

The International Tribunal on Climate Justice: cultural meanings and social change

by CARYS HUGHES

Introduction

There is currently no international legal mechanism for sanctioning countries and corporations that are polluting the environment and contributing to climate change. The UN Framework Convention on Climate Change (UNFCCC) is the only comprehensive international agreement designed to address climate change. However, it contains no mechanism for trying or sanctioning countries that fail to comply with the commitments they make. Many developed countries have violated key obligations under the UNFCCC and the Kyoto Protocol, including a failure to mitigate green house gas emissions (UNFCCC, 2010).

Meanwhile, it is estimated that 300,000 people a year die due to climate change related causes, and this estimate is expected to rise to 500,000 by 2030 (Human Impact Report, 2009). Importantly, the impacts of climate change do not affect all people equally: 98% of the people 'seriously affected' by climate change, 99% of all deaths from weather-related disasters, and 90% of total economic losses, are suffered in the developing world. Paradoxically, the fifty Least Developed Countries –as classified by the United Nations- contribute less than one percent of global carbon emissions (ibid).

The International Tribunal on Climate Justice

It is within this context that in October 2009 a preliminary hearing of the International Tribunal on Climate Justice took place in the city of Cochabamba, Bolivia. Seven cases were submitted, accusing a range of governments, transnational corporations, and international organisations, of human rights violations as a result of climate change, due to their actions or omissions. The Inter-American Development Bank, the

European Union and the Andean Development Corporation were among the accused (Solon Foundation, 2009).

The Tribunal was not brought about by national governments or any international institution but rather an international network of social movements, community groups and non-governmental organisations. As such, it has no legal authority. However, the organisers state: “Although the duty has not been granted us by any formally constituted legal authority, we recognize responsibility in the name of mankind and in defence of civilisation and Mother Earth” (Solon Foundation, 2009).

A-legal space

The International Tribunal on Climate Justice is not the only initiative of its type. The term ‘a-legal space’ was coined by Chilean political theorist and sociologist Marta Harnecker (2007) to describe the 1992 mock ‘referendum’ that took place in Caracas, Venezuela.

Ballot boxes were set up throughout the city, not by the government but by a political party; *La Causa R*, and the population was asked to vote as to whether the then president, Carlos Andrés Pérez, should continue governing. Five hundred thousand people took part in the referendum (more than 25% of the city’s residents), 90% of which voted against the president continuing in his position. Harnecker (2007) argues that due to the level of citizen participation, the referendum, while not legally binding, indeed became a ‘political fact’ and helped to create the conditions under which the president could subsequently be impeached. Moreover, she suggests that this notion of an alternative legal space, ‘not legal but not illegal’, can be utilised in order to raise consciousness, mobilise, and persuade the population to participate, in a way that will build an alternative social force (ibid).

There are a number of cases around the world, where civil society has attempted to occupy the kind of alternative legal space to which Harnecker alludes. Examples include the ‘World

Referendum on Climate Change’, a Bolivian civil society led initiative aiming to consult ‘the citizens of the world’ on how climate change should be addressed (PWCCC, 2010), and the UK’s ‘High Pay Commission’; an ‘independent inquiry into top pay in the private sector’ established by campaign group Compass (High Pay Commission, 2010).

While there are many differences between these various initiatives, there are a number of common features. They seek to imitate an official institution or process through the use of protocols and procedures of formal legal or democratic mechanisms. They are motivated by a perception of institutional failure, and organised from the ‘bottom-up’, by organisations of civil society. And they claim legitimacy on the grounds of ethics and/or popular support.

Broadly, these initiatives seek to force changes in the formal systems, where they are perceived to have failed to deliver a just solution. With no legal powers or authority they must do this through engendering public support. However, it is for more than their reliance on public opinion that these initiatives are interesting from a Communication for Development perspective.

It could be argued that ‘a-legal’ initiatives offer a unique tool for civil society; to challenge the commonly held cultural meanings that are barriers to social change. Through re-framing an issue in a way that challenges the mainstream interpretation these initiatives promote new ways of understanding and responding to the issue at hand.

This article will explore this hypothesis through an analysis of the International Tribunal on Climate Justice (the ‘Tribunal’) and how it may have worked to advance the case for legal infrastructure to address climate change. The first section is a discussion of the way in which climate change is commonly framed and understood by the media and public, and the implications of this for policy and public behaviour. The second

section explores how the Tribunal, as a type of ‘a-legal initiative’, may challenge cultural meanings. The third section takes a closer look at the Tribunal and how it has been set up, to investigate whether it is likely to fulfil any semiotic potential.

The framing of climate change

Despite the scale of the human rights abuses that are caused by climate change, it is generally not framed as an issue involving right and wrong. While there are countless ways in which this complex multidimensional issue could be represented, research into the language and concepts used by the media and politicians suggests that there are certain common and well-established framings.

Climate change is most commonly presented as a scientific, technological or economic problem (Chong & Nicholson, 2008; Terry & Sweetman, 2009; Bäckstrand & Lövbrand, 2007), i.e. understood and discussed with regard to technological or economic factors. In a 2008 paper that explores the competing discourses that have been employed in international climate negotiations, Bäckstrand and Lövbrand, identified three central ‘meta-discourses’ that have fought for dominance over the last twenty years. They call these: *Green Governmentality*, *Ecological Modernization* and *Civic Environmentalism*. Civic Environmentalism is described as a discourse that ‘advocates a fundamental transformation of consumption patterns and existing institutions to realize a more eco-centric and just world order’. The authors argue that this discourse was dominant in negotiations throughout the 1990’s, shaping the debate around the question of north-south equity, and ‘provided the impetus’ for the principle of ‘common but differentiated responsibilities’ that was incorporated under Article 10 of the Kyoto Protocol in 1997 (Bäckstrand & Lövbrand, 2008, p2).

However, it is argued that this justice focused discourse has subsequently been marginalised. For the last ten years the debate has been defined by Ecological Modernization, that represents a ‘decentralized liberal market order that aims at providing

flexible solutions to the climate problem at the lowest possible cost' and Green Governmentality that focuses on the role of multilateral negotiations, and global scale centralised mitigation and monitoring efforts (ibid).

So discussion of global justice and the need for fundamental structural changes to international architecture has been replaced by a less political, science driven approach, concerned with the administration of the problem (with Green Governmentality) and a focus on market based solutions, with their 'salient win-win rhetoric' (ibid) (with Ecological Modernization).

So what are the implications of these particular framing biases for how society responds to the problem of climate change?

Technological, economic and justice frames are not necessarily in contradiction with one another. Presenting climate change as an issue of global injustice, for example, does not preclude a consideration of technological and economic factors, and potential solutions. The frame used, however, determines the way in which the problem is principally understood, and therefore, most importantly, the solutions that are most likely to be proposed.

The prevalence of the scientific framing, which understands climate change as a primarily environmental problem (rather than social, ethical, health, cultural or otherwise), is likely to lead to 'scientific' policy solutions. This could include technological innovations, such as Carbon Capture and Storage, and renewable energies. Or policies around the administration of science based monitoring, such as systems for measuring country and per capita emissions.

An economic based framing, that asserts the power of the market to bring economic development at the same time as environmental protection, such as the framing evoked by the *Ecological Modernization* discourse, is likely to lead to

market based policy solutions. Carbon Markets and other market based mechanisms, such as Clean Development Mechanisms, that are included in the Kyoto Protocol, could be said to be products of such a framing.

The establishment of a legally binding international tribunal on climate justice is a policy solution that depends on a very different framing of the climate problem. It depends on an analysis that extends beyond the science of climate change, and addresses issues of global power relations, equity, and ethics. Dominant economic, technological, and science based framings do not obviously support the development of legal infrastructure as a policy solution.

These framings also have a bearing on public participation and engagement with this issue. The question of what kind of frames inspire action, and how to frame an issue in a way that will inspire action, is highly complex. However, it could be argued that the most dominant climate change frames, discussed above, broadly speaking, discourage civic engagement on the issue.

If the problem is understood narrowly through the scientific frame, the implication is that experts must solve it. If it is a technological problem, what can members of the public do but wait for top down solutions? Similarly, if we understand it through the prism of neoliberal economics, individuals must wait for market mechanisms, established by governments, to function.

Therefore the dominant ways of representing climate change constitute a barrier to those campaigning for climate justice. If campaigners are to encourage wider civic engagement with the issue, and convince audiences that the creation of international legal infrastructure is important and necessary, they must change the way the public understands the problem.

Using alternative legal space to challenge cultural meanings

A-legal initiatives allow for an issue to be re-framed in a way that challenges mainstream frames and supports an alternative interpretation. The 1992 fake referendum in Venezuela framed the president as having lost his legitimacy in the eyes of the public. The UK's 'High Pay Commission' presents wage inequality as a potential problem (and not inevitable or 'just the way things are') and one serious enough to merit investigation through a 'commission'. Citizens' tribunals apply the labels of 'victim' and 'criminal' to individuals, states and companies that are not normally cast in these roles.

In the case of the International Tribunal on Climate Justice, the European Union, Inter-American Development Bank and the Andean Development Corporation, amongst other actors are found to be guilty of human rights violations due to climate change. Climate change is framed, not just as an environmental problem and tragedy, but a problem that continues to be caused, knowingly by 'climate criminals' (Solon Foundation, 2009).

As discussed above, the emergence (or re-emergence) of a justice based framing of climate change is essential if policies around the creation of legal infrastructure are to gain support. The Tribunal, therefore, has the potential to play an important role in influencing the climate policy debate.

However, the Tribunal is hardly unique in presenting an alternative to the dominant scientific, economic and technological climate change frames. So how is it different to other political campaigns for climate justice?

One response is that it delivers a subtly different message to that of other activists, commentators, and politicians who have argued that climate change should be seen as a justice issue, and legal infrastructure should be developed to address the problem. The Tribunal says not that an international tribunal on climate justice *should* be established, but that *it has been*.

Through creating a version of what it is campaigning for (albeit with no actual legal powers) the Tribunal sends a different message to audiences; that such a tribunal is possible. This is a message not carried by traditional legal initiatives. Had the organisers of the fake referendum in Venezuela instead ran a city wide opinion poll the significance of the event would have differed. An opinion poll would have demonstrated the level of public opposition to the president; that he no longer had the support of his public. It would have carried the message that the population want change. But it would not have challenged the dominant frames that seek to show that things are how they are for a reason, and no alternative is possible.

The referendum, by contrast, did not send the message that there should be a referendum but that there had been. And that the president had lost. The Tribunal does not send the message that climate change *should be seen as* a justice issue, and potential perpetrators judged, but that it *is* a justice issue and key states and international organisations have been found guilty. In this way it shows these alternatives to the actual reality to be possible.

Potentially, showing the public that a tribunal on climate justice *could* be established will promote changes in public behaviour towards the campaign for a real tribunal. Specifically, a more active and positive public response may be expected now the idea is shown to be possible. In fact, there is support for just this idea.

The philosophy of ‘As If’ was originally postulated by German philosopher Hans Vaihinger (1911). He argued that humans can never really know things about the true nature of the world, but instead make hypotheses and act accordingly. Influenced by Vaihinger’s work, the psychologist George Kelly developed research into the psychological implications of ‘as if’ in “Psychology of Personal Constructs” (1955). He suggested applying an ‘as if’ position to knowledge, encouraging people to act as if different constructions of events were true and believed that this exercise would allow for a fresh and potentially

transforming perspective on oneself and the world around one (Centre PCP, 2009).

These ideas came to form the foundations of a new school of psychology, Personal Construct Psychology, which is based on the central premise that people should behave ‘as if’, trying on different ideas about the world and themselves in order to free themselves from constricting beliefs and discover how their behaviour changes as a result (ibid).

Alternative legal initiatives provide the means for audiences to think and act ‘as if’ a different construction of events were a reality, enabling them to see beyond the actual reality and gain a different perspective on the issue at hand. The Tribunal enables audiences to imagine ‘as if’, and therefore see the creation of a real tribunal as possible, and the actual reality as contingent rather than inevitable.

Now, it may be objected that the Tribunal is not *real*. Since none of the political, social or economic barriers to the construction of a tribunal on climate justice have been overcome, how does it show that a tribunal on climate justice is *possible*? Indeed the initiative is in some ways just theatre; a representation of events that many would wish were reality but are not.

However, one of the tenets of Personal Construct Psychology is that beliefs and ideas about the world can be as much a barrier to change as any concrete obstacle (Centre PCP, 2009), because they determine peoples’ actions. If society believes something to be impossible or unrealistic, then people will not work towards it, nor support it.

An interesting case study, relevant to this point, comes from The Yes Men, an association of US activists who, among other stunts, famously impersonated a spokesman for Dow Chemical, whose subsidiary company was responsible for the Indian Bhopal disaster in 1984. The fake spokesman reported, live on

BBC news, that the company was taking full responsibility for the disaster and would be providing \$12 billion in compensation (the full value of the subsidiary company) for the victims of the disaster. Moreover, he added: “I would also like to say that this is no small matter, this is the first time in history that a publicly owned company of anything near the size of Dow, has performed an action that is significantly against its bottom line, simply because it’s the right thing to do”[i]. After the event, The Yes Men commented: “We want to show that another world is possible, and that Dow could do the right thing”[ii].

In another stunt, The Yes Men printed over 1 million fake copies of The New York Times with stories including ‘Iraq War Ends’ and ‘National Health Service plans announced’, and distributed them throughout New York. In an interview with CNN, one of the organisers explained: “it was about reminding people that it is possible for this war to end, after 8 years it’s hard to imagine the war being over and us being in a time of peace, and here it is tangible in the form of this newspaper”[iii]. As with the Tribunal, The Yes Men have not addressed any of the political, economic, social or other forces which prevent the changes they are campaigning for from taking place, but they argue that they have shown that these changes are possible.

Perhaps, what they have done is allow the public to visualise a different reality, and thereby brought down some of the psychological barriers to change. Through convincingly pretending that another construction of events is reality, even if only for a short time, they challenged the psychological tendency to assume that no other way is possible.

These different possible realities -where Dow Chemical pays \$12 billion in compensation to its victims, or governments are convicted of ‘climate crimes’ for not sticking to their emission reduction targets- can then be compared by audiences with the actual reality. If the audience decides they no longer agree with the actual reality, then they can work to change it.

In the case of the Tribunal, audiences can imagine the existence of an international court for ‘climate crimes’ where some of the world’s most powerful states and respected international organisations have been convicted of human rights violations due to their failure to comply with climate change commitments. Audiences are able to read about the cases, the evidence presented, and the specific human rights legislation allegedly broken. They are shown that it would be possible to identify, try, and charge those actors. They are then able to consider whether this Tribunal should indeed be legally binding, and whether this is a campaign they will support.

The impact of the International Tribunal on Climate Justice

The Tribunal may have great potential to foster new cultural meanings, which promote alternative policies and civic engagement, by virtue of the fact that it is creating a version of what it campaigns for. However, all citizens’ tribunals do this. And, according to

Klinghoffer & Klinghoffer (2002), authors of the most in-depth study on the subject, “International Citizens’ Tribunals: Mobilizing Public Opinion to Advance Human Rights”, citizens’ tribunals have regularly had limited impact.

Therefore it cannot be assumed that the Tribunal will successfully challenge cultural meanings around climate change and climate justice, and thereby affect social change, merely by virtue of calling itself a ‘tribunal’ and going through the motions of hearing ‘cases’, and producing ‘findings’, as all citizens’ tribunals do.

The challenge is to assess why some a-legal initiatives are successful and others not, and consider how the Tribunal may compare. Through an examination of successful initiatives, and drawing on the Klinghoffers’ study of citizens’ tribunals (2002), it is possible to define a number of features that have been

present in successful initiatives, and may be determinants of success. Two of these criteria include convincingly replicating the style and format of a formal, legal or democratic process, and appearing ‘objective’ to target audiences. The importance of these criteria, and the extent to which the Tribunal can be said to meet them, are discussed below.

The criteria for successful use of alternative legal space

There is evidence to suggest that both successfully appropriating the format of a real tribunal and appearing to be objective are features that are key to the success of citizens’ tribunals. The Klinghoffers (2002) emphasise the importance that citizens’ tribunals abide by formal court room procedures. This includes following the established and official ways of processing evidence, and that charges be based on existing legislation and against legally recognisable entities, such as governments, organisations or individuals.

The Klinghoffers argue that this is so that the case is easily translatable to the formal legal system and from a practical perspective this makes sense, if the aim is to bring the case forward within the formal system. However, it could be argued that it is also important for semiotic reasons. It is likely that the audience will find it easier to believe the tribunal is ‘real’ the closer it is to an actual official tribunal.

A related criterion is the issue of ‘objectivity’, which according to the Klinghoffers (2002) is crucial to the success of citizens’ tribunals. They refer to the case of the 1966 Russell Tribunal to demonstrate this point. Set up by philosopher Bertrand Russell to investigate and try US foreign policy and military intervention in Vietnam, it ‘tried’ and ‘convicted’ the US government for committing genocide against the Vietnamese people, amongst other charges.

The Klinghoffers argue that the appearance of partiality was a key factor in the tribunal’s failure to mobilize mass support.

Specifically, they point to key structural components such as the absence of a defence, failure to cross examine witnesses and the use of panellists that were all openly anti-war rather than representative of a mix of viewpoints. In their view, this contributed to the image of the tribunal as a mere rhetorical political stunt, rather than as a rigorous, legalistically based, objective exercise

Now, one could question the feasibility of holding a truly 'objective' citizens' tribunal. Citizens' tribunals are established as a response to a perceived injustice and a belief that this injustice has not been addressed through the formal systems. They are organised by individuals who wish to right this wrong and as such it is hard to imagine a citizens' tribunal that would find the accused to be 'not guilty'.

However, the Klinghoffers (2002) provide significant evidence that the *appearance* of a lack of objectivity damaged the Russell Tribunal. Various prominent intellectuals declined to participate in the tribunal, despite supporting the cause, because they perceived it to be too partisan. The American playwright Arthur Miller, the British Theatre critic Kenneth Tynan, and the American cultural historian Lewis Mumford all declined due to the absence of a defence. Meaning not only that the tribunal was unable to benefit from their involvement but it suffered the negative media coverage associated with these public rejections. Subsequent public criticism came from the chairman of the Consultative Council of Lawyers Committee on American Policy towards Vietnam, American international law professor, Richard Falk. The Committee was highly critical of US actions in Vietnam, yet in a two volume study of international law and Vietnam by Richard Falk the Russell Tribunal is dismissed as a 'juridical farce' (ibid, p134).

Therefore, whilst it could be argued that a demand for objectivity is unrealistic (or nonsensical) in the case of citizens' tribunals, they should at least follow the procedures and protocols that have been designed to strive for objectivity in the

formal court systems. The inclusion of a defence, cross examination of witnesses, and apparent impartiality of jurists would contribute to an increased *appearance* of objectivity.

Does the International Tribunal on Climate Justice meet these criteria?

In the International Tribunal on Climate Justice formal courtroom procedures are adhered to, including a jury, clearly defined cases, and the inclusion of charges based on existing human rights legislation. Publicity materials are presented in the style of a legal report with ‘recommendations’ as well as details of the cases, jury members and the precise human rights laws and conventions that allegedly have been broken (Solon Foundation, 2009).

The Klinghoffers (2002) call for charges to be brought against specific, identifiable, actors, as opposed to non legal entities such as ‘the capitalist system’. Here also the Tribunal abides by the recommendations. Despite the fact that organisers of the Tribunal have identified the root cause of climate change as ‘the capitalist system’ (Solon Foundation, 2009) charges are against specific states and international organisations on the basis of specific actions.

Therefore many of the signifiers employed denote an exercise that is based on existing established legal systems and legislation. A deeper analysis of the Tribunal’s full range of potential meanings would best be carried out with reference to a clearly defined target audience. However, on the basis of these signifiers, a likely interpretation is that this is a serious venture, based on already established norms, values, and indeed, laws.

The question of objectivity is more complex. Depending on the audience, certain key signifiers could connote to a lack of objectivity. Firstly, jury members are all activists -some well known for campaigning on climate justice, and thus far from the clear divide between jurists and organisers that the Klinghoffers (2002) recommend in order to attain objectivity. Secondly, there

is no defence, and the promotional materials show no evidence of an attempt to create one.

Whether audiences interpret something as ‘objective’ or not will be influenced by their already existing beliefs and ideas about the way the world is. Audience members with some knowledge of, and sympathy for, issues around ‘climate justice’ might see the Tribunal as objective, while others with less knowledge of the issues or a different understanding of the problem of climate change may be more critical of aspects such as the lack of defence and politically active jury members.

However, given the current dominance of scientific, technological and economic framings of climate change, and the relative marginality of the justice frame, it would be reasonable to assume that a large percentage of international audiences outside of activist or environmentalist circles will question these features in the Tribunal.

For future hearings, the Tribunal may benefit from using a selection of jurists from a range of disciplines and backgrounds, and potentially political persuasions. They could also consider inviting lawyers to put together a case for the defence, or inviting the accused to comment (even if chances of a response are slim). This would create a better appearance of objectivity to mainstream media and audiences.

A feature of formal legal or democratic systems is that they purport to be objective. If target audiences interpret an initiative as obviously partisan, the illusion that it is a kind of formal legal or democratic initiative is broken. If a-legal initiatives are to help audiences imagine ‘as if’ a different political reality is possible, they must better meet these criteria; appropriating the format and appearance of an official tribunal, referendum, or commission, and appearing to be objective.

Conclusion

The Tribunal, like other types of a-legal initiatives, has great potential to influence public cultural meanings in a way that may advance its cause. It has utilised this potential to some degree through successfully appropriating the procedures and format of a real tribunal. Through taking measures to appear more objective it could enhance its impact on wider international audiences.

The significance of initiatives that seek to occupy an alternative legal space can best be appreciated through a comparison with initiatives that occupy a traditional legal space. Returning to the case of the Venezuelan ‘referendum’, and the fictional legal alternative; a citywide opinion poll, the difference in meaning is clear. While the opinion poll would have demonstrated the low level of support for the president, it would not have challenged his rule in the same way. An opinion poll may have said that a large majority of people wanted the situation to be different, and believed it should be different, but it would not have proposed “it doesn’t have to be like this” or “this is not inevitable”. As such, the opinion poll reinforces, or at least does not challenge, the dominant discourse that seeks to show that things are the way they are for a reason, and that no other way is possible.

In contrast, a referendum or citizens’ tribunal goes beyond “we don’t agree with this situation”, and says “we don’t accept this situation”. Through presenting an alternative version of reality, it carries the implicit message that this is how things could be, and if carried out effectively, encourages audiences to temporarily imagine ‘as if’ this alternative were real. Even if none of the socio-economic factors around an issue have changed, an audience is encouraged to believe that an alternative is possible. This belief in the possibility of an alternative is a first and essential step towards making the alternative a reality.

Different discourses are involved in a permanent struggle for dominance (*Phillips & Jørgensen, 2002*), attempting to make sense of and apply meaning to the world according to their

framework while stamping out more marginal discourses. As each discourse fights for dominance, they seek to normalise their values and concepts and establish the belief that they represent the only way of seeing the world. Therefore, an initiative that enables audiences to imagine ‘as if’ and see a different policy as possible is of great value to those promoting an alternative approach. In this way, the Tribunal, and other a-legal initiatives, can be a tool to help persuade the public that ‘another world is possible’.

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About the author

Carys Hughes most recently worked at the Bolivian NGO *Centre for Legal Studies and Social Research*, researching the country's new Mother Earth rights legislation. In October 2011, she will start a PhD in Politics, focusing on the use of alternative legal space by civil societies around the world. E-mail: carys_hughes@hotmail.com

[i] See <http://www.youtube.com/watch?v=LiWlvBro9eI>

[ii] See <http://www.youtube.com/watch?v=xXSpyZCRIjU>

[iii] See <http://www.youtube.com/watch?v=dO6Oi3XUYgg>