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Citizenship Rights in Times of Disaster: The Ethics of International Intervention

Introduction

Natural disasters cause significant environmental change and societal costs while devastating the lives of its victims. The number and power of extreme weather events are forecasted to increase with the advent of climate change. The average yearly death count caused by natural disasters between 2002–2011 was 107,000 and those affected was 268 million (CRED 2013). Natural disasters also have implications concerning the protection of human rights. The sovereign state has the obligation to ensure its citizens protection, but when the sovereign is unable or unwilling to ensure this protection, what then? The increasing calls for international intervention in circumstances such as this implies that human rights protection is an international obligation.

This paper attempts to look at the forecasted effects of climate change and natural disasters and its relationship to sovereignty, citizenship, international law and ethics. I argue that the current legal framework is inadequate to deal with victims – especially internally displaced people living in developing countries – who are confronted with disastrous climate change and natural disasters. I do this by first examining the most recent reports from the Intergovernmental Panel on Climate Change (IPCC). I will use the reports that forecast climate change effects upon human displacement. Next, I will examine sovereignty and citizenship and how international normative frameworks justify intervention in a

sovereign state. Finally, I present and examine several ethical duty concepts from liberal political theory to flesh out the gaps between our ethical duties and practice “on the ground.”

The Advent of Climate Change and Displacement

Over the last several months, The IPCC released its fifth assessment reports providing the world with the most reliable information regarding climate change science, impacts and adaptation strategies. The IPCC released their previous round of reports in 2007, yet the forecasts and warnings presented this year come to the same conclusions regarding climate change effects. Of particular note, the reports highlight the severe risks associated with climate change and extreme weather events. The report warns of “[r]isk of death, injury, ill-health, or disrupted livelihoods in low-lying coastal zones and small island developing states and other small islands, due to storm surges, coastal flooding, and sea-level rise” (IPCC 2014, 10). The report also warns of “severe ill-health and disrupted livelihoods for large urban populations due to inland flooding in some regions” (IPCC 2014). These risks will further be exacerbated by a “[r]isk of food insecurity and the breakdown of food systems linked to warming, drought, flooding, and precipitation variability and extremes, particularly for poorer populations in urban and rural settings” (IPCC 2014). Due in large part to these risks, the IPCC believes, “[c]limate change over the 21st century is projected to increase displacement of people” (IPCC 2014, 20). Climate change will force

individuals and communities to migrate either as an adaptation strategy (move to urban centers or fertile lands) or through displacement (home or livelihood destroyed). Extreme weather events and natural disasters will increase in power and number with the changing climate. These and other climate change effects will have the greatest negative impacts in developing countries.

Examining the uneven social and economic impacts of natural disasters in the early 21st century will provide some insight into the significance associated with disastrous climate change and extreme weather events. A 2012 IMF report found that between 2009–2011 “700 natural disasters were registered worldwide affecting more than 450 million people” (Laframboise and Loko 2012, 4). Another recent study found “143.9 million people were newly displaced by natural disasters between 2008 and 2012” (IDMC 2014). The cost of these disasters rose “from an estimated US$20 billion on average per year in the 1990s to about US$100 billion per year during 2000–10” (Laframboise and Loko 2012, 4). Climate change will only increase the occurrence of natural disasters, so we can assume that registered disasters will be over 700, the affected people will be over 450 million and the cost will be over $100 billion a year. In other words, climate change impacts will be significant. The IMF report found that “natural disasters occur more frequently, and affect more people, in developing countries” and since the 1960s “about 99 percent of the world population affected by disasters has lived in developing countries and 97 percent of all deaths have occurred in developing countries” (Laframboise and Loko 2012, 6).

A group's or individual's social vulnerability to natural disasters depends upon 'their exposure to stress resulting from environmental change (Adger 2000, 348). Stress can manifest on multiple scales and in a variety of ways, yet the destruction of livelihoods dominates the concept. It correlates closely with national and supra-national institutional and non-institutional interactions following environmental change. These interactions define the vulnerability of an individual or community. Unpacking some of the complexity allows us to see how developing nations are greatly affected by natural disasters and climate change.

One study found that the most significant factors contributing to individual or group vulnerability depends upon, "a country's level of urbanization, the security of its property rights regime, its coastal exposure…and the scale of income inequality among its citizens" (Roberts 2007, 104, 218). Urbanization, in that study, decreased vulnerability such that those in rural areas lack infrastructure protections such as health services. One scholar posits an individual's or group's vulnerability to climate change has three key determinants – exposure to climate risk, susceptibility to damage and the capacity to recover (Barnett 2009 132). Exposure to climate risk, for example, could be a group living on low-lying coastal zones or small island states. Susceptibility to damage can be whether the individual structure is a high-rise building or a poorly made house. Capacity to recover can be whether the individual has insurance, community support, or financial savings. The nation-state, of course, plays a

large role in contributing to or decreasing their citizen's vulnerability to environmental change.

Looking to the Nation-State

Adapting and mitigating disastrous climate change effects requires each state's responsibility and cooperation. Green house gas (GHG) emissions mix and spread throughout the earth's atmosphere thereby necessitating a firm conviction to decrease emissions of every state. If the largest emitters continue to do so, for example, the harm is felt throughout the world. Therefore, cooperation occurs through climate negotiations, voluntary decrease of green house gas emissions, deforestation policies, development and many other aspects under state control. Sam Adelman remarks "[s]tates whose sovereignty is declining are rediscovered as central actors in the global political economy" (2010, 165). The author points out that EU member states now focus on territorial borders and national policy when dealing with climate change. In other words, what the state can or cannot do. Thus, responses to climate change focus on the Westphalian model. The Westphalian focus highlights the imbalances existing between interests of the global north and south. State self-interest in their economic development has become one of the biggest impediments to a global solution. Adelman argues, "[s]overeignty is the largest unresolved problem of political modernity and the biggest impediment to dealing

with climate change" (2010, 166–7). Thus, sovereign control of territorial borders and environmental policy is central in climate change politics.

Natural disasters have significant consequences concerning people's realization of human rights. Many of the problems faced by people displaced or affected by natural disasters include –

> Unequal access to assistance; discrimination in aid provision; enforced relocation; sexual and gender-based violence; loss of documentation; recruitment of children into fighting forces; unsafe or involuntary return or resettlement; and issues of property restitution" (Ferris 2008)

As noted above, those most affected by natural disasters live in developing countries. Some of these state's placement in the global economy negatively affects its institutional capacity to adequately deal with the consequences of natural disasters. In such situations, human rights are remote forms of legal protection and are "associated with victims not with citizens" (Turner 2010, 182). Meaning, their rights become acknowledged when they become victims and not in everyday life. Thus, the state plays a central role in protecting its citizen's human rights. Hannah Arendt pointed out that inalienable human rights exist independently of the government, but requires citizenship to ground them in reality (1973). Moving past human rights as abstract concepts requires an authority to enforce protections (Arendt 1973, 296–7). In other words, the "right to have rights" only applies to people who are members of a political community (Arendt 1973, 296–7). As noted earlier, natural disasters will increase in number and devastation and that developing nations will be the hardest hit. With some developing nations lacking the financial and industrial infrastructure to ensure the

protection of their citizen's rights, we will see disastrous climate change causing significant human right issues. Moreover, the possibility exists as well for an uneven enforcement of rights where individuals or groups are marginalized because of their race, ethnicity, religion or history within the sovereign community. Thus, examining the obligations of the sovereign to its citizens allows us to see where and if gaps in protections exist.

Citizenship Rights and the Obligations of the Nation-State

The citizenship rights, that a state has a duty to enforce, emerged from historical practices and interactions between citizens and their sovereign. T.H. Marshall traced these responsibilities in his essay *Citizenship and Social Class*. He posited that the first step in citizenship rights were civil rights such as, liberty of the person, freedom of speech and religion and access to justice. These rights were developed in the seventeenth and eighteenth centuries and institutionalized in common law (1950, 10). The second step saw the emergence of political rights such as being personally invested within the polity or electing politicians. These rights were developed in the nineteenth century and institutionalized in parliament and government councils (1950, 10). The third and final step saw the birth of the social element of citizenship. Rights such as economic welfare, security, and a civilized respect of rights were institutionalized in the education and social systems like welfare in the 20th century (1950, 11).

These rights form the bedrock for a flourishing life through which citizens can rely upon their sovereign to protect and enjoy the benefits of citizenry.

The intersections between climate change, sovereignty and citizenship rights converge in ways most important to those who suffer from natural disasters in developing countries. As Seyla Benhabib makes clear, “one’s legal status is dependent upon protection by the highest authority that controls the territory upon which one resides and issues the papers to which one is entitled” (Benhabib 2004, 55). A citizen of the state, then, should benefit from the state’s responsibility to protect their rights. Those who suffer from natural disasters and do not cross territorial borders, rely upon their government to relieve their suffering. The problem with ensuring human rights protections within states is the fundamental link with civil rights provisions of those individual nation-states (Cheah 2006, 5). While international human rights provisions are largely incorporated into national law, if any gaps exist in local law, then enforcement too will be uneven.

In the case of natural disasters and the problems associated with them, a sovereign state can be unwilling to enforce rights protections for its citizens. As Falguni Sheth notes, entire populations can be “cut against” meaning, they can be cut out of the polity. She reveals the processes associated with this —

> With regard to the population that will be cut against, it will be one that sovereign power considers a threat to its own conservation and to the prevailing regime. The nature of the threat that is so posed to sovereign power can be rather ambiguous or broad. It need not in fact be a clear or inevitable challenge to an existing regime; it need only be perceived as such. The features that constitute this threat then, can be as ambiguous and ever-shifting, although there are some consistent elements that can be ascribed to the threatening subject (or population). The perceived

> unruliness of a population is one element that guides the moment of decision…the "unruly" threat is a transgression of the prevailing order; it signifies something in-tangible, such as a contrasting ideological framework, like Islam, or the memory of a dangerous or troubling history or discourse surrounding that population…But the danger can be represented or manifested by something else that may or may not be tangible, such as outward garb, physical comportment, phenotype, accent, skin color, or something even more subtle (Sheth 2009, 49).

What Sheth points to are the markers of difference that provides state's with reasons to "cut against' certain populations. Following natural disasters, for example, displaced people may exist outside of any legal protections and may be persecuted by their own government during times of chaos. For this reason, and the lack of institutional capacity, supranational bodies may be essential to ensure human rights protection.

Interventions and their Justifications

State intervention requires existing supranational agencies and civil society to assist in the process of protecting human rights. Benhabib notes that these supranational processes of intervention "ought to be advanced with, rather than in lieu of, existing polities" (Benhabib 2004, 3). As is often the case in practice, humanitarian aid occurs through a militarized lens and follows the "top-down" script of aid whereby a state's sovereignty is marginalized through humanitarian strategies that may not cooperate or be sensitive to cultural norms, traditions, geography and essential characters of the nation-state. There are several legal principles enumerated in global politics that enumerate the rights and responsibilities of a nation-state and the international community. The first is

sovereignty as responsibility; second, Security Council's Chapter VII powers; and third, the responsibility to protect.

Sovereignty as responsibility is a legal principle which states that governments are responsible for the human rights of their citizens and when states are unable or unwilling to provide these rights to their citizens, an international responsibility arises to protect those citizens rights (Weiss 2006, 3). In situations where a nation-state is unable or unwilling to protect its citizens reveals the importance of international human rights law in ensuring human rights protections. While challenging traditional doctrines of sovereignty, international human rights law frames the treatment of a state's citizens an international concern and not only a domestic concern (Eide 2001, 85). This principle marks a space wherein, if the state has not fulfilled their obligations to their people, then this principle justifies international intervention.

The responsibility to protect (R2P) highlights several principled doctrines relating to the protection of human rights. The responsibility portion entails "the responsibility to prevent, react, and rebuild, with the single most important priority being the responsibility to prevent" (ICASS 2001). The first principle states that "every state has the primary responsibility to protect its population from genocide, ethnic cleansing, war crimes and crimes against humanity;" and the second states, "the international community has a responsibility to assist states in fulfilling its protection role;" and the third principle enumerates "the responsibility of the international community to take timely and decisive action if the state has failed to fulfill its responsibility to protect its population" (Davies 2010, 5). As we

can see, the international responsibility to protect human rights revolves around those suffering from genocide, war crimes, crimes against humanity, and ethnic cleansing (Cohen 2010, 41). R2P's application only to *jus cogens* rights under international law justifies intervention if a state violates these international legal norms. In response to such violations, the collective action of the international community can include "diplomatic, humanitarian, and other peaceful means, to be followed if necessary by the use of force on a case by case basis under Chapter VII of the U.N. Charter" (Cohen 2010, 41). However, if no *jus cogens* norms being violated, like the situations apparent following natural disasters, what is the international communities intervention principle?

The UN Security Council declared over twenty years ago that the absence of armed conflict does not imply that activities of nation-states cannot be threats to international peace and security. The Council stated, "[t]he non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security" (UNSC 1992). Here, the Security Council leaves open the ability to intervene, but not an affirmative duty to do so, in cases of ecological disasters that threaten peace and security. There may be the possibility for Chapter VII intervention concerning natural disasters (this occurred in Haiti), but R2P is less clear.

A legal principle developed by ICICS (the Intervention, International Commission on, and State Sovereignty) allows for interventions in the absence of *jus cogen* violation. The ICICS reported that "where a population is suffering serious harm, as a result of…repression or state failure, and the state in question

is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect" (ICASS 2001). This implies that R2P can be invoked, in some circumstances, if a natural disaster resulted in state failure or if the state is refusing to cooperate with the international community.

In 2008, the U.N. Secretary-General stated that extending R2P to climate change and natural disasters would undermine, "consensus and stretch the concept beyond recognition or operational utility" (Moon 2008). Thus, we see that this principle is not applicable, at least not explicitly, to climate change and natural disasters. However, Secretary-General's Special Adviser Edward Luck stated that R2P could be applicable in the context of a natural disaster if a government's action or inactions harmed its citizens during a natural disaster "could well be said to constitute an attack on that population" (Cohen 2010, 45). Falguni Sheth's warnings concerning state action that cuts against certain populations, under the guise of natural disaster, perhaps R2P could be used to justify an intervention. Sovereignty and territorial borders forms the foundation on how these doctrines could be utilized to ensure human rights protections for victims of natural disasters and climate change.

The Rights of the Internally Displaced

Most people displaced by either conflicts or natural disasters remain within the borders of their country. They are internally displaced persons (IDPs), defined in the Guiding Principles on Internal Displacement as —

> Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human right s or natural or human-made disasters, and who have not crossed an internationally recognized State border (OCHA 2001).

Whereas people who are displaced over territorial borders have the human rights protection of the refugee act, no such international convention exists for those displaced that remain within their country. Nonetheless, the Guiding Principles state that IDPs –

> Shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced" (OCHA 2001)

Additionally, the Guiding Principles hope to ensure that IDPs have protection concerning their "physical safety and access to life-saving assistance, as well as their fundamental civil, political, economic, social and cultural rights" (Cohen 2013, 210). Thereby enumerating global or cosmopolitan legal protections – the development of a global framework protecting rights of the global citizen. The Guiding Principles established a "soft law" mechanism based on human rights and humanitarian law standards developed in collaboration with international agencies to share the burden of assisting IDPs (Betts 2009, 56). Ironically, as one scholar noted, "agencies seeking to help persons who have not crossed a border require permission from the very political authorities who may be responsible for the displacement" (Weiss 2006, 1).

The Guiding Principles provide some protection for IDPs and provide an alternative framework for intervention from R2P and Chapter VII. The advent of

these international principles and laws and the ways in which states can intervene sovereign integrity is interesting in the sense that these tools can be used for nefarious practices and not solely for protecting human rights. The only legal instrument that defines the specific rights of IDPs and state obligations are the Guiding Principles, but that does not represent a binding legal document. And, as one scholar concluded, “most of the other international instruments from which the protection of IDPs might be inferred include both ‘ratification gaps’ and ‘consensus gaps’” (Westra 2009, 10). Therefore, at this time there are no binding legal treaties that protect all IDPs. Not only do protection gaps exist for current IDPs, but also the Guiding Principles are silent concerning slow onset disasters such as desertification and sea level rise; nor are there any alternative frameworks tailored specifically to the needs of those displaced by slow onset disasters (Cohen 2013, 213). Thus, the law concerning natural disasters and IDPs is new, under theorized and with no protections for those displaced due to several forecasted slow-onset climate change effects.

Despite all the international mechanisms, which could possibly protect IDPs, the ultimate power of protection rests with the sovereign. And if a state is unable or unwilling to protect is citizens, and the international community does not respond, then those citizens exist without rights – the “right to have rights” is no longer applicable for the IDP. Nonetheless, these emerging trends seem to be pieces of a broader trend of eroding sovereignty and privileging rights discourses. A fascinating aspect of the Guiding Principles is that it may be seen to strengthen sovereignty for powerful states. One scholar noted that Northern

states were concerned about international migration and were seeking ways to reinforce border controls through interventions in Southern states to contain people within their territorial border thus strengthening sovereignty, but on a selective basis (Betts 2009, 57). The applicability of collective intervention concerning natural disasters and IDPs leaves much room for selective engagement. Even if sate intervention occurred every time, and that would most likely not be a good thing, we still would see gaps in protections depending on state cooperation, the effectiveness of aid delivery, and a host of other issues. With the increase in extreme weather events and the forecast of even worse disasters due to climate change, looking into ethics, justice and political theory can provide ideas of how we are morally obliged to act in situations such as natural disasters and whether these existing frameworks reflect these obligations.

Ethical Obligations and Duties

David Miller, in his book *On Nationality*, analyzes and considers ethical viewpoints and the duties we owe our fellow humans. Miller's conception of ethical universalism posits that ethics exist apart and prior to any relationship with other individuals and are universal in character - they are shared by all (Miller 1995, 50). He states –

> Each person is an agent capable of making choices surrounded by a universe of other such agents, and the principles of ethics specify what he must do towards them, and what he may claim in return from them" and

> since the principle is universalist in character, the circumstances of the individual does not change the duties we owe them (Miller 1995, 50).

Thus, human rights principles that we owe all people would be same duties we owe victims of natural disasters. Opposite to ethical universalism is ethical particularism. Miller argues ethical particularism "holds that relations between persons are part of the basic subject-matter of ethics, so that fundamental principles may be attached directly to these relations" (Miller 1995, 50). Here, relations are essential. The duties we owe others in ethical particularism, Miller continues, begins from our connections and commitments to people, groups or collectives (Miller 1995, 50). Our relationships are already encumbered with these duties we owe to certain people. These two conceptions provide a frame to analyze the aforementioned laws. While ethical universalism reflects international human rights – the duties each person is owed – Ethical Particularism reflects the principles and laws mentioned earlier. Those fleeing *jus cogen* norms or those displaced within their country are owed more specific duties than those not in the same classification. While each person is ethically owed duties, ethical particularism gives us an opportunity to focus our duties on those most in need.

Adding a nuanced texture to Miller's ethical particularism are Samuel Scheffler's concepts of associative duties and political obligations. Scheffler explains that associative duties are those "special duties that the members of significant social groups and the participants in close personal relationships are thought to have to one another" (2001, 89). This could be applicable to a nation, a state, a city or more personal relationships. Scheffler goes on, "these duties or

responsibilities require us to give the interests of our associates various forms of priority over the interests of non-associates" (2001, 89). These duties to our associates can limit processes of international intervention or on a more personal level spend one's energies working to strengthen the inhabitants of one's own city by working for the government despite billions living on the world in worse conditions. With the associative duties, then, we have a special obligation and duty to those suffering within our territorial borders or on a more micro scale. This points to the obligations of the state's citizens as well. For instance, if a state is unwilling to help its citizens, then those state actors breaking their associative duties.

Scheffler's other idea — political obligations — "are conceived of as consensually generated obligations to uphold the laws and institutions of one's society" (2001, 91). This highlights the obligations that states have to follow the rule of law. In the case of IDPs, all citizens would have an obligation to ensure those displaced have the protections available through their political institutions. These obligations would limit intervention processes since it privileges the institutions of their own political institutions. This idea is challenged in the case of the EU, nonetheless, the idea still holds in the largest set of circumstances. Thus, if one were to argue for non-interventionism and the strengthening of the state, they would find the associative duties and political obligations an essential framework with to theorize with.

Both Miller's and Scheffler's ideas provide lenses through which we can view the ethical underpinnings to the duties we owe others and how the current

legal order concerning natural disasters and IDPs provides a framework to make our duties less than mere abstractions. Iris Marion Young provides, however, a clear sense of how we can channel our duties to help those suffering the most with her idea – the politics of positional difference. Young argues that the practices and policies of public and private social institutions "that interpret equality as requiring being blind to group differences are not likely to undermine persistent structural group differences and often reinforce them" (2007, 84). If we all hold a universal duty to each other, as Miller theorized, that does not highlight the unequal burdens held by certain disadvantaged individuals, groups and nation-states. Young believes, "to remove unjust inequality it is necessary explicitly to recognize group difference and either compensate for disadvantage, revalue some attributes, positions or actions, or take special steps to meet needs and empower members of disadvantaged groups" (2007, 84). This framework allows us to justify our actions to help those who are most disadvantaged. Of course, this is applicable on small scales, but on the global scale, Young's politics of positional difference addresses the global inequality that undergirds the unequal disadvantages concerning natural disaster and climate change effects. Thus, we are looking for a redistribution of benefits that takes into consideration our greater ethical duties to disadvantaged groups.

Conclusion

The forecasted impact of climate change and the devastation of natural disasters are stunning. Natural disasters affect millions of people and the costs of can be in the billions of dollars. Protecting the rights of victims of these disasters requires a balancing act between sovereign power and responsibility and the obligations of the international community. The doctrines provided above have the capacity to intervene in limited circumstances, but their connection between natural disasters and climate change are tenuous at best.

By examining our ethical obligations, we can tease out that difference between owing duties to our fellow human beings and owing greater duties to disadvantaged groups. For the disadvantaged group suffer disproportionately and will continue to do so. Our ethical obligations must inspire us to develop laws or principles that will allow the international community to assist those suffering due to natural disasters and climate change effects.

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