

## 8. Schopenhauer's *Mitleid*, environmental outrage and human rights

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### 1. INTRODUCTION

When we feel a sense of outrage on witnessing great wrongs perpetrated against persons or communities, where does that outrage come from? What accounts for it and is it justifiable? The thesis of this chapter is that Schopenhauer's ethic of *Mitleid* (compassion) both explains where this sense of outrage comes from and why it is justified; and further, that widely accepted human rights standards confirm the validity of that experience of outrage and the felt need to act on it.

The modern human rights movement began in outrage, and the modern environmental movement found its human rights footing only when it too began to feel outrage at the increasing number, complexity and scope of environmental abuses that impacted human persons. The Universal Declaration of Human Rights (UDHR), a founding document in the modern human rights movement, reminds us in the second recital of its Preamble of the recent horrific events in World War II, and of those 'barbarous acts which have outraged the conscience of mankind'.

The Preamble also reminds states that it is in their self-interest to promote human rights,<sup>1</sup> an appeal to the motive that Schopenhauer will term 'egoism', but emphasis in the Preamble is placed on reminding

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<sup>1</sup> Recitals three and four of the UDHR Preamble refer to states' self-interest in promoting human rights: 'Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law', 'Whereas it is essential to promote the development of friendly relations between nations'.

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states of the moral outrage that the human community felt and expressed at governments whose behaviours showed such disregard for human suffering.

The injuries and devastating suffering that so often result from exposure to environmental toxics, from damage to the environment and from climate change often evoke a similar sense of moral outrage. This chapter explores the grounds and implications of that outrage.

## 2. OUTRAGE EXPERIENCES

Most of us can probably think of environmental situations that have impacted people in serious ways, about which we have felt appalled and horrified. Perhaps it was aerial pesticide sprays of large populated areas that resulted in devastating health and economic impacts on residents; or heavy industrial pollution of water and air that had dramatic impacts on nearby residents; or oil and gas drilling or refining operations that have affected families and communities and contributed to climate change.

Imagine the family, for example, whose next door neighbours have leased their land to an oil and gas company, and a six-acre drill pad has now been erected on the neighbour's land just 200 yards away from this family's home. Imagine that shortly after drilling began, the family's well water suddenly developed a pronounced chemical taste and they no longer felt safe drinking, cooking or showering with it. Imagine that the children began experiencing respiratory and other health problems within a few days of the start of drilling operations, so that the family sees no other option than to move away and live elsewhere – only to discover that real estate values in their neighbourhood have plummeted because of the presence of hydraulic fracturing, so they can no longer sell their home, and their insurance covers none of their losses because losses associated with fracking have been exempted.

Or consider the experience of the young Latina student in my class one quarter who suffered from a variety of health challenges – respiratory, neurological, skeletal, developmental, reproductive, etc. – most of which she had endured since birth. At one point in the class when I was lecturing on environmental toxics, pesticides and health impacts, you could almost see a light go off in her head. She raised her hand and asked whether I thought it might be possible that her mother's exposure to pesticides in the agricultural fields of Eastern Washington could be a factor in her own health situation. 'When my mother was pregnant with me her job was to be a spotter', she explained. 'When the pesticide spray plane flew low along the rows of berries, my mother's job was to stand at

the end of each long row and wave her hands in the air as the spray plane passed over to signal the pilot that he should turn around at that point and fly back down the next row. She did that all day long when the crop dusters were spraying. Do you think that could have been a factor in my health?<sup>2</sup> It is not the environment, of course, that is responsible for injuring people in these situations; it is the individuals, corporations or governments that have done things, or allowed things to be done, to the environment that have then resulted in injury to people.

If we feel outrage at situations like these, this chapter asks what accounts for that outrage, where exactly it comes from and what it is grounded in. The chapter argues, first, that the philosophy of Arthur Schopenhauer provides an ethical and metaphysical account of where such moral outrage comes from, how it comes to be and why it is so powerful, and secondly, that widely accepted moral norms expressed in human rights documents then confirm the validity of those feelings of outrage. Both these insights have implications for activist responses to issues at the nexus between human rights and the environment.

The philosophical claim to be made in this chapter is that Schopenhauer's ethic of compassion, his *Mitleids-Moral*,<sup>3</sup> provides a better account of our experience of moral outrage than do other ethical systems such as Aristotle's ethic of virtue and happiness, Immanuel Kant's categorical imperative or John Stuart Mill's consequentialist, greatest happiness for the greatest number, principle, or even ethical systems based on religious beliefs about rewards and punishments in an afterlife. These philosophies and theologies certainly do have their strengths, but accounting for the experience of moral outrage is not one of them.

This chapter uses the terms 'outrage' and 'moral outrage' in their ordinary sense of an unusually strong reaction of anger, shock or indignation – also described as feeling appalled, horrified, aghast or disgusted – particularly at witnessing or learning of great wrongs done to others. If we followed Plato's psychology, we would attribute this feeling to the part of the soul he calls the spirited part,<sup>4</sup> the part that loves justice and gets angry at injustice.

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<sup>2</sup> The horrific Union Carbide disaster in Bhopal, India, in 1984 could also serve as a trenchant example of situations that evoke moral outrage. See U Baxi, 'Writing about Impunity and Environment: The "Silver Jubilee" of the Bhopal Catastrophe' (2010) 1 *Journal of Human Rights and the Environment* 23–44.

<sup>3</sup> DE Cartwright, 'Compassion and Solidarity with Sufferers: The Metaphysics of Mitleid' (2008) 308 *Eur J Philos* 292–310.

<sup>4</sup> Described in Socrates' second speech in Plato's *The Phaedrus*.

As Lynn Hunt says in *Inventing Human Rights: A History*, ‘we are most certain that a human right is at issue when we feel horrified by its violation’.<sup>5</sup> When we see or hear of such horrible injustices we are often seized with shock and outrage and blurt out, if only to ourselves: How awful! How could anyone do such a thing? When we ask that question of ourselves, though, what exactly is it we are asking? Are we asking how someone could have so little fear of punishments in the afterlife? Probably not.<sup>6</sup> Are we asking how anyone could care so little about being a virtuous person (as in Aristotle’s ethic)? Again, probably not. Are we asking how anyone could so completely overlook their duty to act on universal principles of moral obligation (Kant’s ethic)? Almost surely not. Are we asking how anyone could so inaccurately estimate the sum of beneficial and harmful consequences (Mill’s ethic)? No. Schopenhauer thinks the sense of our question is something closer to: How is it possible for anyone to be so utterly bereft of human compassion that they could do, or allow to be done, such a heartless deed.

### 3. SCHOPENHAUER’S ‘HUMBLE PATH TO ETHICS’<sup>7</sup>

The primary source for understanding Arthur Schopenhauer’s (1788–1860)<sup>8</sup> ethical philosophy is *On the Basis of Morality*,<sup>9</sup> an essay he submitted in 1839 to the Royal Danish Society of Scientific Studies for its prize essay contest about the foundations of morality. His essay was the contest’s only submission. It directly addressed and answered the question, but was not awarded the prize, probably because the judges were irked by his acerbic references to some highly respected German philosophers of the day, particularly Hegel, whom he considered to be bombastic, wordy, shallow and an empty ‘philosophaster’. The Academy’s one-paragraph formal judgement about Schopenhauer’s essay

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<sup>5</sup> L Hunt, *Inventing Human Rights: A History* (New York, Norton 2008) at 26. Her use of ‘horrified by’ will be taken as being equivalent to ‘outraged by’.

<sup>6</sup> We will see later that I am paraphrasing Schopenhauer here.

<sup>7</sup> The term is from G Mannion, *Schopenhauer, Religion and Morality: The Humble Path to Ethics* (Aldershot, Ashgate 2003) 232.

<sup>8</sup> Born 22 February 1788 in Danzig (Gdańsk), died 72 years later in 1860 in Frankfurt.

<sup>9</sup> The two English translations used for this paper are: A Schopenhauer, *On the Basis of Morality*, Translated by EFJ Payne, Introduction by DE Cartwright (Indianapolis, Hackett 1995), and A Schopenhauer, *On the Basis of Morality*, Translated by DE Cartwright and EE Erdmann, Introduction by C Janaway (Oxford, OUP 2010).

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claims that the essay did not directly answer the question posed, but the judges' concluding sentence says it all: 'Finally, we cannot pass over in silence the fact that several distinguished philosophers of recent times are mentioned in a manner so unseemly as to cause just and grave offense'.<sup>10</sup>

Schopenhauer scholar David Cartwright offers quite a different assessment, one less tainted by the tender sensitivities of the Danish Academy's panel of judges. 'Arthur Schopenhauer deserves to be considered a first-rate moral philosopher', he says,

because of his analysis of the ethical significance of compassion (*Mitleid*). Although his ethics contains other important insights, it is his multi-faceted analysis of compassion which is its crowning jewel. The depth of Schopenhauer's understanding of the nature and ethical importance of this emotion is unparalleled in the history of Western philosophy.<sup>11</sup>

Although Schopenhauer himself was no saint (witness his misogyny, for example, and a brief review of his biography<sup>12</sup> would turn up more), he did not believe that a person's faults disqualified them from writing about ethics.<sup>13</sup> 'It is just as little necessary', he says, 'for the saint to be a philosopher as for the philosopher to be a saint',

just as it is not necessary for a perfectly beautiful person to be a great sculptor, or for a great sculptor to be himself a beautiful person. In general, it is a strange demand on a moralist that he should commend no other virtue than that which he himself possesses.<sup>14</sup>

#### 4. PURPOSE OF ETHICS

Schopenhauer begins by asking what the central job of ethics is, what it intends to study and what its methods are. Philosophers have given quite different answers to these questions, of course, most involving analyses and reasoned justifications for 'ought' and 'ought not' statements. Schopenhauer, though, sees ethics not as a set of justifications for

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<sup>10</sup> Schopenhauer (1995) (n 9) 216.

<sup>11</sup> Quoted in G Mannon, *Schopenhauer, Religion and Morality: The Humble Path to Ethics* (Aldershot, Ashgate 2003) 198.

<sup>12</sup> The best available is the welcome new biography by Cartwright, 2010: DE Cartwright, *Schopenhauer: A Biography* (Cambridge, CUP 2010).

<sup>13</sup> MA Fox, "'Boundless Compassion': The Contemporary Relevance of Schopenhauer's Ethics' (2006) *Eur Leg* 37–71.

<sup>14</sup> A Schopenhauer, *The World as Will and Representation, Volume I*. Translated by EFJ Payne (New York, Dover Publications 1969) 383.

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prescriptive claims about how people *ought* to behave, but instead as a purely empirical study of how people actually do behave, with an eye to the moral dimension of their actions, along with an explanation, both psychological and metaphysical, for why they behave that way. The purpose of ethics, he says,

is to indicate, explain and trace to its ultimate ground the extremely varied behaviour of [people] from a moral point of view. Therefore there is no other way for discovering the foundation of ethics than the empirical, namely, to investigate whether there are generally any actions [at all] to which we must attribute *genuine moral worth*.<sup>15</sup>

Schopenhauer's answer to that question will be yes, there are acts of genuine moral worth, justice and loving-kindness, but that our accounting for them will entail both explanation and, at bottom, a genuine mystery. The explanations, he believes, must be empirically based, not spun from philosophically abstract concepts in the academies. Explanations will need to be clear, intuitively evident and understandable by everyone, whether learned or not and whether they are abstract thinkers or not. No abstract, artificial combinations of abstruse concepts will be acceptable.

## 5. CRITERION FOR ACTIONS OF MORAL WORTH

To begin with, the non-moral incentives to action (for Schopenhauer) include egoism and malice. Malice, in which the incentive to action is to cause suffering in another, is morally reprehensible and is the actual and conceptual opposite of morally noble actions. Egoism, i.e., acting in one's own self-interest, which is by far the most common motivation for human actions and which shows itself in almost limitless forms, is, in his view, morally neutral.

The only actions that would have moral worth<sup>16</sup> are those done for the benefit of someone else, someone who is not me. A morally worthy act must therefore exclude actions motivated by self-interest or by malice.

If a self-interested motive is the only one, its discovery entirely destroys the moral worth of an action; and if such a motive acts as an accessory, the moral worth of the action is reduced by its discovery. The absence of all egoistic motivation is therefore, *the criterion of an action of moral worth*.<sup>17</sup>

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<sup>15</sup> Schopenhauer (1995) (n 9) 130.

<sup>16</sup> Ibid 143.

<sup>17</sup> Ibid 139–40, Schopenhauer's emphasis.

In Schopenhauer's view, egoism and moral worth absolutely exclude each other. As long as egoistic motivation is present – even if the anticipated self-benefit at which the action aims is remote, perhaps even in an after-life, and even if the goal aimed at is to improve my character or to 'perfect myself – as long as egoistic motivation is present, the action resulting from it does not have moral worth: 'If an action has as its motive an egoistic aim, it cannot have any moral worth. If it is to have moral worth, its motive cannot be an egoistic aim, direct or indirect, near or remote'.<sup>18</sup> There is thus only one case in which an act has moral worth and that is when the act is done solely to benefit another or to prevent or relieve the suffering of another.

It is worth asking at the outset whether any such actions exist, i.e., whether any actions 'exclusively centred in the weal and woe of someone else'<sup>19</sup> exist, or whether all human acts are egoistic, done for some purpose that is intended to benefit me. In other words is the class of morally worthy acts a populated or an empty class? Schopenhauer believes there are indeed acts done purely to benefit another or to prevent or ease their suffering. The key challenge, though, is to 'find out *what it is* that can move a [person] to actions of this kind'.<sup>20</sup> How is it possible, in other words, to be moved to act solely for another's well-being: 'How is it possible for *another's* weal and woe to move my will immediately, that is to say, in exactly the same way in which it is usually moved only by my own weal and woe?'<sup>21</sup> That is the question.

Schopenhauer's answer is 'compassion' ('*mitleid*' from '*leid*', suffering), a concept that conveys the sense of *suffering with* another. Acting to prevent or to alleviate another's suffering, just as I might otherwise act to prevent or to alleviate my own, entails my understanding, or even experiencing, the other's suffering as I normally experience only my own. 'But this [says Schopenhauer] necessarily presupposes that, in the case of *his* woe as such, I suffer directly with him',

I feel his woe just as I ordinarily feel only my own; and, likewise, I directly desire his weal in the same way I otherwise desire only my own. But this requires that I am in some way *identified with him*, in other words, that this

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<sup>18</sup> Ibid 141.

<sup>19</sup> Ibid 143.

<sup>20</sup> Ibid 140, Schopenhauer's emphasis.

<sup>21</sup> Ibid 143, Schopenhauer's emphasis. And he phrases the question again at 165: '[H]ow is it possible for a suffering which is not *mine* and does not touch *me* to become just as directly a motive as only my own normally does, and to move me to action?'



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entire *difference* between me and everyone else, which is the very basis of my egoism, is eliminated, to a certain extent at least.<sup>22</sup>

For Schopenhauer the compassionate actor feels, in some mysterious way, identified with the other person, feels their suffering in such a way that the difference between that person and himself is eliminated or at least reduced: 'As soon as this compassion is aroused, the weal and woe of another are nearest to my heart in exactly the same way, although not always in the same degree, as otherwise only my own are. Hence the difference between him and me is no longer absolute'.<sup>23</sup> Compassion is thus a kind of participation in the other's sufferings: 'We suffer *with* him and hence *in* him; we feel his pain as *his*, and do not imagine that it is ours'.<sup>24</sup> This, according to Schopenhauer, is the great mystery of ethics, and is astonishing. Compassion, for him, is *the* primary ethical phenomenon and yet presents itself to us as a mystery, i.e., as not entirely explainable. 'This event is certainly astonishing, indeed, mysterious. In fact it is the great mystery of ethics; it is the primary and original phenomenon of ethics, the boundary mark beyond which only metaphysical speculation can venture to step.'<sup>25</sup> (The metaphysical explanation will be discussed below.)

Since it is only weal (well-being) and woe (suffering), whether mine or another's, that moves the human will to act, there are in principle only four possible classes of motivation for human actions: (1) acting to promote my own weal and interests, which Schopenhauer terms 'egoism'; (2) acting to bring about my own woe and suffering, which Schopenhauer does not name and does not discuss;<sup>26</sup> (3) acting to bring about suffering and woe in another person, which he terms 'malice', and is at the far negative end of moral value; and (4) acting to prevent or ease another's suffering or on behalf of their well-being, which he terms

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<sup>22</sup> Ibid 143–44, Schopenhauer's emphasis.

<sup>23</sup> Ibid 144. '[T]he process here analyzed is not one that is imagined or invented; on the contrary, it is perfectly real and indeed by no means infrequent. It is the everyday phenomenon of compassion, of the immediate participation ... primarily in the sufferings of another, and thus in the prevention or elimination of it [sic]' (ibid).

<sup>24</sup> Ibid 147.

<sup>25</sup> Ibid 144.

<sup>26</sup> Schopenhauer does not discuss the second category, acting to bring about my own woe. Is it an empty category or are there behaviours that would fit it? Masochism perhaps? Spiritual asceticism? In a letter to Johann August Becker, 10 December 1844, he claimed that the desire for one's own woe possessed 'ascetic value'. See (n 3).



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‘compassion’. In actuality, though, Schopenhauer focuses his discussion primarily on only two of these motivations: egoism, which he says accounts for the vast bulk of human actions, and compassion. And further, Schopenhauer argues that it is only sympathy with another’s *suffering*, not with their well-being, that stirs us to compassion: ‘Direct sympathy with another is restricted to his *suffering*. It is not roused, at any rate not directly, by his *well-being*; on the contrary, in and by itself this leaves us unmoved’.<sup>27</sup> And the reason for this, explains Schopenhauer, is that pain and suffering are the positive, substantial reality. Satisfaction, happiness and contentment are negative only, in that they are simply the absence of suffering.

The reason for this is that pain, suffering that includes all want, privation, need, in fact every wish or desire, is *that which is positive and directly felt and experienced*. ... [T]he nature of satisfaction, enjoyment, and happiness consists solely in the removal of a privation, the stilling of a pain ...<sup>28</sup>

Suffering, in other words, is the primary ethical datum, and our concern for suffering, when it occurs in another person, is what moves us to act compassionately.<sup>29</sup> We can act compassionately in two ways, either by avoiding causing or increasing another’s suffering, or by undertaking an action to relieve their suffering.

## 6. THE VIRTUE OF JUSTICE

Justice is the name of the virtue by which a person refrains from doing injury to another, and is the first of Schopenhauer’s two cardinal virtues, loving-kindness being the other.

Imagine that your pursuit of a given egoistic aim such as comfort, pleasure or profit were to entail, as a side effect, causing injury or harm

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<sup>27</sup> Schopenhauer (1995) (n 9) 145, Schopenhauer’s emphasis.

<sup>28</sup> Ibid 146, Schopenhauer’s emphasis.

<sup>29</sup> A more recent expression of the importance of compassion can be found in the words of former Anglican Bishop Christopher Senyonjo of Uganda who appeared in *Call Me Kuchu*, a film about the repression of gay people in his country. He said that lack of compassion is at the root of human rights abuses: ‘When people don’t regard others as real human beings, they have no compassion for other people. They do anything they want to them, as if they were not human beings’. Voice of America, <http://www.voanews.com/khmer-english/news/Movies-About-Human-Rights-Screened-in-New-York-161199605.html> (accessed 10 October 2014).

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to another person in the process. It would be the virtue of justice, stemming from compassion, that would prevent you from pursuing that aim (or at least from pursuing it in a manner that causes woe to the other) and that restraint would be morally worthy. You would be acting justly.

[T]he first degree of the effect of compassion is that it opposes and impedes those sufferings which I intend to cause to others by my inherent anti-moral forces. It calls out to me 'Stop!'; It stands before the other [person] like a bulwark, protecting him from the injury that my egoism or malice would otherwise urge me to do.<sup>30</sup>

Applying this analysis, if a corporation, for example, acting in pursuit of its own egoistic (economic) ends, were to injure or to harm others in the process, that would be a violation of the virtue of justice and thus morally blameworthy.

If the virtue of justice were to be expressed in a maxim, that maxim would be *Neminem laede*, 'Harm no one'. Refrain from causing harm to others. Maxims and norms of this sort (perhaps including human rights norms) are important for living a moral life. Maxims are the fixed forms in which we store our sense of compassion. They are the 'receptacle or reservoir which stores the habit of mind'.<sup>31</sup> So if a person is following the maxim of justice, to harm no one, compassion still acts indirectly in them when they are respecting the norms of justice. Even if this person acts primarily out of a sense of duty and respect for the norms of justice, compassion still (says Schopenhauer) remains always ready to come forward if the 'established maxim' is not working. 'Nothing', says Schopenhauer, 'will bring us back to the path of justice so readily as the mental picture of the trouble, grief, and lamentation' of the sufferer.<sup>32</sup> This argument underscores the well-recognised importance of personal narratives in environmental human rights work, because such narratives make immediately clear the sufferings of others and evoke the public compassion that can lead to change.

What Schopenhauer has underscored here is that injustice and moral wrong consist in causing or adding to the sufferings of another. And again it is 'wrong' that forms the positive concept here, while morally worthy acts are those that lead to the cessation, easing or prevention of suffering. In support of this claim of the conceptual primacy of injury and wrong, Schopenhauer quotes Hugo Grotius: 'Justice is that which is

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<sup>30</sup> Schopenhauer (1995) (n 9) 149.

<sup>31</sup> Ibid 150.

<sup>32</sup> Ibid 152.

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not unjust'.<sup>33</sup> This may initially sound tautologous but Schopenhauer intends it to underscore his claim that injustice is the primary concept from which the concept of justice is derived.<sup>34</sup>

This formulation is reminiscent of Alan Dershowitz's argument in *Rights from Wrongs*<sup>35</sup> that rights emerge out of the experience of great wrongs, and that as new wrongs become possible and actual – pollution of the atmosphere, toxification of potable water, etc. – so new rights become evident, such as the rights to clean air and water. New rights emerge, in other words, in response to new ways in which people can be injured. This view also allows for the existence of purely moral rights that are antecedent to rights in law, because this explanation is based on the experience of actual empirical injury. The concept of rights as moral norms would thus for Schopenhauer precede the emergence of rights based in law.

The concepts *wrong* and *right* are synonymous with doing harm and not doing harm, and to the latter belongs also the warding off of injury. They are obviously independent of, and antecedent to, all positive legislation. Hence there is a purely ethical or natural right ... that is independent of all positive statute.<sup>36</sup>

Thus on the question as to whether rights exist only *after* they have been defined in law or exist as moral rights prior to their implementation in law, Schopenhauer comes down clearly on the side of the latter.<sup>37</sup>

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<sup>33</sup> H Grotius, *The Law of War and Peace* (I, 1,3).

<sup>34</sup> On the question of which notion, right or wrong, is conceptually prior, Schopenhauer also cites Dante who, when asked 'Who knows what is good?' responds '[h]e who knows what is bad': quoted in A Schopenhauer, *On the Will in Nature* (Oak Grove Kindle 2011), Kindle location 453–55.

<sup>35</sup> A Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York, Basic Books 2005) 7–8.

<sup>36</sup> A Schopenhauer, *On the Basis of Morality* (1995) (n 9) 154, Schopenhauer's emphasis.

<sup>37</sup> Johannes Morsink refers to the view that rights exist only after they have been expressed in law as the fallacy of implementation: 'This fallacy does to human rights what the functionalism and behaviorism in psychology did or still do to our mental states. These schools of thought in psychology translate mental states out of existence as irrelevant to the real business of science. Just as some doctors and neurologists only want to know about the bodily behavior and neurobiological condition of their patients, so some human rights theorists are only interested in the instruments of international human rights law. And just as their behaviorist counterparts tend, for all practical purposes, to ignore people's mental states, so purists in the legal human rights field ignore the metaphysics of

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Even more egregious than harming another is what Schopenhauer terms 'double wrongs', or 'treachery'. Double wrongs occur when a person whose job is to protect someone both (a) fails to protect and (b) actually harms the person he is supposed to protect.

This *double injustice* occurs when anyone has expressly undertaken the obligation to protect someone else in a definite respect; consequently the nonfulfillment of the obligation would in itself be an injury to the other person, and thus a wrong; but in addition, he now attacks and injures the other [person] at the very spot where he should protect him. Such is the case, for example, when the appointed watchman or attendant becomes a murderer, the trusted custodian becomes a thief, the guardian defrauds his ward of her property, the lawyer prevaricates, the judge allows himself to be bribed, and the man asked for advice deliberately gives some dangerous and pernicious counsel.<sup>38</sup>

Examples of this in today's news are too numerous to mention: the investment manager who commits fraud for personal gain, the football coach who abuses children under his care, the bishop who protects abusing priests instead of the children, etc., and we could all probably think of similar examples committed both by individuals and institutions.

## 7. THE VIRTUE OF LOVING-KINDNESS

If justice, the first cardinal virtue, consists in refraining from causing injury to another, the second cardinal virtue, loving-kindness (philanthropy, *caritas, agape*), consists in and taking action positively to relieve or to prevent another's suffering. If justice is the virtue of not injuring and its maxim is *Neminem laede* ('Harm no one'), loving-kindness is the virtue of actively helping and its maxim is *Omnes, quantum potes, juva*: 'Help everyone as much as you can'. Acts of loving-kindness may be easy or difficult and may sometimes entail sacrificing one's own health, freedom, property or life to prevent or alleviate another's need or distress. Schopenhauer, not a great lover of religions, does credit Christianity for its emphasis on the virtue of loving-kindness and refers to compassion as

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inherence because they are only interested in how the international legal system works on a practical level' (J Morsink, *Inherent Human Rights: Philosophical Roots of the Universal Declaration* (Pennsylvania, University of Pennsylvania Press 2009) 47).

<sup>38</sup> Schopenhauer (1995) (n 9) 156, Schopenhauer's emphasis.

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‘Christianity’s greatest merit’.<sup>39</sup> He also notes, however, lest Christianity be given too much credit, that this virtue was being extolled in Asia 1000 years earlier in the Vedas and Buddhism. Loving-kindness is thus the second cardinal virtue and from it flow all the ‘duties of virtue’ and love, i.e., not just the moral minimums of justice.

So both cardinal virtues, justice and loving-kindness, stem from compassion, which is a kind of ‘participation in’ another’s suffering. How that ‘participation’ happens, though, is a genuine mystery:

But how is it possible for a suffering that is not *mine* and does not touch *me* to become just as directly a motive as only my own normally does, and to move me to action? ... I ... *feel* [the other person’s suffering] *with him, feel it as my own*, and yet not *within me*, but *in another person*.<sup>40</sup>

This is, for Schopenhauer, *the* mystery of ethics. ‘And yet it happens every day [he says]; everyone has often experienced it within himself; even to the most hard-hearted and selfish it is not unknown’.

Every day it comes before our eyes, in single acts on a small scale, wherever, on the spur of the moment and without much reflection, one man helps another, hastens to the assistance of one whom he has seen for the first time, and in fact sometimes exposes even his own life to the most obvious danger for the sake of that [person], without thinking of anything except that he sees the other’s great distress and danger.<sup>41</sup>

And yet how could this be possible? What is it about the underlying metaphysical substructure of the world that allows for this to happen?

## 8. METAPHYSICAL GROUNDING

This ‘participation in’ another’s suffering is, says Schopenhauer, a genuine mystery. How does it happen? What is its undergirding? How does it relate to the underlying nature of things? These questions require some attempt at explanation. Thus, what has up until now been the basis for explaining morally worthy acts (compassion), now becomes the problem.<sup>42</sup> How is it to be explained? To answer this question Schopenhauer must now explore the metaphysical underpinnings of compassion –

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<sup>39</sup> Ibid 163.

<sup>40</sup> Ibid 165, Schopenhauer’s emphasis.

<sup>41</sup> Ibid 166.

<sup>42</sup> Ibid 203.

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at which point he has to leave the realm of the empirical and phenomenal, and enter a realm in which analysis, suggestion and analogy are the most useful tools.

Schopenhauer's view of the ultimate nature of things takes up where Immanuel Kant left off in his *Critique of Pure Reason*. He accepts Kant's fundamental distinction between the world of appearances (phenomena) and the underlying true reality (noumena), and also accepts Kant's notion of the basic categories of perception, such as time, space and plurality, which are our contributions to perception and which shape and condition our entire experienced world.

For Schopenhauer, the phenomenal world, the world of appearance, corresponds to Hinduism's concept of Maya, the world of illusion, and to what the Greek philosophers termed the world of becoming, as opposed to the world of being. It is the world of our experience, and as it comes streaming in through our senses it gets shaped into a perceived world that is conditioned by time, space, plurality and the other categories of perception. The noumenal world, according to Schopenhauer, i.e., the true world of being that exists beneath these ephemeral appearances, is not shaped by space, time and plurality, but exists outside or beyond them.

Schopenhauer's term for the fundamental noumenal reality that underlies all the phenomenal appearances is *Der Wille*, a concept that has little or nothing to do with our usual concepts of human choosing, willing and acting. I tell students that if they think of *Der Wille* as 'The Force' in *Star Wars*, they won't be too far off. *Der Wille* is the underlying energy, elan, drive, or Will to Be that manifests itself in all the various particular forms we experience in the world of sensory multiplicity spread out in perceptual space and time.

All these multiple phenomenal beings, i.e., all the temporal-spatial multiplicities of our experience, are, for Schopenhauer, phenomenal expressions of the one underlying noumenal reality, *Der Wille*. All the apparently separate individuals in our experienced world only *appear* to be separate individuals. At root they, we, are all just different expressions, different manifestations, of the same fundamental underlying noumenal reality. This fundamental underlying identity of all individual persons, of all living things, and in fact of all things, is central for Schopenhauer, and is his explanation, at the metaphysical level, for how it is that we sometimes feel the sufferings of another almost as if they were our own.

This metaphysical view of the underlying oneness of things is not by any means unique to Schopenhauer. He finds it expressed in the Vedas of Hinduism, in Buddhism and in the mystical expressions of most of the

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world's religious traditions. He would probably also have found it in the worldviews of many indigenous peoples had he been familiar with them.<sup>43</sup>

According to this view, individual persons *appear* to be different, just as individual islands in an ocean appear to be different and separate – but this is only the way things appear on the surface. Down at the deep ground of things, what appear on the surface to be individual beings (or islands) are discovered below simply to be upcroppings from the same underlying ground. Schopenhauer says:

This doctrine teaches that all plurality is only apparent, that in all the individuals of this world, however infinite the number in which they exhibit themselves successively and simultaneously, there is yet manifested only one and the same truly existing essence, present and identical in all of them. Such a doctrine, of course, existed long before Kant; indeed it might be said to have existed from time immemorial ... it is the main and fundamental teaching of the oldest book in the world, the sacred Vedas.<sup>44</sup>

The egoist, though, i.e., the person acting only in his own self-interest, fails to recognise that we are all part of the same underlying essence, and instead believes that he is an entirely separate being, and that his interests

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<sup>43</sup> One example of this indigenous understanding of the world, expressed in terms that Schopenhauer might well have appreciated, derives from the worldview of the Onondaga people in upper New York state and south-eastern Canada, one of the Native American tribes in the Haudenosaunee (Iroquois) confederacy of nations.

Oren Lyons is one of today's elders, a Wisdom Keeper, in the Onondaga nation. In his youth he was the first Onondagan to enter college. His friend Huston Smith tells the story: 'When [Oren] returned to his reservation for his first vacation, his uncle proposed a fishing trip on a lake. Once he had his nephew in the middle of the lake where he wanted him, he began to interrogate him. "Well, Oren," he said, "you've been to college; you must be pretty smart now from all they've been teaching you. Let me ask you a question. Who are you?" Taken aback by the question, Oren fumbled for an answer. "What do you mean, who am I? Why, I'm your nephew, of course." His uncle rejected his answer and repeated his question. Successively, the nephew ventured that he was Oren Lyons, an Onondagan, a human being, a man, a young man, all to no avail. When his uncle had reduced him to silence and he asked to be informed as to who he was, his uncle said, "Do you see that bluff over there? Oren, you are the bluff. And that giant pine on the other shore? Oren, you are that pine. And this water that supports our boat? You are this water"' (recounted in H Smith, *The World's Religions*, Revised and updated [Kindle Edition] (HarperCollins 2009), Kindle location 7771–88).

<sup>44</sup> Schopenhauer, *On the Basis of Morality* (1995) (n 9) 207.



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are entirely separate from the interests of other selves who appear separated from him in time and space. The egoist sees only the phenomenal appearances of things shaped by temporality, spatiality and plurality. Other persons appear to him as completely separate beings with wants and needs entirely separate from his. This illusion, according to Schopenhauer, is what accounts for egoism.

On the other hand, the person acting from compassion,

makes less of a distinction than do the rest between himself and others ... In fact, in magnanimous deeds it [this distinction] appears to be abolished, since here the weal of another is protected and supported at the expense of the good [person], and thus another's ego is treated as equal with his own.<sup>45</sup>

So the egoist and the person of compassion are acting on the basis of two entirely different perceptions of reality, one considering separateness and individuation to be real, the other considering them illusory.<sup>46</sup> But which of the two is correct?<sup>47</sup>

For Schopenhauer, the answer is that plurality and separateness belong only to the world of appearance and are not part of the fundamental oneness of things.

[I]f plurality and separateness belong only to the *phenomenon*, and if it is one and the same essence that manifests itself in all living things, then that conception that abolishes the difference between ego and non-ego [i.e., compassion] is not erroneous; but on the contrary, the opposite conception must be ... Accordingly, [compassion] would be the metaphysical basis of ethics and consist in *one* individual's again recognizing in *another* his own self, his own true inner nature. Thus doing right and doing good, would in the end harmonize perfectly with the profoundest teaching.<sup>48</sup>

The actions of egoism, on the other hand, express the illusory belief that

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<sup>45</sup> Ibid 204–205.

<sup>46</sup> 'That the world has only a physical and not a moral significance is a fundamental error, one that is the greatest and most pernicious, the real perversity of mind'; from Schopenhauer's essay *On Ethics*, quoted in G Mannion, *Schopenhauer, Religion and Morality: The Humble Path to Ethics* (Aldershot, Ashgate 2003) 191.

<sup>47</sup> 'The question now is whether this latter conception of the relation between one's own ego and another's, which is the basis of the actions of a good character, is mistaken and due to a delusion, or whether such is rather the case with the opposite conception on which egoism and malice are based' (Schopenhauer, *On the Basis of Morality* (1995) (n 9) 205, Schopenhauer's emphasis).

<sup>48</sup> Ibid 209, Schopenhauer's emphasis

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‘Individuation is real; the *principium individuationis* and the diversity and variety of individuals based on this are the order of things-in-themselves. Each individual is a being radically different from all others. In my own self alone I have my true being; on the other hand, everything else is non-ego and foreign to me’. This is the knowledge to whose truth flesh and bone bear witness; it lies at the root of all egoism and is really expressed in every loveless, unjust, and malicious action.<sup>49</sup>

So the egoist’s actions, says Schopenhauer, express the belief that individuation is real and substantial, while the compassionate person’s actions express the recognition that individuals are not as separate as they appear.<sup>50</sup> The actions of the egoist spring from illusion, while the actions of the just and compassionate person arise from recognising the true nature of things.<sup>51</sup>

## 9. OUTRAGE

But how does all this account for the experience of moral outrage? Schopenhauer refers to two grotesque events that he thinks would outrage anyone because they are so deeply cruel.

... for example [says Schopenhauer], the case recently reported in the papers, of a mother who murdered her five-year-old son by pouring boiling oil down his throat and her younger child by burying it alive; or the case, just reported from Algiers, where, after a casual dispute and fight between a Spaniard and an [Algerian], the latter, as the stronger, tore away the whole of the lower jawbone of the former, and carried it off as a trophy, leaving the other man still alive; when we hear of such things, we are seized with horror and exclaim: ‘How is it possible to do such a thing?’

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<sup>49</sup> Ibid 210.

<sup>50</sup> ‘Schopenhauer does tend to regard doing the right thing as coincidentally engaging in what we might call “applied metaphysics”’. MA Fox, ““Boundless Compassion”: The Contemporary Relevance of Schopenhauer’s Ethics’ (2006) *Eur Leg* 378–79. Schopenhauer writes, ‘To be just, noble, and benevolent is nothing but to translate my metaphysics into actions’ (quoted in Fox 372).

<sup>51</sup> ‘Good characters make less of a distinction than do the rest between themselves and others, treating others as an “I once more”, whereas bad characters treat others as an absolute “non-I”. From a strictly empirical perspective, he continues, it appears as if the bad person’s attitudes and behavior are correct, because each person is spatially distinct, and so it seems as if others are absolute “non-I’s”. But the empirical standpoint itself is not warranted, Schopenhauer claimed ...’, DE Cartwright, *Schopenhauer: A Biography* (n 12) 493.

Schopenhauer then examines what we mean when we ask this question:

What is the meaning of this question? Is it: How is it possible to have so little fear for the punishments of the future life? Hardly. Or: How is it possible to act according to a maxim that is so absolutely unfitted to become a general law for all rational beings? Certainly not. Or: How is it possible so utterly to neglect one's own perfection and that of another? Again, certainly not. The sense of that question is certainly only this: How is it possible to be so utterly bereft of compassion? Thus it is the greatest lack of compassion that stamps a deed with the deepest moral depravity and atrocity. Consequently, compassion is the real moral incentive.<sup>52</sup>

The experience of outrage is thus an immediate and visceral reaction to the absence of compassion, i.e., to the absence of something we intuitively recognise as fundamental to our nature as living beings. I think Schopenhauer is correct here. When we witness or learn of acts that we find appalling, that leave us aghast and make us ask 'How could that be?', the sense of that question is 'How could anyone so utterly disregard the suffering of others and be so wilfully inattentive to the horrific impacts of their actions? Do they not see what they are doing? Have they no heart?'

The conclusion here is that it is a failure of compassion, and a lack of fellow feeling that is at odds with our nature and with our understanding of the deep nature of things, that accounts for the feeling of outrage.<sup>53</sup>

One additional note before we leave Schopenhauer. With regard to the question 'How is it possible to be so bereft of compassion?' one answer could be this. 'Here's how: Be a corporation'. Corporations may be 'persons' in law, but they are certainly not persons in actuality. And as Anna Grear<sup>54</sup> has so eloquently shown us, they do not share the rich vulnerabilities of, or sensitivities to, embodied human persons. Corporations are not, in Schopenhauer's terms, motivated by malice in the sense that they *want* to cause suffering and injury. Rather, given their mandate to maximise profits for shareholders, they are simply unambiguously and unashamedly egoistic actors in that their sole motivation is to benefit the

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<sup>52</sup> Schopenhauer, *On the Basis of Morality* (1995) (n 9) 169–70.

<sup>53</sup> 'I think that you could also find another basis in Schopenhauer for outrage, one that lies just in the reverse of responses to compassion behavior, that is wrongful actions are morally reprehensible (one of the few times Payne went awry was rendering "*moralisch verwerflich*" as "morally bad"), eliciting strong feelings of disapprobation', personal email from David Cartwright, 6 July 2012.

<sup>54</sup> A Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave Macmillan 2010).

corporation and its owners. It just sometimes happens with egoism that other people's lives get in the way of egoistic purposes, and the impacted people and communities get trampled. And if those individuals and communities can get trampled on efficiently, and with little resistance, that suits the corporation's purposes even better. Outrage at their disregard for the sufferings of those who are in their way is, as in Schopenhauer's example, outrage at their being 'utterly bereft of compassion'.<sup>55</sup>

## 10. HUMAN RIGHTS

If Schopenhauer's ethic of compassion explains the outrage we feel at unnecessary suffering, our widely accepted international human rights tradition provides another level of validation for that sense of outrage and the felt necessity of acting on it. If compassion says: 'That suffering is horrific and unconscionable', human rights norms say: 'Yes, and it is also wrong and unjust. You are right to feel that outrage; others would too. Human suffering should not be so disregarded, and you are right to fight against it'. Human rights norms, in other words confirm the experience of compassion. They say: 'It's not just you and it's not just because you are over-sentimental. Your intuitions are correct. This is genuinely immoral and should not be accepted'. Feelings, after all, may be seen as inner, personal and private and could perhaps be interpreted as relevant only for

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<sup>55</sup> This chapter is about *human* rights, not animal rights, but it is important to recognise that Schopenhauer's philosophy of compassion applies equally as well to non-human animals. 'The moral incentive that I have presented is further proved to be genuine in that it also takes under its protection *animals*, which are cared for in other European systems of morals in such an unjustifiably bad way. That animals are alleged to be without rights, the delusion that our actions toward them are without moral significance, or, as is said in the language of that morals, that there are no duties toward animals, is frankly a revolting crudity and barbarism of the Occident' (Schopenhauer, *On the Basis of Morality* (2010) (n 9) 239).

Schopenhauer's explanation for this compassion towards other animals is that 'the essential and primary thing is the same in the animal and in the human, and that what differentiates the two lies not in the primary ..., in the inner essence, which in the one as well as in the other is *the will* of the individual. But what differentiates the two lies only in that which is secondary, in the intellect, in the degree of cognitive power [which results from a mere] somatic difference of a particular part, the brain' (ibid 241, Schopenhauer's emphasis). Schopenhauer concludes that 'one may confidently assert that whoever is cruel to animals could not be a good person' (ibid 242).

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me. Human rights norms, on the other hand, are public, not private, and are visible, widely agreed upon and capable of being recognised and discussed in the public square.

Human rights standards, precisely because of their public nature and because of having been so widely endorsed, provide both validation for the more private world of moral intuitions, and a formal language for engaging with others in the public square about environmental wrongs that negatively impact human persons. If compassion is primarily affect (and thus more subjective), human rights norms are primarily discursive, rational and public. Compassion feels horrified and says: 'This is unconscionable'. The human rights tradition sees violation and says: 'Yes, this is morally wrong, unjust, and perhaps legally actionable'. If compassion stirs and moves the individual, human rights norms voice the judgement of the larger community, publicly confirming what the individual has felt.

The modern human rights movement, begun at the end of World War II, captured and gave voice to the moral outrage at the horrific events that had taken place a few years earlier in a modern, western-world state (Germany) with a government that had been democratically elected by an educated populace. Those gruesome events had been implemented according to legally enacted ordinances and were regulated and overseen by administratively legitimate government ministries. Those horrors were, in other words, committed in full compliance with the rule of law (as are many environmental assaults today).

We know there were some both within and outside of central Europe who felt personal outrage at these events and acted on it, but for many their outrage had to remain private and personal. The only supra-legal standards of conduct available at the time, i.e., standards that could claim to supersede laws of the state and could possibly have justified the outrage, included – but only for believers – the teachings and principles of conduct in certain religious traditions. Some, we know, did choose to act on those higher standards. But there did not yet exist any broadly accepted, formally endorsed, human rights standards or instruments, not tied to a particular religious tradition, that could claim to take precedence over national laws. There were not yet available any widely accepted public standards or fora to validate a person's inner sense of outrage. We can only guess whether anything would have been different if there had been.

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The moral values expressed in the UDHR<sup>56</sup> and in subsequent treaties and declarations articulated a set of fundamental moral norms – more fundamental even than the laws of nation states – that could serve as ‘a common standard of achievement for all peoples’ (UDHR Preamble). To the extent that these declarations and treaties have been successful, they serve as external, public validation of the moral outrage felt when confronting horrific human wrongs, even when those wrongs are committed under cover of law.

## 11. HUMAN RIGHTS IMPACT ASSESSMENTS

The private inner sense of outrage at moral wrongs is confirmed, if this chapter’s thesis is correct, by the existence of widely accepted and publicly endorsed human rights standards. Those standards, however, are relatively broad and generic and there may be some question as to whether a specific human rights norm would even be applicable to a given environmental situation. Does the right to security of person, for example, apply to families in rural areas who are impacted by commercial aerial pesticide sprays? Does the right of women and children to special consideration apply to families living near a hydraulic fracking operation? If a detailed Human Rights Impact Assessment (HRIA) could be prepared for a specific environmental situation that had clear adverse human impacts, that human rights assessment would provide an even more specified confirmation of that outrage.

To date Human Rights Impact Assessments can be prepared through at least three different sources: (a) Environment and Human Rights Advisory (EHRA); (b) NomoGaia, ‘a nonprofit research and policy organization dedicated to clarifying the corporate role in human rights protection and facilitating corporate responsibility’;<sup>57</sup> and (c) an HRIA Toolkit, designed to address pesticide issues, recently developed by a

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<sup>56</sup> In the world of ethics, something genuinely unique came into the world with the signing and adoption of the UDHR. Never before in human history had a document about moral values been conceived, written, and endorsed by representatives of virtually every nation on earth. René Cassin, one of the drafters of the UDHR (who, for his work, was awarded the Nobel Peace Prize in 1968), is quoted as saying that, with the UDHR, ‘something new ... entered the world’. It was, he said, ‘the first document about moral value adopted by an assembly of the human community’, J Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia, University of Pennsylvania Press 1999) 33.

<sup>57</sup> <http://www.nomogaia.org/>.

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graduate student in the Human Rights Education Program at the University of San Francisco. A few words about each.

(a) Environment and Human Rights Advisory (EHRA),<sup>58</sup> the organisation with which I am most familiar, has prepared (gratis) a number of HRIAs over the past few years for specific environmental situations such as: (1) a proposed aerial pheromone/pesticide spray over several hundred square miles of California's central coast and San Francisco Bay area that would have directly impacted over three million residents;<sup>59</sup> (2) a proposed biomass power generation plant situated in an economically disadvantaged neighbourhood of one Oregon city;<sup>60</sup> and (3) a proposal to open New York state to hydraulic fracturing for natural gas.<sup>61</sup> These HRIAs have been commissioned by environmental organisations working on the issue and have been addressed to the head of the agency or corporation with authority to make decisions about the proposed environmental action. The HRIA of hydraulic fracturing for natural gas, for example, was commissioned by Earthworks' Oil and Gas Accountability Project in Washington DC, and was addressed to the New York State Department of Environmental Conservation.

These HRIAs summarise the relevant facts and concerns in the situation, lay out a number of specific human rights norms of concern, and detail how each norm applies to that situation. One of the norms of concern in the New York fracking report,<sup>62</sup> for example, is 'Motherhood and childhood's right to special care'.<sup>63</sup> The HRIA describes what this right entails and what the specific reasons for concern are with regard to hydrofracking, and then does the same for 25 additional norms of concern. It then details a set of potential liabilities the New York State Department of Environmental Conservation could face if human rights

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<sup>58</sup> <http://environmentandhumanrights.org>. I am the founder and director.

<sup>59</sup> [http://www.lbamspray.com/00\\_Documents/2008/EHRA.pdf](http://www.lbamspray.com/00_Documents/2008/EHRA.pdf).

<sup>60</sup> [http://www.environmentandhumanrights.org/resources/EHRA%20Seneca\\_Eugene%20report%20090828\\_1.pdf](http://www.environmentandhumanrights.org/resources/EHRA%20Seneca_Eugene%20report%20090828_1.pdf).

<sup>61</sup> <http://www.environmentandhumanrights.org/resources/EHRA%20frac%20rpt%20111212-1.pdf>.

<sup>62</sup> T Kerns, 'A Human Rights Assessment of Hydraulic Fracturing for Natural Gas' (Environment and Human Rights Advisory 2011), <http://environmentandhumanrights.org/resources/EHRA%20frac%20rpt%20111212-1.pdf> (accessed 23 May 2012).

<sup>63</sup> This right is articulated in UDHR Article 25, Covenant on Economic, Social and Cultural Rights, Article 12, Convention on the Rights of the Child, Article 27 and United Nations Declaration on the Rights of Indigenous Peoples, Article 22.



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standards were to be abridged, and what specific measures the Department could take to reduce those liabilities.

These HRIAs are addressed to the responsible agency or corporation and are presented as purely informational, just as Environmental Impact Assessments and Health Impact Assessments are. The assessments say, in effect: 'Here are some liabilities you may be facing with respect to these specific human rights norms, and here are some specific measures you can take to reduce those liabilities'. More directly, though, these HRIAs can benefit activists who are engaging the issue, providing them with a public, verifiable set of specific human rights standards applicable to their situation and showing that the outrage they feel is appropriate, justifiable and supported by human rights norms.

(b) HRIAs developed by NomoGaia appear to serve similar purposes, and are designed to alert both the corporation and the rights-holders in the area who may be adversely impacted by the corporation's activities as to the human rights norms that apply to their situation. NomoGaia has detailed the process and results of providing HRIAs to corporations in two different situations.<sup>64</sup>

(c) An HRIA Toolkit that focuses specifically on pesticide-related issues, an HRIA/P, has been developed by Emily Harden, a graduate student in the Master of Arts in Human Rights Education at the University of San Francisco. Ms Harden, in collaboration with EHRA and with Pesticide Action Network North America, developed a Toolkit that includes a Guidebook with HRIA/P instructions and a formatted template for the full HRIA/P as well as a secondary template for a briefer version of the HRIA/P to be designed for distribution among the affected rights-holder community.<sup>65</sup> A key element of this HRIA/P process involves active engagement with the rights-holder community in developing and validating the final HRIA/P itself as well as in validating its numerical scoring of the degree and likelihood of impact for each human rights norm at issue.<sup>66</sup>

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<sup>64</sup> K Salcito et al., 'Assessing Human Rights Impacts in Corporate Development Projects' (2013) *Environ Impact Asses* 39–50.

<sup>65</sup> E Harden, 'HRIA Toolkit for Pesticide Issues' (Environment and Human Rights Advisory 2014), <http://www.environmentandhumanrights.org/ehra-reports-database/hriaptoolkit/> (accessed 15 August 2014).

<sup>66</sup> Private corporations may also choose to prepare their own HRIAs, of course, both to internally review possible human rights impacts of a given project, and to be prepared in the event of public criticism on grounds of human rights violations.

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A fourth model for a Human Rights Impact Assessment that addresses an environmental situation is the 2008 climate change report prepared by the International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*. Though its structure varies from those above, its purposes are similar.

Thus, just as common-sense perceptions about matters of fact in environmental situations need to be verified and supported by reference to scientific studies, so personal convictions about the moral wrongness of a situation need to be verified and validated by reference to another kind of external, public and broadly verifiable norm. HRIAs are intended to serve that purpose.

## 12. PRACTICAL IMPLICATIONS

If the central claims of this chapter have validity, if Lynn Hunt's historical account of the role of empathy in the genesis of rights discourse is accurate and if she is correct to argue that 'rights are best defended in the end by the feelings, convictions, and actions of multitudes of individuals, who demand responses that accord with their inner sense of outrage',<sup>67</sup> then at least three practical implications follow for environmental activism.<sup>68</sup>

- *Telling the story*. Simple, meaningful personal accounts of direct impacts that environmental assaults have had on individuals, families and communities should be collected, documented and widely publicised in order to help awaken the moral imagination and to evoke the compassion and outrage that will be necessary for the emergence of genuine change. Voice of Witness,<sup>69</sup> a non-profit organisation that focuses on the power of personal story in 'illuminating human rights crises', can serve as a source for methodologies and inspiration in this work.

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<sup>67</sup> Hunt (n 5) 213.

<sup>68</sup> In addition to the practical measures discussed below, several others are outlined on the 'Human Rights Methods and Practice' page of my online course in Environment and Human Rights, <http://environmentandhumanrightscourse.info/lecsite/practicalmethods.html>.

<sup>69</sup> <http://voiceofwitness.org>.

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Claims of injury or harm in these stories may need to be substantiated by reference to scientific studies and/or expert testimony. Independently commissioned Environmental Impact Assessments, Health Impact Assessments and Economic and Social Impact Assessments will be helpful in validating these claims.

- *Claiming moral authority.* Providing activists with well-researched Human Rights Impact Assessments of their specific situation can help clarify the moral dimensions and values at stake as well as identifying potential legal pressure points. As noted above, foregrounding and documenting human rights standards that apply in that particular situation can publicly validate the felt sense of injustice and legitimise the outrage experienced by those whose lives have been negatively impacted.
- *Exercising moral power.* Community-led public inquiries, such as New Zealand's 'People's Inquiry into the impacts and effects of aerial pesticide spraying over urban areas of Auckland' held in 2006,<sup>70</sup> and public tribunals like the Permanent People's Tribunal (2011) Session on Agrochemical Transnational Corporations held in Bangalore, India in December 2011, can be both educative and powerful. Since both formats, inquiries and tribunals, are community-initiated and led (not government-initiated), they can be structured to ensure that the voices of those who have been impacted are adequately heard.

### 12.1 People's Tribunals

A People's Tribunal is a community-led, quasi-litigation event, similar to a courtroom proceeding, in which a complainant or class of complainants who have suffered injuries due to environmental exposures tries an agency, corporation or other defendant deemed responsible for those exposures. The agency, corporation or other defendants are judged, not against state laws but against moral and legal standards expressed in international human rights instruments.

A community, for example, may try an agricultural or forestry enterprise or government agency that aeriually applies pesticides in the near vicinity of their children's schools, for violation of human rights standards designed to protect children's safety and health. Or a community

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<sup>70</sup> J Goven et al., 'Report of the March 2006 People's Inquiry into the impacts and effects of aerial spraying pesticide over urban areas of Auckland' (The People's Inquiry Inc 2007), <http://peoplesinquiry.files.wordpress.com/2013/09/web-report-finalreformatted01-1.pdf> (accessed 19 October 2013).

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may try the regulatory agency for failure to adequately regulate, or for failure to sufficiently protect the community's health.

The best example of this to date is the Permanent People's Tribunal (2011) Session on Agrochemical Transnational Corporations held in Bangalore, India. This Tribunal, comprised of respected jurists from around the world, sat for four days in December, 2011 and considered indictments against the six largest agrochemical corporations (Monsanto, Syngenta, Bayer, Dow Chemical, DuPont and BASF) and their home states (United States, Switzerland and Germany) on charges of human rights violations. The Tribunal heard testimony from victims, survivors, witnesses and experts in various fields. When the verdict was issued several months later, the corporations and their home states were found 'responsible for gross, widespread and systematic violations of the right to health and life, economic, social and cultural rights, as well as of civil and political rights, and women and children's rights' (Permanent People's Tribunal Verdict).<sup>71</sup>

The primary purposes of a People's Tribunal are education about human rights standards and environmental hazards, and perhaps also the mobilisation of shame directed against indicted parties. The panel will be comprised of three to five jurists of high standing familiar with international human rights standards, and the venue should be a place of dignity and authority. The geographical location, if possible, should be near where the exposures and events in question occurred, partly for the convenience of witnesses, partly to maximise media coverage, and partly with an eye to the location's symbolic power. The War Crimes Tribunals after World War II, for example, were held at Nuremberg partly for symbolic reasons because Nuremberg was a centre of power during the Third Reich.

The primary differences between a Peoples' Tribunal and normal courts of law are:

- A Peoples' Tribunal does not have the formal legal standing, and its findings do not have the compulsory legal force of governmental or intergovernmental courts.
- The standards against which defendants in a People's Tribunal are judged are those expressed in international human rights documents, rather than those expressed in domestic laws.

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<sup>71</sup> <http://www.agricorporateaccountability.net/en/page/ppt/167> (accessed 18 March 2015).

## 12.2 People's Inquiries

Community-led People's Inquiries are similar to Tribunals in form, venue and purpose, but differ from Tribunals in that they are less like trials that result in judgments and verdicts, and more like a public fact-finding inquiry, or a Truth and Reconciliation Commission.

An Inquiry meets for several days in a public venue to hear testimony, examine evidence, deliberate and in time issue a final report that tells the community's story from the point of view of those who have testified and others they represent. Its Final Report draws conclusions from this evidence and makes recommendations.

The only example so far of such an Inquiry, aside from the Truth and Reconciliation Commissions held in some parts of Africa and South America, is the People's Inquiry held in Auckland, New Zealand in February 2006<sup>72</sup> (on which I served as one of the four commissioners). Its purpose was to examine the government's handling of an aerial spray programme in which helicopters and fixed wing aircraft had, for two and a half years, regularly deployed liquid pesticides over several thousand acres of urban Auckland in an attempt to eradicate a Painted Apple Moth population.

Details about the arrangements, structure, venue, stated purposes and format of that Inquiry, as well as to download its Terms of Reference, Final Report, and the collection of much of the formal testimony on which the report was based, can be found on the People's Inquiry website.<sup>73</sup> Part III of that Final Report includes an analysis of the spray programme from a human rights perspective.

Though bringing human rights norms to bear on environmental concerns does have certain practical advantages,<sup>74</sup> it is not suggested here that these methods will produce immediate results. As Martin Luther King has so eloquently reminded us, '[t]he arc of the moral universe is long but it bends toward justice'.<sup>75</sup>

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<sup>72</sup> Ibid.

<sup>73</sup> <http://peoplesinquiry.wordpress.com>.

<sup>74</sup> T Kerns, 'Ten Practical Advantages of a Human Rights Approach to Environmental Advocacy' (2013) *Journal of Environmental Studies and Sciences* 416–20; JH Knox, 'Climate Ethics and Human Rights' (2014) *Journal of Human Rights and the Environment* 22–34.

<sup>75</sup> ML King, 'Sermon at Temple Israel of Hollywood' (American Rhetoric Online Speech Bank 1965), <http://www.americanrhetoric.com/speeches/mlktempleisraelhollywood.htm> (accessed 2 November 2013).

### 13. FINAL THOUGHTS

Schopenhauer scholar David Cartwright suggests that if there are differences between masculine and feminine approaches to ethics, then Schopenhauer's ethic may be closer to the feminine approach than to the masculine approach characteristic of classical philosophers like Aristotle, Kant and Mill:

If it is true, as Carol Gilligan has argued in *In a Different Voice*, that a woman's morality differs from a man's morality in being more concrete and contextual than abstract, ... more personal rather than impersonal, motivated more by care than duty, and structured more by responsibilities than rights, one could mount a strong argument that the misogynistic Schopenhauer has more of a woman's morality than a man's.<sup>76</sup>

Schopenhauer's philosophy is also consistent with Lynn Hunt's claim, in *Inventing Human Rights: A History*, that the empathy that paves the way for the emergence of a human rights movement 'depends on the recognition that others feel and think as we do, that our inner feelings are alike in some fundamental fashion',<sup>77</sup> and that this experience of empathy with others 'serves as the foundation of human rights'.<sup>78</sup> This chapter's thesis is also consistent with Hunt's recognition that '[h]uman rights are not just a doctrine formulated in documents; they rest on a *disposition toward other people, a set of convictions about what people are like* and how they know right and wrong in the secular world'.<sup>79</sup> Hunt argues that this sense of empathy arose at a certain point in history, while Schopenhauer regards empathy as a fundamental characteristic of human nature – two views which may not be as inconsistent as might appear at first glance.

This chapter's thesis is also consistent with Alan Dershowitz's argument in *Rights from Wrongs: A Secular Theory of the Origins of Rights*,<sup>80</sup>

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<sup>76</sup> Cartwright continues: 'Although Schopenhauer argues from stereotypic grounds that justice is more a masculine virtue, philanthropy more a feminine virtue ... he also believed that philanthropy or loving-kindness is the highest virtue' (Cartwright, in Schopenhauer, *On the Basis of Morality* (1995) (n 9) xxviii).

<sup>77</sup> Hunt (n 5) 29.

<sup>78</sup> Ibid 32.

<sup>79</sup> Ibid 27, my emphasis.

<sup>80</sup> 'This book is respectfully dedicated to the countless victims of terrible human wrongs – wrongs that have been the source of human rights. May these rights help to prevent the recurrence of these and other wrongs': A Dershowitz,

which sees rights as growing out of our experience of great wrongs perpetrated against humans. Dershowitz's theory, like Schopenhauer's, considers itself to be based in empirical observation rather than in *a priori* analyses of the nature of human good or of the best life.<sup>81</sup> Dershowitz claims that rights are 'an experiential reaction' to 'agreed-upon wrongs of the past that we want to avoid repeating'.<sup>82</sup> Rights, in his words, 'come from human experience, particularly experience with injustice'.<sup>83</sup>

One advantage of Dershowitz's theory is that it does help explain the emergence of so-called 'new' rights, such as the right to clean air and to clean and adequate drinking water. These rights, he would say, have arisen out of our experience in the past half-century with so many communities being deprived of clean air and water.

Schopenhauer's theory, like Hunt's, is also consistent with the well-recognised importance of personal narratives from the victims of environmental human rights abuses. Without such narratives it is virtually impossible for others to adequately appreciate the impacts that these abuses have had on individuals, families and communities.

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*Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York, Basic Books 2005) v–vi).

<sup>81</sup> 'I reject Aristotle's argument that we cannot define rights without first determining "the nature of the most desirable way of life". It is enough to have a conception – or a consensus – about the very bad society, and about the wrongs that made it so. Based on this experience with wrongs, rights can be designed to prevent (or at least slow down) the recurrence of such wrongs. ... It is more realistic to try to build a theory of rights on the agreed-upon wrongs of the past that we want to avoid repeating, than to try to build a theory of rights on ideal conceptions of the perfect society about which we will never agree. Moreover, a theory of rights as an experiential reaction to wrongs is more empirical, observable, and debatable, and less dependent on unprovable faith, metaphor, and myth, than theories premised on sources external to human experience' (ibid 6, 7).

<sup>82</sup> Ibid 7.

<sup>83</sup> Ibid 8.