

# TOWARD A UNIFIED THEORY OF RIGHTS IN THE AGE OF THE “ANTHROPOCENE”

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**Note to readers:** In the last few weeks I have made significant changes to the focus of around half of my work-in-progress because of (1) what I found in my research in the latter part of the summer regarding the origin of the reigning “rights” dichotomy in U.S. law and legal theory (as I explain in this excerpt, under that dichotomy, civil and political rights are conceived of as something apart from, and more important than, the right to basic environmental protection); and (2) the filing last month of what I believe bear the potential to be landmark lawsuits by three California counties against dozens of major oil, coal, and other fossil fuel companies for harms caused by climate change (more specifically, sea level rise). I briefly describe both and provide an overview of the entire article in my introduction below, but do not include further excerpts from these parts of the article. I welcome feedback on the excerpts I have, and I will briefly explain in the origin and lawsuit pieces in more detail in my presentation that will hopefully be sufficient to allow for discussion as well. I look forward to meeting with you and hearing from you at our panel!

## **I. Introduction**

Mohandas K. Gandhi merged Eastern and Western jurisprudence and philosophy to develop his theory of civil disobedience—“*satyagraha*”—which Dr. Martin Luther King later embraced as a principal part of his battle against racial injustice in the United States.<sup>1</sup> In this

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<sup>1</sup> Karen C. Sokol, *East Meets West in Civil Disobedience Theory and Beyond: Lessons from Mohandas K. Gandhi and Martin Luther King, Jr.*, in THE GLOBAL COMMUNITY YEARBOOK OF INTERNATIONAL LAW AND JURISPRUDENCE 2015, at 125, 125-28 (Giuliana Ziccardi Capaldo ed., Oxford

article, I propose that the Eastern and Western foundations of *satyagraha* also undercut a dichotomy that has long dominated in Western legal theory—namely, that civil and political rights are something apart from, and more important than, the right to basic environmental protection. Further, I examine how the catastrophic impacts of climate change appear to be providing the impetus to finally begin breaking down this rights barrier.

I begin this article with an examination of the origins of the rights barrier in the United States: a massive disinformation campaign enmeshed with Cold War politics calling into question the science behind climate change and other environmental harms in order to evade legal controls. I then examine some of the key theoretical points within Gandhi’s “*satyagraha*” in Part III, and in Part IV I discuss how more recent Western and Eastern writers and activists—including Dr. Martin Luther King—have drawn on similar ideas in expanding the idea of legal rights. In Part IV, I explain the concept of the Anthropocene. Finally, in Part V, I consider the potential of recent climate change litigation in the United States for realizing this unified theory of rights. The environmental and public health battles in the United States and around the world demonstrate that putting “rights” into silos, and then creating a hierarchy of rights allows the environment to be spoiled and the pursuit of global health to slump. The West must to re-conceptualize individual rights and embrace more holistic constructions.

## **II. The Origins of the Rights Barrier**

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### III. Gandhi's Merger of Indian Philosophy and Western Jurisprudence

While Gandhi was generally familiar with the main Indian philosophical works before he went to London to study law, he did not closely study them—and here I refer mainly to the *Bhagavad Gita* and the *Yoga Sutras*—until *after* spending several years in London.<sup>2</sup> He consequently began to both incorporate his deeper understanding of Indian philosophy into the Western legal concepts that he was learning and to use Western legal concepts to clarify his understanding of the Indian texts he was studying.<sup>3</sup> According to Gandhi, his study of the two disciplines had a synergistic effect on his thinking. He writes, “[m]y study of English law came to my help” in answering the questions posed by the Indian texts, and “[m]y regard for (Western) jurisprudence increased” when viewed in light of the Indian texts.<sup>4</sup> Unfortunately, Gandhi does not elaborate on this intersection in his autobiography or in other published writings, which is not surprising given that he was focused on his *satyagraha* campaigns in India at the time he was writing.<sup>5</sup> This is in all likelihood at least part of why so few Western legal scholars have engaged with Gandhian thought.<sup>6</sup> Additionally, I am unaware of any Western legal scholars who are also Sanskrit scholars, which of course makes close engagement with the Indian texts even more challenging.<sup>7</sup> Although there is an increasing movement to incorporate Eastern thought

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<sup>2</sup> See MOHANDAS K. GANDHI, AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH 232-33 (Mahadev Desai trans., Dover Publications 1983) (explaining that his understanding of each discipline was enhanced as he began to study Indian philosophy and to see how it informed Western jurisprudence, and vice versa); see also, e.g., Sokol, *East Meets West*, *supra* note 1, at 127 (describing Gandhi's merger of Eastern philosophy and Western jurisprudence to create his theory of civil disobedience).

<sup>3</sup> See GANDHI, *supra* note 2, at 232-33.

<sup>4</sup> *Id.* at 233.

<sup>5</sup> As Gandhi explains in the introduction to his autobiography, he was urged to write an autobiography and agreed, but found it to be impossible amidst political turbulence, imprisonment, and strategizing about his campaign for racial and social justice in India. See GANDHI, *supra* note 2, at vii (explaining that he “ha[d] no spare time” to write an autobiography “as a book,” but rather “could only write a chapter week by week”).

<sup>6</sup> See Sokol, *supra* note 1, at 127.

<sup>7</sup> I know this well from my own research, as I am also not a Sanskrit scholar and thus heavily rely on the

into Western legal scholarship, it is still nascent, and does not appear to be focused on the Indian philosophical texts on which Gandhi based *satyagraha*. For purposes of this article, I discuss generally some hypotheses about how Gandhi merged Western jurisprudence with the two key texts that he identifies in his autobiography—namely, the *Bhagavad Gita* and Patanjali’s *Yoga Sutras*—based on his explanation of *satyagraha*, these texts, and some of the extensive commentary on them.

Although Gandhi mentions that he studied both texts more closely in London than he ever did while growing up in India, he indicates that his primary focus was the *Bhagavad Gita*.<sup>8</sup> Studying the *Bhagavad Gita*, or “Song of the Lord,” is daunting: it is a key part of *Mahabharata*, the longest epic in history and a fascinating, complex story comprising layers of metaphors in every verse, chapter, and part.<sup>9</sup> The *Mahabharata* generally, and the *Bhagavad Gita* in particular, are key parts of the philosophical foundations on which Patanjali drew in forming the system of yoga philosophy that he set forth in the *Yoga Sutras*.<sup>10</sup>

Like Indian philosophy generally, that embodied in these two important works is dialogic in nature, which fits with the subtitle of Gandhi’s autobiography—“The Story of My *Experiments with Truth*.”<sup>11</sup> Nevertheless, the Sanskrit term that Gandhi created to capture the ideas of his now highly respected theory of civil disobedience—“*satyagraha*”—means “firmness” or “strength” in “truth.”<sup>12</sup> At first blush, this seems in tension with the nature of

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extensive commentary on both texts.

<sup>8</sup> See GANDHI, *supra* note 2, at 232 (noting that the *Bhagavad Gita* “had always “had a fascination for me,” and that “[n]ow I realized the necessity of diving deeper into it”).

<sup>9</sup> See B.A. van Nooten, *Introduction* to MAHABHARATA xiii, xiii, xix (William Buck, ed. & trans., 1973).

<sup>10</sup> THE YOGA SUTRAS OF PATANJALI xxiii-xxiv, xxxiii (Edwin F. Bryant ed., trans., & commentator, 2009) [hereinafter YOGA SUTRAS].

<sup>11</sup> See *supra* note 2 (emphasis added).

<sup>12</sup> See GANDHI, *supra* note 2, at 232-33

. . . . It was clear that a new word must be coined by the Indians to designate

Indian philosophy (that is, with the idea that one is always seeking the “truth,” but never assuming to have found it). Although this is undoubtedly the case as a general matter—and arguably key to Gandhian philosophy and his successful *satyagraha* campaigns—a closer look at his idea of “truth” in the context of *satyagraha* is not in tension with the potential for a rethinking of “truth” in the Western sense of the term.

The foundational concept beneath Gandhi’s *satyagraha* is non-violence (“*ahimsa*” in Sanskrit).<sup>13</sup> *Ahimsa* is one concept that, while thoroughly discussed in the *Bhagavad Gita* and in the entire *Mahabharata*—is not open to question. This *yama*, or “ethical principle,” is one aspect of “duty”—a concept that is debated throughout Eastern and Western philosophy and jurisprudence—that is clearly, at least in the Eastern tradition, “firm.” More specifically, *ahimsa* is one “truth” that the *Bhagavad Gita* and the *Yoga Sutras* strongly adhere to.<sup>14</sup> This does not mean that one will never be faced with a situation in which it is impossible not to do harm. Indeed, the protagonist of the *Bhagavad Gita*—Prince Arjuna—is faced with the dilemma of deciding whether to engage in a complex war in which neither side is entirely “good” or “bad.”<sup>15</sup>

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their struggle.

But I could not for the life of me find out a new name, and therefore offered a nominal prize through the *Indian Opinion* to the reader who made the best suggestion on the subject. As a result Maganlal Gandhi coined the word ‘Sadagraha’ (Sat = truth, Agraha = firmness) and won the prize. But in order to make it clearer I changed the word to ‘Satyagraha’ which has since become [the] designation for the struggle.

*Id.*

<sup>13</sup> See *id.* at 284 (“When in a meeting of Europeans I found that the term ‘passive resistance’ was too narrowly construed . . . that it could be characterized by hatred and that it could finally manifest itself as violence, I had to demure all those statements and explain the real nature of [my theory of civil disobedience].”); *id.* at 242 (explaining how he “learnt later” that his natural reaction of non-violent, yet firm, resistance to the police in Johannesburg “was an essential part of Satyagraha, and an attribute of *ahimsa*”).

<sup>14</sup> See, e.g., YOGA SUTRAS, *supra* note \_\_\_, at 243 (“[A]himsa, nonviolence, the principal motto of Gandhi’s noncooperation approach is the *yama* (moral restraint) singled out by the commentators and Pantañjali for special attention . . . *Ahimsa* is the most important *yama* . . . and therefore leads the list.”).

<sup>15</sup> See BHAGAVAD GITA 6-7, n. 3 (Anilbaran Roy ed. & Sri Aurobindo trans. & commentator, 1995); RICHARD FREEMAN, THE MIRROR OF YOGA 107-08 (2012).

Rather, it means that one should always make decisions based on kindness, compassion, and love for all other beings.<sup>16</sup> Indeed, the *yama* that follows *ahimsa* in Patanjali's *Yoga Sutras* is "satya."<sup>17</sup> There is a reason that *ahimsa* is first, however: truth should not result in harm to other beings—that is, "ahimsa must always be respected first."<sup>18</sup>

The primacy of *ahimsa* is based on the understanding that all humans and other species—as well as our surrounding physical environment—are interconnected. In fact, at the core, we are of one essence.<sup>19</sup> As Gandhi put it in explaining *ahimsa* as "the basis of the search for truth"<sup>20</sup>:

It is quite proper to resist and attack a system, but to resist and attack its author is tantamount to resisting and attacking oneself. For we are all tarred with the same brush, and are children of one and the same Creator, and as such the divine powers within us are infinite. To slight a single human being is to slight those divine powers and thus to harm not only that being but with him the whole world.<sup>21</sup>

Because most theories of rights in the West are either limited to so-called civil and political rights or deem them much more important than environmental and public health rights (which, at least in the United States, are not even normally called "rights," but rather "protections"), these theories cannot accommodate the Indian concepts of *ahimsa* and the interconnectedness of all beings. Gandhi and King, however, successfully vindicated rights

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<sup>16</sup> See FREEMAN, *supra* note \_\_, at 63-64.

<sup>17</sup> YOGA SUTRAS, *supra* note \_\_, at 243.

<sup>18</sup> YOGA SUTRAS, *supra* note \_\_, at 246.

<sup>19</sup> In the *Bhagavad Gita*, for example, after Prince Arjuna halts the battle to consult with his teacher about the dilemma, his teacher explains to him that the "Lord" is "[s]eated in all beings" and that all beings "abid[e] in the one eternal Being." *Id. supra* note \_\_, at 208 & 209. As Sri Aurobindo explains in his commentary on these passages: "As we perceive more and more this equal spirit in all things, we pass into that equality of spirit," *id.* at 208 n. 2, and "[a]ll this surface of cosmic is a diverse becoming of natural existences in the one eternal Being," *id.* at 209 n. 1.

<sup>20</sup> GANDHI, *supra* note 2, at 242.

<sup>21</sup> *Id.* (emphases added).

based on these concepts by merging them with Western thought. It is thus possible, and, I ultimately argue, necessary, to adopt a theory of rights that does not put rights into the artificial dichotomy of civil and political rights, on the one hand, and environmental and public health protections, on the other. Rather, an appropriate theory of rights should be based on *ahimsa* and the interconnectedness of beings. Some scholars have advanced theories that could be understood in this way, or at least closer to it than the reigning narrow conception of rights in the West.

### III. Legal Rights and Indian Philosophy

In Western legal scholarship, the reigning theory of rights is based on the idea that they are possessed by and for the benefit of individuals.<sup>22</sup> Relatedly, the most important rights in under these theories are so-called “civil and political” rights—that is freedom from various governmental intrusions, including, for example, intrusions on speech rights, voting rights, and criminal procedure rights.<sup>23</sup> By contrast, to the extent that there are “rights” to public health and safety, and relatedly, to a safe, clean environment, they are generally conceived of as protections of the “common good” that are either not accounted for in the individual-based rights theory, or are relegated to a second-class status that assumes they will be sufficiently protected if civil and

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<sup>22</sup> See, e.g., Ronald Dworkin, *Rights as Trumps*, in ARGUING ABOUT LAW, 335, 335 (Aileen Kavanagh & John Oberdiek eds., 2009) (maintaining that rights should be understood as legal protections possessed by individuals that “trump” any public policy that may interfere with them); cf. also, e.g., H.L.A. Hart, *Are There Any Natural Rights?*, in ARGUING ABOUT LAW, *supra*, at 311, 313-14 (advancing the “will” theory of rights, under which rights are possessed by individuals and allow them to demand certain behavior by those who are obligated to fulfill the rights).

<sup>23</sup> See, e.g., John Rawls, *The Justification of Civil Disobedience*, in ARGUING ABOUT LAW, *supra* note \_\_, at 244, 249-50 (prioritizing civil and political rights over environmental and public health and safety rights by deeming the former to be subject to “clear” violations that may justify civil disobedience, while the latter are not); see also generally Amartya Sen, *Rights and Agency*, 11 PHIL. & PUB. AFF. 3, 4-6, 16 (explaining the reigning individual-based theories of rights).

political rights are respected.<sup>24</sup>

There are scholars who veer from the reigning dichotomy, however, and their views may be understood through the Gandhian Indian philosophical lens of *ahimsa* and oneness. Initially, as I discussed in my previous Comment, King immediately saw the power of Gandhi's merger of Western and Eastern thought, and used it to effectively change the way people in the United States thought about systemic inequalities in legal rights, and, ultimately, about the role of legal rights in society.<sup>25</sup> When King first encountered Gandhi's theory, he explicated *ahimsa* as "love" for humankind.<sup>26</sup> The concepts of *ahimsa* and the interconnectedness of all humans permeates King's renowned *Letter from a Birmingham Jail*.<sup>27</sup> In the letter, King explains his civil disobedience campaigns as driven by—and thus designed to demonstrate—"love" for humankind and the bond that we all share regardless of geographical location or status within sociopolitical power structures.<sup>28</sup> In Birmingham, King was fighting for civil and political rights, but in his *Letter* he also mentions economic injustice,<sup>29</sup> and, indeed, in the weeks before his assassination, he was advocating strongly for economic and social rights—those relegated in the reigning dichotomy.<sup>30</sup> Adequate housing, food, education, and other basic necessities

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<sup>24</sup> See John Rawls, *supra* note \_\_, at 249-50 (arguing that a fair distribution of benefits and burdens in society will naturally follow if civil and political rights are protected).

<sup>25</sup> See Sokol, *supra* note 1, at 127-28.

<sup>26</sup> See Coretta Scott King, *Introduction to GENE SHARP, GANDHI AS A POLITICAL STRATEGIST*, at x (1979) (quoting DR. MARTIN LUTHER KING, JR., *STRIDE TOWARD FREEDOM* (Harper & Brothers 1958)).

<sup>27</sup> Martin Luther King, Jr., *Letter from a Birmingham Jail* (Apr. 16, 1963), in KING PAPERS (Stan. U. Martin Luther King, Jr. Res. & Educ. Inst. 1985), [http://okra.stanford.edu/transcription/document\\_images/undecided/630416-019.pdf](http://okra.stanford.edu/transcription/document_images/undecided/630416-019.pdf). [hereinafter *Letter from a Birmingham Jail*].

<sup>28</sup> See *id.* at 2 ("I am in Birmingham because injustice is here . . . . I am cognizant of the interrelatedness of all communities and states. . . . Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly.")

<sup>29</sup> See *Letter from a Birmingham Jail*, *supra* note \_\_, at 6 (explaining the oppression and suffering of black people all over the country, both because of overt racism as well as that so many were "smothering in an air tight cage of poverty amidst an affluent society").

<sup>30</sup> See Eugene Robinson, *MLK's Prophetic Call for Economic Justice*, WASH. POST (Jan. 15, 2015)

fundamental to humans' ability to thrive, were being systematically denied to those dwelling in what King deemed "the other America."<sup>31</sup> These rights—and other public health and safety protections and environmental protections—are no less important than civil and political rights, but rather, as King urged, must be understood as part of a "package" of basic rights that everyone should be guaranteed.

At a more theoretical level, Joseph Raz advanced an account of legal rights that could arguably accommodate civil and political rights on equal footing with environmental and public health rights. Interestingly, Raz, a Western scholar, critiques the reigning "individual" centered theory of rights, and in proffering his alternative, draws in part on the work of Amartya Sen.<sup>32</sup> Sen, a Indian philosopher, economist, and Nobel laureate, has worked in England and now the United States for most of his academic career. Sen knows Indian philosophy well, and his work focuses primarily on social and economic inequality, including inequities in vulnerability to environmental catastrophes.<sup>33</sup> In one of his numerous articles, he develops a theory of rights, based on human "capabilities" and societal "states of affairs."<sup>34</sup> This theory accommodates the common good—and thus rights such as those to environmental and public health and safety protection—that individual-based rights theories prioritizing civil and political rights leave out entirely or downplay.

Although Raz does not completely accept Sen's theory, he draws heavily on it in

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available at [https://www.washingtonpost.com/opinions/eugene-robinson-mlks-call-for-economic-justice/2015/01/15/3599cb70-9cfe-11e4-96cc-e858eba91ced\\_story.html?utm\\_term=.322778fb82c6](https://www.washingtonpost.com/opinions/eugene-robinson-mlks-call-for-economic-justice/2015/01/15/3599cb70-9cfe-11e4-96cc-e858eba91ced_story.html?utm_term=.322778fb82c6) (last visited Nov. 22, 2016).

<sup>31</sup> *Id.*

<sup>32</sup> JOSEPH RAZ, *ETHICS IN THE PUBLIC DOMAIN: ESSAYS IN THE MORALITY OF LAW AND POLITICS, Rights and Individual Well-Being* 29, 30-32 (1994).

<sup>33</sup> See Robert R.M. Verchick, *Disaster Justice: The Geography of Human Capability*, 23 *DUKE ENVTL. L. & POL'Y F.* 23, 25, 56-57 (2012) (explaining how Sen's "capability approach" to rights and social justice "offers an important framework for seeing social resilience in times of disaster as an important aspect of personal freedom").

<sup>34</sup> See Sen, *supra* note \_\_ at 16.

presenting a solution to a “puzzle” that individual-centered rights theories leave unresolved.<sup>35</sup> According to Raz, that puzzle is that many of the rights that individuals possess are accorded a level of protection in the law that outweighs the value of that right for a given individual.<sup>36</sup> According to Raz, a portion of the additional weight borne by the right as a legal matter can be accounted for by the nature of law—that is, (1) law must provide protection through institutions, which operate on the basis of ground rules that necessarily “simplify” in a way that misses the subtleties of the value of rights to individuals, and, relatedly, (2) law must sweep broadly, particularly when it comes to rights that involve freedom from governmental intrusions.<sup>37</sup> These aspects of the nature of law and legal institutions do not entirely account for the “individual value/legal importance” discrepancy, however, and Raz looks to Sen’s work to provide part of the solution. Sen’s “state of affairs” or “capacities” theory of rights accords them added weight because rights serve “moral,” common goals of the given society.<sup>38</sup>

Raz offers a solution that he understands to be between an individual-based theory of rights that dominates in Western scholarship and a more “common good” oriented, moral view, as advanced by Sen. Specifically, according to Raz, the “individual value/legal importance” discrepancy disappears when one realizes, put simply, that the interests of others in the given legal community matter too; in fact, they matter a lot.<sup>39</sup> Raz makes clear that by “common

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<sup>35</sup> See RAZ, *supra* note \_\_ at 30-32.

<sup>36</sup> Raz provides a simple example of this “individual value/legal importance” discrepancy that is common enough to create a “puzzle” about the nature of legal rights:

I may own something which is of little value to me, say, an old shirt. Since it is my shirt, others have a duty to respect my right to it. Rights always justify the existence of duties on (some) others. This in itself shows that the right exceeds in importance the interest which it protects, since had I no right to it my interest in having the shirt would not have justified holding others to be duty-bound to let me have it.

*Id.* at 31.

<sup>37</sup> See *id.* at 33-34.

<sup>38</sup> See *id.* at 32.

<sup>39</sup> See *id.* at 37-40.

interest,” he is not referring to the utilitarian notion of the sum of individual interests (or “goods”), but rather “to those goods which, in a certain community, serve the interest of people generally in a conflict free, non-exclusive, and non-excludable way.”<sup>40</sup> Thus, by Raz’s lights, the “individual value/legal importance” discrepancy is illusory. As he explains:

Many people judge [rights] by their contribution to *their* well-being, and it is not much. Their *real* value is in their contribution to a common liberal culture. That culture serves the interests of members of the community. Given the great contribution that observance of the civil and political rights makes to the preservation of the common good, it would be irrational not to let that fact be reflected in the value of the rights. Given the doubly harmonious relation between the individual interest served by these rights and the public good they contribute to, and given that this mutually reinforcing relation is stable and secure, rather than coincidental, there is every reason to regard the value of the rights to the common good as part of their justification. That makes it also a factor in determining the weight of the rights.<sup>41</sup>

Although Raz is focused on civil and political rights, his argument that their legal importance is in significant part attributable to the common goods that they create could easily accommodate environmental and public health and safety rights, particularly when viewed in light of the Indian philosophical premises of *ahimsa* and oneness. These premises are brought into sharp relief by the planetary emergency that we find ourselves in an age of climate change—or, as the International Union of Geological Scientists would urge us to think of it—in the age of

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<sup>40</sup> *Id.* at 37.

<sup>41</sup> *Id.* at 40 (emphasis added).

the “Anthropocene.”<sup>42</sup>

#### IV. The Unified Theory of Legal Rights Necessary in the Age of the Anthropocene

All names of epochs are ways of organizing our thinking about the Earth’s history—that is, they are all human-created conceptual categories. The current epoch—the Holocene—began around 12,000 years ago, at the end of the last major ice age. Since then, the human population has greatly increased, and human activities have had dramatic impacts on every part of a planet, and, as we now know, as a result, on the climate. As Naomi Oreskes, a member of the Anthropocene Working Group, the subcommission of the International Union of Geological Scientists working on the organization’s proposal to rename the current epoch, described the purpose behind the new name:

[G]eologists [are] saying, “We are witnesses to this profound and problematic transition. *And we want the world to talk about it.*”

The challenge of the Anthropocene *is to learn to see ourselves not at the open end of Earth’s timeline but within its bounds*, as fossils in the making.<sup>43</sup>

Thus, the proposed name of the current age is distinctive in that it is not just descriptive, as previous epochs were, but also, and more importantly, *urgently* prescriptive. As Oreskes makes clear, scientists are attempting to alert the world community that humans have created a planetary emergency that we have no choice but to face.

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<sup>42</sup> See, e.g., Michelle Nijhuis, *When Did the Human Epoch Begin?*, THE NEW YORKER (Mar. 11, 2015), available at <http://www.newyorker.com/tech/elements/holocene-anthropocene-human-epoch> (last visited Nov. 25, 2016) (providing a brief summary of the work of the international group of scientists and the import of naming the current epoch the “Anthropocene”).

<sup>43</sup> Nijhuis, *supra* note \_\_ (emphasis added).

Importantly, the fact that humans have changed the planet in this astounding and frightening way is only part of what an age of human-caused climate change has made clear to us. That is, the Anthropocene is an age in which we have been forced to recognize not only that humans created the planetary emergency of climate change, but also that we are all interconnected—all humans, other species that inhabit and have inhabited the planet with us, and, relatedly, the planet itself and all its complex ecosystems.<sup>44</sup> We are living in an age in which we have been forced to recognize, and are continually reminded in myriad ways, that we are all interconnected. That is, the Anthropocene is also an age that has brought into sharp relief the lesson of the *Bhagavad Gita*, the *Yoga Sutras*, other Indian texts, and, ultimately, Gandhi’s jurisprudential theory of *satyagraha*.

Thus, the current age of climate change—whatever that age is called—painfully lays bare the falsity of the reigning “rights” dichotomy. It thus must be dismantled unless we deny the reality that the naming of the current age as that of the “Anthropocene” represents. And that sort of denial is exactly what Oreskes and other members of the Anthropocene Working Group are pleading with the world community not to do by for the first time proposing to give an age a name that is primarily and forthrightly prescriptive in nature.

Given the dire nature of the planetary situation we have created, scientists, policymakers, and scholars all over the world have called for aggressive and systematic adaptation and

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<sup>44</sup> Compare, for example, Jedidiah Purdy, *After Nature: A Politics for the Anthropocene* (2015), in which Professor Purdy explains the great import of the concept of the Anthropocene, stating that the age finds its most radical expression in our acknowledgement that the familiar divide between people and the natural world is no longer useful or accurate. Because we shape everything, from the upper atmosphere to the deep seas, there is no more nature that stands apart from human beings. There is no place or living thing that we haven’t changed. Our mark is on the cycle of weather and seasons, the global map of bioregions, and the DNA that organizes matter into life.

*Id.* at 2-3.

mitigation measures.<sup>45</sup> Recognizing a unified theory of rights—one that includes civil, political, environmental, and public health and safety rights on equal footing—is a necessary part of a legal system that is capable of meaningfully addressing climate change on local, national, and global levels. Raz’s theory that rights should be conceived of as at the same time serving the individual and common good<sup>46</sup> could be a powerful basis for such a unified theory, as it, like Gandhi and King’s theories, merges Western and Eastern thought.

Even though Raz’s focus in his work on the nature of legal rights is on civil and political rights, his theory still has great salience for environmental and public health and safety rights. In the West, the latter are often not considered “rights” at all, but, if anything, “protections” that may be accorded through various legal mechanisms. This “rights” dichotomy in Western thought is in large part based on the misconception that “rights” can serve only the individual, rather than the common good.<sup>47</sup> Raz argues that civil and political rights serve both, and the age of the Anthropocene makes clear that environmental and public health and safety rights will too—if they are, as they must be, understood as rights just as fundamental as civil and political rights.

Thus, in the age of the Anthropocene, we must rethink the nature of legal rights both to address the environmental and public health crises that we face and will inevitably continue face,

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<sup>45</sup> See, e.g., UN Framework on Climate Change, *Marrakech Partnership for Global Climate Action 2*, at [http://unfccc.int/files/paris\\_agreement/application/pdf/marrakech\\_partnership\\_for\\_global\\_climate\\_action.pdf](http://unfccc.int/files/paris_agreement/application/pdf/marrakech_partnership_for_global_climate_action.pdf) (COP 22/CMP 11 2016) (“There is universal recognition of the urgent need to deliver climate action at an accelerated pace and at an enhanced scale across all sectors of the economy and society in the pre-2020 period,” and thus of the “urgent need to scale up the global response to climate change and support greater ambition from governments, including in the period 2016–2020.”).

<sup>46</sup> See *supra* notes \_\_ and accompanying text.

<sup>47</sup> Cf., e.g., Katharine G. Young, *The New Economic and Social Rights*, 107 AM. SOC. INT’L L. PROC. 486, 486 (noting that one of the principal objections asserted by Western policymakers and scholars to the recognition of such rights is “the longstanding “justiciability” objection . . . the concern that judicial involvement in economic and social rights is naïve at best and anti-democratic at worst”).

and to attempt to prevent greater catastrophes from occurring than if we maintain our current narrow way of thinking about rights specifically and, more generally, the relationships between and among humans, other species, and the Earth. Recent climate change litigation may be a step on the road to toward such a unified theory of rights.

**V. Suing for Creating Climate Catastrophes**

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