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# Why Historical Emissions Should Count

Lukas H. Meyer\*

## Abstract

*This Article argues for three ways in which historical emissions should count for the fair distribution of the benefits and burdens of responding to climate change among currently living people. First, historical emissions should count as a matter of ideal distributive justice if and insofar as their consequences can be considered beneficial to currently living and future people. Second, it is difficult to justify compensatory measures for damages caused by historical emissions for three main reasons: the non-identity problem, past people's limited knowledge of the long-term consequences of the emissions they caused, and the problem of attributing responsibility for past people's actions to currently living people. Rather than regarding climate damages primarily as a reason for compensation for wrongdoing, we should view them primarily as a justification for redistribution due to undeserved benefits and harms. Third, historical emissions play an important role in forming the expectation of people in the developed countries to be able to cause emissions at the current level. If we were in a position to implement a fair, effective and legitimately imposed global climate regime we should not unnecessarily frustrate that expectation.*

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\* Univ.-Prof. of Philosophy, University of Graz, Austria; Habilitation, University of Bremen 2003; D.Phil., University of Oxford (Balliol College) 1996. I wish to thank Dominic Roser and Pranay Sanklecha, with whom I co-authored papers on issues discussed in the paper (see notes 4, 6, 26, 35, and 40), and the participants of the Conference on Climate Change Justice at The University of Chicago Law School for many extremely helpful comments and criticisms. Last but not least, I would like to thank the editorial team of the journal for their numerous improvements of the text.

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I. INTRODUCTION

Intergenerational justice, namely, what currently living people owe to future people and the question of how to interpret the normative significance of what past people did,<sup>1</sup> is of central importance in providing an interpretation of what ought to be done to respond to climate change in the present. Answers to questions concerning the past and the future are relevant for determining what currently living people ought to do today. In the climate-justice debate, the time dimensions past, present, and future are interlinked in interesting ways.

This Article addresses two questions: First, how should we take into account historical emissions and their beneficial consequences in initially distributing emission rights among currently living people? I will argue first, in Section II, that as a matter of ideal distributive justice, historical emissions should count if and insofar as their consequences can be interpreted as beneficial to currently living and future people. In their book *Climate Change Justice*, Eric A. Posner and David Weisbach do not address this issue.<sup>2</sup>

My second question concerns who should pay for the damages that are caused by (historical) emissions, especially assuming that people (taken individually and collectively) have not stayed and will not stay within their fair shares. In Section III, I agree with Posner and Weisbach in arguing that compensation payments are difficult to justify, given the reasons they discuss in Chapter 5 of *Climate Change Justice*.<sup>3</sup> Insofar as arguments actually succeed in justifying some compensatory measures, they are likely only to justify them for parts of those who cause or suffer from climate change. However, I add what I take to be an important reason for believing that the compensatory rationale is

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<sup>1</sup> For an explication of this understanding of intergenerational justice see Lukas H. Meyer, *Intergenerational Justice*, in Edward N. Zalta, ed, *The Stanford Encyclopedia of Philosophy* (2008), online at <http://plato.stanford.edu/archives/spr2010/entries/justice-intergenerational/> (visited Oct 23, 2012).

<sup>2</sup> See generally Eric A. Posner and David Weisbach, *Climate Change Justice* (Princeton 2010).

<sup>3</sup> See *id.* at 103–08. As explained below, the two reasons are that past people were ignorant about the long-term consequences of their actions that have had emissions as a side-product and that currently living people cannot be said to be responsible for what others did before they came into existence.

limited in the case of intergenerational relations: to the extent that the contingency of future people's existence and personal identity depend upon currently living people's decisions and actions, common notions of harming and benefitting are not applicable for interpreting the effects of these actions. This concerns both the effects of currently living people's actions on future people's well-being and the effects of past people's actions on the well-being of currently living people. Further, I note that currently living people might be said to owe compensatory measures to future people for having failed to fulfill their duties to them. I also will suggest that rather than regarding climate damages primarily as a reason for compensation for wrongdoing, we should view them primarily as a justification for redistribution due to undeserved benefits and harms. Leveling off the highly unequal effects of historical emissions can be a legitimate concern for distributive justice. Finally, I point to the effects of historical emissions for forming the expectation of people in the developed countries to be able to cause emissions at the current level. I suggest that we should not unnecessarily frustrate this expectation for arriving at a fair, effective, and legitimately imposed global climate regime.

## II. HOW SHOULD WE DISTRIBUTE EMISSIONS?

The outline of an argument for distributing emissions has a number of steps, including the following basic four steps, the first three of which I introduce in Section II.A. In the next two subsections I will discuss the implication of my view for the distribution of emission rights.

### A. How to Distribute Emissions? Three Presuppositions

First, we need to argue for a global limitation of emissions and thus for a maximum of still-permissible emissions. I have argued elsewhere that currently living people have to respect the basic rights of future people as a matter of intergenerational justice. The applicable context-relevant notion of justice is best understood as a version of sufficientarianism that attributes high priority to the protection of the basic rights of all people whenever they live.<sup>4</sup> Such a minimal

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<sup>4</sup> I have argued that we have special and strong reasons for a sufficientarian conception of intergenerational justice. See generally Lukas H. Meyer, *Past and Future: The Case of a Threshold Notion of Harm*, in Lukas H. Meyer, Stanley L. Paulson, and Thomas W. Pogge, eds, *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* 143 (Oxford 2003); Lukas H. Meyer, *Intergenerationelle Suffizienzgerechtigkeit*, in Nils Goldschmidt, ed, *Generationengerechtigkeit* 281 (Tübingen 2009). I presuppose a pluralism of conceptions of justice reflecting different types of relations among people. The reasons for intergenerational sufficientarianism reflect the non-contingent special features of intergenerational relations. For relations among contemporaries, more demanding principles can be shown to be plausible; for inter- and transnational relations, I propose the priority view, described below. See also Lukas H. Meyer and Dominic Roser,

understanding of what intergenerational justice requires can contribute to specifying a maximum of still-permissible emissions.

Second, we need to clarify why we care about a fair distribution of the remaining permissible emissions. The goods in question are the benefits that people realize in carrying out actions that unavoidably have emissions as a side-product. Today almost all of our activities, such as producing industrial commodities, farming, or flying, have emissions as their unavoidable side-product.<sup>5</sup> Causing emissions is a *conditio sine qua non* of most of our actions that potentially contribute to our well-being. While we have no reason to be interested in emissions as such we have strong reasons in being concerned about our well-being and thus in being allowed to cause emissions so long as emissions are an unavoidable product of our actions. Accordingly, I propose to understand “distributing emissions” as the shorthand for distributing the permissions to perform emission-generating activities that regularly benefit those who engage in these activities. These permissions are often referred to as “Emission Rights.”<sup>6</sup> Distributing emissions therefore stands for distributing the benefits of engaging in emission-generating activities by distributing emission rights.

Third, we need to specify the principle according to which we judge the distribution of emissions. For that I propose the priority view.<sup>7</sup> According to the priority view, benefitting people matters regardless of how much others have, but we should give greater weight to benefits for people who are badly off than to benefits for people who are well-off. One plausible version of the priority view specifies the following prioritarian principle of distribution: People ought to receive more benefits when they are worse off, and we ought to maximize the total sum of the weighted benefits.

Clearly, the priority view is not open to many of the objections advanced against a strictly egalitarian understanding of justice. According to the prioritarian principle as stated, equality as such does not matter. The view thus is not open to the leveling-down objection. A strictly egalitarian position holds that equality is of intrinsic value, implying that we have a reason to worsen the state of better off persons for the sake of equality even though it is better for no one. Many find such leveling down objectionable.<sup>8</sup> Even if prioritarians do not see

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*Distributive Justice and Climate Change: The Allocation of Emission Rights*, 28 *Analyse & Kritik* 223, 233–45 (2006).

<sup>5</sup> Emissions can also be beneficial owing to the climate change they cause. Some people benefit from a warming world.

<sup>6</sup> For an explication of “emission rights” see Meyer and Roser, *Distributive Justice* at 227–29 (cited in note 4).

<sup>7</sup> See Derek Parfit, *Equality and Priority*, 10 *Ratio* 202, 213 (1997).

<sup>8</sup> See generally Nils Holtug, *Egalitarianism and the Levelling Down Objection*, 58 *Analysis* 166 (1998).

anything intrinsically bad in social, economic, and other differences, their priority view often has egalitarian implications. The priority view accepts that if X is worse off than Y, we have at least a *prima facie* reason for promoting the well-being of X rather than of Y. Thus, in many cases the prioritarian principle will prescribe an equal distribution of the goods in question but it can also justify giving more of a good to a person for two reasons: first, if that person is worse off and, second, given that the priority view is an aggregative view, if the person can make better use of the good in terms of total benefits realized. Below I will discuss whether and how these two reasons for an unequal distribution can be shown to be relevant when we investigate the question of what the priority view implies for the distribution of emission rights.

## B. How to Distribute Emissions Ahistorically

I will argue, as a matter of applying the priority view to the distribution of emission rights, that historical emissions should count if and insofar as their consequences can be interpreted as beneficial to currently living and future people. I develop the argument in two steps. In this section I show that when we disregard past emissions of currently living people and historical emissions of previously living people, the priority view can plausibly be understood to require an equal per capita distribution of emission rights. Then, in Section II.C, I show how accounting for the large differences in historical emissions justifies an unequal distribution of emission rights.

How should we go about applying a prioritarian principle to the distribution of emission rights? One option, which I will adopt, is to consider the fair distribution of emission rights in complete isolation from the distribution of all other goods. A second option would be to consider the currently existing highly unequal distribution of all goods (or at least all goods that are considered relevant from the perspective of distributive justice)<sup>9</sup> as given and, then, to distribute emission rights in order to even out the existing unequal distribution of all justice-relevant goods. A third option would be to consider the distribution of emission rights in conjunction with the distribution of all other goods that a theory of global justice aims at allocating fairly.

All three options are problematic. If we followed the first option generally and distributed each single good in isolation from all others, we would not necessarily arrive at an overall distribution of goods that would satisfy a prioritarian principle: the different goods (also owing to their unequal distribution) interact with each other in numerous ways that are relevant for the

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<sup>9</sup> Alternative understandings of the subject matter of theories of justice could include: all goods taken together insofar as they affect the well-being of people or the design of institutions affecting the distribution of those goods.

benefits that people receive from having access to them. If we followed the second option and took the distribution of all other goods into account by taking that distribution as given, this is likely to prescribe giving all emission rights to the global poor, that is, to those who have very little of the other goods; aiming at realizing an overall just distribution of goods by fairly distributing only one single good seems less than convincing. The problem with the third option is that investigating the question of what the application of the prioritarian principle requires for each single good when considered in conjunction with all other goods is so complex that we will not be able to specify what this would imply for the distribution of any single good and, thus, specifically, for the distribution of emission rights.

I propose to follow the first option for pragmatic reasons. In our non-ideal world it is not an issue of much political relevance how to globally distribute all natural resources (or all goods in general), but the issue of how to distribute emission rights is one that we are faced with. If, accounting for the rights of future people, we have strong reasons to put a cap on global emissions, a good that earlier was available in unlimited quantities is turned into a scarce good, and, thus, we are confronted with the question of how to distribute this newly limited commodity. If we determine how to distribute this good in isolation from all other goods, we might later on have to change our prescription in light of the consequences that its distribution has for the just distribution of other goods independently or all other goods bundled.<sup>10</sup>

In section II.A, I distinguish two justifications for an unequal distribution according to the priority view, which, in the typical case, would simply demand an equal per capita distribution of these rights. The priority view justifies the unequal distribution of a fixed amount of a good in two cases only: first, if some of the recipients are worse off than others; second, if some of the recipients can extract more benefits out of the particular good than others.<sup>11</sup> Are these two reasons for an unequal distribution relevant when we apply the prioritarian principle to emission rights in isolation (in other words, by abstracting from the existing background distribution of all other goods)? No, they are not, since both justifications are excluded when we consider the distribution of emission rights in isolation from the distribution of all other goods. First, ignoring the distribution of other goods makes identifying better off or worse off recipients

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<sup>10</sup> See also John Rawls, *A Theory of Justice* 8 (Oxford 1971) (describing his methodology of initially limiting the subject matter of his investigation in order to make remaining problems more tractable).

<sup>11</sup> A third legitimate reason for inequality arises once the free choices of individuals are taken into account. The priority view can take them into account by catering to the idea of responsibility, that is, respecting the value of free choice even if this should alter the optimal prioritarian distribution.

impossible. Second, how many benefits individuals can draw from an emission right depends on their access to other goods, such as wealth, the natural environment, or the industrial structure of their country. Thus, when the distribution of all other goods is regarded as irrelevant, the priority view would prescribe a distribution of equal emission rights among individual persons, that is, equal per capita emission rights. In the remainder of this Article, I rely on the conclusion that applying the prioritarian principle according to the first option and without taking the past into account speaks in favor of equal per capita emission rights.

### C. Accounting for Historical Emissions in the Distribution of Emission Rights

Historical emissions have highly unequal consequences for currently (and future) living people. Their consequences are both beneficial and harmful. The level of past and current emissions strongly correlates with the level of wealth. Highly industrialized countries are causally responsible for more than three times as many emissions between 1850 and 2002 than developing countries.<sup>12</sup> Even though industrialization in today's high-income countries has caused a large part of the build-up in greenhouse gases, people of the developing countries—in particular those living in the future—will suffer disproportionately more from climate change. And, of course, far more people live in developing countries.<sup>13</sup>

Given that historical emissions have both beneficial and harmful consequences, it seems plausible to distinguish two ways in which historical emissions can be considered normatively significant. First, their beneficial consequences can be considered relevant for what may count as a just distribution of the remaining permissible emissions among currently living people. This concerns how the mitigation burden should be distributed globally. Who should bear what costs of reducing emissions to the justifiable quota? Second, the harmful consequences of historical emissions are relevant for what may count as a just allocation of the costs of adapting to climate change that was not avoided or has to be considered unavoidable—especially considering that people did cause more emissions than they were entitled to and have not stayed within their fair shares. Here we are concerned with how the adaptation burden should be distributed globally.

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<sup>12</sup> See Kevin Baumert, Timothy Herzog, and Jonathan Pershing, *Navigating the Numbers: Greenhouse Gas Data and International Climate Policy* 32 (World Resources Institute 2005).

<sup>13</sup> See United Nations Population Fund, *State of World Population 2007* (UNFPA 2007), online at <http://www.unfpa.org/swp/swpmain.htm> (visited Oct 25, 2012).



While the issues of mitigation and adaptation are often linked together in political negotiations, we can think of them as separate issues. As suggested in Sections II.A and II.B, distributing emission rights (the mitigation issue) can be considered an issue of distributive justice. Many theorists consider paying for the climate change damages (the adaptation issue) an issue of compensatory justice.<sup>14</sup> In the end I will argue that it should be considered mostly an issue of distributive justice as well.

Should the beneficial consequences of historical emissions be considered relevant for what may count as a just distribution of the remaining permissible emissions among currently living people? If so, how? We can distinguish several major objections against counterbalancing past emissions:<sup>15</sup>

1. In the case of the US, more than half of its past emissions were caused prior to 1975. Posner and Weisbach point out that more than half of Americans alive today were born after 1975, and more than 27 percent are today younger than twenty years old.<sup>16</sup> These young Americans may object: “Why should I be responsible for the sins of my ancestors?” The objection states that currently living people should not be made responsible for the acts of their ancestors and should not be put at a disadvantage simply because the people inhabiting their country before them emitted too much.

2. Posner and Weisbach suggest that “we should distinguish between greenhouse gas emissions that occurred before the problem of anthropogenic climate change was widely known, or before that point at which reasonable people would have acknowledged the problem, and later emissions.”<sup>17</sup> For the time before, many people may object: “We didn’t know about the greenhouse effect.” The objection states that one can only be blamed for a certain act if one knows—or should know—of the harmful effects of the act. Yet, it is debatable whether until recently the knowledge of the harmful effect of emissions was sufficiently widespread.<sup>18</sup>

3. There is a third general objection that Posner and Weisbach do not mention. It interprets the non-identity problem for the consequences of past actions on the composition of currently and future living people in the following

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<sup>14</sup> See, for example, Maxine Burkett, *Climate Reparations*, 10 Melb J Intl L 509, 510 (2009); see also Posner and Weisbach, *Climate Change Justice* at 99–118 (cited in note 2).

<sup>15</sup> Of course, there are also practical difficulties: one is in estimating past emissions and another is in bringing it into the negotiating process because it is neither a simple (but rather a complex) proposal nor is it one that serves the interests of those with the most bargaining power.

<sup>16</sup> Posner and Weisbach, *Climate Change Justice* at 103 (cited in note 2).

<sup>17</sup> Id at 104.

<sup>18</sup> See id at 104, 110; see also id at 110–16 (discussing the “culpability problem”).

way: no one can claim to be worse off or better off than she would be had another climate policy been pursued in a sufficiently distant past.<sup>19</sup>

These objections also differ in their scope. The first objection is relevant for emissions by people who are now dead; the second objection concerns emissions, for example, before the first Intergovernmental Panel on Climate Change (IPCC) report in 1990;<sup>20</sup> and the third objection can be raised with respect to emissions (and policies influencing emissions) early enough to be a determining factor in the number and identity of people living today.

These objections do not succeed in showing that historical emissions cannot be considered relevant for what may count as a just distribution of the remaining permissible emissions among currently living people. Rather, we can take part of past emissions into account and in at least two ways that are not open to the three objections. The first relies on an interpretation of the circumstances under which people are bearers of claims to a fair share of the remaining permissible emissions.

We could demand that the equal per capita distribution of emission rights (or some other criterion of a fair distribution) is realized at a point in time, for example, every day, or over the whole lifespan of individuals. In this context considering the whole lifespan of individuals seems far more plausible.<sup>21</sup> People do not cause emissions from time to time. It is not as if the need to cause

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<sup>19</sup> The non-identity problem precludes us from saying that future people are harmed (or benefitted) by actions that are necessary conditions of their existence as the individuals they will be. See Derek Parfit, *Reasons and Persons* 351–79 (Clarendon 1984). This is the case if we understand harm in the sense of being made worse off by an action than one would otherwise be. There is, however, another conception of harm that successfully evades the non-identity problem: by claiming that people can be said to be harmed by actions that make them fall below a certain pre-specified threshold, future people can also be said to be harmed by actions that are a necessary condition of their existence. For a treatment of these issues, see generally Meyer, *Intergenerational Justice* (cited in note 1).

<sup>20</sup> J.T. Houghton, G.J. Jenkins, and J.J. Ephraums, eds, *Climate Change: The IPCC Scientific Assessment* (IPCC 1990), online at [http://www.ipcc.ch/publications\\_and\\_data/publications\\_ipcc\\_first\\_assessment\\_1990\\_wg1.shtml#.UImDrsWHKSo](http://www.ipcc.ch/publications_and_data/publications_ipcc_first_assessment_1990_wg1.shtml#.UImDrsWHKSo) (visited Oct 25, 2012). See generally Axel Gosseries, *Historical Emissions and Free Riding*, 11 *Ethical Perspectives* 36, 40 (2004) (listing and discussing some salient dates that might serve as an alternative to 1990: 1840 (as proposed by the Brazilian Proposal), 1896 (first scientific text on the greenhouse effect by Svante Arrhenius), 1967 (first serious modeling exercises), and 1995 (the second IPCC report)). One might also add the IPCC reports from 2001 and 2007 as well as the very beginning of industrialization in the eighteenth century. Rather than attempting to determine a point in time when it was reasonable to attribute the relevant knowledge conditions to many or most people in the highly industrialized countries, we might investigate the question as a matter of degree and distinguish among individual people and actors. Thanks to Stephen Gardiner for outlining this alternative.

<sup>21</sup> For discussion, see Nils Holtug and Kasper Lippert-Rasmussen, *An Introduction to Contemporary Egalitarianism*, in Nils Holtug and Kasper Lippert-Rasmussen, eds, *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford 2007), and Thomas Hurka, *Perfectionism* 9–22 (Oxford 1993).

emissions arises sporadically. Rather, people cannot avoid engaging in emission-generating activities. To cause emissions is a prerequisite for people pursuing their projects and in all phases of life. This will remain the case for the foreseeable future. Unless we have a technological revolution that would allow us to avoid, compensate for, or extract greenhouse gases in high quantities and at small cost to ourselves, the net level of emissions caused will be strongly correlated with the level of welfare that people realize.

Thus, currently living people will cause emissions for all their lives. If their claim to a fair share refers to a fair share over their whole lifespan, then the emissions that occurred during the life of the presently living have to be taken into account. To be sure, this is only a small part of past emissions. As explained in Section II.A, a fair share of emissions stands for a fair share of the benefits of engaging in emission-generating activities. People in the highly industrialized countries already enjoyed many benefits from their own emission-generating activities during their lifetimes. If we want to achieve an equal per capita distribution of benefits from emission-generating activities, then a larger part of the permissions to perform emission-generating activities that regularly benefit those who engage in these activities should go to most people in the developing countries. This is the first way of taking into account (one small part of) past emissions in determining a just distribution of the remaining permissible emissions among currently living people and for arguing for above-average per capita emission rights for most people in the developing countries on the basis of the inequality of past emissions currently living people caused over their lifetime.

As these past emissions are the past emissions that currently living people caused themselves, the first and third objections obviously do not speak against taking them into account. However, people might well have caused some of their past emissions in a state of ignorance with respect to how, by acting in these ways, they contribute to climate change. So we might want to rely on the second objection and argue in favor of excluding those past emissions on the grounds that the ignorance of past polluters does not allow attributing responsibility for those emissions to them. This would be a mistake, as the rationale of the argument as presented for their inclusion does not justify higher emission rights for people in the developing countries as compensation for past wrongdoing of people in the industrialized countries. It justifies them by the idea of equalizing emission benefits over the lifetime of individuals. For the distributional rationale it matters that an individual already has used up (some or

most of) his share. It does not matter whether he did so knowingly and wrongfully.<sup>22</sup>

As argued throughout, we are not interested in emissions as such but in the benefits that people realize from emission-generating activities. The second justifiable way of taking (part of) past emissions into account for the determination of the presently fair shares interprets the relevant benefits as including those from emission-generating activities by past people. Industrialization pursued by our predecessors has yielded many benefits up to today, and, important for our context, many more for most people living in the industrialized countries than for most people of the developing countries. These benefits include the provision of infrastructure, for example, schools, hospitals, streets, and railroads, which were built before those presently alive were born. That the products of the emission-generating activities by people who are now dead unequally benefit the currently living has to be taken into account when we distribute benefits from emission-generating activities among currently living people.<sup>23</sup>

Looked at in this way, no responsibility for the emission-generating activities of past people is attributed to currently living people and, of course, the question of what currently living people know about climate change and its causes does not arise either. Thus, the first two objections obviously do not speak against this way of taking past emissions into account. But we might want to object to the inclusion of benefits from past people's activities on the basis of the third objection that reflects the non-identity problem. This would be a mistake, as the rationale of the argument for their inclusion does not rely on the claim that those individuals who today live in developing countries are worse off than they would be without emissions in the distant past. Neither do we claim that the people of the developed countries benefit from industrialization in the distant past in the sense of being better off than they would be had there been no industrialization. This is what the non-identity problem implies: nobody can claim to be better off than she would have been without industrialization, since if a different economic development path had been pursued, most likely, she would not exist today. However, this is fully compatible with the observation that the circumstances in which people find themselves since their conception can be more or less beneficial to them. People realize benefits owing to the fact of being brought up in an industrialized world while others do not enjoy such

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<sup>22</sup> This approximate conclusion has to be qualified somewhat as a matter of transitory justice. See Section III.

<sup>23</sup> For the reasons stated in Section II.B I assume that we should consider the distribution of this good, in other words, the benefits from emission-generating activities, in isolation from all other goods.

circumstances. It is true for each of them that they could have fared differently; had a person born into the highly industrialized world been taken away after his birth and transferred to a slum in the developing countries, he would have been worse off than being raised in the developed world. The second way of taking past emissions into account relies on more or fewer benefits from emission-generating activities being passed on to currently living people since their conception. Thus, according to prioritarian standards, people who have received fewer, typically people in developing countries, should get a disproportionate share of emission rights because others, typically people in highly industrialized countries, have already received a large part of their share by inheritance from their ancestors.

My conclusion is that certain parts of past emissions should be taken into account in distributing emission rights, namely, at least those past emissions that occurred during the lifetime of the presently living and those past emissions that were side-products of benefits that are still around today.<sup>24</sup> The two ways of taking into account past emissions I have defended will not allow us to take into account all inequality in historical emissions; those emissions that belonged to people who are now dead and that yield no benefits for the currently living have no normative significance from this perspective.

There is a general reason why the three objections do not pose any problem for the two ways of taking past emissions into account. All three objections rely on the idea that lower-than-equal shares of emission rights for people in the highly industrialized countries must be grounded in the idea that the wrongdoer (or the beneficiary of a wrongful action) must return something to those who are harmed. The idea of compensation so understood is present in the three objections as follows. The third objection, the non-identity problem, denies that past emissions can be seen as harmful and, thus, if there is no harm, then no compensation is appropriate. It also denies that some are made better off through emissions than they would be otherwise and so there is no beneficiary. The second objection, ignorance about the climate problem, claims that even if past emissions could be seen as harmful, they still cannot be seen as wrongful; as such, no compensation is owed. The first objection, to the concept of being responsible for the deeds of one's ancestors, goes further in stating that even if past emissions were both harmful and wrongful, still, compensation is not owed, the reason being that compensation is something that the wrongdoer himself must pay and not his descendants.

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<sup>24</sup> Simon Caney, *Environmental Degradation, Reparations, and the Moral Significance of History*, 37 *J Soc Phil* 464, 470 (2006) (arguing that evening out inequalities in emissions over time relies on a collectivist framework). By focusing on the benefits of past emissions enjoyed by the presently living, I provide an interpretation that does not rely on a collectivist framework.

Even if the objections were based on sound premises when applied to other positions,<sup>25</sup> they are not relevant for my argument since the two ways of taking past emissions into account in no way rely on the idea of compensation for past wrongs. They consider the distribution of emission rights as a problem of distributive justice (as described in Section II.B), and so understood we do not refer to harm or wrong at all. Rather, the idea is to equally distribute the benefits associated with emission-generating activities among the presently living over their whole lifetimes. As I have argued, owing to the unequal inheritance of such benefits and the unequal benefits people have realized through their own actions, we will not achieve this goal unless we give most people of the developing countries higher shares of emission rights.

### III. CLAIMS TO COMPENSATION OWING TO CLIMATE DAMAGES?

The three objections are normatively relevant when we attempt to provide an answer to a different question: not the question of how to fairly distribute the benefits of emission-generating activities, but rather the question of how to fairly deal with the bad consequences of emission-generating activities. Who should pay for the damages that are caused by historical emissions, especially assuming that people have not stayed and will not stay within their fair share? These costs have two aspects: first, the climate damages themselves, and second, the adaptation costs necessary to minimize, or at least decrease, climate damages—this is because the impact of emissions not only depends on the level of climate change they produce, but also on the human reaction to this change.

I will suggest that rather than regarding climate damages primarily as a reason for compensation for wrongdoing, we should view them primarily as a reason for redistribution due to undeserved benefits and harms. One way to distinguish between the basic idea of redistribution and compensation starts with the premise that there is some baseline distribution of goods that is just. This baseline distribution is on the one hand determined by a certain criterion (such as the priority view, egalitarianism, or sufficientarianism<sup>26</sup>) and on the other by changes to the distribution (as determined by the criterion) that someone experiences as a result of his own responsible (and non-wrongful) choices. Deviations from this baseline then call for two different kinds of reactions. If the reaction the deviation calls for is based on the wrongfulness of what occurred, we are operating in the realm of compensatory justice. If the reaction

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<sup>25</sup> I do not believe that these objections are wholly based on sound premises. See, for example, Meyer, *Intergenerational Justice* at § 3.1 (cited in note 1) (discussing the non-identity problem).

<sup>26</sup> One might take the status quo as a given and declare it to be the relevant baseline. I criticize and reject this view in Meyer and Roser, *Allocation of Emission Rights* at 229–32 (cited in note 4).

the deviation calls for is based on the idea of evening out undeserved benefits or harms (which are due to luck, for example, or harmful, but non-wrongful, actions), we are operating in the realm of distributive justice.

Then the basic question becomes: Which duties to pay for adaptation to climate change are based on the wrongfulness of what was done, in other words, which duties can be traced back to the compensatory rationale? Any duties that cannot be traced back in this way will fall into the category of the redistributive rationale and will be regarded as grounded in the objective of leveling off undeserved benefits and harms. The size of such payments is determined by whether payments for adaptation costs are justified on the basis of the compensatory or redistributive rationale.

Two remarks are appropriate. First, not everybody regards evening out undeserved benefits and harms through redistribution as a moral imperative;<sup>27</sup> and some, namely sufficientarians, regard it as an imperative only up to the point where everybody has “enough.” I will assume that undeserved benefits and harms should be evened out according to prioritarian standards, but the basic point of distinguishing compensatory and redistributive rationales remains interesting also for theorists who do not see undeserved benefits and harms as giving weighty reasons for redistribution.

Second, I am working with a narrow notion of compensation. Payments that are due to non-wrongful harm-doing have also been labeled compensation payments.<sup>28</sup> All I argue is that it is an interesting question in the intergenerational context of climate change to separate payments based on wrongfulness from those not based on wrongfulness and that the latter can be seen as based on concerns different from the former, namely redistributive and not compensatory concerns.

I agree with Posner and Weisbach that compensation payments for climate damages are difficult to justify and for a good number of reasons.<sup>29</sup> We can distinguish several versions of compensatory payments depending on who has the duty to provide them. The most natural duty-bearer for compensatory payments is the emitter of wrongful emissions himself. I will call this the Emitter Pays Principle (EPP).<sup>30</sup> A second version of compensatory payments, the

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<sup>27</sup> See, for example, Peter Cane, *Atiyah's Accidents, Compensation and the Law* 355 (Butterworth 5th ed 1993).

<sup>28</sup> Joel Feinberg, *Voluntary Euthanasia and the Inalienable Right to Life*, 7 *Phil & Pub Aff* 93, 102 (1978).

<sup>29</sup> See Posner and Weisbach, *Climate Change Justice* at 99–118 (cited in note 2).

<sup>30</sup> The Emitter Pays Principle is restricted to wrongful emitters and is to be distinguished from interpretations of “polluter pays principles” (also, “strict liability principles”) or Moellendorf’s causal principle that makes any emitter—whether wrongful or not—pay. See Darrell Moellendorf, *Cosmopolitan Justice* 98 (Westview 2002).

Beneficiary Pays Principle, identifies the beneficiary of wrongful emissions as responsible for providing compensation. A third version ascribes the duty to pay compensation to the wrongdoing community: a Community Pays Principle.

I will briefly discuss only the EPP. There is not much doubt that in general (that is, disregarding whether it can be usefully applied to the climate change problem), the idea of such compensation is very well supported by our moral intuitions. This is in contrast to the Beneficiary Pays Principle and the Community Pays Principle, where the principle itself is clearly disputed, even apart from its application to the climate change problem. So my question is: Can the EPP justify compensatory payments for the specific case of climate damages?

There are five basic problems for justifying compensatory payments in the context of climate damages. Posner and Weisbach discuss the first three. In analyzing the normative relevance of received benefits caused by historical emissions we have already come across the problem of blameless ignorance and the non-identity problem (problems three, four, and five, below).

- a. Potential payers might be dead.<sup>31</sup>
- b. Potential payers might not have exceeded their fair shares.<sup>32</sup>
- c. Potential payers might have been blamelessly ignorant.<sup>33</sup>
- d. Potential recipients might, due to the non-identity problem, only be said to be harmed according to a threshold conception of harm.
- e. Potential payers might, also due to the non-identity problem, not be said to have benefited.

If the EPP is put to the service of justifying compensatory payments, one has to identify wrongful emitters and wrongfully harmed persons. Someone emits wrongfully if, first, he exceeded his fair share and second, he knew or was liable to know about the harmfulness of his emissions. Someone is wrongfully harmed by emissions if he either is worse off due to wrongful emissions than he would otherwise be or falls below the specified threshold of harm due to wrongful emissions (or both). If all emitters could legitimately be excused by ignorance, then EPP cannot identify any wrongful emitter at all to pay compensation payments. If not, it can still only ascribe compensatory duties to some (even though there are many more persons who are causally responsible for climate change today and in the future). The EPP also has difficulties in identifying wronged persons; they can only be said to be wronged, and thus be

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<sup>31</sup> See Posner and Weisbach, *Climate Change Justice* at 102 (cited in note 2).

<sup>32</sup> See *id.* at 109–15.

<sup>33</sup> See *id.* at 104.



the rightful recipient of compensatory payments, if we can defend a solution to the non-identity problem. Elsewhere I have argued that the most plausible response to the non-identity problem relies on a threshold conception of harm in conjunction with a sufficientarian understanding of the threshold. Accordingly, wronged persons are rightful recipients of compensatory payments if they fall below the sufficientarian threshold.<sup>34</sup>

We can conclude that insofar as arguments actually succeed in justifying some compensatory measures, they are likely only to justify them for parts of those who cause or suffer from climate change. However, I would like to add three qualifications. First, many of us do not seem to fulfill our intergenerational duties of justice vis-à-vis future people with respect to climate justice. Currently living people stand under such duties if it is the case that they can be said to know not only about the seriously harmful consequences of their emission-generating activities for future people, but also about effective measures to protect future people's basic rights and that implementing these policies is not over-demanding on them. Elsewhere I have argued that this is not the case.<sup>35</sup> Looked at in terms of consequences, an individual is highly unlikely to have any morally better alternative to continuing to emit at a level that is far above the just per capita level; any level of emissions she chooses is most likely to have the same or very similar impact in terms of violations of rights of future people—in other words, none or very close to none.<sup>36</sup> If currently living people stood under intergenerational duties of justice vis-à-vis future people with respect to climate justice, then currently living people's having failed to fulfill their duties vis-à-vis future people would constitute harmful wrongdoing.<sup>37</sup> If so, and if currently living people failed to fulfill their duties vis-à-vis future people, they would owe future people compensatory measures that prevent future people from becoming victims of their wrongful harm-doing.

Second, the fact that the developing countries have to carry such a large share of climate damages seems to be a situation that asks for some kind of response. And of course, compensation (in the narrow sense of wrongdoers paying something to the wronged persons on the grounds of the injustice committed) is not the only kind of possible response. Rather, given that many effects of climate change can be seen as undeserved harms—and harms that go

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<sup>34</sup> See generally Meyer, *Past and Future*, in Meyer, Paulson, and Pogge, eds, *Rights, Culture, and the Law* at 143 (cited in note 4); Meyer, *Intergenerational Justice* at § 3.1 (cited in note 1).

<sup>35</sup> See Lukas H. Meyer and Pranay Sanklecha, *Individual Expectations and Climate Justice*, 33 *Analyse & Kritik* 449, 462–64 (2011).

<sup>36</sup> This might even be true for collective actors with as large a share of global emissions as the US, depending on our account of how its emissions contribute to the harm caused.

<sup>37</sup> See Posner and Weisbach, *Climate Change Justice* at 108–09 (cited in note 2).

along with undeserved benefits for other persons—leveling off such effects on the basis of a concern for distributive justice seems an equally plausible response. If principles of distributive justice, and in particular the priority view, do apply at a global level, these principles can also be applied to the distribution of duties of paying adaptation costs to those who suffer from climate damages. In assuming that the priority view is the correct kind of principle for distributing emission rights, I presupposed that principles of distributive justice do apply at the global level.<sup>38</sup>

Consequently, I believe that principles of distributive justice can also be applied (at least to some degree) to the distribution of duties of paying adaptation costs to those who suffer from climate damages. Of course, to common moral intuition, demands of compensatory justice seem to have a stronger force than demands simply based on evening out undeserved benefits or harms, particularly at the global level.<sup>39</sup> I do not necessarily want to question that view; compensation payments might have a certain priority before redistributive concerns. However, in the context of climate damages, compensation payments are only justifiable for such a small part of the problem that it is appropriate to primarily direct attention to the redistributive demands. The focus must be turned to equitably sharing undeserved benefits and harms rather than focusing on compensating wronged persons in view of the limited applicability of the latter enterprise.

The third qualification reflects another perspective on the normative relevance of historical emissions that, I believe, is compatible with what I have argued in this paper. People living in the highly industrialized countries and elsewhere have formed expectations about the level of emissions that they may cause that is far above what they are entitled to according to the equal per capita view of emission rights, and even more so when that view takes into account historical emissions. The expectation has been formed partially but necessarily by the collective level of historical emissions of their political societies. In pursuing life plans and projects that are open to them, people as members of highly industrialized countries typically engage in activities that have far more emissions as their side-product than the ideal view of a just distribution of emission rights would allow them to cause. If, under the current circumstances, their expectation—to be able to emit far more than ideal justice would allow—could be shown to be legitimate and permissible, this would identify a consideration relevant to determining how one ought to go about arriving at an ideal collective solution. The expectation would have to be taken into account by

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<sup>38</sup> See, for example, Thomas W. Pogge, *Realizing Rawls* (Cornell 1989).

<sup>39</sup> See David Miller, *Holding Nations Responsible*, 114 *Ethics* 240, 241 n 1 (2004); Gosseries, *Historical Emissions* at 55 (cited in note 20).

establishing the authoritatively imposed global climate regime in a fashion as non-disruptive as is consistent with bringing about an effective and fair solution to the problem of climate change.<sup>40</sup>

This claim is meant to identify a criterion for assessing a transition to a just global climate regime. I mention it here since some disagreements reflect misunderstandings owing to authors talking at cross-purposes. In particular, we can consider historical emissions relevant in opposite ways when discussing matters of transition and matters of ideal justice, strengthening and weakening the claims of the beneficiaries of historical emissions, respectively.

#### IV. CONCLUSION

In this Article, my aim has been to outline considerations relevant for specifying an ideally fair way of allocating the mitigation and adaptation costs associated with climate change, particularly in light of the benefits and damages brought forth by past emissions. I presuppose a prioritarian theory of distributive justice and generally proceed by abstracting from the background inequality existing in the real world. First, I discussed mitigation and conclude that most people in the developing countries should get higher per capita emission rights than most in the highly industrialized countries because the former have fewer benefits associated with past emissions to start with. Finally, I discussed who should pay adaptation costs and argue that it is difficult to frame the duty of people in the highly industrialized countries to those who are highly vulnerable as a duty of compensation but that it should primarily be seen as a duty grounded in concerns of distributive justice.

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<sup>40</sup> But see Meyer and Sanklecha, 33 *Analyse & Kritik* at 467–69 (cited in note 35).