

Commentary

The right to keep cold

The people of northern Canada are experiencing the impacts of climate change first hand. They perceive this to be an injustice imposed on them from the polluters of the world. Sheila Watt-Cloutier, the Chair of the Inuit Circumpolar Conference, speaking at the Conference of the Parties of the Climate Change Convention in Milan in December 2003 put it thus:

“Most people have lost contact with the natural world. They even think global warming has benefits, like wearing a T-shirt in November. But we know the planet is melting and with it our vibrant culture, our way of life” (*The Guardian* 2003).

The impacts of climate change, in effect, breach the right of individuals, groups, and nations to an environment safe from anthropogenic harm. This claim of harm is being made by residents of far northern communities of Canada and neighbouring high-latitude countries where the impacts of climate change are presently observed. They make the case that they have a right to keep cold. The Inuit Circumpolar Conference is presently seeking to invoke the 1948 American Declaration on the Rights and Duties of Man in the United States to make this case (ICC, 2003). They claim that native peoples of North America and Eurasia are bearing the brunt of climate change. They observe that the complacency of industrialized countries in this regard comes from a lack of connectedness to the natural world.

The potential impacts of climate change on ecosystems in northern latitudes, and on the populations that rely on them, are presently being assessed through the Arctic Climate Impact Assessment (ACIA) which reports in 2004. The ACIA scientists find a clear warming trend for the Arctic, particularly in winter, at rates twice the global average increase over the same period. There is likely to be significant future warming, whatever global preventative action is now initiated. Tundra areas are projected to shift and contract to their lowest recorded areal extent and permafrost thawing is already disrupting infrastructure in Canada, Alaska, and Russia (Corell, 2004). Reidlinger and Berkes (2001) and Berkes and Jolly (2001) outline the dilemmas and responses of indigenous Inuvialuit societies in northwestern Canada. They show that through the 1990s communities have been forced to adapt, switching species and adjusting hunting practices in the short term. Recognising the threat that such changes pose, communities have been forced to develop comanagement institutions to enhance their capacity for learning and self-organization.

The case being brought by the indigenous communities raises fundamental issues of the rights of cultural groups, particularly the oppressed and marginalized, compared with those of nations (Kymlicka and Norman, 2000). But the threat is universal. The indigenous minorities of northern Europe and the Americas are not alone in facing climate change impacts that threaten lifestyles and cultures. The residents of the world's atoll nations and other small island states are also vulnerable to the impacts of climate changes. These impacts limit the options for adaptation for islanders to potentially drastic solutions, such as major infrastructure investments in water treatment, migration, or learning to live with extreme events outside the range of experience (Barnett and Adger, 2003). The summer heatwave of 2003 in western Europe led to unprecedented mortality with an estimated 30 000 additional deaths among elderly and vulnerable populations. Such events are projected to become

common through the incoming century (Beniston, 2004). No-one asked these societies if they wished to adapt. Climate change is a fundamentally unjust burden, an externality from past and present polluters that use the global atmosphere as an open-access resource.

So do individuals, groups, or societies have rights when it comes to climate change? The answer appears to rest on whether there is international justice in any meaningful sense. Without a system of international law enforced by sanctions or other mechanisms, any 'rights' people may have to an environment safe from human-induced disruption exist in principle only. Even with effective international law, rights are not guaranteed—rights to avoid danger may emerge only from an interpretation of fairness (Franck, 1995) which places this facet of the climate change problem at the centre of the debate. There are many competing claims as to what fair 'climate justice' entails.

The global nature of the climate change phenomenon brings an additional dimension. There appears to be a discrepancy between what happens within jurisdictions and what rights individuals have outside them. Thus climate justice needs to go beyond the confines and concerns of traditional environmental justice advocates. The US environmental justice movement has attempted to attach liability to action—to internalize the externalities associated with imposing environmental burdens on others distanced in space and time. In its evolution, the environmental justice movement has developed new emphases on 'justice as recognition' rather than 'justice as fair outcome' in terms of equity of burden. Through diverse campaigns on equitable burdens of pollution and siting of hazardous installations the justice movement in the USA has had notable successes. Schlosberg (2003) argues that these successes come about largely without the need to assert a single definition of justice or without facing the problems of universalism or the global nature of some environmental problems. The movement has appealed interchangeably to both 'justice as outcome' and 'justice as recognition' to make their case. But in the face of global climate change something greater is required than simply the globalization of debates (Young, 2000) because of the global and extrajurisdictional nature of the climate challenge. In this case, I would argue, a focus on security and danger as an outcome and the definition of rights to its avoidance are required.

Can justice in outcome of danger be built into the international climate change regime as it is currently manifest? The climate change regime is focused around the UN Framework Convention on Climate Change and its subsequent mechanisms. Much of the discussion within the regime has been focused on sharing the burden of mitigation action—which countries should reduce their emissions of greenhouse gases today. This presents a well-delineated dilemma for the international community: how to allocate rights to emit greenhouse gases to the global atmosphere between countries given that people in industrialized countries currently emit in excess of 5 tonnes of carbon per capita per year and many developing countries have equivalent emissions of one twentieth of that amount (Baer et al, 2000). Various proposals have been put forward by negotiating parties and nongovernmental organizations on how to equitably distribute the burden of emission reduction, appealing to different definitions of equity. But the targets approach of the Convention through the Kyoto Protocol does not pay meaningful attention to the burden of impacts, particularly given that the ultimate objective of the Convention is the "stabilisation of greenhouse gas concentrations at a level that would prevent dangerous anthropogenic interference with the climate system" in a time frame that allows natural ecosystems to adapt, food security to be ensured, and sustainable development to proceed.

Dangerous climate change depends on who is defining it and who is experiencing it. If we have a 'right to keep cold' (that is, a right to an absence of anthropogenic danger) then two elements need to be in place. First there has to be an acceptance that rights are a legitimate means of expressing justice within the climate regime. This is 'justice in outcome'. Second there has to be an agreed mechanism for the evaluation for what constitutes danger to climate change. This is 'justice as recognition'. There are substantial impediments to both of these elements.

The first element involves a redirection of notions of equity within climate change discourses. Justice in climate change is multifaceted and incorporates seemingly incompatible dilemmas and decisions. Equitable climate change could, for example, be defined with respect to welfare, such as impacts on human health and material well-being. Not surprisingly, narrow interpretations of welfare change have been the guiding principle to date. Equity could, alternatively, be defined with respect to a right to avoid increased impacts, or the right to development pathways unconstrained by new climatic risks. Both the deontological approach to justice implied in a right to avoid danger along with the imperative to act in advance of knowledge, I would argue, already exist within the Framework Convention on Climate Change in its Article 3.3:

"The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures."

The second element of climate justice is also directly intertwined with precautionary action. Justice as recognition involves the right to be heard in debates and to have fair influence on decisions. This is the crux of the second prerequisite for a rights-based approach to avoiding dangerous climate change and is equally as problematic as the first element above. What mechanism for defining danger, for example, could possibly gain legitimacy in international circles when the risks of dangerous and significant impacts are so heterogeneous? Can the right of the peoples of the far north of Eurasia and the Americas to 'keep cold' be compared with the rights of threatened bird populations to avoid being driven to extinction if these two are risks defined as different thresholds of impact?

The search for a mechanism of representation and conciliation over defining dangerous climate change cannot rely, as most global environmental agreements have done to date, on a scientific consensus. The most authoritative scientific pronouncements in the climate change arena are those of the Intergovernmental Panel on Climate Change (IPCC). The IPCC in its 2001 report suggested that deciding what constitutes dangerous climate change is a value judgment beyond the remit of the IPCC and perhaps of science itself. A consensus on danger is never likely to be forthcoming, therefore, because it is a value-laden concept (Dessai et al, 2004). The way forward would involve the climate regime reorienting itself to become more open to divergent values and divergent notions of risk and of justice.

Parties need to recognize each other's rights to diverging and competing objectives. Danger is not the same everywhere. The globalized nature of both discourse and of action on the atmosphere as a global commons reveal the requirement for a 'situated universalism' (see Warren, 1999). I suggest that this insight is a prerequisite for self-enforcing collective action which emerges from the interconnectedness of the risk dilemma rather than being a utilitarian struggle over the equitable distribution of 'bads'. The decisions on what constitutes danger for different regions or ecosystems, in addition, need to be based on the principle of impartiality rather than altruism or self-interest (see LeGrand, 1991). This suggests that future targets for emission reduction in the period after the Kyoto Protocol should be based on projected levels

and rates of climate change that would ensure no impacts constituting danger to any party. This set of dangerous changes would have to be agreed by consensus in principle, irrespective of and impartial to location or initial vulnerability of the parties or the impacts.

The prospects for these two elements of a rights-based approach to climate change impacts are not good. Few industrialized countries will reach the already less-than-ambitious targets of the Kyoto Protocol within its timetable. And some major players such as the United States choose to free-ride on the process, eschewing the benefits of international cooperation which undoubtedly exist (Böhringer, 2003). The UK Government's Chief Scientist, David King, pointed out to the American Association for the Advancement of Science in February 2004 that there are, however, sound instrumental reasons to take equity concerns seriously within climate change. Consideration of justice and equity is central to the stance of major developing countries within the global negotiation process (King, 2004). Without regard to justice as outcome and justice as recognition, there is little prospect of these countries accepting post-Kyoto emissions targets.

Climate change does not respect national boundaries. The risks of dangerous climate change are therefore as real in the United Kingdom as they are in the Pacific islands or northern Canada. The danger is no less real for being physically different in nature in each place. The rights to absence of harm caused by others' actions can be attributed to individuals and groups as much as to nations, despite the group nature of inequality being largely ignored within international debate and underplayed in political theory (Phillips, 2000). The arguments above do not denigrate the role of scientific endeavour in the process. Rather they heighten the need for risk-based scientific appraisal that allows negotiators to recognize diverse climate risks and to promote decisions on the basis of impartiality. We should all have a right to keep cold.

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Acknowledgements. I thank the Tyndall Centre and the Leverhulme Trust for research support. I thank Paul Baer, Jon Barnett, Bronwyn Hayward, Mike Hulme, and Jouni Paavola for insightful comments and discussions. The published version is exclusively my responsibility.

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