Human Rights in a Hostile Climate

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According to mainstream science, humanity faces a time of emerging global environmental crises. Massive increases in economic output and human population over the last two centuries or so are putting increasing pressure on natural systems, including those basic to the support of human and other forms of life, such as climate, fresh water, oceans and natural habitat. In this context, hard questions arise about how a human rights approach can help us to understand and act on these concerns.

This chapter investigates such questions through the example of global climate change. It makes three central claims. First, climate change and similar problems pose a profound ethical challenge to existing institutions and theories. Second, a human rights approach can play a role in addressing this challenge through its articulation, development and defense of a basic but often neglected ethical intuition. Nevertheless, third, there remains much to be done. In particular, early work tends to overplay the initial advantages of human rights as such, and underestimate the role played by specific conceptions of human rights that are much more controversial and ambitious. Moreover, current human rights paradigms are not directed to the central characteristics of the profound challenge. Given all this, a practical and theoretical reorientation is needed. This has implications for the evolving project of political philosophy on a global, intergenerational and ecological scale.

1. The Ethical Challenge

We live in incredible times. The world economy has more than quintupled since the middle of the last century, and is currently doubling every twenty years. Meanwhile, the human population has grown by more than 250% since 1950, and recently has been increasing by roughly a billion people every twelve years. This rapid expansion of the human footprint has ecological consequences for humans, animals and the rest of nature.

One prominent manifestation is human-induced global climate change. According to mainstream science, this is already occurring, with significant effects on humans and other forms of life. Nevertheless, the changes felt so far are modest by comparison to those projected for the future. If the science is correct, we are on the verge of a serious shift in global climate comparable in magnitude to an ice age (albeit to a hotter, rather than colder, world). Although the planet has been warmer in the past, this is not the past of human experience (for example, there were crocodiles at the poles). Moreover, whereas such dramatic shifts usually occur over hundreds of thousands, if not millions, of years, the changes we are set to inflict will play out over only a few centuries, and perhaps mere decades. In other words, we are very quickly creating what some scientists have termed a “different planet”.

In the face of such a threat, one might expect societies to spring into action. Yet so far this has not occurred. Despite many fine speeches, international reports, diplomatic

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conferences, accords, and even a treaty, global emissions of the main greenhouse gas, carbon dioxide, are now up by more than 40% since 1990, and have increased substantially in most major countries. Moreover, recently, the short-term effects of the financial crisis aside, this growth has been accelerating at rates that seemed almost unimaginable two decades ago. Worst of all, international negotiations on new mitigation efforts seem entrenched in an ongoing cycle of procrastination. In short, we are currently in the grip of a deep political inertia, characterized by repeated policy failure and apparent public indifference, on what the nations of the world have publicly declared to be “one of the greatest challenges of our time” (Copenhagen Accord 2009).\footnote{This Accord was signed by a group of countries that included the US, EU, China and India.}

In my view, central to the ongoing inertia is the fact that climate change poses a profound ethical challenge. It is genuinely global, strongly intergenerational, and occurs in a setting where our theories and institutions are weak. Each of these factors raises serious obstacles to ethical action in its own right. When they converge, they are mutually reinforcing, constituting ‘a perfect moral storm’ for ethically responsible behavior (Gardiner 2011a).

Climate change is a genuinely global problem because the spatial dispersion of causes and effects means that agents can take the immediate benefits of their own emissions, but pass most of the costs onto others in different parts of the world. It is strongly intergenerational because the long time lags involved imply that current emitters can pass most of the costs — and especially the most serious — decades and centuries into the future. Climate change also brings together a set of issues — e.g., global justice, intergenerational ethics, scientific uncertainty, and our relationship with nature — where our general theoretical understanding is hardly robust, and which current institutions (e.g., market mechanisms, short-term democratic election cycles, realist international politics, and so on) seem ill-equipped to address. Indeed, both the problem and its urgency seem opaque (or even invisible) to many conventional ways of thinking and going on. Neither we or our institutions can easily register the consequences of our behavior, the victims, the causal routes, and who should do what as a result.

If climate change is a perfect moral storm, this has practical implications. The first is that existing institutions and the theories that support them face a fundamental test of moral and political legitimacy (Gardiner 2011a, 2011b). If they fail to address the climate challenge — and problems of this type more generally — then they are at least subject to criticism (Robinson 2010, xix). If the failure is severe, then perhaps even rejection is warranted.

The second practical implication is that ours is not a neutral evaluative context. The global and intergenerational problems imply that the current generation of the affluent face strong temptations to ignore their ethical responsibilities. They hold significant power over the global poor, future generations and the rest of nature. No one can really stop them from taking benefits for themselves and passing on the costs to others; no one, that is, except themselves. There is room for hope here, since admitting that one is engaging in this kind of buck passing is morally uncomfortable, even when the admission is only to oneself and those similarly placed. However, this encouraging fact also implies that there is some incentive to disguise what is going on, with clever but shallow counterarguments, flawed proposals and alternative framings. In short, ethical discourse itself is under threat from distorting influences. Unfortunately, there is plenty of evidence for this in the actual climate debate, where we have seen a succession of grand promises followed by empty agreements (Gardiner 2004, 2011a). Given this, arguments about climate change should be subject to extra scrutiny, and this includes theoretical arguments.

In summary, the climate problem has a specific shape (involving political inertia and a perfect moral storm), poses a test of moral and political legitimacy (to current institutions and theories), and occurs in a nonneutral evaluative setting (where there is a real threat of
distortion). Understanding this is important if a human rights approach is to deal with the problem as it is.

2. Aspirations

If these are our problems, how might a human rights approach help? In my view, the most central answer is that human rights talk helps us to articulate, develop and defend a fundamental ethical intuition: that there are some kinds of harms – i.e., violations of basic human rights – that should not be inflicted on others, and that institutions that systematically inflict such harms are ethically illegitimate. The thought is that marshalling this intuition can make a central contribution to addressing the perfect moral storm and overcoming political inertia.

Recently, three more specific roles for a human rights approach have been suggested. The first is that of shifting the dominant discourse away from short-term geopolitical, and especially economic, thinking. Advocates claim that such a reframing is beneficial since these approaches miss much of the point of climate policy, and bring with them structural features that a human rights approach would reject.

On the one hand, as a matter of substance, an economic approach is said to embed a system of value that strongly emphasizes consumption goods over other important values (such as life support, or historical and aesthetic values), to exhibit a status quo bias towards the rich and the current generation (in valuing interests in economic terms and in employing standard discount rates for the future), and to license trade-offs between overall welfare and the interests of individuals that ought to be prohibited (ICHRP 2008, 17; Caney 2010, 169-172; Lawrence Unpublished, 22).

On the other hand, methodologically, human rights enthusiasts reject the general holism of conventional economics (in its focus on maximization or optimization) and its resulting disregard for distribution (Caney 2010). Moreover, they draw attention to what they see as unmotivated and prejudicial departures from such disregard within economics. For example, they are skeptical about the usual rationales for temporal discounting, since these appear to discriminate against future generations (Cowen and Parfit 1993; Caney 2009; Gardiner 2011a, chapter 8).

By contrast, the human rights approach is said to be methodologically preferable because it is atomistic (having individual human beings as its focus), remains spatially and temporally neutral (rather than being biased towards the richer countries and the present), and has concern for distribution built in (ICHRP 2008, 20). It is also thought to be substantively superior because it prioritizes morally fundamental concerns (i.e., basic human rights) over more peripheral matters (e.g., the production of consumer goods), emphasizes the perspective of the victim, focuses on the most vulnerable, and disallows certain kinds of tradeoff (Caney 2010). Finally, human rights are claimed to provide a better basis for policy, and to bring neglected issues into focus. For example, they are said to facilitate a new emphasis on adaptation, providing a “compass for policy” that encourages autonomous adaptation by demanding rights-specific information and responses (ICHRP 2008, 23-26).

The second possible role for a human rights approach is substantive. A human rights framing brings with it an existing legal structure that includes a set of statutes, rulings, regulations, norms, and so on. Moreover, these seem to deal with matters that are central to the climate problem, such as liability and enforcement, and to highlight issues that are largely hidden in the economic approach, such as causality, accountability and “harms to actual persons”. For example, a human rights perspective might be thought to translate ethical demands into legal obligations, provide procedural guarantees, focus on concrete realities rather than abstract possibilities, and generate the mechanisms of accountability needed for viable policy (ICHRP 2008, 5-8, but see 64; cf. Rajamani 2010). Given all this, a

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3 ‘Harm’ is used in a very general way here.
human rights approach may provide not only a better goal for policy than conventional economics, but also the means of implementation.

The third possible role for a human rights approach is theoretical. The ethical intuition that a human rights approach serves to articulate, develop and defend has an important status. It is basic in at least three senses: first, satisfying it is a necessary condition for a minimally ethical policy; second, it serves as a foundation on which other things are built; and, third, it has priority over other ethical concerns.

These theoretical features suggest two practical virtues of a human rights approach to climate change. First, a human rights perspective may seem at least relatively uncontentious. For instance, a policy orientation based on human rights thresholds is said to provide “a platform for broad-based dialogue on burden sharing of a kind that has frequently lacked in climate change debates” because it “uses a language to which few will object”, and is more “modest, achievable and fair” than other proposals (such as equal per capita shares, or greenhouse development rights) (ICHRP 2008, 7). Second, some advocates see the climate issue as a useful entry point for the wider human rights agenda. By providing “an invaluable opportunity to reappraise the most pressing needs of a highly inequitable global society”, a human rights move in climate policy can help to “create the kind of international and social order that the framers of the Universal Declaration dreamed of” (Picolotti 2008, v; Robinson 2008, iv).

In conclusion, there are strong prima facie reasons to support a human rights approach to climate change and to global environmental crises more generally. The ethical intuition at stake is a central one, but is in danger of being overshadowed or ignored by contemporary policy discourse. A human rights approach promises to capture the theoretical importance of and add depth to that intuition, while also bringing institutional insights and precedents. In particular, it appears to reorient the theory and practice of climate policy in “shovel ready” ways that overcome the limitations of other approaches.

Such are the early aspirations of a human rights discourse for climate change. Let us turn now to the arguments for it.

3. The Initial Case

In an influential piece, Simon Caney argues for a human rights analysis of climate change, and claims that this argument “does not need to rely on controversial or ambitious conceptions of human rights” (Caney 2010, 166). According to Caney, human rights “designate the most fundamental moral requirements which individuals can claim of others” (Caney 2010, 165). He highlights four features of such rights (Caney 2010, 164-5). The first is human dignity: human rights are grounded in each person’s humanity. The second is universal protection: “human rights represent the entitlements of each and every individual to certain minimal standards of treatment, and they generate obligations on all persons to respect these basic minimum standards”. The third is lexical priority: human rights take general priority over other values, constraining their pursuit. The fourth is that human rights are moral thresholds. They represent levels below which individuals should not be permitted to sink. Summarizing, Caney states, “human rights specify minimum moral thresholds to which all individuals are entitled, simply in virtue of their humanity, and which override all other moral values” (Caney 2010, 165).

Caney’s central argument for a human rights approach to climate change is that it jeopardizes three key human rights. Appealing only to “the least contentious and most modest formulation of the human right in question” (Caney 2010, 166), he uses evidence

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4 Caney also claims that a HR approach has six major advantages over CBA. Roughly speaking, these are: (i) it limits the relevant impacts, (ii) it makes costs irrelevant; (iii) it requires compensation for harms; (iv) it functions as a deontological constraint; (v) it constrains the distribution of duties; and (vi) it provides a normative interpretation of the UNFCCC objective of avoiding ‘dangerous anthropogenic climate change’. In what follows, I suggest problems with (i), (ii), (iv) and (vi).
from major scientific reports to argue that climate change endangers the enjoyment of rights to life, health and subsistence. For example, for the right to life, he points out that climate change is projected to result in an increased frequency of heat waves and severe weather events (such as storm surges, flooding and landslides), both of which typically lead to direct loss of life (Caney 2010, 166-167 citing IPCC 2007). From this, he infers that climate change seriously threatens the enjoyment of the right to life. Using similar data for impacts on health and subsistence, he concludes that climate change also seriously threatens the enjoyment of these human rights. In short, generalizing, the basic strategy seems to be to argue:

(1) There is a human right to X.
(2) Enjoyment of X is seriously threatened by climate change.
(3) Therefore, climate change seriously threatens the enjoyment of the human right to X.
(4) Therefore, it is appropriate to analyze climate change in terms of its impact on human rights.

Call this, ‘the Master Argument for Human Rights’ (or simply ‘the master argument’). At first glance, the master argument appears simple, straightforward and irresistible. In addition, the human rights framing looks exciting. For one thing, it appears at least relatively uncontroversial. When the rights themselves are characterized in the minimal way suggested by Caney, the approach seems to command a broad and overlapping political consensus across more substantive ethical doctrines. For another, it appears both refreshing and illuminating. As well as promising an escape from the tangled discourse of climate economics, the human rights concern offers a direct route through to the worry that, via the ongoing failures of international climate policy, existing institutions are at risk of failing the global test. If current arrangements are failing to protect key human rights, then it seems clear that there is a case to answer.

Despite the initial appeal of the master argument, a human rights approach faces serious challenges. Some of these are familiar from other contexts, some are exacerbated here, and others are more novel. In the next three sections, I provide a brief overview of three such challenges, together with some examples of their policy relevance, paying particular attention to Caney’s arguments. Throughout, my aim is neither to defeat the human rights approach in general nor Caney’s contribution, but rather – in keeping with the aims of this volume – to suggest where the hard questions are, on which further work needs to be done. My hunch is that answering such questions requires a normatively richer (and much more controversial) account of basic human rights that is reoriented to a very different setting. Such a reenvisioning of the content and role of human rights will be important not only for climate, but also for the wider and evolving project of political philosophy on a global, intergenerational and ecological scale.

4. Framing Revisited

The first challenge is to the framing advantages of a human rights approach, and emerges from the internal limitations of the master argument. At its root is the gap between, on the one hand, the initial ethical insight it aims to articulate, and, on the other hand, how this insight is developed within both general and more specific conceptions of human rights. To see this gap, let us sketch three related problems.

The first is that the master argument seems to inherit much of its appeal from a more fundamental argument. This “vital interests” argument uses the same general

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5 Caney’s pattern of reasoning is echoed in ICHRPH 2008, Humphreys 2010, and a recent World Bank report (McInerney et al. 2011, chapter 2).
6 For critical legal analysis, see Bodansky 2010, Lawrence Unpublished.
strategy as the master argument, but to argue that climate change threatens vital human interests (rather than human rights). It claims: (1) there is a vital human interest in X; (2) enjoyment of X is seriously threatened by climate change; (3) therefore, climate change seriously threatens the enjoyment of the vital human interest in X; (4) therefore, it is appropriate to analyze climate change in terms of its impact on vital human interests.

Taken by itself, the vital interests argument is highly plausible (cf. Shue 1992, 393). However, it also appears to undercut the master argument, since it seems more fundamental, and more modest in its claims. Specifically, although vital interests might be conceptualized in terms of human rights, they may also be thought of in other – arguably more minimal – terms, such as (for example) basic human needs, security, or capabilities. Given this, an independent argument for moving beyond vital interests to human rights is required.

One reason this matters is because many people’s initial approval of the master argument may rest on an implicit endorsement of the vital interests argument rather than a robust human rights framework. For example, perhaps some have a commonsense conception of human rights that simply equates them with vital interests that deserve some kind of protection. If so, they might resist tying their commonsense endorsement of the master argument to any more specific conception of human rights, such as one grounded in actual legal uses, political institutions or philosophical theories. If this is right, then the initial impression that the master argument establishes the special or independent relevance of existing human rights discourse to the climate case is illusory. Most of the underlying work is done by the vital interests argument, and so is compatible with a range of different normative frameworks.

The second problem emerges because both the master argument and the vital interests argument may be parasitic on a more general argument. Suppose that climate change threatens all important concerns (e.g., because it threatens systematic severe or catastrophic impacts). If “everything is affected”, then it is not surprising that human rights are. Instead, the real task is to show the special relevance of human rights. Most importantly, there is a challenge from other ethical values. If everything important is affected by climate change, then one can run parallel arguments to the master argument for human rights for all manner of other values, including, for example, liberty, property, utility, community, and so on. If so, why not prioritize these framings of the climate problem instead?

This observation reveals several important facts about the master argument for human rights. First, much of the work is done by the severe threat posed by climate change rather than by the importance of rights per se. Second, the master argument for human rights is only one among many possible arguments for the relevance of core values, and alternative arguments are also likely to be plausible. Consider, for example, master arguments for liberty, community, security, and so on. Third, given this, the master argument for human rights does not by itself establish their special normative relevance. Instead, it is either silent on, or else simply assumes that relevance. Note that the conclusion of the master argument is ambiguous on just this point. The ‘appropriate’ in the claim “it is appropriate to analyze climate change in terms of its impact on human rights” might be read to assert only that human rights are one potential way to look at the climate problem (to be assessed against others), or it might be read more strongly as asserting that human rights are the preeminent consideration. Unfortunately, the former does not get us far beyond the “everything is affected” and vital interests arguments, whereas the latter

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7 Some might object that this is sufficient for a human rights approach. However, this is not obvious. For example, note that this conception does not require that protection is owed to the individuals whose interests are threatened, which one might regard as a minimal condition for a human rights approach.

8 Caney asserts “general” priority for human rights over other values; it is unclear whether he means to assume the special importance of human rights.
simply asserts the primacy of a human rights approach. Either way, there is more work to be done.

The third, related, problem for the master argument for human rights is that, because it ignores other values, it offers only a partial ethical framing of the climate problem. In principle, this need not be a deep difficulty, so long as other values are also appropriately included. However, in practice, we must beware of the framing effects of beginning with the master argument.

To see this, consider one of Caney’s own proposals. The basic commitment of international climate policy under the United Nations’ Framework Convention on Climate Change is to avoid “dangerous anthropogenic interference with the climate system” (UNFCCC 1992). Historically, there has been some debate as to how the crucial concept – “dangerous climate change” – should be understood (Oppenheimer and Petchon 2005). Caney proposes that it should be interpreted as climate change “that systematically undermines the widespread enjoyment of human rights” (Caney 2010, 172). In other words, he advocates for understanding the central objective of international climate law and policy in terms of human rights.

This proposal is bold and substantive. Still, the widespread undermining of human rights is only one of the ethical dimensions of climate change (as Caney acknowledges (2010, 173)); hence, if we follow his proposal, there is a real risk that the other ethical dimensions will recede from the policy agenda, or even become lost from view. This is a serious worry. Consider, for example, ethical problems such as one country’s unfair overexploitation of natural resources, or one generation’s reckless use of generational power to pass severe costs onto the future, or our species’ infliction of catastrophic damages on nonhuman animals and the rest of nature. In principle, these problems might persist even without jeopardizing key human rights, or human rights more generally. Yet if they did so, presumably we should not say that international climate policy had achieved its sole, or even central, ethical aim. Imagine, for instance, a future in which humans are able to enjoy their key human rights only because they devote almost all of their time, energy and resources to defending against severe climate change, and so have little left for anything else; or consider a world in which future generations have been bequeathed massive domes to live in on an otherwise desolate Earth. Should we really say that these are circumstances under which international climate policy has succeeded?

In conclusion, the first challenge to a human rights approach to climate change is that the master argument has significant limitations both in terms of articulating the basic ethical intuition, and in differentiating it from (or integrating it with) other ethical concerns. One consequence is that, although the master argument may inspire those already committed (to the basic ethical intuition, a human rights analysis of it, and its primacy over other concerns), by itself it seems unlikely to either persuade or motivate a more agnostic audience. A second consequence is that, since the limitations can infect particular policy issues (such as the definition of dangerous climate change), even the converted must be careful not to overreach.

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9 One response would be to claim that the UNFCCC objective is at fault for being too narrow and anthropocentric. However, this is unclear. Even though the treaty states as its motivation the “protection of current and future generations of mankind,” it has a broad understanding of what this involves, and this seems to move beyond ensuring key human rights. For example, appeals are made to “equity”, “common but differentiated responsibilities”, the “special needs” of developing countries, and the aim of promoting a supportive, open, sustainable, and nondiscriminatory international economic system. In addition, the treaty claims that its aims “should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change … and to enable economic development to proceed in a sustainable manner.”

A second response would be to argue that all this can be incorporated within an appropriately rich account of human rights. This promissory note is tempting, but no longer minimalist; in any case, it seems clear that much work remains to be done.
5. Substance Revisited

The second challenge to a human rights approach involves its alleged substantive advantages. Even if we are persuaded by the importance of a human rights approach, we should ask whether in its conventional forms it successfully picks out the commitments needed to address a problem like climate change, and whether it does so without relying on “controversial or ambitious conceptions” of human rights. In this section and the next, I argue that it does neither, in part because its usual components remain vulnerable to the perfect moral storm. Although this suggests that current human rights doctrine is not yet “shovel ready” for application to climate change, it does provide some sense of the development needed.

In this section, I note four problem areas. The first is the identity of the rights invoked. One strategy is to attempt a “bootstrapping” (or extrapolation) of existing nonenvironmental rights. The main advantage of this strategy is that such rights already have international standing in other contexts. However, one issue is that a very large number seem to be in play (Bell 2011, 101-102). For example, in addition to Caney’s appeal to rights to life, health and subsistence, the early literature also invokes rights to adequate food, water, adequate housing (McInerney et al. 2011), “the right to take part in cultural life, the right to use and enjoy property, [and] the right to an adequate standard of living” (Male Declaration 2007), the right to development and the right not to be forcibly evicted (Caney 2010, 80).

This proliferation raises a number of concerns. One is that people’s lists vary, suggesting that they have different accounts of the problem to be solved. A second is that focusing on some rights rather than others can make serious differences to policy. A third concern is that an expansive plurality of rights may reintroduce a variant of the “everything is affected” problem at a lower level. A human rights approach is less impressive if it encourages a re-listing of every morally important consideration as a new right, and so simply defers difficult choices. More broadly, there becomes a point where one moves beyond “merely” extending existing rights to fit a new context into engaging in a covert reinvention of core values (Gardiner 2011b). At the moment, it remains an open question whether this will occur in the case of climate change (or the natural environment more generally), partly because little detailed work has been done to show how the bootstrapping of existing rights is supposed to work. Nevertheless, we should not simply assume in advance that bootstrapping will turn out to be adequate in a complex global, intergenerational and ecological setting.

One response to this last worry is to call for new, distinctively environmental rights. This “invention” strategy has strong supporters in both legal and philosophical circles. In the legal realm, the UN has declared that “[m]an 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations” (Stockholm Declaration 1972), and also spoken of “the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights” (Male Declaration 2007). Among political theorists, Caney suggests a human right “not to be exposed to dangerous climate change”, Steve Vanderheiden proposes a “right to an adequate environment with a corollary that the right includes a claim to climate stability”, and Tim Hayward promotes both a “right to an environment adequate for (human) health and well-being” and a “fundamental right of each individual to an equitable share of the planet’s aggregate natural resources and environmental services that are available on a sustainable basis for human use” (Caney 2008, 539; Caney 2006, 263; Vanderheiden 2008, 252; Hayward 2005, 29; Hayward 2007, 445).

The idea of new, distinctively environmental rights has some appeal. Still, one concern is that the various sources do not agree on the general shape or content of the
Another worry is that it is not obvious that the reductive, atomistic strategy of the rights approach will work. Why assume in advance that complex collective aims such as climate stability are reducible to rights that pertain to individuals? Clearly, more needs to be said.

The second problem area for a conventional human rights approach concerns the possibility of conflict between relevant rights. Just as rights may compete with other values, so distinct human rights (e.g., to life and to private property) may conflict with one another (Rajamani 2010). If so, a simple appeal to human rights does not resolve the issue.

The third area is the role of human rights. For example, one of the central features of human rights from Caney’s point of view is that they make certain ethical concerns “nontradable”, in the sense that they “override all other moral values”, “constrain the pursuit of other moral and political ideals”, and “condemn any trade-offs which would leave some below the minimum moral threshold” (Caney 2010, 165). On the face of it, this appears a strong requirement, and so hardly uncontroversial and minimalist. Even within contemporary human rights discourse it is common to accept a progression of concern for human rights that accompanies social development, and the suspension some provisions in situations of “emergency”. In addition, such compromises are highly relevant to climate ethics, since some claim that suspension is currently justified, given the extent of global poverty and the (alleged) priority of economic development. More generally, one cannot ignore the possibility that a broader human rights perspective may imply that climate change should take a back seat to more pressing threats, so that the master argument is too narrow to gain traction. Although many (including myself) would resist such arguments, the conceptual space they occupy cannot simply be assumed away, as if by definitional fiat.

The fourth problem area involves the scope of the relevant rights. Human rights initially appear very victim-centered. However, something needs to be said about who the duty-holders are and how far their responsibilities extend. In practice, this will determine much of the substance of a human rights approach.

To see why this might matter, consider another of Caney’s claims: that it is vital to the human rights approach that “the threats to life, health, and subsistence ... are the products of the actions of other people”, in the sense that “if the impacts of climate change were entirely the result of natural phenomena and were not traceable to human causes, then ... [those arguments] would not succeed” (Caney 2010, 169, emphasis added). Hence, on Caney’s view, something counts as a human rights problem if and only if human agency is responsible for it.

Understood literally, this causal claim suggests that the master argument is invalid. Climate change might threaten important human interests without thereby threatening the enjoyment of rights that protect those interests. In particular, if those rights only protect against some kinds of threats – e.g., those traceable to human causes – then rights need not be in play every time the relevant interests are threatened. In this case, for example, they would not be threatened by severe natural climate change. This is not Caney’s own view, since he accepts an extremely generous (and controversial) interpretation of the causal claim. However, the fact that it is encouraged by the initial framing reinforces the

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10 Another is that international institutions are reluctant to endorse new rights of these sorts. This is not a philosophical problem, except insofar as it casts doubt on the foundation in common law, or basic ethical intuition. However, it is a practical problem, especially for those who would claim that human rights provide a relatively uncontroversial basis for climate and global environmental policy.

11 In a footnote, he says: “Suppose that climate change were nonanthropogenic … but politicians could implement an effective program of adaptation and design institutions that would safeguard the vital interests of people in life, health and subsistence, but chose not to. They could then be said to violate the human rights of others to life, health, and subsistence because they would be acting in such a way as to create threats to life, health and subsistence.” (note 38, 176; emphasis added). Hence, on Caney’s view, if someone could protect the vital interests but chooses
impression that the master argument is much less powerful than it initially appears, and that more substantive and controversial conceptions of human rights are needed to do real work.

The main lessons of this section are that it is unclear that a conventional human rights approach successfully picks out the commitments needed to address a problem like climate change, or that it can do so without relying on “controversial or ambitious conceptions” of human rights. Most notably, it seems likely that much important work will be done internally, in the specific conception of human rights being invoked (rather than in the invocation of human rights as such), and that these internal matters can make a large difference to policy. Given this, it is not enough simply to invoke the language of human rights for climate change in the way that the master argument does. Even if one accepts that language, many - perhaps most - of the central issues remain to be addressed.

6. Theory Revisited

Several of the preceding worries are familiar from other areas where human rights are deployed. This section takes up concerns that are more specific to climate change and global environmental problems more generally. In particular, we might ask: Is a human rights approach well-suited to addressing a perfect moral storm?

Presumably, the basic ethical intuition - that there are some kinds of harms that should not be inflicted on others, and that institutions that systematically inflict such harms are ethically illegitimate – remains highly relevant. Given this, it might be said, the internal difficulties of the human rights approach identified in earlier sections should not be too off-putting. Such an approach at least provides the right kind of framework within which to have the necessary discussions.

This position is attractive. Nevertheless, in the context of a perfect moral storm, where we are vulnerable to moral corruption, we must notice the obstacles to be overcome. In what follows, I shall (very briefly) point to three major worries that suggest that addressing the perfect storm requires at least a serious reorientation of much human rights discourse.

The first worry is that of merely naming the problem. Simply asserting that the perfect moral storm threatens human rights does not get us very far in addressing it. In particular, the bare statement does not tell us much about the principles, institutions and policies that we should employ to combat it.

To see why this might matter, consider, for example, a rival utilitarian approach that said simply, “allowing severe climate change is bad if it fails to maximize utility”. Even if this is true in so far as it goes, it does not yet tell us much about what should be done, or how. Given this, a utilitarian political theory that contented itself with resting at this point would seem unduly complacent. If it also said that there might be many ways of dealing with the problem, none of which could be adequately discerned in advance, it could also be accused of being unduly opaque and perhaps also evasive. Importantly, these complaints would stick even if one had complete confidence in the initial diagnosis. A moral and political theory can be defective in ways other than being wrong at the first stage (Gardiner 2011a, chapter 7).

The parallel with human rights is that one might be confident that climate change is a human rights issue, and most fundamentally so, and yet still worry that existing appeals to human rights have other vices. For example, the difficulties of the previous section (e.g., deciding whether existing rights should be bootstrapped or new ones introduced, pinning not to, they create the relevant threats. However, this is a very broad view of ‘creating’ a threat, which others might resist, especially as part of a minimalist account of human rights. For example, we would not normally say that I create threats to famine victims in Africa just because I could assist them but choose not to. As Philippa Foot once said, refusing to aid the starving is not the same as deliberately sending them poisoned food (Foot 1967). This is so even if both are (very) morally wrong.

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down exactly which rights are most central, determining the scope of the relevant rights, identifying the relevant duty bearers, and so on) might imply that the approach is opaque or even evasive at crucial points. If such matters are not addressed, one might worry that the approach has become unduly complacent; and recall that in a perfect moral storm, involving the threat of moral corruption for the current generation, complacency is a serious complaint.

The second major worry is that existing human rights paradigms go beyond mere complacency, to being covertly biased against the major victims of a perfect moral storm. The institutional advantages of the inherited legal paradigm are often mentioned. However, current institutions seem ill-suited to the climate problem in important ways.

First, they are typically highly reactive. For example, the paradigm legal forum for addressing human rights is judicial, and takes the form of remedial action once harm has been inflicted, victims identified, and causal routes explained. This paradigm is not a happy one in the climate case. Most notably, there are very long time lags involved. Greenhouse gas emissions, once made, can remain in the atmosphere for hundreds - even thousands - of years, affecting temperature and climate more generally. Hence, it will often be the case that harms do not occur, and specific victims cannot be identified, before the original emitters are dead and gone. Given this, the paradigm and much of its associated legal trappings will be inadequate to the intergenerational dimension of the problem and the severity of the harms involved. Remediation is likely to be too little, and much too late.12

Second, existing institutions focus on the wrong agents. Human rights law is largely concerned with the rights of individuals against their own states. Yet climate change is a profoundly global and intergenerational problem. Again, the intergenerational challenge is particularly notable. How does one hold earlier generations accountable for the harms they inflict on their successors? One concern is that existing human rights law provides no answer; another, even more serious one, is that this is the wrong question to be asking, and that something other than an accountability model is required.

The general lack of fit between existing human rights paradigms and the climate problem suggests that one serious threat posed by the current human rights discourse is that it facilitates only the inclusion of current victims of negative climate impacts in the political and policy discussion. In other words, it provides a limited avenue through which some existing (and early) victims of climate change in the current generation can try to pursue their claims. Such a focus hardly touches many of the main elements of the perfect moral storm, but is predictable within it.

The third major worry is that a human rights approach faces philosophical difficulties that provide a convenient distraction for those wishing to take advantage of a perfect moral storm. On the one hand, the moral paradigm for harm works best with readily identifiable and determinate agents, victims, impacts and causal pathways. Yet climate change and other genuinely global, intergenerational and ecological problems do not conform well to this paradigm (Jamieson 1992, 2010; Gardiner 2011c). For example, instead of specific individual agents and victims, much of the perfect moral storm is concerned with collectives, and especially generations. Moreover, climate impacts are not easily separated from other background social facts, and the causal pathways are complex and interdependent. In addition, there are vexed issues of identity. For example, according to the non-identity problem, we do not harm those whose existence depends on our polluting activities, so long as they have at least a minimally decent life (Parfit 1985; Meyer 2005).

On the other hand, there are also specific challenges to rights in this context. For example, some argue that it is incoherent to claim that future people have rights, since they do not yet exist (Beckerman and Pasek 2001); others insist that it would be rational for future people whose very existence depends on the continuation of polluting behavior to

12 This complicates the typical claim that human rights “put a human face” on systemic impacts by highlighting their implications for actual people in actual places.
waive any rights violated by that behavior so long as their lives overall are worth living (Parfit 1985). Clearly these worries are important to the adequacy of a human rights approach. If future people lack rights – or would waive them even if they have them – then we cannot expect a rights approach to provide them robust protections in a perfect moral storm.

My claim is not that any of these philosophical difficulties constitute decisive reasons to reject either climate action or a human rights approach. (On the contrary, I am unmoved by most of them.) Instead, the point is that, if we ignore the limitations of the standard human rights approach, we are at risk of embracing a paradigm that does little to deal with many elements of the perfect moral storm – including the central element of intergenerational buck-passing. Given this, even within a human rights approach there is a high risk of moral corruption. We can sound appropriately ethical in our initial diagnosis and suggestion of remedies, when in fact these remedies are not adequate to the problem that confronts us.

How then might we move forward? The perfect storm analysis provides an agenda for the human rights approach in law and philosophy. Given its presence, and the challenge it poses to conventional institutions and theories through the global test and elsewhere, the human rights approach must resist complacency and seek to address the storm as it is. This would involve – at a minimum – addressing three major areas: risk, future generations, and the relationship with nature. It would also include a paradigm shift within the discourse from a reactive to a proactive stance, from an individual and short-term focus to one that incorporates a collective and intergenerational perspective, from an individual-state model of relationships to one that takes seriously individual-generation or generation-generation relations, and from a purely anthropocentric account to one that allows a place for the nonhuman and our relationship to nature.

This is a lot to ask. Moreover, presumably not all of it can take place within the human rights discourse considered merely as such; instead, wider theory will have to encroach. Nevertheless, the hard questions are worth asking. If our problem is the perfect moral storm, then making a human rights approach central may already sharply narrow the normative picture (e.g., in the ‘dangerous climate change’ proposal). If this is not to facilitate continued buck-passing, then we must be alert to its internal and external limitations.