Environmental Justice: A Way Forward the Deconstruction of Property Rights

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Justicia ambiental: Un camino hacia la deconstrucción de los derechos de propiedad

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Conflicts over natural resources are already among the greatest challenges of the century. The increase of natural disasters due to environmental injustice is intensifying the uncertainty of life. Currently, more people are being forced to leave their homes as a form of adaptation and survival because of climate change. This essay is a reflection on why Environmental Justice's call against racism, is also a call to reconsider the current patterns of consumption, the perception of property rights, and progress.

Image above: Global map of environmental justice showing the conflicts in each country in different subjects, for example: conflicts over access to the territory, extraction of minerals and fossil fuels, water management and use, biodiversity conservation, among others. Available at https://ejatlas.org/

Introduction

What could be the contribution of the environmental justice theory to the reform of property rights? The object of this essay is to analyse a possible answer to

this question. The present time is posing a complex landscape for sustainable development. The achievement of the Agenda 2030 seems to be at risk by the current global crises. Indeed, one could have the impression that life is moving backwards the COVID-19 pandemic, the demonstrations against racism and the use of violent force by police, and the conflicts towards the access of natural resources -all exacerbated by natural disasters and environmental forceful environmental factors like climate change. These disasters are turning life inside out, shaking all that seems stable, and their consequences will be massive and longer-lasting. But in fact, these are the results of the environmental injustice. It is time to stop ignoring the signals of these crises and move towards the much-needed change that would lead humanity to sustainable development for all. Let's seize these times as an opportunity to build a new fairer society as environmental justice has been calling for since long ago.

Methodology

In order to answer the main question of this essay, three questions will be posed: a) What is environmental Justice? b) What is the connection between the crisis of environmental injustice and the current crises of COVID-19 pandemic, racism, conflict, and climate change? c) How these crises connect to Property Rights?

Environmental Justice

> *I should keep the environment clean*
> *and not throw litter but dispose it correctly. Moreover,*
> *I should not contaminate water and land used by others*
> (Shantideva 2002, 67).

What is Environmental Justice? Environmental Justice (EJ) started as a social movement at the beginning of the 1980s in the United States (US), though it became universal in the early 1990s. In 1982 the Warren County of North Carolina housed a toxic waste incinerator. This was a place inhabited mainly by African Americans –60% of its 16 000 inhabitants. Resisting the presence of a toxic landfill in their neighbourhood, residents led a series of protests that ended with 500 people detained. According to Dr. Robert Bullard –considered to be the father of EJ– this episode catapulted the EJ movement. The incinerator remained at the site, but the case prompted a study by the United States General Accounting Office, that showed how, strategically, the toxic waste and uncontrolled landfills were in towns inhabited by the African Americans and other minorities, such as Latin Americans, Asians and Native Americans. From the beginning, the movement was defined as one, against environmental racism.[1] Defining EJ as a movement against racism highlighted a deeper issue - the struggles of power relations among social groups. Indeed, for Bullard, EJ is about a change of paradigm in which vulnerable communities and individuals, normally invisible, are given voice to become visible (Espinosa González 2012, 51-77) (Bullard 2012) (Segoviano Basurto 2015, 82-111).

In October 1991, the first National People of Color Environmental Leadership summit was held in Washington DC. The summit brought together more than five hundred representatives of organizations from the US and Latin America. The Declaration of Principles of Environmental Justice (DPEJ) was its concluding document. It is a declaration with 17 principles. Among these, principle one affirms "the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from

[1] Term, created by the Rev. Benjamin F. Chavis, was one of those arrested and after became director of the Racial Justice Commission of the United Church of Christ.

ecological destruction". Principle two "demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias". Principle three, "mandates the right to ethical, balanced and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things". Principle seven demands the right for social participation "at every level of decision-making, including needs assessment, planning, implementation, enforcement and evaluation". Principle nine "the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care". Principle thirteen "calls for the strict enforcement of principles of informed consent". Finally, principle seventeen is a call for "we, as individuals to make personal and consumer choices to consume as little of Mother Earth's resources and to produce as little waste as possible; and to challenge and reprioritize our lifestyles to ensure the health of the natural world for present and future generations". In 1992, the DPEJ was embedded within the Rio declaration on Environment and Development. From then on, the Principles of the Environmental Justice have gradually permeated into different countries' regulatory frameworks (Espinosa González 2012, 51-77) (Alston 2010) (Bullard 2012)

More recently, Jorge Riechmann defined EJ as "the fair distribution of environmental benefits and damages through three principles: a) Principle of Sustainability or Intergenerational Justice, b) Principle of Equal Parts or World Justice for the right to land, c) Principle of half-and-half or Interspecific Justice". In this concept Riechmann is implying a human expanded responsibility towards nature and other animal species. The principle of sustainability, *or Intergenerational Justice,* refers to the obligations to future generations. That of equal parts or *World Justice for the right to land*, refers to the right of an equitable distribution of the goods and natural resources among humans. The principle of half-and-half or *interspecific justice*, refers to the obligation by humans to share the planet with other animal species, respecting their life and space (Riechmann 2003, 103-120) (Espinosa González 2012, 51-77).

EJ's initial proposal is now expanding to the core of the legal theories with Riechmann's proposal, indeed raising an interesting challenge to the current legal obligations' theory. According to Riechmann's classification, there should be three amplified dimensions of the legal obligations in space and time. In alignment with the sustainable development's proposal, he talks about a responsibility to future generations. However, he also talks about the obligations towards present generations in two cases of vulnerable communities that may be endangered by humans' depredation. For him, equal-shared access to land should be particularly for poorer human communities, but also communities of other animal species. This perspective could be greatly beneficial when approaching conflicts over property and access of natural resources, especially for environmental displaced communities (Riechmann 2003, 103-120) (Riechmann 2005) (Azuela 2011, 1919-1942) (Segoviano Basurto 2015).[2]

> From the increase in our powers to intervene in nature, our knowledge and our capacity for foresight, derives the increase in our responsibilities.

[2] Antonio Azuela for example is calling to a constitutional debate about property rights in the post- revolutionary Mexico. For him, the environmental agenda for the sustainable use of resources may be opposing with current land regimes. One may ask then: What should be the extent of property rights of agrarian communities and individuals who own land with special ecological value for society in general? To what extent society should restrain the access to land and natural resources when these could be of particular value to the life vulnerable communities?

> Hans Jonas suggested that nature, as a human responsibility, is undoubtedly a novum on which ethical theory must reflect. The notion of responsibility (towards the biosphere, non-human living beings, vulnerable communities and future human generations) plays a key role in articulating an ethical response to the challenges of the contemporary ecological crisis, a task that is inscribed in a vulnerable world (Riechmann 2005, 21-23).

Environmental Justice is about enhancing human rights and species welfare for the sake of life on Earth. Riechmann's proposals are a call for a new way of ethical thinking, one in which the possession of any advantage or privilege is a responsibility to protect those more vulnerable. (Islam 2017, 3) (Espinosa González 2012, 51-77) (Bullard 2012) (Segoviano Basurto 2015, 13-17) (The Center for Environment and Development the Rainforest Foundation & Forests Monitor 2003, 7-27).

Root cause of many crises

What is the connection among the crisis of environmental injustice and the current crises of COVID-19 pandemic, racism, conflict and climate change? For Riechmann, is easier for humans to cause suffering to animals due the image of "the other". Why? Because by being "other" is not "one of us". Therefore, he proposes that humans stop thinking in terms of the existent differences or affinities with "others". Other creatures will always be deeply incomprehensible to us. However, is more important that humans hold on to their capacity of reacting to the suffering of "others", since humanity depends to a large extent on kindness and compassion (Riechmann 2005, 15).

James Tully is also calling to a new way of thinking in regard of the image of "the other". Nevertheless, as a matter to reconsider the ideal of progress. For him, the conquest of other cultures created an idea of development enhancing death by diminishing life. To be considered "developed", the defeated cultures –classified as the "others" from the side of the hegemony– had to resemble the image of their conqueror. To do so, they had to destroy who they were. Thus, he calls attention to the fact that for each cultural lost, an opportunity for life is lessened (Tully 1995, 183-212).

> Diversity –the rich tapestry of Life's intricately interlaced phenomena, processes, and relationships– is being degraded by modern reductionist forces of homogenization. The fabric of interdependent and mutually reinforcing strands of biological, cultural, linguistic, and institutional diversities has frayed, as the world has become increasingly brittle and less resilient. At a time when the environmental and social consequences of human-induced changes have become increasingly severe, there is a growing recognition that humankind, as Albert Einstein observed, cannot solve problems in the same way of thinking that led to their creation. A new way of thinking, a paradigm shift, is required to sufficiently improve the nature of our relationship with the world. (UNESCO 2008, 5)

For Tully, the basis of a new spirit is "for different peoples, religions, and cultures, to learn to respect each other, to respect and honor each other's differences". That is, learning to live in the virtue of and not despite the differences (Segoviano Basurto 2015, 92-94) (Tully 1995, 183-212).

Human activities in total disrespect of nature and other communities –either humans or animals– are not only leading to several disasters, but also exacerbating their consequences. Pandemics, climate change, racism, conflicts and forced migration due environmental disasters are among them. Ironically,

these consequences are presenting serious threats to human security in general. The idea that ones' benefit excuses the damage to "others" –something that it may be easier since "is not me or one of us", indeed, is getting back at "us". Hence it could be worth to analyse if what is being done in the name of progress and benefit is instead detrimental to life. COVID-19 pandemic is a clear message from nature. Those were the words by Inger Andersen, UN environment chief, to *The Guardian.* For her, "humanity was placing too many pressures on the natural world with damaging consequences". "Failing to take care of the planet means not taking care of ourselves" (Carrington 2020) (Naicker 2011, 1-6) (Segoviano Basurto 2015) (IPCC 2014) (The World Bank 2016) (IOM 2014, 1-4).

Indeed, we were warned of the COVID-19 pandemic by scientists. The causes, that also add to the risk of future pandemics, are deforestation, industrial agriculture, the illegal wildlife trade, climate change, and other types of environmental degradation. COVID-19 pandemic is also raising the probability of major human rights violations, especially for those who are already vulnerable to environmental harm. As David Boyd highlighted "Today, the disposition or lack of disposition of basic resources such as water and habitat, turns out to be the difference between life and death". According to him, instead of deflecting attention from the environmental issues during the pandemic, governments should accelerate their efforts to achieve the 2030 Agenda of the Sustainable Development Goals (SDG). An effective way to prevent pandemics and protect human rights is maintaining a healthy environment- there is no other way (Boyd 2020) (Frutos *et al.* 2020) (Naicker 2011, 1-6).

Right after the crisis of COVID-19 pandemic started, another crisis forcefully re-emerged. Once more, bringing back the attention to the key foundations of the Environmental Justice movement –against racism and giving voice to the voiceless. All over the world, people raised their voice against police violence. They were trying to give voice to George Floyd, Breonna Taylor and Tony McDade murdered by the police in US. In Mexico, to Giovanni López Ramírez. Those within the Environmental Movement are doing their best to add their voices against these atrocities because it is noticeably clear. Racism and violence are killing the planet too. One cannot talk about sustainable development whilst racism and violence have not yet been eradicated. In his article "Racism is Killing the Planet" Hop Hopkins could not be clearer (Hopkins 2020).

> You can't have climate change without sacrifice zones, and you can't have sacrifice zones without disposable people, and you can't have disposable people without racism[...] We're in this global environmental mess because we have declared parts of our planet to be disposable. When we pollute the hell out of a place, that's a way of saying that the place—and the people and all the other life that calls that place home—are of no value (Hopkins 2020).

There are many crises arising from within the crisis of environmental injustice. These are now interacting as an endogenous vicious cycle from which is difficult to distinguish causes and effects. Hopkins analyses also bring the current environmental crises to the stories of dehumanization since colonial times (Hopkins 2020) (Segoviano Basurto 2015, 58-98) (Tully 1995, 183-212).

Deconstructing Property Rights

How these crises connect to Property Rights? In Mexico, as in the US, the tells of the "others" by the colonizers created imagery of Native and Indigenous people as less "developed". This was the excuse to terrorize them, evict them from their lands or to acquire them

as a part of these. The Doctrine of the Discovery and the law of *encomiendas* are clear examples of it. The first one made its way into US law with the case of Johnson v. McIntosh ruled by Judge Marshall. According to this doctrine, any land "discovered" by Christians was theirs because of the inherent inferiority of non-Christian people. After Johnson v. McIntosh in 1823, the US Supreme Court ruled that the principle of discovery gave European nations an absolute right to New World lands. In the case of the *encomiendas*, the Spanish Crown ruled that all the conquered land was automatically the property of the Crown. The use of the land could be transferred as *encomiendas* to the Spanish citizens. The entrust –as *encomienda* could be translated to– included the indigenous inhabitants. The excuse for it was their evangelization in case they had souls. In Hopkins' words "just as the settlers had to believe and tell stories to dehumanize the people they killed, plundered, and terrorized; today's systems of extraction can only work by dehumanizing people" (Hopkins 2020) (Segoviano Basurto 2015).

For Carol M. Rose, the present dominant concept of property is the telling of a story imposed by the cultural hegemony. As Jaime Ubilla explains, within the civil law tradition, ownership's rights are expressed by the Roman maxim *ius utendi fruendi et abutendi res sua quatenus juris ratio patitur.* That is, the owner has the right to use, take fruits and dispose freely with his item, to the exclusion of every other person. According to the traditional economy, to ensure market security and strong trade, domain of property is essential. If there are no clear and defined property rights and no-one takes care of resources, they are wasted and there is conflict. However, this creates a competition in which the winner generates the clearest messages of occupation. But what if these messages are not clear or understood by other cultures? (Rose 1994) (Ubilla 2016, 214) (Segoviano Basurto 2015).

This issue was also posed by Jean-Jacques Rousseau in his discourse about the origins and foundations of inequality among humans. Niklas Luhmann retakes it in *The Origin of the Property and its Legitimation: A Historical Overview* (Luhmann 2015).

> The first who, having encircled a piece of land, ventured to say; this is mine, and found people simple enough to believe it, was the true founder of civil society. What crimes, wars, murders, miseries, and horrors had not spared the human race, who, tearing out the stakes or filling the ditch, would have shouted to his fellow creatures. Do not listen to this impostor; you are lost, if you forget that the fruits are to all, and that the earth is to no one. (Luhmann 2015, 6)

For Luhmann, "the dragging force of the structural conditions that characterize modern society, operating without interruption and almost blindly, has led the society system to a situation very different from what was expected of progress". The ideal of a modern society in a constant positive transition seems to become more distant by the day. Alluding to the old English proverb; "the proof of the pudding is in the eating", just look at the crises of environmental injustice resulting from the idea of progress by conquerors (Luhmann 2015, 2-3).

Conclusions

> *Thinking that we can live independently in our little world does not correspond to reality. It is more realistic to think that we are like a cell within the immense body of life, different from others but intimately related to them. We are completely dependent on all beings [...] the idea that it is possible to worry only about our own well-being and even seek it at the expense of others is absurd* (Gyatso 2017, 52).

What could be the contribution of the environmental justice theory to the reform of property rights? The

"modern" legal system of property is the institution of a dominant culture. It is the imposition of an absolute and exclusive right, that devastated the conquered cultures. Dehumanized disposable people –placed at the other side of the fence– by people with no sense of humanity itself. The right to free use, given by ownership, is demonstrating to be excluding and dominating with nature. This message could not be more pertinent at this precise moment. At present, more and more people are being forced to leave their homes as a form of adaptation and survival in the face of the effects of climate change. This will also intensify conflicts over the ownership, access, and management of natural resources. According to the United Nations Environment Program (UNEP), since 1990, 40% of armed conflicts have originated in a disagreement over the management of natural resources. The Planet Security Initiative declared that conflicts over natural resources are already among the greatest challenges in the geopolitical structure of the century (UNEP 2015, 1-52) (Abel *et. al.* 2019, 239-249) (Planet Security Initiative 2017) (Segoviano Basurto 2015).

It may seem reasonable to defend the current institution of property rights while standing inside the fence. However, what if tomorrow we are the ones outside? As this conclusion is written, news about Hurricane Laura that hit Louisiana report its path of destruction. People lost their lives and many others lost everything they owned. And this is just one of many. Environmental injustice is intensifying the uncertainty of life. However, out of adversity, opportunity may arise and if there was a wait for an attentive audience, this is the time! (Sacchetti 2020). —

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