



By Carolyn Raffensperger

Human Rights and Humanity's Survival

When we tell the legal history of the United States during the early part of the 21st century, it will include too many tales of rights denied and rights misconstrued. Guantanamo Bay and the Patriot Act are but two examples. Another occurred on September 13, when the U.N. General Assembly adopted the Declaration on Rights of Indigenous Peoples. These rights are crucial not only to the survival of indigenous peoples but to the survival of humankind, but the United States was almost alone in voting against it.

Indigenous cultures are the living expression of the third generation of human rights, the rights of fraternity with the biotic community. As the bioethicist Herschel Elliott has noted, any viable system of ethics is contingent on its ability to preserve the ecosystems that sustain it. The evolution of human rights law codifies our emerging understanding of our moral obligation not just to each other but to the world around us.

The French jurist Karel Vasak first described the stages, or generations, of rights stemming from the French revolution principles of liberty, equality, and fraternity. The first generation, representing liberty, are civil and political rights. Second generation, or equality rights, are economic, social, and cultural. The third generation, fraternity rights, are communal. As

enumerated by legal scholar Burns Weston, third generation rights include the rights to self-determination, to economic and social development, to participate in and benefit from the common heritage of humankind, to peace, to a healthy and sustainable environment, and to humanitarian relief when disaster strikes.

The countries voting against the declaration — Australia, Canada, and New Zealand joined the United States — did so because they viewed it as bestowing too many rights and as incompatible with national laws. U.S. law is organized around certain individual liberties (freedom of speech, freedom from arbitrary search and detention) but recognizes few community rights. Some states have granted the right to a clean and healthy environment, but that is an anomaly in U.S. jurisprudence.

Because of Washington's unwillingness to recognize the rights of indigenous people to be secure on their land and in their culture, tribes are increasingly bypassing U.S. courts and going to either the United Nations or the Organization of American States for redress for actions by the U.S. government.

Last March, in response to a legal action filed by the Western Shoshone Nation, the U.N. Committee on the Elimination of Racial Discrimination demanded that the U.S. "freeze," "desist," and "stop" actions taken against the tribe. Contrary to the 1863 Treaty of Ruby Valley, the United States asserts that it owns 90 percent of the tribe's land, a claim that appears to be necessitated by the value of the lands for bomb testing, gold mining, and nuclear waste disposal.

The U.N. committee urged the United States "to pay particular attention to the right to health and cultural rights of the Western Shoshone . . . which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and

cultural significance they give to their ancestral lands." The U.S. government has not responded.

In a similar move, the Inuit, an indigenous group of 155,000 people living across Alaska, Greenland, and northern Canada and Russia, filed a legal action before the human rights arm of the OAS, the Inter-American Commission on Human Rights. They argued that the United States' status as the world's number one greenhouse gas emitter violates certain of their most basic rights. "Because of the loss of ice and snow, communities have become isolated from one another; hunting, travel, and other subsistence activities have become more dangerous or impossible; drinking water sources have been jeopardized; many coastal communities are already threatened or being forced to relocate . . . and transmission of Inuit culture to younger generations has become difficult or impossible. These impacts jeopardize the realization of the Inuit's rights to culture, life, health, physical integrity and security, property, and subsistence."

Their attorney, Martin Wagner, argues that "the commissions and omissions by the U.S. and their effects have infringed on three inter-

national human rights of the Inuit: the rights of indigenous peoples; the right to use and enjoy property without undue interference; and, the rights to life, physical integrity, and security."

As bioethicist Elliot says, "All ethical theories are subject to nature's veto." For too long the United States has narrowly construed human rights as individual, civil, and political. Humanity's survival demands that we follow the lead of indigenous people and expand our legal framework to include the rights of fraternity.

Carolyn Raffensperger is Executive Director of the Science and Environmental Health Network in Ames, Iowa. She can be reached at raffenspergerc@cs.com.

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