SYMPOSIUM

# What Justice Theory and Climate-Change Politics Can Learn from Each Other

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Scholars of justice theory often refuse to apply their principles to concrete social or political issues; instead, they develop those principles in abstraction from contemporary value conflicts or policy debates, preferring to remain silent on how justice might inform controversial political decisions. Rawls, for example, casts questions concerning the application of his "justice as fairness" conception across national, generational, and species boundaries as among the several "problems of extension" for which his theory may or may not be equipped, noting that "the idea of political justice does not cover everything, nor should we expect it to" (1993, 20–21). Even where he applies his justice theory to problems of international relations in his *The Law of Peoples*, Rawls describes its application as merely "an extension of a liberal conception of justice for a domestic regime to a Society of Peoples" (1999, 9), as though constructing and applying justice principles are entirely discrete steps, with its application to concrete social or political issues a unidirectional project of wielding static principles as practical tools, offering nothing of importance to a normative theory's development.

By contrast, and perhaps in response to the expressed indifference by justice theorists concerning the practical application of their principles, those theorists working on justice issues in politics often assume that there exists little of practical value to learn from abstract discussions of how justice principles are developed and justified among normative theorists. Despite sharing a common evaluative language and a motivation to promote justice and oppose injustice, theorists of and advocates for justice rarely engage each other on more than a superficial level, and often assume that they have little to learn from the other. Theorists write about justice in practice but pay little serious attention to its practical challenges, and practitioners borrow principles from theorists but rarely wield those principles with the precision required by the analyses from which they originate, treating them more often as convenient rhetorical devices than critical analytical tools that are subject to their own, often inconvenient, limits.

Both are mistaken, I contend, underestimating the insights that the other might provide either to the development or application of justice theories or principles, if perhaps correctly estimating the difficulties in reconciling justice in theory and practice. I show that justice theorizing can benefit by the application of principles to real value or policy conflicts, where justice is claimed as a core policy objective but multiple conceptions of what it requires are wielded by competing parties, and that policy-relevant dimensions of real-world justice problems can sometimes be helpfully illuminated by appropriate theories or principles of justice. Here, I consider not only the insights that justice theory might offer current debates over international climate policy architecture, but also several insights for justice theory that might be gleaned from these debates, suggesting greater policy relevance for some versions of justice theory than are commonly appreciated, and several lessons for justice theorizing that can help to avoid oversights made evident by this applied case.

To begin, the international policy challenge of mitigating the expected effects of global climate change has widely and aptly been recognized as one involving justice as both a critique of unabated climate change and core objective of cooperative remedial efforts (Shue 1999). As typically expressed, climate change is, among other things, a problem of international or global injustice, and its remedy must be guided by relevant principles of justice if it is to address the problem appropriately and to wield power legitimately. For example, parties to the 1992 UN Framework Convention on Climate Change (UNFCCC) explicitly identified the international imperative to protect the world's vulnerable from climate-related harm as one of justice, invoking three key conceptions of justice in its call for the world's nations to "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities" (UNFCCC 1992, Article 3). By explicitly framing climate change as a matter of justice, the UNFCCC provided sufficient fodder to stimulate popular and scholarly debates about what climate justice requires, if not enough to settle them.

Not only does it identify "equity" as a key principle for setting national decarbonization targets, but the Convention's language of "common but differentiated responsibilities" explicitly invokes justice principles that assess liability for avoiding or redressing harm on the basis of the degree to which various parties are responsible for creating some risk. These identify, as I have argued elsewhere (Vanderheiden 2008), three distinct justice principles and two kinds of corresponding justice problems. On the one hand, these make reference to egalitarian distributive justice and a resource-sharing problem in reference to "equity" but, on the other hand, identify a burden-sharing problem to be settled by


doi:10.1017/S1049096512001448

reference to either (or both) differences in responsibility and capability. The Convention did not specify how the problem of climate change mitigation is to be understood overall—whether as a forward-looking issue of assigning fair shares to the scarce planetary resource of greenhouse emissions absorptive capacity, limiting those emissions according to some formula concerning each person's or nation's equitable share of a sustainable total emissions budget, or as a backward-looking issue of assessing remedial liability to either responsible or capable parties for the purpose of supporting current and future mitigation efforts. Nor did it provide concrete guidance for how distinct principles might be applied to it, and both remain divisive aspects of how to process in post-Kyoto international climate policy development.

If, for example, climate change mitigation is regarded primarily as a problem of equitably sharing some common but scarce resource, egalitarian distributive justice principles suggest themselves as appropriate theoretical starting points. Perhaps, following Rawls in his difference principle, one might assign carbon reduction targets to nations that converge on approximately equal per capita emissions shares, but allow some inequality in those shares when these benefit the least advantaged. Here, the focus would necessarily be on what, if anything, might justify departures from the default position of equal per capita shares, as, for example, the physical or geographical differences among nations or persons that affect their ability to convert a given emissions allowance into a comparable measure of welfare or functioning.

If climate change mitigation is instead viewed as fundamentally a problem of assessing shares of liability for protecting the vulnerable against climate-related harm by reducing current greenhouse emissions or otherwise coming to their aid, other conceptions of justice emerge. Here, the overall focus is on the economic costs or other burdens associated with carbon abatement, combined with one of several sets of facts that can assess liability for shares of those costs or burdens. If, for example, one was to apply a conception of justice based in responsibility to climate change mitigation, the focus would be on each party's total contributions toward the problem and would require a further judgment concerning the role of fault in assessing the liability of various parties. Under a strict liability standard, each party's cumulative and net greenhouse emissions would determine its share of overall remedial liability, thus focusing on its historical and current emissions along with its land use changes or other carbon sequestration efforts, which can affect net emissions. If a fault-based liability standard is used, the focus would shift from causal contribution to excusing conditions that justify subtractions from cumulative emissions in calculating each party's remedial liability, on grounds that it cannot be faulted for those contributions. Under such a standard, pre-1990 emissions might be exempted, as occurring before governments could be expected to adequately know the relationship between greenhouse pollution and climate change, or those emissions associated with the meeting of basic needs might likewise be exempted as unavoidable and therefore faultless.

By contrast, if remedial liability is assessed according to the differentiated capabilities of various parties, then the focus turns away from the historical facts and ethical judgments central to responsibility-based justice, and toward largely economic and political facts concerning the relative capacities of various parties. Those countries viewed as being in a position to more easily reduce their current emissions, whether because of the lower social welfare opportunity costs of diverting funds toward climate change mitigation that can be associated with general affluence, or on the basis of the different marginal abatement costs that result from variable past efforts in harvesting the "low-hanging fruit" of carbon abatement opportunities as well as national differences in built infrastructure and access to low-carbon energy resources or sequestration options, would be assigned, by this standard, relatively higher mitigation burdens. Even among burden-sharing approaches, the features of various potentially liable parties that each focuses on is significantly different, as would be the prescriptions that each justice principle issues on the basis of a fixed set of facts.

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The UNFCCC text simply lists these three conceptions of justice as among those that might be used to determine national obligations, providing no further reasoning for choosing one conception over another and providing no insight into how some composite index that takes account of all three might be constructed (Caney 2005; Baer et al. 2009), its language introduces more questions about the kind of justice principles to be used in climate change mitigation efforts than it answers. Indeed, this lack of specificity has allowed philosophers and political theorists the opening needed to ask the normative questions that the Convention demurred: On what bases *should* national climate change mitigation burdens or resource shares be assigned, if justice in their assignment is the goal and operational constraint? Do any of our existing conceptions of justice particularly fit well onto the distributive problem that international climate change mitigation efforts raise, such that this fit can recommend one or more of those identified conceptions of justice as particularly appropriate to it? Such questions necessarily go beyond any discernible legislative intent or clarifying information from the Convention's text, making

its interpretation more an exercise in justice theorizing than in following any revealed historical consensus on principles, suggesting that the most philosophically plausible view might not settle the current political impasse or help to forge an international consensus on how to assign such obligations.

What, then, can participants in international climate change politics learn from justice theory? For one thing, there exists a plurality of plausible conceptions of distributive justice, each of which arguably fits within the kinds of distributive problems for which it has been developed and is most commonly used. In torts, where justice requires that an injured party be compensated or otherwise restored to some prior condition, where this requires the assessment of remedial liability, and where a faulty party can be identified, fault-based responsibility seems the most plausible candidate for ensuring that justice be done, because it not only assigned liability on bases that appeal to retributive justice principles, but it also provides a disincentive against future reckless or negligent behavior that might likewise put vulnerable persons or peoples at elevated risks of harm. Where the injury exists and requires redress, and where causally responsible parties can be identified but no fault established, strict liability offers a justice principle that is superior to its alternatives, which thus exclude fault-based liability. Where the injury exists and requires redress, but where none can be identified as liable under either of these standards, the assessment of liability on the basis of capacity (conceived as "ability to remedy") makes sense, given its effort to minimize the welfare impacts of mobilizing the resources needed to provide a suitable remedy to injured parties. Each of these principles is context dependent and prescribes somewhat different remedial liability on the basis of its different focus.

The resource-sharing approach to climate change mitigation implied by the UNFCCC's reference to equity and the three distinct remedial liability principles identified in the text that immediately follows issue some common general prescriptions: that more affluent industrialized countries like the United States do more, whether by virtue of their greater capability or responsibility or as the result of a wider gap between their current and equitable per capita greenhouse emissions, while poorer developing countries be allowed to do less. But these common elements obscure significant differences in the demands that they make on various national parties to the convention and justify those prescriptions on the basis of different facts about each country's economic and emissions profile. However tempting it may be to take an "any of the above" option or make a "good enough" assessment concerning which of the various justice conceptions and principles is chosen, given the vast improvement that any combination of the approaches sketched here would make over the status quo, this temptation ought to be resisted. Despite their overlapping prescriptions and the pragmatic need to move forward on some policy effort to alleviate existing climate injustice, these differences matter at both the level of justification and prescription. Entrenched disagreements over which conceptions or principles to employ in post-Kyoto climate policy architecture have complicated securing agreement on the main elements of national mitigation targets, as different parties continue to insist on different and plausible but ultimately incompatible interpretations of the UNFCCC language. India, for example, continues to insist on a liability formula based on each country's full historical emissions, or strict liability with a wide temporal purview, which is one way of interpreting the CBDR language of the Convention and which favors late-industrializing countries like India. Its "climate debt" approach, however, has been roundly rejected by the United States, which has thus far resisted all liability formulae based in either strict or fault-based liability, preferring instead to emphasize differential national capacity to reduce emissions.

One can understand the reluctance of framers of the UNFCCC text to specify the precise principles by which climate change mitigation efforts would be pursued, even if consensus on such principles could have been established in 1992, because doing so would preempt future debate about the assignment of national shares or burdens and foreclose potential means of compromise among parties holding entrenched and opposing views. But understanding the political sources of their reluctance does not obviate the need for more precision in assessing specific remedial obligations to various parties. While climate justice scholars continue to articulate and defend what they take to be the most plausible interpretations of the UNFCCC language, often arriving at somewhat different endorsed policy outcomes and insisting that their prescriptions are the only fully justified ones, most concede that any plausible interpretation of the demands of climate justice would be "good enough" from a pragmatic point of view. Nonetheless, the appropriate stage for this approximation is not in the identification or construction of principles, but is rather in the formulation of policy, which need not perfectly follow its principled bases but which might be measured in terms of how closely it approximates them. Adding a second stage of approximation, such that policy merely aims to approximate some set of "good enough" justice principles, which themselves merely approximate what justice is seen by theorists as defensibly requiring, introduces an additional layer of imprecision, allowing for additional sources of

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resistance against whatever prescriptions are ultimately endorsed, and without adding any value to the process. Greater precision in the fit between facts and principles allows for more approximation in the fit between principles and policy, whereas less precision in the former multiplies the likelihood of error in the latter.

What can justice theory learn from the international climate policy development process? For one thing, most climate justice scholars apply cosmopolitan justice principles to the problem of climate change because these extend the purview of distributive justice beyond national borders. In doing so, global justice principles highlight the inequitable resource sharing that has led to climate change and the externalizing of the costs associated with affluence onto the world's poor that climate scientists have predicted in identifying fossil fuel combustion as the primary cause of climate change and the global poor as most vulnerable to its insidious effects. Debates within justice theory about whether or under what circumstances justice might ever apply to phenomena that transcend national borders can learn from the case of climate change, which does not depend on the reciprocity (Sangiovanni 2007) or shared associations (Miller 2009) that some require as among the circumstances of justice that limit where justice principles can and cannot be applied. Rawls, for example, rejected the international extension of distributive justice principles, offering little basis for settling ongoing disputes about how to justly allocate finite ecological capacity among and within nations. Those ethical cosmopolitans who are willing to allow for some limited global or international applications of justice principles that require either reciprocity or common social or economic institutions would likewise be unable to articulate how climate change exacerbates existing injustice or could be intentionally guided by principles of justice. Informing their theories of justice primarily by economic rather than environmental relationships that extend beyond national borders, these theorists miss key features of the causes of existing injustice and fail to consider the potential value of justice principles in informing environmental policy efforts, mistakenly narrowing the purview of justice by not considering it in all of its applications.

In addition, justice theory could learn from climate change politics how to cogently theorize the demands of justice in a given applied policy area, from the example of what might be termed a "part-whole" dilemma. Suppose that one accepts the premises that (1) global justice requires that some set of resources be subject to egalitarian distribution; and (2) that climate change exacerbates existing inequalities, thereby increasing injustice. The second premise holds that, whatever the global distribution of resources was prior to climate change, climate change has unjustly worsened that *ex ante* distribution. Without the first premise, that *ex ante* distribution cannot be described as either just or unjust, because the injustice would therefore lie entirely in the intensification of existing disadvantages, rather than in their mere existence. Aside from the incoherence involved in claiming that justice is not concerned with inequitable global resource distribution, but that it becomes concerned when any amount of existing inequity increases, the second premise requires the first one to specify how much redistribution of resources is necessary to fully rectify the existing injustice. But herein lies the part-whole dilemma: Does justice require only the rectification of the *additional* inequity that is specifically caused by climate change, returning to only the *ex ante* global distribution of resources, as implied by the second premise but in apparent contradiction of the first premise, which would find that *ex ante* distribution to be unjust, if somewhat less so than without that initial remedy? Or does it require a full rather than a partial remedy to existing global injustice, as entailed by the first premise but in a way that relegates climate change and its related facts to the background, where it merely contributes to rather than exhibiting global injustice?

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This question takes on greater practical urgency in the context of designing international climate change mitigation institutions and specifying their objectives. It asks: Should a remedial international climate regime merely aim to restore the *ex ante* inequality that would have existed among nations and persons had climate change not occurred (thus eliminating climate injustice, viewed as one among several sources or manifestations of global injustice), or should it go much further, aiming for full global justice (however this is specified, but likely requiring a far greater global redistribution of resources)? Put another way, can climate justice campaigns credibly claim justice as an objective when they merely seek to rectify *part* of existing global injustice, or in the interest of justice, must they be concerned with securing its *full* rectification? One might think, for example, that a commitment to global justice in any of the issue settings in which such analyses apply commits one to justice in all of its issue settings, providing no principle reasons for ceasing redistributive efforts once climate justice has been guaranteed.

Both answers offer plausible reasons on their behalf. On the one hand, aiming to secure climate justice is ambitious in its own right, and the international institutions being developed around climate change mitigation and adaptation cannot reasonably be expected to rectify those instances of global injustice that are not associated with climate change itself. For pragmatic reasons, demanding that they do so would be unreasonable, likely further hindering the important effort in which they are now engaged by saddling them with a much larger and more controversial charge. On the other hand, the normative basis for securing climate justice depends on a broader imperative to secure full global justice, so there can be no principled basis for "settling" on what is an admittedly partial solution to a larger problem. Normative principles worked out in abstraction from the real-world problems to which they might later be constructively applied often need to be modified in light of those applications and the practical constraints that they contain. Deciding among the available justice principles on the basis of their fit with particular policy-related issues and then modifying those principles to allow for feasibility and other practical constraints, as illustrated by the application of justice conceptions to climate change, is a necessary task. Its necessity, instead of being viewed as an obstacle or source of taint on pure theorizing, may be seen as a source of instructive opportunity for theory and practice. Rather than viewing the application of justice principles as either tainted by this process of fitting them to policy-relevant problems or a unidirectional process from which theory itself cannot benefit, one might help to narrow the gap between justice in theory and practice by viewing each as having something to learn from the other. ■

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