the Kyoto Protocol five years later, which called for emission reductions by developed countries of roughly 5%, as the first of what was envisioned as a series of sequential cuts. But over the last decade, the UNFCCC negotiations have seemingly stalled, a perception reinforced by the failure of the recent Copenhagen Conference to adopt a new legal instrument. Although world leaders did negotiate a political agreement – the Copenhagen Accord – critics argue that the Accord delivers far too little by way of emissions cuts and, in any event, is non-binding and therefore likely to be ineffective.² Whether right or

* Emily and Ernest Woodruff Chair of International Law, University of Georgia School of Law. Thanks to John Knox for his comments and suggestions. Needless to say, any remaining errors remain my own.

¹ For a general description of the impacts of climate change, see INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY* (2007). For impacts on the United States, see THOMAS R. KARL, JERRY M. MELILLO & THOMAS C. PETERSEN, Eds., *GLOBAL CLIMATE CHANGE IMPACTS IN THE UNITED STATES* (2009).

² For a more positive assessment of the Copenhagen Accord, see my brief essay, *The Copenhagen Conference - A Post-Mortem*, 104 AM. J. INT'L L. ____ (forthcoming 2010).

wrong, this pessimistic perspective on the process of inter-state negotiations has spurred the search for alternatives, including human rights approaches to climate change.

Over the last several years, interest has grown tremendously in the subject of climate change and human rights.³ Litigators have begun to bring claims asserting that climate change is responsible for human rights violations.⁴ The UN Human Rights Council has adopted several resolutions on climate change and requested the High Commissioner on Human Rights to produce a report on the subject, which was published in 2009.⁵ And the academic community has examined the theoretical and practical issues involved.⁶

Proposals to treat climate change as a human rights problem raise many fundamental questions. Theoretically, what does it mean to conceptualize climate change in human rights terms? How would a human rights approach differ from treating climate change as an environmental or economic or scientific problem? Descriptively, what does human rights law say about climate change and, conversely, what does climate change law say about human rights? Normatively, does it make sense to approach climate change as a human rights issue? What are the pros and cons?

³ This literature is part of a broader literature on human rights and the environment, which has proliferated over the last fifteen years. *See generally* JOHN BONINE & SVITLANA KRAVCHENKO, HUMAN RIGHTS AND THE ENVIRONMENT: CASES, LAW, AND POLICY (2008); ALAN BOYLE & MICHAEL ANDERSON, EDs., HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION (1996).

⁴ The most prominent example was a claim submitted in 2005 in the Inter-American Commission on Human Rights against the United States on behalf of Inuits who asserted that global warming was causing violations of their rights to life, health, culture and subsistence. Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (Dec. 7, 2005), available at http://www.earthjustice.org/library/legal_docs/petition-to-the-inter-american-commission-on-human-rights-on-behalf-of-the-inuit-circumpolar-conference.pdf.

⁵ Report of the Office of the United Nations High Commission for Human Rights on the Relationship between Climate Change and Human Rights, UN Doc. A/HRC/10/61 (Jan. 15, 2009).

⁶ *See, e.g.*, STEPHEN HUMPHREYS, EDs., HUMAN RIGHTS AND CLIMATE CHANGE (2010); John H. Knox, *Climate Change and Human Rights Law*, 50 VA. J. INT'L L. 1 (2009); Eric Posner, *Climate Change and International Human Rights Litigation: A Critical Appraisal*, 155 U. PA. L. REV. 1925 (2007); Amy Sinden, *Climate Change and Human Rights*, 27 J. LAND RESOURCES & ENVTL. L. 255 (2007).

This symposium issue of the *Georgia Journal of International and Comparative Law* represents an important contribution to the emerging scholarship on climate change and human rights, with articles by leading experts from around the country. Professor Thomas Pogge, a professor of philosophy at Yale University, considers the broad implications of climate change for human rights.⁷ Marc Limon, the permanent represent of the Maldives to the U.N. office in Geneva, examines the treatment of the subject within the United Nations system.⁸ Professor Naomi Roht-Arriaza of Hastings Law School considers the human rights implications of measures undertaken by states in response to climate change.⁹ Professor Svitlana Kravchenko of the University of Oregon Law School focuses on procedural rights concerning access to information and public participation.¹⁰ And Professor Rebecca Bratspies of the City University of New York School of Law looks at the role of human rights norms in domestic regulatory decision-making.¹¹ In this brief introductory essay, I will seek to map out the overarching distinctions and questions, in order to frame the more detailed studies that follow.

1. *What distinguishes a human rights approach to climate change?*

Despite the ballyhoo about climate change and human rights, it is not completely clear how much and in what ways a human rights perspective on climate change differs from an environmental perspective. The policy debate about climate change has always focused on its human impacts – the harms to coastal communities, drought-prone areas, agriculture, human health, and human welfare more generally. What, if anything, does a human rights approach add to our understanding of the issues and choices involved?

⁷ Cite

⁸ Cite

⁹ Naomi Roht-Arriaza, *“First Do No Harm”: Human Rights and Efforts to Combat Climate Change*, *infra* ...

¹⁰ Svitlana Kravchenko, *Procedural Rights as a Crucial Tool to Combat Climate Change*, *infra* ...

¹¹ Rebecca M. Bratspies, *The Intersection between International Human Rights and Domestic Environmental Regulation*, *infra* ...

For example, is human rights law more absolutist than environmental law? Do human rights serve as trumps, rather than merely as factors that must be balanced along with other costs and benefits in the policy equation? Do they have “lexical priority,” as philosophers put it?¹² Perhaps so in the case of civil and political rights – although even some civil and political rights can be derogated from in times of national emergency, reflecting a less-than-absolutist approach.¹³ In any event, economic and social rights clearly do not always trump other priorities; that is why they must only be “progressively realized.” The relatively few environmental cases that have been decided thus far by international human rights tribunals recognize that “states have discretion within wide limits to determine how to strike the balance between environmental harm and the benefits of the activities causing it.”¹⁴ Conversely, environmental law itself sometimes takes an absolutist stance by banning hazardous activities altogether, rather than balancing their costs and benefits.

A related feature of human rights law sometimes characterized as distinctive is its focus on thresholds.¹⁵ Even if states have an obligation only to “progressively realize” environmental rights, there are minimum threshold levels to which people have a right and which states must therefore achieve. As Henry Shue puts it, “Basic rights are the morality of the depths. They specify the line beneath which no one is allowed to sink.”¹⁶ To the extent that climate change results in human rights violations, then different levels of greenhouse gas emissions do not represent a continuum; instead, there is a maximum permissible level of emissions.

Again, however, an emphasis on thresholds does not distinguish human rights law from environmental law. Environmental law also frequently defines minimum or maximum thresholds. For example, the UNFCCC defines its objective in terms of a maximum threshold level of greenhouse gas

¹² Simon Caney, *Climate Change, Human Rights and Moral Thresholds*, in HUMPHREYS, *supra* note 6, at 69, 73.

¹³ See, e.g., International Covenant on Civil and Political Rights art. 4(1) (allowing derogations “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed”).

¹⁴ Knox, *supra* note 6, at 35 (surveying the existing case law).

¹⁵ Caney, *supra* note 12, at 72.

¹⁶ HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY* 18 (2d ed. 1996).

concentrations, above which dangerous climate change would occur.¹⁷ The Copenhagen Conference supplements this concentration threshold with a temperature change threshold – i.e., no more than 2° C.¹⁸

These overlaps notwithstanding, human rights regimes do tend to be more legalistic in nature than international environmental regimes.¹⁹ Significantly, the paradigmatic institution established by human rights treaties is the expert committee, composed largely of lawyers. In contrast, the central institution established by international environmental agreements is the conference of the parties, whose primary task is political, namely to direct the implementation and evolution of the regime. Even the more specialized implementation committees established by some international environmental agreements are generally composed of government rather than independent experts, and take a political rather than a strictly legal approach to compliance questions.

The more obviously “political” character of international environmental regimes is reflected not only in their institutional and procedural arrangements, but also in their substantive obligations, which often reflect political compromises struck in order to achieve agreement. Of course, human rights agreements also are the product of negotiation, but with an important difference. In human rights agreements, the end point of the negotiations is a common core of human rights to be respected. In contrast, international environmental negotiations often involve a process of outright horse-trading that, on the one hand, results in different requirements for different countries, but, by virtue of that fact, allows more stringent and specific requirements to be adopted than would otherwise be possible.

Another important difference between international environmental law and human rights law is that international environmental law depends on reciprocity while human rights law does not. International environmental law is grounded in the need for mutual action. Most international environmental

¹⁷ UNFCCC art. 2.

¹⁸ Copenhagen Accord para. 2, UN Doc. FCCC/CP/2009/L.7 (Dec. 18, 2009) (recognizing that deep cuts in emissions are required “so as to hold the increase in global temperature below 2 degrees Celsius”).

¹⁹ This paragraph and the next two are drawn from Daniel Bodansky, *The Role of Reporting in International Environmental Treaties: Lessons for Human Rights Supervision*, in *THE FUTURE OF THE U.N. HUMAN RIGHTS TREATY SYSTEM* 361 (Philip Alston & James Crawford, eds., 2000).

problems – including climate change – cannot be addressed by individual states acting alone; they require collective effort. In contrast, human rights obligations do not depend on reciprocity. States owe obligations not only to one another, but to individuals; moreover, one state's respect for human right does not depend on, and may not be conditioned on, compliance by other states.

2. *What is the appeal of human rights approaches to climate change?*

Regardless of the degree to which a human rights approach to climate change is conceptually distinctive, it offers a number of practical advantages over the inter-governmental negotiating process that make it attractive to environmentalists. To begin with, if the activities that contribute to climate change violate human rights law, then we don't need to wait for governments to agree to cut their emissions (akin to waiting for Godot); our current practices are illegal already. We can make legal arguments right now, under existing law, about what countries *must* do, not simply policy arguments about what they *should* do.

Human rights law promises not only legal arguments but also forums in which to make those arguments. In contrast to international environmental law, where dispute resolution mechanisms are in short supply, human rights law is full of tribunals to hear complaints and *rapporteurs* to investigate more general situations.²⁰ These procedures give victims of climate change, who generally have little influence in the inter-governmental negotiations, a forum in which they possess greater power.²¹

²⁰ Potential forums include, at the global level, the Human Rights Committee established by the International Covenant on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights established by the International Covenant on Economic, Social and Cultural Rights. Regional tribunals include the Inter-American Commission and Court of Human Rights and the European Court of Human Rights. In addition, claims could potentially be pursued in national courts – for example, in the United States under the Alien Tort Statute. *See generally* WILLIAM C.G. BURNS & HARI M. OSOFSKY, EDs., *ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES* (2009).

²¹ Sinden, *supra* note 6, at 17. As Rachel Bratspies notes, ExxonMobil earned \$45.2 billion in 2008, giving them political influence that victims of climate change cannot match. Bratspies, *supra* note 11.

Moreover, by focusing on the harms suffered by particular individuals and groups, human rights procedures help put a human face on climate change and make the impacts more concrete. Politicians have long intuited that people respond more to individual stories than to general statistics.²² Human rights cases serve as a vehicle for telling the stories of those victimized by climate change. As the International Council on Human Rights Policy observes, “Lawsuits draw attention to harmful effects that might otherwise remain below the public radar, put a name and face to the otherwise abstract suffering of individuals and provide impetus and expression to those most affected by the harms of climate change. They can thus mobilize public opinion in support of policy change.”²³

More generally, characterizing something as a human rights problem elevates its standing relative to other issues. It gives the problem greater moral urgency and appeals to an additional constituency beyond environmentalists. In this regard, it serves a similar function as efforts to characterize climate change as an energy security or military security problem. As “merely” an environmental problem, climate change may not muster the political will necessary for costly actions to reduce emissions; but if climate change is a security problem – or a human rights problem – then perhaps people will be more willing to act.

3. *Does climate change violate human rights?*

It is sometime said that climate change violates human rights.²⁴ If this is simply a shorthand way of saying that climate change will affect the realization and enjoyment of a variety of widely recognized human rights, then it is very likely true. Although the extent and nature of these harms are still unclear and will vary from region to region, climate change is likely to affect the right to life, the right to adequate food and water, the right to health, and the right to self-

²² As Joseph Stalin is said to have remarked, “The death of one man is a tragedy. The death of millions is a statistic.”

²³ INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY, *CLIMATE CHANGE AND HUMAN RIGHTS: A ROUGH GUIDE* 41 (2008).

²⁴ *See, e.g.*, THEODOR RATHGEBER, *CLIMATE CHANGE VIOLATES HUMAN RIGHTS* (2009).

determination, among others.²⁵ Some of the harms are caused by climate change directly – the heat wave that struck Europe in 2003 was directly responsible for tens of thousands of deaths from cardiovascular and respiratory diseases. Other effects are indirect. For example, global warming is expected to result in more intense storms, increased drought, water shortages, and flooding of coastal areas, which in turn may result in malnutrition due to heat- and drought-related crop losses, disease due to changed disease vectors and lack of access to clean drinking water, and loss of homes and means of subsistence due to flooding and extreme weather events. Tragically, the biggest impacts are expected in poor regions of the world such as Africa and Bangladesh, where people are most vulnerable, have the least capacity to adapt, and are least responsible for having caused the problem in the first place.

To the extent that conceptualizing climate change as a human rights problem serves a symbolic or political function, then identifying these human harms may be enough. In essence, the argument is that climate change will severely impact the enjoyment of important human rights. Therefore we need to prevent it.

But although this reasoning may be compelling as a policy argument, it is insufficient as a legal argument. Legally, climate change no more violates human rights violation than does a hurricane, earthquake, volcanic eruption, or meteor impact. Human rights are “human” by virtue of not only their victims but also their perpetrators. And they represent human rights “violations” only if there is some identifiable duty that some identifiable duty-holder has breached. As John Knox notes, “Not all infringements of human rights violate legal obligations; human rights may have ethical or moral import without having correlative duties under human rights law.”²⁶ Thus, in considering the connections of human rights and climate change, we need to focus as much if not more on the nature of the duties involved as the nature of the rights.²⁷

²⁵ WORLD HEALTH ORGANIZATION, PROTECTING HEALTH FROM CLIMATE CHANGE (2009); Caney, *supra* note 12, at 75-83.

²⁶ Knox, *supra* note 6, at 3.

²⁷ For an excellent exploration of human rights duties relevant to climate change, *see id.*

4. *Are there human rights duties to prevent or limit climate change? And, if so, who owes what duties to whom?*

In thinking about possible duties to limit climate change, it is useful to separate three issues: first, the types of duties involved; second, the bearer of these duties; and third, the beneficiary of the duties (that is, the holder of the correlative rights). Or, to put it simply: what, who, and to whom.

What types of duties might exist to limit climate change? Human rights scholars often distinguish between duties to respect, protect, and fulfill.²⁸

The duty of states to respect human rights is the most familiar and the least controversial. States may not act in ways that deprive individuals of their rights. For examples, states may not engage in torture, commit extrajudicial killings, or deliberately starve civilians. These negative duties are duties to refrain from particular types of actions. In the climate change context, the duty to respect has implications for government activities that directly contribute to climate change – for example, emissions of carbon dioxide from government facilities and from military activities. It might also apply to government decisions regulating private conduct – for examples, decisions about whether to grant oil leases, which Rebecca Bratspies examines in her contribution to this symposium issue.²⁹ As Bratspies explores, a human rights framework suggests that governments should consider, in making regulatory decisions, both substantive rights such as the right to a healthy environment, as well as procedural rights to information, assessment, and participation, which in general provide stricter and clearer duties, with less deference to government balancing.

In contrast to the duty to respect – a primarily negative duty not to engage in actions that adversely affect the enjoyment of a human right – the duty to protect is a positive duty that potentially requires states to prevent non-governmental actors from infringing on human rights.³⁰ For example, the

²⁸ *Id.* at 9-11, 18.

²⁹ Bratspies, *supra* note 11.

³⁰ See, e.g., *Oganiland Case*, Comm. No. 155/96, ¶ 57 (African Comm'n on Human & Peoples' Rights 2001) (states have a duty to "protect [their] citizens ... from damaging acts that may be perpetrated by private parties"); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96 doc 10 rev. 1 at 88 (April 24, 1997) (states have "an obligation ...

Convention on the Elimination of Racial Discrimination not only prohibits states from engaging in discrimination themselves; it also requires states to protect individuals against private discrimination, for example, through the enactment of anti-discrimination laws. Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) has found that the right to health imposes a duty to formulate and implement policies to promote health. In the context of climate change, the duty to protect could include a duty to regulate private emissions that contribute to climate change, as well as a duty to undertake adaptation measures to limit the harms caused by global warming. Important question regarding the duty to protect include: Is the duty one of due diligence, negligence, or strict liability? To what extent may a state balance protecting human rights against other important societal objectives? And to which activities does the duty apply – only activities within a state’s territory or also activities by its nationals elsewhere?

In addition to the duties to respect and protect, some argue that human rights law imposes a duty to take positive steps to fulfill or facilitate the satisfaction of human rights. For example, the CESCR has found that the International Covenant on Economic, Social and Cultural Rights requires states “to adopt appropriate legislative, administrative, budgetary, judicial, promotion and other measures towards the full realization of the right to health,” including “national policies aimed at reducing and eliminating pollution of air, water, and soil.”³¹ According to the CESCR, states have a duty, “at the very least,” to “ensure the satisfaction of minimum essential levels” of economic, social and cultural rights.³² Similarly, pursuant to a duty to fulfill, rich states might have a duty to provide assistance to poorer states to help them mitigate or adapt to climate change.

to take reasonable measures to prevent such risk [to life or health] or the necessary measures to respond when persons have suffered injury”). See generally Knox, *supra* note 6, at 10-11, 17-19; John Ruggie, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/5, ¶¶ 27-50 (Apr. 7, 2008).

³¹ CESCR General Comment 14, *The Right to the Highest Attainable Standard of Health*, ¶¶ 33, 36, UN Doc. E/C.12/2000/4 (2000).

³² CESCR, General Comment 3, *The Nature of States Parties’ Obligations*, UN Doc. E/1991/23 (Dec. 14, 1990), ¶ 10.

Since climate change is attributable primarily to emissions by private actors – the utilities that generate electricity and the individuals who use it, the companies that manufacture products and the consumers who buy them, the auto companies that make cars and the individuals who drive them – a crucial question is whether the duties to respect, protect and fulfill apply to private actors as well as states. International criminal law demonstrates that international law can in some case impose duties directly on individuals, and some have proposed that corporations have duties to respect human rights.³³ So, at least in theory, human rights law could impose a duty on private actors to respect human rights by limiting their emissions of greenhouse gases.³⁴ But generally, human rights law – like international environmental law – imposes duties on states rather than on corporations. If this is true of climate change, then human rights law limits the activities of non-state actors only to the extent that states have a duty to protect against climate change by regulating private activities.

Finally, to whom are the duties to respect, protect and fulfill owed? Are they owed only to individuals (and possibly groups) within a state's territory? Or do they extend to people in other countries, giving them correlative rights? Generally, the answer to this question depends on whether human rights law applies extraterritorially, when a government or a company acts in another country. But, in the climate change context, defining the geographic scope of the rights holders is necessary even when a government acts, or fails to act, within its territory, since greenhouse gas emissions do not respect borders: emissions purely within a state's territory affect the enjoyment of human rights by people everywhere. Do the extraterritorial effects of greenhouse gas emissions mean that states owe duties to respect and protect to people throughout the world? And, if there is a duty to fulfill, is the same true of it? Do states have a duty to provide assistance internationally?³⁵ These are crucial

³³ See Stephen R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001).

³⁴ See Peter Newell, *Climate Change, Human Rights and Corporate Accountability*, in HUMPHREYS, *supra* note 6, at 126.

³⁵ Article 2 of the International Covenant on Economic, Social and Cultural Rights requires states "to take steps, individually and through international assistance and cooperation ..., with a view to achieving progressively the full realization of the rights recognized in the present Covenant." But, as Stephen Humphreys notes, "the extent to which this exhortation comprises an obligation remains

questions in fleshing out the interconnections between climate change and human rights.³⁶

5. *What are the human rights implications of actions to combat climate change?*

Thus far we have been considering the impacts of climate change itself on the enjoyment of human rights. In addition, the measures undertaken by states and private actors in response to climate change may affect human rights, as Naomi Roht-Arriaza considers in her contribution to this symposium issue.³⁷ Policies to slow deforestation or to increase reforestation, for example, could affect forest communities. The use of corn to produce ethanol could raise the price of agricultural products. And investments in expensive new emissions control technologies could divert resources from other uses and undermine a country's ability to develop.

Analyzing these response measures from the perspective of human rights is in many ways more familiar and straightforward than analyzing the impacts of climate change itself. When a government acts to combat climate change, it must do so in ways that respect human rights. In this regard, measures to combat climate change are no different from measures to combat terrorism or crime. Forest policies, for example, should respect indigenous rights, biofuel policies should respect the right to food, and so forth. More controversially, some have proposed that climate change policy distinguish between "luxury emissions" and "subsistence" or "survival" emissions, which should not be cut

deeply contested." Stephen Humphreys, *Introduction: Human Rights and Climate Change*, in HUMPHREYS, *supra* note 6, at 10.

³⁶ See generally MARK GIBNEY & SIGRUN SKOGLY, EDs., *UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS* (2010). For an excellent discussion of these issues in the context of climate change, see Knox, *supra* note 6, at 40-52.

³⁷ Roht-Arriaza, *supra* note 9; see also Knox, *supra* note 6, at 38-40.

because they are necessary for the enjoyment of basic human rights to food, water, and shelter.³⁸

Human rights law not only recognizes substantive rights such as the rights to life and to food, it also recognizes procedural rights such as the right to information and the right to participate in government decision-making processes. As Svitlana Kravchenko considers in her contribution to this symposium issue,³⁹ these procedural duties have obvious implications for the processes by which governments make decisions about their climate change response strategies both nationally and internationally.

6. *Does a Human Rights Approach to Climate Change Make Sense?*

In addition to the conceptual question (what does it mean to conceptualize climate change in human rights terms?) and the descriptive question (what does human rights law say about climate change?), there is the normative question: What *should* human rights law say about climate change, if anything?

As critics note, human rights approaches come at a cost.⁴⁰ Climate change mitigation involves tremendously complex tradeoffs between different values. Focusing on particular individuals or cases can obscure these tradeoffs, making sensible policymaking difficult, and fails to take account of the need for collective action to address climate change. Moreover, as a practical matter, attributing particular harms to climate change is difficult, and tracing the causal connections between emitters and victims even harder. As Eric Posner notes, “it would be impossible for a victim of global warming to show that one particular corporation or factory caused his injury. Any theory would need to allocate liability on the basis of market share or some other proxy for degree of

³⁸ Henry Shue, *Subsistence Emissions and Luxury Emissions*, 15 LAW & POL’Y 39 (1993); see also PAUL BAER, TOM ATHANASIOU & SIVAN KARTHA, *THE RIGHT TO DEVELOPMENT IN A CLIMATE CONSTRAINED WORLD* (2007) (proposing a “greenhouse development rights” framework).

³⁹ Svitlana Kravchenko, *supra* note 10.

⁴⁰ Posner, *supra* note 6.

responsibility, and although American courts sometime do this, the difficulties of using such theories for global warming are considerable.”⁴¹

Nevertheless, given the importance of the climate change issue and the slow pace of the international negotiations, there is much to be said for the attitude, let a thousand flowers bloom. Ultimately, solving the climate change problem will depend on government regulation or technological developments or some combination of the two. But, in the meantime, human rights approaches can help mobilize public concern and prod the political process. They can play an important role, even if they cannot solve the climate change problem alone.

Whatever our view of the role of human rights approaches to climate change, it behooves us to better understand the interrelationships between the two. This symposium issue makes an important contribution to this effort.

⁴¹ *Id.* at 1934.