

**Transformations of climate governance:
Developing equity and fairness guidelines for the post-Paris climate effort**

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I. Introduction

The Paris Agreement, together with its companion COP decision, concluded in Paris at the 21st Conference of the Parties (COP 21) in December 2015, puts the world on an important track (Boran 2016). This is so, not because the Agreement provides definitive solutions, but because it sets the building blocks of long-term cooperation that is intended to become increasingly more ambitious over time. It does so first and foremost by putting in place a *new governance structure* for the global climate effort, one that works not by imposing targets top-down, but by facilitating global collective action through non-punitive governance procedures. It promises to facilitate this collective action by putting in place the architecture within which the collective effort is to grow over time through bottom-up efforts.

While the Paris Agreement has many features that distinguish it from its predecessor, one is of singular importance. The agreement architecture no longer revolves around a strict bifurcation between developed and developing countries. The negotiations from 2011 to 2015 under the Durban Platform for Enhanced Action that led to the Paris outcome – which we will refer to as the *Paris negotiations* – were focused on finding common ground on an overall framework that would be flexible, and yet rigorous, sufficient to support long-term ambitious and fair cooperation on climate change.

One of the key features of this paper, and a core issue that runs through this transformation of governance structure, is the evolving notion of equity in the negotiations and resultant climate policies. Equity has always been central to the negotiation process. As the Paris negotiations progressed, it became increasingly clear that the international community's approach to equity would need to be updated in order to capture a more nuanced conception than the narrow, bifurcated model of differentiation that it came to be associated with in the earlier phases of climate negotiations. During the first two decades of the UNFCCC process equity was expressed through the equal effort from differentially capable nations. "Equity" was shaped by this differentiation. However, the transformation we will discuss in this paper points to a new and more nuanced conception of equity. The question this paper is attempting answer is: How exactly the discussion of equity and differentiation should be updated to reflect the new processes in play during the post-Paris era of climate policy?

The architecture of the Paris Agreement, we suggest, requires a transformation of conceptions of equity. It calls for a shift from substantive principles governing burden allocation toward procedural principles governing ongoing political dialogue. We outline the main features of this approach. However, the procedural principles we put forward are *not* hollow or merely formal proceduralist principles. We distance ourselves from strict forms of pure proceduralism. Supplementing our analysis with a set of normative prescriptions, we suggest that principles guiding political dialogue in the adjudication of NDCs should be equipped with carefully calibrated substantive values that are consistent with long-term goals of the Paris Agreement that all parties can support. These include commitments to reciprocity and a commitment to enhancing well-being and human flourishing within the global process under the Convention. We discuss how these commitments can be embedded in the procedural principles that guide the political process under the UNFCCC as it moves forward after Paris.

The paper will proceed, first, by discussing the role of equity in the Paris negotiations and the transformations that were taking place, some times explicitly, and some times more implicitly. We will then consider the nature of global governance expressed in the Paris

agreement. We will continue by considering the apparent proceduralism in the Paris agreement, and suggest that the inclusion of a set of substantive values, augmenting that apparent proceduralism, would provide a better way of accomplishing the ends of the Paris agreement. We will conclude by briefly considering the implications of this inclusion of substantive normative commitments to the Paris agreements.

II. The Paris negotiations and the thorny question of equity and differentiation

Throughout the Paris negotiations, the process of building a new agreement architecture can be described as an effort to update the global governance structure to better reflect new realities, and more nuanced understandings of equity and the different circumstances of parties to the negotiations.

The equity discourse in the last two decades focused on conceptualizing equity as a principle supporting an allocation formula based on the differential capacities of developed and developing nations. This approach to equity was consistent with a specific structure of global climate governance: based on binary differentiation model and negotiating top-down targets (the Kyoto Protocol model of global governance).

In the climate ethics literature, distinct arguments have been put forward defending an allocation pattern on substantive moral grounds. The following list is not exhaustive, but illustrative of some of the recurrent argument that have been articulated.

Historical accountability

Although there are variations, historical accountability arguments prescribe correcting past injustices. They have in common the view that Annex I countries have a moral obligation to respond to the problem of climate change, because this is a problem they have historically brought about (e.g. Neumayer 2000)).

Ability to pay

While historical accountability follows an intuition from corrective justice, ability to pay is an argument from distributive justice. Annex I countries should take up the burden of responding to climate change, on this view, not just because they are responsible for the problem, but because they are in a position to assume the costs of mitigation (Jacoby, Schmalensee, and Sue Wing 1999; Singer 2002; Stone 2004)

Equal atmospheric shares

Also known as the “equal per capita” emissions allowance system, these arguments stem from a claim that everyone has equal rights to the atmosphere. Having made this equal rights claim, its defenders move on to explore an appropriate pattern of burden allocation consistent with this claim (Vanderheiden 2008; Moellendorf 2010; Singer 2002)

This provides only a sketch of a few of the most prominent allocation schemes. A fuller account would reveal internal variations as well as intersecting and overlapping elements, for these considerations have dominated the normative debates on climate change and justice in the last decade. In spite of the variations, what these arguments have in common is that they each defend a top-down allocative formula based on substantive moral considerations.

In the negotiation process, however, the top-down bifurcated model of differentiation of the Kyoto era encountered persistent difficulties, as it could not speak to the fluid emission and development patterns *among* developing countries, and the changing patterns of growth and development. Non-Annex I countries, which represented all developing countries, in fact form a heterogeneous group (Winkler and Rajamani 2014, 109-110;). For example, the so-called BRIC countries (Brazil, Russia, India, and China) were lumped in with other countries without their development capacities or trajectories. This heterogeneity made the bifurcation of developed and developing less significant than it might need to be as the foundation for the “equity through differentiation” approach. Equity required more. Additionally, there are vast disparities in types and degrees of vulnerability to climate risks, as well as adaptive capacities. To be sure,

countries represented by the Alliance of Small Island States (AOSIS) as well as the group of least developed countries (LDCs) have long had special status under the Convention. Nonetheless, even when their special status is acknowledged, the remainder of the non-Annex I countries remain highly heterogeneous (see also Boran 2016; Breakey 2015).

The limitation of the bifurcated model was that it stood in the way of getting developing countries with high emission patterns to take part in aggregate emission reduction efforts. Furthermore, new elements were being considered in the negotiation process, such as adaptation, loss and damage, and climate finance. In light of these considerations, a number of scholars and experts had been highlighting the importance of “thinking broadly about equity”, giving rise to debates on “how it can be operationalized across many elements of the agreement” (Morgan and Waskow 2014, 18). Put more succinctly, it became plain that the climate regime had to move away from operating on an assumption that the world is made of two rigid groups toward “one in which there is a continuum” (Winkler and Rajamani 2014, 110).

In the Paris negotiations, the goal was to respond to this need and to work collectively toward a global agreement *applicable to all*. No specification was made on equity at the launch of the negotiation process in Durban in 2011. As Rajamani notes, the Durban Platform made no direct mention of ‘common but differentiated responsibilities’ (Rajamani 2015, 1). But because the new agreement was to be negotiated ‘under the Convention’, and since the Convention adopts differentiation as a core principle, it follows that the new agreement had to incorporate differentiation within the structure of the new climate regime.

This gave rise to a complex web of questions on differentiation that remained at the heart of the Paris negotiations (Morgan and Waskow 2014, Brunée and Streck 2013; Klinsky and Winkler 2014; Winkler and Rajamani 2014). The debate had many aspects, but it revolved around the central question of ‘how, in what form, and to what extent, might differentiation play a role in a regime ‘applicable to all’?’ (Winkler and Rajamani 2014, 103; Morgan and Waskow 2014, 18). While previously differentiation was neatly

associated with the bifurcated approach, in the run up to Paris, the concept of differentiation attracted a wide ‘range of views among parties on its core content, its legal status, and how it should be reflected in the new climate agreement’ (Rajamani 2015, 1).

This made the issue of equity particularly delicate and tough to resolve in the negotiations leading up to Paris. Many agreed that a more nuanced approach to differentiation was needed (Rajamani 2015; Bodansky 2012; Bodansky and Diringer 2014, Morgan and Waskow 2014, Brunée and Streck 2014; Klinsky and Winkler 2014). In the Paris Agreement, differentiation has been retained in a way that allows each party latitude in offering their contributions to the climate effort based on their national circumstances. So, the Paris Agreement implicitly adopts a nuanced and more pluralistic conception of differentiation. But how this is to be operationalized as the process moves forward, and what kind of updating of equity it implies remains an open question. In the remainder of this paper, we aim to take the discussion on equity forward in a way that builds on these considerations.

III. Global climate governance *après Paris*: Flexibility with binding rules

The Paris Agreement establishes what Bodansky and Diringer (2014) term a “hybrid” model. It puts in place a bottom-up process where parties offer their best efforts based on their national circumstances bound by rigorous rules and procedures that govern of assessment and reviews at five-year intervals (global stocktakes). In doing so, the Paris Agreement puts in place a comprehensive framework specially conceived for long-term goals (Center for Climate and Energy Solutions 2015). In order to ratchet-up ambition, the process relies heavily on the review processes and global stocktakes. Precisely because of these features, the Paris Agreement also relies “on transparency as a means of holding countries accountable” (Center for Climate and Energy Solutions 2015). Integral to the Paris Agreement is a transparency pathway, whose goal is to put in place a non-punitive but facilitative system of capacity-building to bring countries on par for transparent reporting and assessment of progress. Many of these features are to be

developed in the meetings of the newly formed Ad Hoc Committee on the Paris Agreement (APA), which takes over from the Ad Hoc Working Group on Durban Platform for Enhanced Action (ADP), which completed its work at COP 21 in Paris.

To sum up, the Paris outcome presents a new governance model: combining a bottom-up process of country efforts/contributions with a set of rules and procedures governing the global stocktakes, reviews and assessments. Equity and fairness remain at the core of the Paris Agreement. And yet, it is an open question how equity and fairness are to be updated so they can provide guidance for forward progress within the new governance structure.

IV. A procedural approach to equity

The transformation of the global climate governance architecture, we contend, requires a parallel transformation of the principles governing equity and fairness in a way that fits the new framework of the Paris era. The strictly substantive principles of burden allocation, which presuppose Annex I vs. non-Annex I bifurcation, remain obsolete and would be unable to guide the process move forward in COP 22 and beyond. However, the extent to which equity should be updated, and the form of any updated conception of equity remains an open question.

We propose to reconfigure the equity framework by taking it to be primarily procedural, so it can be operationalized within the global governance architecture in the Paris era. Rather than thinking about equity in substantive terms, we propose to think about it as a primarily procedural question, yet to understand this procedural focus within certain substantive constraints, constraints that are implicit within the idea of differentiation.

When regarded as a substantive question, equity is about determining an allocation of burdens. As a procedural question, it is about developing a fund of principles to guide and operationalize formal deliberations on what counts as an adequately ambitious and

equitable NDC within the global effort to reach collectively agreed upon long-term goals. In the procedural approach we suggest, then, the discourse on equity should be about developing the procedures of *multilateral reason-giving* and justification in such a way that it truly embraces pluralism about national circumstances and so captures the spirit of differentiation without the crude bifurcation contained with the Annex I – non-Annex I distinction.

The principles of equity, in this framework, do not take on the role of determining who should do what within a system of cooperation, to be imposed top-down. Rather, their role would be that of creating the most appropriate conditions for political dialogue. In this approach, the central question is: what are the best conditions for political dialogue that would be conducive to collectively building national contributions (NDCs) in a way that is fair and ambitious? These principles would provide guidance to collective deliberation by adding substantive points carefully calibrated for that discussion, focusing on the shared concerns motivating dialogue. According to this approach all parties start off with recognition of a shared problem they are committed to resolve collectively (I'll add footnote referring to Gutmann & Thompson 2004), as well as recognition of each party's distinctive national circumstances as an integral part of the collective process (Boran 2016).

The advantage of thinking about equity at a procedural level is that it helps avoid the highly moralized and seemingly intractable substantive questions of burden allocation (e.g. those based on accounts of historical responsibility or proposals to distribute allowances through a system of atmospheric equal shares/rights) that dominated the Kyoto era of global governance. Procedural principles, as deliberative democracy theorists Gutmann and Thompson explain, “do not have to claim to be capable of transcending all fundamental moral disagreements”. They offer “a way of adjudicating the disagreements [in political processes]” (Gutmann & Thompson 2004, p. 130). When put in this way, it is easy to see that the guiding principles are higher-order principles that guide the political process of deliberation at the multilateral level.

V. Embedded proceduralism: Procedural guidelines with a human face

What we propose is not to be conflated with **purely formal** readings of proceduralism. The challenge with reformulating the discussion on equity and fairness in procedural terms, particularly for highly complex problems such as global climate change, is that it is vulnerable to criticisms that the ensuing decisions are inadequate or unjust because they do not match a particular substantive moral intuition. Indeed, it is possible to formulate one such criticism against the Paris outcome on grounds that it does not put in place binding targets that sufficiently reflect, say, principles of corrective justice and historical responsibility.

The problem with these objections is that they underestimate the value and prospects of adequately formulated rules and procedures for adjudicating nationally determined contributions. If adequately developed and calibrated, procedural guidelines that are specially designed to both enhance equity and ratchet-up ambition can help the governance process make forward progress. Thus equipped with carefully gauged but robust moral principles, proceduralism would not be a weakness but a virtue of the governance architecture in the Paris era. To this end, we suggest that the procedures of review and adjudication in regular global stocktakes be endowed with some carefully qualified substantive features that are consistent with the *broader collective goals* to which all parties have committed themselves. (For example, the procedures and guidelines of the multilateral review and assessments could make provisions for parties to reflect on the historical circumstances that have given rise to the capacity of various nations to achieve those collective goals). Parties can then be asked to weigh these considerations in relation to the broader long-term goals.

This refined conception of proceduralism about equity in the UNFCCC can be dubbed “embedded proceduralism”, to distinguish itself from strict forms of “pure” proceduralism. **The idea is to “embed” within proceduralism a set of carefully formulated substantive moral norms that are consistent with collective goals** that parties have agreed

to and can continue to support. Since, parties have already made a commitment to collectively support the Agreement's long term goals, certain substantive features that are aligned with these goals would not be at variance with proceduralism, but would rather strengthen it.

Long-term collective goals include first and foremost the goal of limiting of global temperature increase to 2 °C (and making every effort to keep it close to 1.5 °C). They also include a commitment to enhance living prospects and the conditions of human fulfillment and flourishing, and a willingness to collectively work towards climate-resilient (or climate-ready) societies.

Broader procedural principles include inclusiveness, transparency, accountability, etc. These play a central role in the process. Yet, these principles are too broad, and do not say much about how equity-based considerations are to be integrated in the reason-giving process. The “embedded” principles suggested above are intended to achieve this, by supplementing these broad principles of governance with procedural guidelines that appeal to shared values, and have a moral grounding, which all parties can accept. This provides a balance between bottom-up concerns of the parties regarding their own particular circumstances, development needs, and capacities, and the importance of providing an overarching framework within which those concerns can be expressed. Principles of political reason-giving would meet these requirements *if* they are formulated in a way that is consistent with the near-term and long-term goals of the Paris Agreement.

While additional principles may become apparent, two key principles will be reciprocity and supporting human flourishing. These two principles capture two vital features of the Paris accords, namely, the intersubjective, discursive model of presenting, evaluating, reviewing and revising the NDC submissions, and the need to make climate commitments responsive to the locally determined development needs of communities, that is, on human flourishing. While there is not sufficient space here to expand on these principles fully, we can characterize the shape of these principles in broad strokes

Reciprocity

The basic premise of reciprocity is that parties and other participants in the global climate effort owe each other justification for the proportionality of efforts that they put into the global endeavor. For its operationalization, parties can be asked to provide an account of how their NDCs satisfy requirements of reciprocity. For example, parties that discount their mitigation actions due to national circumstances, can be asked to provide a justification of how they benefit from other parties' actions that have taken a lead in climate action, and how this helps them reach certain goals for the next assessment and review process. This kind of justification can help enhance and align transparency standards across parties. The form of discursive interaction – the intersubjective form of justification that allows each party to evaluate and review the submissions of other parties – provides a helpful means of moving beyond pure proceduralism to what we have called an embedded proceduralism, one that take seriously the need for parties to address one another in light of the particular circumstances faced by those parties. By allowing for parties to assess the mutual acceptability of NDCs we bring in an important normative dimension to the process, one that reflects the insights of developments in moral theory beyond pure proceduralism (Scanlon 1999; Habermas 1995, 1991)

Enhancing human well-being, human-flourishing

A further constraint that would help to satisfy concerns over equity from the developing world is, simply, to follow appeals by scholars such as Henry Shue (1999, 2010) and Dale Jamieson (2014), and others (Moellendorf 2014; Dryzek et al 2013) to integrate development concerns into climate change. The newly minted sustainable development goals (SDGs) provide one promising means of doing this, and we see in the development goals the need for addressing climate change (UN 2016).

While there is not room in these pages to outline fully the operational details of integrating sustainable development goals into the post Paris agreements, we can acknowledge the wide recognition that development, spelled out in terms of human flourishing, constitutes one vital way of making this connection. Integrating human flourishing in this way has the potential to add further substance and moral significance to the principle of reciprocity. We would suggest this substantive value be a centerpiece of discussions over contributions by serving as the basis for a metric for contributions: parties should ask of one another, to what extent does this NDC contribute to the maintenance of human flourishing at the global level, and to what extent does it contribute to or affect human flourishing domestically. As a rough but now widely accepted metric for human flourishing, we suggest relying on the SDGs. While there are certainly operationalization issues with the SDGs, the goals capture the wide range of considerations accepted to be necessary for development and which serve as a reasonable approximation of the ideals of human flourishing.

Recognizing this contrast between domestic need and global reduction constitutes the foundation for original appeals to equity in terms of differentiation between developed and developing nations. Reintegrating that differentiation through the lens of differing levels of and opportunities for human flourishing provides an important means of acknowledging the legitimacy of those early appeals to equity without falling afoul of the troubles faced by early crude efforts at differentiation. Moreover it makes this differentiation by appealing to what should be at the forefront of discussions of climate change: the instability and suffering likely to result from ever increasing climate change (Allen et al, 2014; Dryzek et al 2013; Shockley 2014).

VI. Conclusion

We began this paper with an examination of the new governance model integral to the Paris outcome, which combines a bottom-up process of country efforts/contributions with a set of overarching rules and procedures governing the global stocktakes, reviews and

assessments. We have argued that this transformation of the global governance model calls for an update on the equity framework, and then suggested that this entails developing a nuanced form of proceduralism.

An embedded proceduralism allows for the necessary fairness of proceduralism with the values that serve as the motivation and foundation for the substantive discussions of the moral significance of climate change negotiations. Such a modified proceduralism balances the bottom-up needs of individual parties, with the top-down advantages of a general framework. Our principles enable that balance.

Integrating reciprocity with proceduralism allows for both the approval of peers and consensus of the global community. But, moreover it allows for countries to be acknowledged as individual actors, with individual concerns. This provides a better means of addressing equity, and difference, than was available through the crude Annex I/ non-Annex I distinction of the Kyoto Protocol. Integrating human flourishing with proceduralism provides a common basis for measuring effort and concern. Together these two principles would allow for the legitimate concerns of developing nations to be addressed in a manner that allows for the focus of policy to be on the reduction of global emissions and the effect of our efforts to reduce our CO₂ stocks on the most vulnerable. Keeping these two equally important goals in mind provides a better means of addressing equity than a rough and antiquated measure based on historical economic measures. Those most affected by the ravages of our changing climate, deserve a more nuanced account of equity. In this short paper, we have attempted to provide a preliminary framing for such an account.

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