

Ten Practical Advantages of a Human Rights Approach to Environmental Advocacy¹

This paper argues that including a human rights dimension in environmental advocacy brings distinct practical advantages that are not as available when relying only on other ethical approaches. The paper describes three practical measures used in environmental human rights work and ten practical advantages of using those measures.

Introduction

Environmental advocacy is hard work. It is challenging, often discouraging and requires drawing, when possible, on deep reserves of perseverance and resilience.

Environmentalists often contend with enormously powerful industries -- forestry, agriculture, oil and gas, etc -- and with powerful government interests. Industry and governments are sometimes both responsible for environmental damage, one by inflicting and one by permitting it. Industries and governments exert their power sometimes in transparent and sometimes in clandestine ways, sometimes in ethical and sometimes in unethical ways. Both industry and governments have enormous resources at their disposal while environmentalists are often poorly funded (or unfunded) and have few available resources. The interests of industry are often self-serving (meeting their legal mandate to return a profit to their owners) and the interests of governments are sometimes aligned with those of industry.

In the face of such power and with a long history of losses at the hands of that power, it is easy for environmentalists to feel discouraged or hopeless and for impacted communities to feel dispirited and believe there is little they can do to effect meaningful change. This paper argues that a human rights approach can help.

Second premise claims

If David Hume is right in his argument that no "ought" can be derived from an "is," i.e., that no factual state of affairs necessarily implies what actions should be taken, then it follows that every practical argument requires a second premise which posits a value claim before it draws its "therefore this should be done" conclusion. Among the value claims available, this paper argues that a second premise which brings human rights and environmental justice² norms to bear on environmental issues provides significant practical advantages and gives communities an opportunity to take back initiative and re-enliven hope.

An aside: this paper might be seen as a small fragment of a contribution to the still-unnamed-and-yet-to-emerge minor subfield of Ethics that examines the

functional efficacy of ethical systems, i.e., the power of any given ethical system, quite apart from its philosophical validity or ethical worth, to effectively move, influence or incline behavior, and to instill caring about moral behavior.

Determining which second premise value approaches are more likely to be efficacious is not a trivial or unimportant question, especially in an age when worrisome environmental and planetary processes are so far advanced and time is of the essence. The practical efficacy of environmental value claims grows more important each day,³ and this paper's thesis is that including human rights and environmental justice norms as one of those value claims offers practical advantages in several different dimensions.

What is a human rights approach?

A human rights approach is a moral appeal to parties to do the right thing, based on broadly recognized standards of just behavior expressed in internationally recognized human rights declarations, covenants, conventions and charters. (This moral appeal may also at some point be backed up by human-rights-based legal action.) This paper views the standards expressed in the *Universal Declaration of Human Rights* and the declarations, covenants and conventions that arose from it -- those on the rights of women, rights of children, rights of indigenous peoples, etc -- as broadly endorsed public expressions of moral norms.

Other second premise value claims clearly have practical advantages as well. A utilitarian or consequentialist approach has the advantage of speaking in more or less the same terms as the cost-benefit approach so commonly used by industry and governments. Theological value claims that appeal to the biblical mandate to exercise dominion (or stewardship) over the earth have the advantage of viewing the earth in a manner similar to those who see the instrumental value of "natural resources" managed for human benefit, as well as the advantages that accrue to using a rhetoric of divine mandate. Second premise claims based on compassion for the earth's fauna, flora and ecosystems have the advantage of appealing (if Buddhism and Schopenhauer are correct) to a deep metaphysical, perhaps biological, something at the structural basis of all life. Each of these approaches has its own set of advantages and will appeal to certain groups and worldviews, and the more people who are persuaded the better.

The human rights approach, though, has some unique advantages, to which we turn after a brief survey of three practical human rights tools.

Practical tools

Powerful tools a human rights approach can use include:

1. Telling the story. Simple, clear personal accounts of direct impacts that environmental assaults have had on individuals, families and communities can be collected, documented and publicized. This "situated knowing" of personally impacted witnesses helps to awaken moral imagination and to evoke the compassion and outrage that will be necessary for change.

Claims of injury or harm in these stories may need to be substantiated by reference to scientific studies and/or expert testimony, just as the moral intuitions about right and wrong will be substantiated by reference to human rights norms.

2. Claiming moral authority. Providing advocates with well researched human rights assessment reports for their specific situation can help clarify the moral dimensions and values at stake, as well as potential pressure points. Foregrounding and documenting specific human rights standards that are particularized for that situation can publicly validate the felt sense of injustice and can legitimize the sense of outrage experienced by those whose lives have been directly impacted.

The work of the non-profit NGO I direct, Environment and Human Rights Advisory, is to evaluate the human rights dimensions of environmental projects undertaken by private industries and governments, and to prepare human rights assessment reports⁴ for them or for environmental organizations that are dealing with them. The reports are detailed and specified to the particular situation, noting which particular human rights norms are applicable, why they are applicable, what potential liabilities that project might face and what measures the industry or government could take to reduce those liabilities.

3. Exercising moral power. Community led public **Inquiries**,⁵ such as New Zealand's 2006 "People's Inquiry into the impacts and effects of aerial pesticide spraying over urban areas of Auckland,"⁶ and public **Tribunals**⁷ like the Permanent People's Tribunal Session on Agrochemical Transnational Corporations held in Bangalore, India in December 2011,⁸ can be both educative and powerful.

Since both formats, i.e., Inquiries and Tribunals, are community-initiated and led (not government-initiated), they can be structured to insure that the voices of those who have been impacted are adequately heard, understood and entered into the public record.

In addition to organizational and funding challenges, all three of these tools do require significant promulgating and publicizing to create their full effect, and this can be a challenge. When the Permanent People's Tribunal, for example, issued its final verdict in the spring of 2012 finding the six major Transnational Agrochemical Corporations and their host states guilty of "gross, widespread and systematic violations" of human rights standards, activists still found it difficult to persuade governments to acknowledge receiving the verdict and to issue a statement about it. And yet the success of these methods does depend on such promulgation and public response.

And now to the practical advantages.

A human rights approach:

1. **provides a novel reframing of environmental issues.**

In addition to the inherent moral value of human rights and environmental justice norms, they also put into play a narrative for which industry and governments do not yet have a well-rehearsed response. (This particular advantage, the novelty of the human rights frame, is somewhat time-sensitive, of course, and may appear less of an advantage if industry were to develop some rhetorically plausible response.)

2. **reduces the problem of moral relativism.**

Whenever ethical questions are under discussion the problem of moral relativism raises its provocative head: "There are different moral norms all over the world, who's to say what's right or wrong, one person's good is another person's bad," and so on. With the emergence of the *Universal Declaration of Human Rights*, though, all that changes a bit simply because of the moral authority that attends the unprecedented widespread public endorsement of these standards. The *UDHR* represents the first time in history that a document about moral values has been conceived, written and endorsed by representatives of virtually every nation on earth. René Cassin, one of the drafters of the *UDHR* (who, for his work, was awarded the Nobel Peace Prize in 1968), is quoted as saying that, with the *UDHR*, 'something new...entered the world'. It was, he said, "the first document about moral value adopted by an assembly of the human community."⁹

Simply being broadly accepted, of course, does not mean that the moral standards represented in human rights documents are necessarily "valid" or "true." It only means that they are broadly accepted. Still, the *UDHR*, along with the covenants and conventions that have followed from it, have a uniquely broad and powerful moral standing across the world in such a way that invoking human rights norms as moral standards may not be dismissed quite as readily as invoking other moral standards whose appeal may be more limited to certain groups or worldviews.

3. **thinks from the bottom up.**

With the emergence of the modern human rights movement we have begun to see things from the "situated knowing" perspective of those who suffer the abuses, and not just from the standpoint of the corporations or government regulators who are inconvenienced by that suffering. As Dietrich Bonhoeffer has said so clearly in the oft quoted words from his *Letters and Papers from Prison*, "We have for once learnt to see the great events of world history from below, from the perspective of the outcast, the suspects, the maltreated, the powerless, the oppressed, the reviled - in short, from the perspective of those who suffer."¹⁰

The modern human rights movement, which expresses the moral dimension of how things look "from below," foregrounds those personal narratives which can evoke and engage the kind of compassion that is essential for genuine change. As columnist Carol Pierson Holding noted in a recent column on climate change, "It's the sight of human suffering that galvanizes citizens to action."¹¹

4. **has less ethical "slippage."**

The term "slippage," at least when applied in an ethical context, might be unfamiliar to most ethicists, but the concept probably is not and the experience isn't either. The term refers to that space of interpretability, the little leap in every ethical system between a guiding ethical principle and the specific acts chosen to live out that principle in a given situation. Practical wisdom ("prudentia") is said to be the virtue or art of making wise practical choices when taking that existential leap from the general principle to a specific embodied action, and slippage is what makes practical wisdom so challenging.

Slippage in an ethical situation is analogous to what your auto mechanic refers to as "slop" in a gear train, as in the connection between your steering wheel and the front wheels. If we think of the steering wheel as the ethical principles used to guide life choices -- such as "Act as the virtuous person would act" -- then we can think of the front wheels, where the rubber meets the road, as the actual specific choices a person makes about what they will do in that situation.

Ethical standards that have relatively more slippage -- such as "Choose the path with greater benefits and fewer costs" -- are also, like putty, more easily squished into a wide range of shapes and, like silly putty, tend to pick up the tint and taint of whomever is using them, just as silly putty picks up the image and colors of the comic strip it is pressed onto.

It is this paper's contention that a human rights and environmental justice approach to environmental issues will have somewhat less ethical slippage, largely because the ethical standards articulated in human rights documents -- the "right to free, prior and informed consent," for example -- are more specific than many of the more general principles found in other ethical systems.

It is not that human rights norms have no slippage at all -- even "No one shall be subjected to torture"¹² has room for interpretability, as public debates in the US in recent years have shown -- only that human rights norms, because of their greater specificity, have a lower slippage quotient.

5. **appeals to compassion**

If Schopenhauer and Buddhism are right, compassion ("mitleid" in the German, from "leid," suffering) is the primary, or perhaps sole, motivator for ethically meaningful action. Schopenhauer and Buddhism see compassion as ontologically grounded; others see it as biologically or genetically grounded. In either case the experience of empathic connection with the suffering of others is not epiphenomenal but is in some deep way fundamental to human experience, and it is the human rights tradition, particularly with its high regard for the importance of personal narratives, that evokes and foregrounds the experience of compassion.

6. **is educative**

A human rights approach, even when it does not completely succeed in

accomplishing the intended goals of its current project, can still serve the purpose of educating people both about the current issue and about the value of human rights norms in general.

7. provides an effective vocabulary.

Human rights discourse provides a long established and well rehearsed vocabulary of broadly respected and persuasive language with genuine rhetorical power. A 2007 public opinion research survey found that human rights language had broad public appeal,¹³ and a subsequent document based on that study, *Talking Human Rights in the United States: A Communications Toolkit*, provides "ideas, recommendations, and best practices"¹⁴ for promoting human rights in the US.

8. helps with despair.

Environmental advocacy can be discouraging and overwhelming, and it sometimes seems that the more one knows about all sides of a given issue, the more discouraging and hopeless the problem can feel. This is the "you-can't-fight-city-hall syndrome," or the "what-can-anyone-really-do syndrome," or the "butting-your-head-against-a-brick-wall syndrome," though I prefer Sandra Steingraber's, "well-informed futility syndrome." It refers to the feeling that "resistance is futile," an impression often encouraged by industry and regulatory agencies (as well as by the Borg), and sometimes the longer you have worked on an issue and the more well informed you are, the more futile it can feel.

A human rights approach can help with this feeling of hopelessness and futility when going up against the very powerful because the three practical methods mentioned above -- personal narratives, human rights reports and public hearings and tribunals -- can be so effective at foregrounding the personal human impacts, and because they empower communities to take initiative even when the regulatory agencies will not. Appeal to widely recognized human rights norms can also provide both personal and public validation of a community's sense of being wronged by environmental assaults, and in that way can re-energize communities that have lost hope.

9. sometimes just works.

And sometimes the power of personal narratives, combined with a formal human rights report addressed to the relevant industry or agency, just simply works. A small community on the Oregon coast, for example, was facing an upcoming aerial pesticide spray immediately adjacent to the city boundaries and near schools and neighborhoods, despite community opposition. The community commissioned a human rights assessment and asked that it be addressed to the forestry company that was arranging the spray. Shortly after the report was sent, the company agreed to forego their planned aerial spray and instead use the less risky (and lower volume and less drift-prone) backpack spray method instead, as the community had originally requested.

10. has advantages in law.

Our discussion so far has focused entirely on human rights standards as

moral rather than as legal norms. However, if an issue did move to the legal sphere (no small feat) individuals would have three advantages in international human rights courts that they may not enjoy in domestic courts:

1) Every individual is considered to have legal standing in international human rights courts, which eliminates one of the larger obstacles to having a case heard.¹⁵

2) Standards of proof in international human rights courts favor the plaintiff over the state. As Picolotti and Taillant explain in their book, *Linking Human Rights and the Environment*, “Unlike most national courts, the [Inter-American] Commission and Court have *low* standards of proof,”¹⁶ sometimes admitting circumstantial evidence. This can benefit plaintiffs who often have less than perfect evidence to support claims of causality and health effects.

3) The burden of proof is on the state in such an action, rather than on the plaintiff, even though the state would be the defendant.¹⁷ This means that facts presented by the claimant would be presumed true unless proven otherwise by the state.

Conclusion.

A human rights and environmental justice approach does have *disadvantages* too, of course, just as do other second premise claims. It is clearly anthropocentric, for example, and may not appeal at all to more traditional ecocentric environmentalists.

And yet, given the immense challenges of today's environmental advocacy and its efforts to protect the planet and its peoples from often unresponsive industries and governments, it is no surprise that environmentalists would look for additional value approaches that might have high potential for effectiveness. Traditional utilitarian, ecological, economic and public health approaches certainly do have their merits and functional advantages, but what this paper has argued is that adding a human rights dimension to the mix offers significant and unique advantages from which other approaches might benefit.

Tom Kerns, Director
Environment and Human Rights Advisory

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² Article 26 of the Convention on Civil and Political Rights reads: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground...”

The basic principles of environmental justice (a human rights standard that has acquired particular saliency in the environmental movement) require that those communities that are disadvantaged in any way – socially, economically, as a result of discriminatory racial policies, etc., or who simply have less ready access to social and economic resources – be accorded the same

degree of respect, fair treatment and opportunity for meaningful involvement in decision-making as communities that are more socially or economically advantaged and have greater access to resources. As explained on the Environmental Protection Agency website, "Fair treatment means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of...negative environmental consequences." <http://www.epa.gov/region1/ej/> Accessed May 24, 2013

³ "environmental organizations have grown in strength and sophistication, but the environment has continued to go downhill, to the point that the prospect of a ruined planet is now very real." Speth, James G, *Rachel's Democracy & Health News* October 23, 2008.

http://www.precaution.org/lib/08/prn_dhn081023.htm Accessed May 24, 2013.

⁴ Gratis.

⁵ For a short description of Inquiries see

<http://environmentandhumanrightscourse.info/lecsite/CitsInquiry.html>

⁶ <http://www.peoplesinquiry.co.nz/index.php>. Accessed 5-24-12

⁷ For a short description of Tribunals see

<http://environmentandhumanrightscourse.info/lecsite/CitsTribunal.html>

⁸ <http://www.agricorporateaccountability.net/>. Accessed 5-24-12

⁹ J Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999) p 33.

¹⁰ D Bonhoeffer, *Letters and Papers from Prison* (Kindle Locations 353-355), 1953, 1997, Simon & Schuster, Inc.. Kindle Edition.

¹¹ Carol Pierson Holding, "Could Summer's Devastation Provoke Environmental Action?", Huffington Post, 7-19-12, http://www.huffingtonpost.com/carol-pierson-holding/climate-change-action_b_1681200.html, accessed 7-19-12.

For an analysis of how Arthur Schopenhauer's ethic of compassion plays into this human rights approach, see my paper, "Schopenhauer's Mitleid, Environmental Outrage and Human Rights," in press; available on request.

¹² UDHR, article 5

¹³ Belden Russonello & Stewart, *Human Rights in the U.S.: Opinion Research with Advocates, Journalists, and the General Public*, 2007. This survey found that "the American public accepts a human rights framework for social justice issues in the U.S."

<http://environmentandhumanrights.org/resources/public%20opinion%20research%20on%20HR%2008-07%20exec%20summ.pdf>, accessed 7-20-12.

¹⁴ <http://environmentandhumanrights.org/resources/HumanRightsToolkit.pdf>, accessed 7-20-12.

¹⁵ "One of the most important successes of international human rights law is that it has given victims direct access to international human rights fora. Thus in international human rights law, *individuals* are subjects of law and can legally claim against human rights abuses perpetrated by states." Picolotti, Romina and Jorge Daniel Taillant, *Linking Human Rights and the Environment*, University of Arizona Press, 2003, p 120.

¹⁶ Ibid. p 133.

¹⁷ " That is... the facts reported in the petition shall be presumed to be true if, during the maximum period set by the Commission, the government of the State in question has not provided pertinent information to the contrary.... If the State denies the evidence, it must specifically prove that the evidence is not valid." Ibid.