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ON HUMAN RIGHTS AND THE RIGHT TO AN ADEQUATE ENVIRONMENT FOR
ONE'S HEALTH AND WELL BEING

MICHAEL ANTHONY CURTO, JR.

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Reviewed and approved by the following:

Amy Linch
Lecturer of Political Science
Thesis Supervisor

Michael Berkman
Professor of Political Science
Honor's Advisor

*Signatures are on file in the Schreyer Honors College

ABSTRACT

The topic of this paper deals with human rights, specifically the internationally recognized human right to an adequate environment for one's health and well-being. At the outset, I provide an overview of human rights among political theorists and detail how such rights developed over time, and how they continually change. I then examine a case study of the Ogoni people of the Niger Delta. The case study illustrates the link between a degraded environment and the abridgement of human rights. I employ an ethical model developed through the ideas of Aristotle and John Rawls to evaluate this case. Subsequently, I explore how society must deal with conflicting claims on the advantages of social cooperation in political society and the need to distribute advantages and disadvantages in accordance with principles acceptable to all affected parties. To create a situation where all parties may agree, I utilize the political framework of John Rawls' original position and conception of the veil of ignorance. This thesis assumes that people acknowledge the benefit of correcting the unfair natural lottery of where people are placed in life.

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Section 1

An Examination of Human Rights

Human rights are not set in stone; they are constantly evolving, and responding to new forms of oppression. The articulation of human rights is a response to problems that undermine well-being of human kind at any given point in time. The definition of human rights and their institutionalized enforcement have changed dramatically over the past few centuries. As the world has become increasingly interconnected via globalization and technology, our capacity to influence and positively change events has grown exponentially. The tradition and expansion of human rights demonstrates that as our world evolves and new problems arise, the concept of basic human rights must change accordingly.

In keeping with the Aristotelian tradition, this thesis sets forth the following analytical framework: the discussion, development, implementation, and enforcement of “human rights” operate within two models: the *ethical or universal* and the *political*. The ethical model largely deals in the theoretical and hypothetical arena, and its major function is to serve as an incubator for solutions to problems that need to be addressed in the political model. The political model is concerned with the implementation and enforcement of human rights laws and ideals. The term “human rights” is often used to describe something intangible or philosophical, and so, some may confuse it with human rights law.

The ethical model provides the possibility of establishing political ideals and imagining the conditions of their achievement without the encumbrance of practical concerns with available resources for implementation. The evolution and discussion of issues relating to human rights can be more creatively engaged through the ethical model, with an ultimate goal of bridging the hypothetical scenarios of establishing human rights with their concrete expression through the political model and human rights law. This situation gives the ethical model the all-important duty to constantly find new ways to expand and progress human rights, while at the same time it pressures the political model to implement these new

ideals. The bridge between the ethical and political model is first seen on a major scale when the term “human rights” was introduced at the end of the eighteenth century in the publication of the *French Declaration of the Rights of Man and of the Citizen (1789)*, and the *United States Bill of Rights (1791)*. (Griffin 1) This was a fundamental step towards achieving universal and ethical human rights in the political system (human right’s law) where they could actually be enforced. Prior to those documents, the major focus within the subject of “human rights” largely dealt with antiquity’s notion of “natural rights and natural law, from which some scholars claim our notion of “human rights” derives.

There are several definitions for human rights; however, all definitions draw from the ongoing development and progression of political theory. For purposes of this paper I employ the definition that a human right is “a universal moral right, something which all people everywhere at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human.” (Thorne 302). This definition allows for progression and further development of ongoing human rights, not just for individuals but also for groups.

One of the most effective ways to examine human rights is to connect them with a historically significant document that serves to tighten the gap between human rights in the abstract (ethical model) and human rights law in practice (political model). In that regard, my examination begins with Aristotle and his idea of the *telos* of the human being and the pursuit of what he calls the “good life.” According to Aristotle, everything in life has a *telos*. There are several English translations for *telos*, including “purpose, goal, or final end” (Malpas 2003), but in Aristotelian terms a human *telos* is best understood not just as what a human descriptively is, but more importantly what a human *naturally* was meant to be in life. Aristotle claims that the *polis*, which is roughly translated as “city-state,” exists “by nature because human beings realize their natural ends in the *polis*” (Miller 174) and that the *polis* “must be arranged or organized in accordance with justice or the common advantage.” (Miller 175). Aristotle understood that “justice,” or “the common advantage,” refers to the “mutual advantage of each individual,

rather than the overall or general advantage.” (Miller 175) At this early stage in the development of human rights, Aristotle rejects one of the major arguments of utilitarianism, which is that some may suffer as long as the majority benefits. This concept represents a fruitful basis for justifying the intrinsic value each person has, and- that one may not *intentionally* harm any number of people for the benefit of others.

Aristotle’s interpretation of human rights, however, was not universal by today’s standards. In fact, Aristotle defended institutions, such as slavery, that any civilized society today would find indefensible. The distinction for Aristotle revolved around the notion that people born naturally into slavery were property, they lacked the capacity to reason, and thus were naturally suited for slavery. For Aristotle, if something occurred naturally or according to its *telos*, then it was justifiable and correct. For example, Aristotle claimed that certain slaves - those born into slavery - were “natural slaves,” and that those who were “made” slaves (prisoners of war) were unnatural. His justification for such a distinction lies in his claim that “there are human beings who, without possessing reason, understand it” (*Politics* Book 1, 1), and know it is to their benefit to be a slave.

For Aristotle, there appear to be two conditions concerning almost anything: the natural (good) and the unnatural (bad). The beauty of his methodology is that it is still applicable to many of today’s problems and challenges. However, the determination of what is “natural” and “unnatural” would be made very differently today.

Aristotle believed that humans had “*eudemonia*” or “happiness,” and that “... happiness is something final and self-sufficient, being the end of all action... the supreme good.” (Browne 87) Aristotle defined happiness as “a certain kind of activity of the soul in accordance with virtue.” (Browne 94) He believed that the end goal of political science was to foster a population of “virtuous” citizens who employed reason in their decision-making. Reason was learned, underscoring Aristotle’s belief in the importance of education for all those who participate in the political process. Applying this concept in the context of today, one would expect Aristotle to advocate for universal education; he would argue that in a

democracy everyone has the right to participate in the political process, whether via voting, donating to causes, or volunteering. However, as mentioned earlier, Aristotle was a product of his time, and he believed certain people, such as those naturally suited to slavery, could only achieve an “inferior level of virtue.” (*Politics* Book 1, 1).

Aristotle’s concept of the “happy life” was not the same for every person. He believed that all human beings must accept the form of happiness to which they were best suited rather than try to create it. In the evolution of human rights, political recognition or what Hannah Arendt called “the right to have rights” (Arendt 296) is rarely universally extended; rather, it is given to a specific group or groups and is eventually expanded to include the whole of humanity. Aristotle asserted that if happiness “... consists in virtuous activity, it is only reasonable to suppose that it is the activity of the highest virtue, or in other words, of the best part of our nature.” (Browne 407). He later used the term “contemplation,” claiming “... intuitive reason is the highest of our faculties, and the objects with which intuitive reason is concerned are the highest of the things that can be known.” (Browne 407). As such, Aristotle would argue intuitive reason should be used when forming or making decisions focused on the future of society.

Even though Aristotle failed to advocate policies that favored universal human rights, he did help create the basic principle that humans are rational beings and that a human life is essentially rational activity via the *polis*. There is no inherent historical causality to Aristotle’s ideas in the progression of human rights, but his ideas have been very influential on latter theorists who expanded his ideas in context of right claims.

One of the next significant events involving human rights was the fall of the Roman Empire and its corresponding political instability. The fall of the Roman Empire resulted in the complete collapse of the rule of law, with all its corresponding consequences. As citizens fought for day-to-day survival, they lost their sense of community and access to education, the concept of human rights was buried beneath

these struggles. It wasn't until the High Middle Ages in Western Europe that it resurfaced, and when it did it incorporated extensive religious underpinnings.

Prior to the Renaissance's secularization process of human rights, the discussion and majority of new theories about human rights were based on the theological teachings of Thomas Aquinas. Aquinas built upon Aristotle's idea that humans were separate from the rest of the creatures on earth, incorporating the notion that everything has a divinely designated end. Aquinas' monumental feat was reconciling the majority of Aristotle's beliefs with Christian theology. This eventually allowed other Christian philosophers to expand on Aristotle's work and theory that events occur naturally and according to their *telos*.

Aquinas claimed that God endowed humans with the innate ability to reason, among other precepts that laid the foundation for what he articulated as *natural law*. Aquinas, however, was extremely skeptical about the potential of humanity without divine intervention. He outlined four different kinds of *laws*: the *eternal*, the *natural*, the *human*, and the *divine*, all of which were incredibly influential on church teachings and moral philosophy. Aquinas described eternal law as divine governance of all things, an act of intellect, or (reason) in God. In the Aristotelian tradition, man participates in what Aquinas's called eternal law through reason.

Aquinas' idea of a natural right is starkly different from the post Enlightenment concept of a human right as an "entitlement that a person has." (Griffin xi-xvii) During the Enlightenment, political thinkers began the process of secularizing natural rights away from the traditional medieval political thought, and placing more emphasis on humanity's ability to reason.

Immanuel Kant believed human rights, which he called natural rights, were derived from a single abstract principle called "The Universal Principle of Right." Behind this concept is the simple idea that any action is right if it can "... coexist with everyone's freedom in accordance with a universal law."

(Griffin 52). Under the Kantian tradition of political theory, this freedom in accordance with a universal law is something that society must politically strive for. The acceptance of the universal law does not rely on a *telos* in the Aristotelian tradition or on a God in the Aquinas tradition, but rather on rational interrogation of the conditions of human freedom. As such, it represents a new way of thinking that places a heavy emphasis on the political model of human rights.

John Rawls worked extensively in the social contract tradition. He knew in depth the works of the major theorists in the field (Kant, Locke, Hobbes, Rousseau), many of whom greatly influenced his positions and beliefs. Rawls held the belief that problems concerning “legitimacy” within a liberal society may be solved “... if political power governed in accordance with a political conception of justice.” (Wenar 2012) Rawls developed his own concept of justice in an essay entitled, *Justice as Fairness: Political not Metaphysical*. For Rawls, human rights are concerned with the claims that justice requires. In order for Rawls to ensure that society accepts the requirements for justice, he utilizes the liberal social contract tradition of legitimacy, and requires that parties on their own accord consent to mutual agreed upon principles.

Rawls’s end goal was to arrange the basic structures of society in a just manner, where equal parties would agree to a set of ideals universally recognized as fair if given the opportunity. His construction establishes distributive principles made evident through consenting parties in an imaginative procedure. His procedure utilizes what he calls *the original position*, which is where representatives of equal citizens deliberate a fair arrangement for society under a *veil of ignorance*. (*A Theory of Justice* 9) The *veil of ignorance* refers to the situation where the attributes of a person, such as race, gender, age, and socio-economic status are unknown, which allows their representatives to deliberate without any preconceived notions and biases towards their constituents. (*A Theory of Justice* 134) The logic behind this scenario is that people cannot advocate principles that inherently favor certain individuals or specific scenarios. From the original position all parties agree to the principles of justice, and that the principles

they choose will be stable over time. The debate ensues between Rawls' *two principles of Justice* and the *principle of average utility*.

The argument is broken down as follows: choosing between Rawls' principle to maximize the minimum level of *primary goods* for the least advantaged and principles that produce the highest level of utility *averaged* among all citizens. (Justice as Fairness: Political not Metaphysical 227). The average utility sounds attractive at first because it creates the best situation of the *averaged* society, but it leaves open the possibility that a small minority faction within society may suffer to achieve an overall happiness of society. This idea follows the Aristotelian principle that each life individually matters not just the total mean of society.

Rawls is advocating a standard for all humanity based on fairness and individual dignity rather than efficient distribution. In so doing, Rawls questions the commonly held notion that the market is the most efficient means for addressing problems and environmental concerns. It is true that the market, as a means of distribution, has increased the quality of life and standard of living for millions of people around the world. Yet, at the same time, it has offered incentives for some to generate short-term profit with huge environmental costs, all to the detriment of the most vulnerable.

Rawls makes the claim that cooperation among citizens will be higher when the representatives choose the two principles of justice over the principle of utility because the lowest advantaged in society will be better off and in a position to advance upwards, thereby reducing the tensions which create conflict. Under such circumstances, the most well off still have the opportunity to advance and increase their wealth so long as it benefits their fellow citizens or does not hurt their situation or their fellow citizens.

Karel Vasak, a Czech-French professor and the first Secretary-General of the International Institute of Human Rights, addressed this dynamic when he characterized the evolution of human rights

into three distinct *generations*, and several sub-categories based on the time when they were legally protected and recognized. Even though Aristotle and other theorists helped organize and develop certain ideas that later human rights theorists drew from, it is widely accepted that international human rights began with the American and French Revolutions, and specifically with the new demands from a rising merchant middle class that wanted certain protections from their government. (Wellman 640) Scholars have identified this *first* set of rights as the first generation of human rights. They are classified as *civil* and *political* human rights because they are mostly “negative rights” being “freedoms from” rather than “positive rights to.” (Marks 438) These rights are largely rooted in the political philosophy of “... liberal individualism and the related economic and social doctrine of *laissez-faire*...favor[ing] the abstention over the intervention of government in the quest for human dignity.” (Weston 5) The underlying theme of first generation rights “... is the notion of liberty, a shield that safeguards the individual-alone.” (Weston 5) These rights were developed on the rise of capitalism in defense of property. Europe had transformed from an agrarian economy, dominated by a land rich aristocracy, to an early industrialized capitalist economy. New rights, backed by legitimate legal documents, were needed to protect the wealth and liberty of the new bourgeoisie from all powerful monarchs and aristocracies.

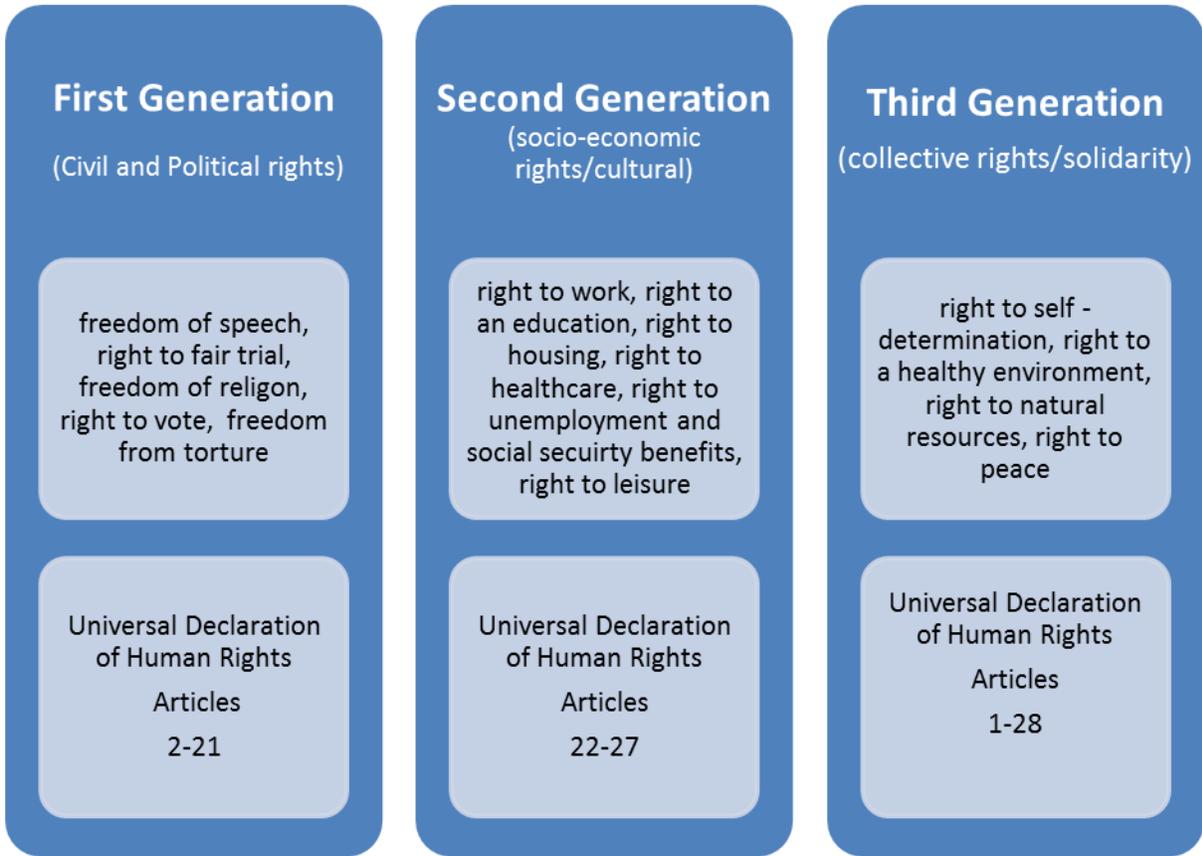
Second generation rights are classified mainly as “positive rights to” and are largely based on the principles of social justice. Second generation rights usually advocate a strong state involvement to ensure that the most vulnerable and needy are looked after. For this reason, they are often referred to as social, economic, or egalitarian rights. While it is sensible to associate first generation rights with the rise of capitalism, second generation rights are “... in a large part, the response to the abuse of capitalist development, and its underlying and essentially uncritical conception of individual liberty, which tolerated, and even legitimized, the exploitation of working classes and colonial peoples.” (Weston 5) Other scholars associate the rise of second generation rights with the rise of the socialist movements in Europe.

Third generation rights are classified as solidary, group, or collective rights. They are “... best understood as a product of both the rise and decline of the nation-state ... and rise of the third world nationalism.” (Watson 6) These rights are largely in response to both the failure to guarantee first and second generation rights, and a new desire among developing and third world nations to share resources, technology, and “... common heritage of mankind.” (Watson 6) These rights call for a new international and global understanding and commitment to human rights across individual nations’ borders. With the resources available to humanity in the 21st century, such as the Internet, improved transportation, and medical technology, solving these problems through shared sacrifice and a new commitment to each other is potentially achievable.

In the modern era, international law arguably has taken over as the foundation and template for ethical and universal human rights laws. One of the more influential and groundbreaking international laws is the Universal Declaration of Human Rights, which was prompted by the Second World War and was adopted by the United Nations General Assembly on December 10, 1948. Some of the most heinous crimes and violations of human rights in our recorded history took place during the Second World War, leading to the desire to create an international standard of human rights.

The table below depicts the specific corresponding rights garnered with each generation and articles found in the *Universal Declaration of Human Rights* associated with each generation.

Table 1-1: Karel Vasak’s Generational Human Rights



Section 2

Human Rights in the Age of Industrialization – Ogoniland

As mentioned above, the 20th Century saw tremendous progress in the area of human rights law. But while the principles of international human rights law have been codified in detail, there is no political entity with enough power and independence to arbitrate and enforce these human rights. In fact, throughout the globe there are places where the most basic first generation human rights are not respected or enforced, even though there are political structures in place to enforce them. One such place is Ogoniland, an area in the Niger Delta that has been the subject of extreme environmental degradation and by Vasak's definition human rights violations. An examination of the Ogoni situation highlights the issues associated with enforcing the right to an adequate environment for one's health and well-being.

Ogoniland is located in the southeastern region of Nigeria in an area called the Niger Delta basin. It has a diverse geography, consisting of rivers, creeks, forests, and swamps. Since the early 1950's, the area has been known to have large deposits of oil reserves. According to the 2006 Nigerian census, "... Ogoniland has an estimated population of around 832,000." (UNEP 32) The Ogoni people mainly reside in rural communities and rely on fishing, farming and other forms of traditional agriculture. Ogoniland's economy, livelihood and quality of life are largely intertwined with the local environment. Thus, the quality of the soil, water and air all serve as vital pieces to the community's survival and economic success.

During the 1980's, several oil companies had active operations in the region. However, due to several highly publicized and controversial incidents, all oil extraction and exploration in the area shut down in 1993. Despite the cessation of oil production, oil spills and past oil activities continue to plague the environment and inhabitants of the area. Below is a picture of an oil company owned right of way. A right of way is a legal term defined as the "... right to travel over someone's land and to have the reasonable use and enjoyment of their property as long as it is not inconsistent with the owner's use and enjoyment of the land." (USLEAGAL.COM) The image of the oil spill highlights the gross neglect and failure to properly address environmental disasters years after oil production has ceased.



Figure 2.1: Right of Way

Oil and petroleum products account for over "... 90% of Nigeria's foreign exchange earnings and some 85% of the government's revenue." (Odeyemi and Ogunseitan 1985) In 2006, a team of English, American and Nigerian scientists conducted an assessment of the environmental damage and the cost of restoring the Niger Delta. They concluded that anywhere from "... 9-13 million barrels of oil have spilled in the Niger Delta ecosystem over the past 53 years, representing about 50 times the estimated volume spilled in the Exxon Valdez Oil Spill in Alaska in 1989." (Imoobe & Tanshi 54) The largest oil pipeline in Nigeria runs through Ogoniland and has continually caused environmental damage largely from oil spills, lack of maintenance, and acts of vandalism.

At the request of the Federal Republic of Nigeria, The United Nations' Environment Program (UNEP) commissioned an independent assessment and case study of the impact of the oil industry on the environment and public health of the people of Ogoniland. The UNEP report identified 69 sites for detailed soil and groundwater investigations. Samples were taken from a variety of areas including sources where local inhabitants received their daily water supply such as creeks, rivers, and estuaries to samples of the local fish and air particles. Altogether more than 4,000 samples were analyzed. This report serves as the largest and best-documented assessment of the effect the oil industry has had in Nigeria.

The largest and most active company in the region was the Shell Petroleum Development Company (SPDC), a joint venture between the National Petroleum Company (NNPC), Shell International, Elf and Agip. (UNEP 24) Prior to the termination of oil activities in 1993, the SPDC possessed and operated 12 oilfields, with the capacity to produce 185,000 barrels per day. (UNEP Table 1) The oil companies in Nigeria wielded an enormous amount of power and influence, especially with regards to limiting environmental regulations.

When examining the environmental degradation in the Niger Delta, it is important to recognize the impact hydrocarbons have on the landscape and water systems in the region. Hydrocarbons are "... naturally occurring organic compounds comprising hydrogen and carbon. [They] can be as simple as methane [CH₄], but many are highly complex molecules and can occur as gases, liquids, or solids." (UNEP Appendix 2 Glossary) Common every day examples of hydrocarbons are natural gas, coal, and oil.

Pollution resulting from hydrocarbons may occur in several ways, but the result is usually the same. Once hydrocarbons come into contact with soil, they drastically alter natural physical and chemical properties. If humans or animals directly consume these chemicals, serious health risks may occur. The degree of pollution depends on the type of soil with which the hydrocarbons come into contact. According to some estimates in the UNEP report, a spill of heavy crude oil onto certain clay soils can have decades of consequences for original properties of the soil.

The Niger Delta is a Mangroves ecosystem typically found in sheltered bays, estuaries, or along tropical coastlines. Mangrove ecosystems are found all around the world and are responsible for coastal stabilization and the primary production and provision of nursery habitat for marine fish. Mangroves not only are ecologically vital to the Niger Delta's stability and aquatic life, but they also serve as the main source of employment and food for the Ogoni people. However, because a mangrove ecosystem provides a natural and constant source of transportation for pollution, it offers the ideal situation for exacerbating an environmental disaster.



Figure 2.2: Typical Polluted Mangrove Ecosystem in Niger Delta

The vast majority of local inhabitants in the Niger Delta rely on traditional forms of agriculture, mainly fishing and small-time farming. In his study of the chemical aspects of pollution in Ogoniland, Eugene Onyeike of the Biochemistry department at the University of Port Harcourt, found that the increased levels of nitrate, sulfate, and phosphate, among other ions, were all above the World Health Organization's acceptable levels. (Onyeike 200) Similarly, G.E. Eriyamremu conducted a study on the heavy metals in the vegetables of certain areas of the Nigerian Delta, and found that "... the level of cadmium and lead recorded in the leaves of vegetables from industrial areas... [was] at least 10-fold (cadmium) and 5-fold (lead) higher than the levels recorded in the typical rural setting." (Eriyamremu 280) Eriyamremu suggested that "... frequent oil spillages may be one of the sources of cadmium contamination." (Eriyamremu 280) These heavier metals are not biodegradable and, thus, the pollution clean-up process requires a concentrated large-scale effort, which has not taken place anywhere within the region.

When oil is extracted from the ground, excess natural gas rises to the surface along with it. An easy way to remove the excess natural gas is by burning it through a stack commonly referred to as “flaring.” Nigeria has one of the worst records with gas flaring in the world, largely due to the lack of regulation on the petroleum industry and utter disregard for the local inhabitants. Aside from the terrible environmental and health effects of flaring, millions of dollars in useable natural gas is wasted. Even though Nigeria is well endowed with oil, it is plagued with energy shortages, especially in the rural areas like the Niger Delta.



Figure 2.3: Nighttime Lights of the Nigeria Region. Data from 1995 is blue, 2000 is green and 2006 is red. The vector polygon drawn around the gas flares associated with Nigeria are show in white. (Quist, 2007)

In 2007, National Public Radio broadcast a story concerning gas flaring in the Niger Delta and, in a section entitled “Black Clouds over Ebocha,” the journalist described the area as follows: “Huge flames billow in the air over Ebocha, and above them, black clouds leap into the sky. The giant gas flares operated by Agip-Nigeria belch out noxious fumes that loom over homes, farms, shops. There’s a strange smell and an audible hiss in the air.” (Quist 2007) As the community’s local leader, Chief Okene, stated: “Yes, we are living with death, because of the oil company.” (Quist 2007) The traditional leaders of the Niger Delta have been forced to give up their land to oil companies and have found themselves with no

say in the decision making process. Chief Okene's wife, Roseline, in a quest to improve the quality of healthcare, organized political protests to flaring.



Figure 2.4: Ebocha Gas Flares

Pollution of certain substances becomes even more dangerous to the Niger Delta area because of the vast river system that spreads throughout Nigeria. The rivers represent a major source of agricultural irrigation and distribute polluted water from oil exploration to many sources of agricultural production. Cadmium is especially potent in this regard because "...cadmium passes more easily from soil to plants and can readily enter the food chain". (Nikhil 787). Contamination of soil by cadmium leads to "... its accumulation in cultivated crops and vegetables." (Nikhil 787) Worse yet, Cadmium exposure has been found to be a "... cardiovascular risk factor, linked to an increased risk of myocardial infarction (a specific type of heart attack), development of hypertension, and diabetes mellitus type 2, as well as overall mortality." (Nikhil 787)

Section 2A: Case Study 2 – SPDC Suspended Facilities- Bomu Manifold, K- Dere, Gokana LGA

The UNEP report involves over nine case studies in the Niger Delta. This thesis focuses on case study 2, entitled “SPDC suspended facilities-Bomu Manifold, K-Dere, Gokana LGA.” The picture featured below provides an aerial view of the site study.

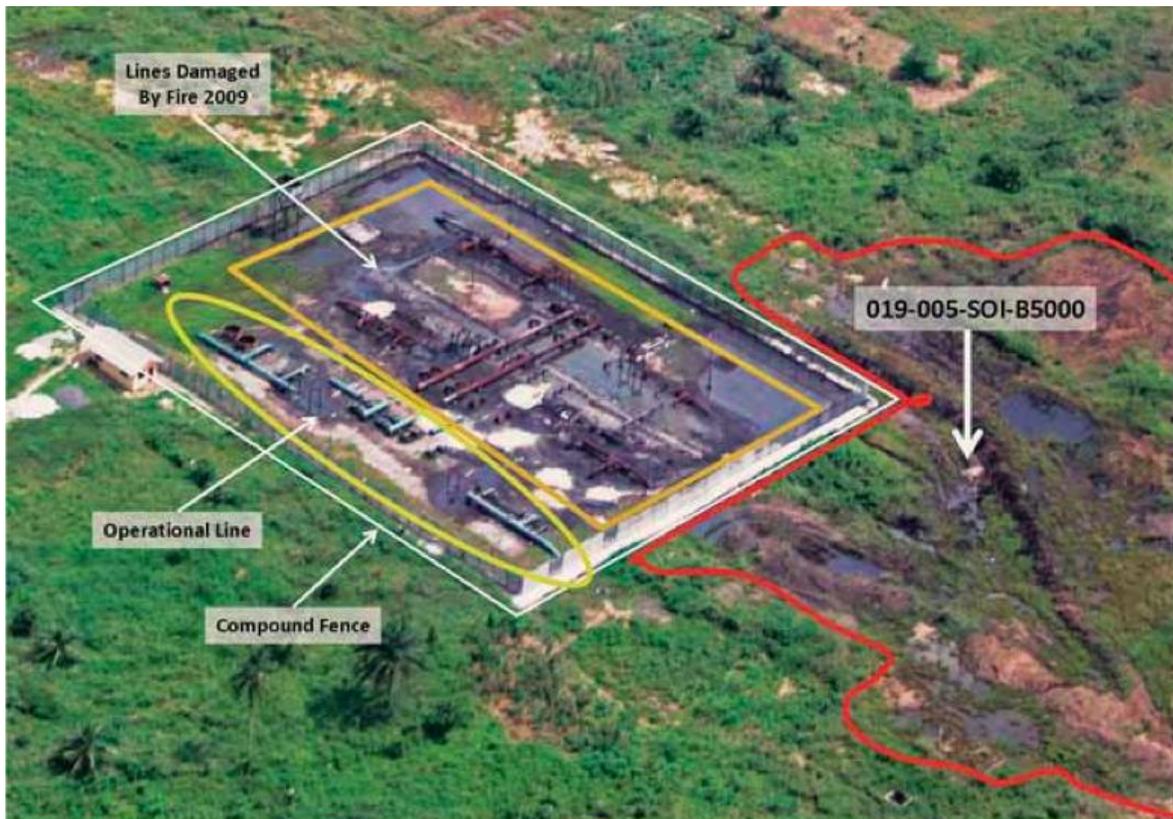


Figure 2.5: Aerial View of Bomu Manifold

Initial Survey

The manifold depicted above covers 5,000 square meters and connects 5 northbound pipe lines.” (Case study 2 115). The surrounding area and environment have been heavily degraded, and the report indicates that the air around the facility smells of oil and petroleum products. The UNEP report found “19,000 square meters outside the manifold are considered polluted with 9,000 square meters labeled as heavily polluted with the concentration of oil on the surface being above saturation.” (Case study 2 116).

SPDC security guards and armed army personnel guard the facility behind a barbed wired fence and access is only granted with an SPDC permit. Local activists and community members are denied access to the facility and are locked out of preventing further environmental damage because the source of the pollution, the manifold, is still in disarray.



Figure 2.6: Bomu Flow Station

The initial report describes the inner part of the facility as highly polluted with “crude oil, seeping through the fence and contaminating several thousand square meters of soil outside the complex.” (UNEP 115). The contaminated environment is not easily contained nor is it quarantined properly. Oil activities and maintenance neglect have adversely affected neighboring ecosystems and communities that rely on the land. Local Ogoni leaders within the community brought attention to the fact that oil companies invest even less effort in cleaning up the pollution when it resides directly on companies land (as seen above). However, due to the ecological nature of the Niger Delta, the pollution meanders off the oil facilities and into the local ecosystems through several avenues and is further exacerbated by heavy rains and the mangrove ecosystem.

Spill History

During the UNEP initial assessment of the complex, only 50% of the industrial facility was in operation. Below are the dates of the *recorded* oil spills in the region. As a result of the recorded 7 oil spills, 2 clean-up projects were commissioned for past spills, and an assessment is ongoing for the 2009 oil spill and subsequent fire. The facility does not have a “systematic drainage collective system.” Consequently contaminated materials are being washed away into the surrounding areas, harming the local ecosystems, on which the community and local economy depend on.

Table 2-1: Oil Spills on Record

October 1990	Recorded Spill
October 1990	Recorded Spill
February 2001	Recorded Spill
March 2001	Recorded Spill
January 2003	Recorded Spill
October 2003	Recorded Spill
Fire as a result of Trans-Niger Pipeline Spill 2009	Recorded Spill

Sample Analysis

The highest soil contamination was 63,600 mg/kg TPH 12 times higher than the EGASPIN intervention value of 5,000 mg/kg (Case Study 2, 116). Data from the analysis indicates that pollution is spreading from the facility into surrounding areas, and getting into the local water supply affecting both inhabitants and crop production. Some of the most important Ogoni community buildings in the region are within a 300 meter radius of the facility, including a primary school for local residents, and a community healthcare center.

One of the most alarming findings of the UNEP investigation was the oil company's utter disregard for the environmental consequence of the oil spills and failure to conduct an urgent clean-up effort immediately following a spill. According to the report, in one area it had been over 2 years since an oil spill occurred without any effort to remove the contaminated material. This neglect contributes to the pollution of the surrounding areas, which is exacerbated by the heavy rains common in this area in certain seasons. The case study cited four key observations of the facility:

- 1) "At 10 of the 21 UNEP investigated sites along the SPDC suspended facilities, soil contamination exceeded the limit set by the Nigerian national legislation.
- 2) At all 10 of these locations, contamination penetrated deeper than 1 metre below the surface.
- 3) At 11 of the 21 sites, groundwater pollution exceeded the intervention value set in Nigerian legislation.
- 4) At 4 of the investigated sites, hydrocarbons were detected in drinking water used by neighboring communities." (UNEP 118).

Section 3

The Ogoni Situation and Human Rights Theory

The Universal Declaration of Human Rights contains 30 articles of human rights deemed by the international community "... inherent and inalienable of all members of the human family." (Universal Declaration of Human Rights 1948) It is one thing for an international body like the United Nations to

acknowledge that all human beings have the fundamental human right to an environment adequate for one's health and well-being, but it is another matter to ensure people are afforded that basic human right.

The U.N. Declaration of Human Rights is an important and monumental document, but it fails to bridge the gap between the commitment to a universal standard of justice and the actualization of that idea because it has no real institutional power to force its implementation. Under the current political model the nation state is the preserver of rights, yet in many parts of the world, like in Ogoniland, enforcement of internationally recognized human rights is blocked by more powerful mitigating interests.

In fact, the devastating events in the Niger Delta exemplify how human rights of the most vulnerable communities in the world, like the Ogoni, are at the greatest risk of abuse. Oliver Ruppel noted this dynamic when discussing the concept of environmental justice: "In both the industrialized and developing parts of the world, a growing body of evidence demonstrates that the poor and other disenfranchised groups have been the greatest victims of environmental degradation." (Ruppel 103)

As evidenced by the UNEP report, rampant environmental disregard is commonplace in the Niger Delta and Ogoniland. If these incidences of pollution were found in any industrialized "first world" nation, the ramifications would be drastic. In the United States, the recent Gulf oil spill is an example how a single environmental disaster cost a company billions of dollars in clean-up efforts and compensation to those who lost their livelihoods in the wake of the disaster. But the Niger Delta is not the United States and with oil revenue accounting for the vast bulk of the country's revenues, one might be tempted to argue that oil spills in a relatively small portion of the country are a small price to pay to support progress for most. As we learned earlier, such utilitarian philosophy does have its proponents who might argue that eventually progress will "lift all boats" and bring prosperity to all, even the Ogoni. Such an argument, however, fails to recognize a number of factors.

First, evidence tells us that the unregulated oil activities are harming the local inhabitants' health. It is difficult to imagine how one can pursue life as a human and pursue happiness, as advocated by theorists as early as Aristotle, if one's health is compromised. In fact, except for the utilitarian approach virtually all theorists would find such actions to be clear violations of one's human rights, and using Vasak's framework a violation of one's third generation human rights.

Second, the environmental conditions have been damaged to the point that the traditional forms of employment have been severely marginalized. This leaves many Ogoni unemployed and at risk of losing generations of traditions. Clearly, for the Ogoni, these developments are a sharp departure from what has been "natural" to them for centuries. And reflecting on Aristotle's theories again, such departure from the "natural" also means that the Ogoni are denied their natural right to happiness. Interestingly, creating an environment in which most Ogoni lose their traditional means of employment also directly denies them one of their second generation human rights, their right to work.

Third, the Ogoni not only live in environmental chaos of a non-regulated oil facility, but they also receive no benefits to help address these problems - either through their government or the marketplace. The federal government maintained a policy that all wealth below ground (i.e., oil) belongs to the federal government. Thus, even if the Ogoni were allowed to drill on their lands, the proceeds would go to the federal government and not to the local people who must endure the negative consequences of the process. While one might argue that a portion of these oil revenues will find their way back to the Ogoni through Federal programs, such as infrastructure and schools, this revenue return has been minimal. Using Rawls's idea that just principles of distribution could be established by citizens deliberating under a *veil of ignorance* that prevented from knowing the specific advantages or burdens they would experience in their society, it is clear that this arrangement does not meet the terms of legitimacy implicit in the social contract tradition. A *veil of ignorance* experiment clearly would not yield such disparate results. In

Rawls's terms the Nigerian government does not provide equal protection to the Ogoni people which in and of itself is a violation of human rights.

Applying Kant's framework of the "Universal Principle of Right" suggests that the Nigerian government's actions are incongruent with any framework based on the belief that society must reconcile individual and societal needs. Absent a utilitarian approach, such actions are irreconcilable with any rational theory focused on the conditions of human freedom.

Focusing on the role of the SPDC in the Ogoni crisis, those examining the ethical model would place the responsibility for the degraded environment and breach of human rights on the multinational corporation, Royal Dutch Shell, while the political advocator would place the burden on the Nigerian government. In a world where the economic interests of multinational corporations and governments of emerging nations are heavily intertwined, such rationale fails to protect those caught in the center of their economic activities. And in the end, neither protection of the Ogonis's human rights nor accountability for economic hardships exists.

As Rawls pointed out, while free markets around the globe have improved the quality of life for many, they have also created a culture where the prospect of short-term economic gains justifies huge environmental costs to the detriment of vulnerable people like the Ogoni. The Ogoni situation demonstrates that without prudent oversight, markets fail to prevent environmental exploitation, which is inconsistent with human rights.

A more sustainable model would employ Rawls' theory that choosing the principle of justice over utility is desirable because the least advantaged in society will be in a position to advance. Such actions relieve the tensions that lead to social conflict and put a society on a more sustainable path. From that perspective, pursuing a policy of human rights isn't just the moral course, it is also good for the economic well-being of society through political stability in the long-run.

Conclusion

Human rights are not set in stone. They are malleable and constantly evolving to address the unique problems of the day that undermine the well-being of humankind. Throughout history, many great political theorists have wrestled with the concepts relating to human rights, all attempting to identify the underlying rationale for their true meaning. Within their writings, one can identify several definitions for the term human rights, and these various definitions identify with different modes of thought.

The term “human rights,” in its most broad definition, hosts two models, the political model and the ethical model. As previously discussed, the ethical model resides in a theoretical realm, whereas the political model operates in reality serving as a legal framework within which societies are asked to operate.

As the world becomes increasingly interconnected via globalization and technology, our capacity to influence and positively change negative practices is equally enhanced. Following Karel Vasak’s model, human rights can be classified in three generations. The various generations describe different phases within a quasi-evolutionary process during which human rights are afforded actual political protections. The first generation includes rights deemed civil and political, and is necessary for a society to develop a robust middle class. The development of a bourgeoisie in Europe, with legal rights to protect their property and progress, serves as an example. Second-generation human rights cover socio-economic and cultural rights secured by a strong state that protects the most vulnerable in society, and the third generation covers collective and solidarity rights. Pursuit of these rights is often the result of failure to secure first and second generation rights.

As more developing countries enter the age of industrialization, long-term success is predicated on their ability to balance the needs and rights of all their citizens. And as has been demonstrated countless times throughout history, failure to do so will ultimately result in civil unrest by those most adversely affected by their governments’ policies. Rawls’ theory provides a solid theoretical framework

that balances the desire for economic progress with the needs of the powerless. It showcases how concern for those in need of protection ultimately also protects the interests of the more fortunate and powerful and, thus, creates the underpinnings of a more stable society.

The discussion, inquiry in, and definition of human rights have been ongoing for thousands of years, and will continue until the end of time. Whatever personal attitudes individuals possess or policies governments implement, the general direction will be towards greater economic justice and political freedom. Examining the different generations of human rights, it is evident that when humanity encounters new problems, needs, and desires, a new set of rights and laws are set in place. Following the Aristotelian tradition, it is imperative that the universal and ethical models continue to create frameworks that help bridge the gap with real political solutions.

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Academic Vita

Michael Anthony Curto, Jr.

Address: 10021 Carmelita Drive, Potomac, MD 20854

202-340-7188 (Mobile), mac5518@psu.edu

Education

The Pennsylvania State University, University Park, PA

Schreyer Honors College

B.A. Candidate in Political Science

Thesis Advisor Amy Linch

Work Experience

Organizing For America- VA	Spring-November 2012
News America Marketing- A News Corporation Company	Summer 2011
Senator Christopher J. Dodd	Summer 2010
Rand * Construction Corporation	Summer 2009
American High Speed Rail Alliance	Summer 2008

Campus Activities/Service

Derby Days Chair- benefits the Huntsman Foundation	Spring 2011
Sigma Chi Fraternity	Fall 08-present
Habitat For Humanity-New Orleans	Summer 2007

Honors

Deans List	Spring/Fall 09
	Spring 10, Fall 11