

1-1-2008

## Climate Change and the Importance of International Environmental Law: Seeking a Cosmopolitan Cure

Paul G. Harris

Follow this and additional works at: <https://elibrary.law.psu.edu/pselr>

---

### Recommended Citation

Paul G. Harris, *Climate Change and the Importance of International Environmental Law: Seeking a Cosmopolitan Cure*, 16 *Penn St. Env'tl. L. Rev.* 323 (2008).

This Article is brought to you for free and open access by the Law Reviews and Journals at Penn State Law eLibrary. It has been accepted for inclusion in Penn State Environmental Law Review by an authorized editor of Penn State Law eLibrary. For more information, please contact [ram6023@psu.edu](mailto:ram6023@psu.edu).

## Articles

# Climate Change and the Impotence of International Environmental Law: Seeking a Cosmopolitan Cure

Paul G. Harris\*

### Abstract

The latest scientific findings confirm that the international treaties designed to prevent dangerous changes to the Earth's climate are failing. Efforts by diplomats to incorporate interstate social and distributive justice into these treaties and the broader climate change regime have

---

\* Paul G. Harris (Ph.D., Brandeis University) is director of the Environmental Studies Program, director of the Center for Asian Pacific Studies, and professor of international and environmental studies at Lingnan University of Hong Kong. He is author or editor of a number of books, including *INTERNATIONAL EQUITY AND GLOBAL ENVIRONMENTAL POLITICS* (Ashgate), *CLIMATE CHANGE AND AMERICAN FOREIGN POLICY* (St. Martin's Press), *THE ENVIRONMENT, INTERNATIONAL RELATIONS, AND U.S. FOREIGN POLICY* (Georgetown University Press), *INTERNATIONAL ENVIRONMENTAL COOPERATION* (University Press of Colorado), *GLOBAL WARMING AND EAST ASIA* (Routledge), *CONFRONTING ENVIRONMENTAL CHANGE IN EAST AND SOUTHEAST ASIA* (United Nations University Press), *EUROPE AND GLOBAL CLIMATE CHANGE* (Edward Elgar), *THE GLOBAL POLITICS OF AIDS*, co-edited with Patricia Siplon (Lynne Rienner), *ENVIRONMENTAL CHANGE AND FOREIGN POLICY* (Routledge, forthcoming), *CLIMATE CHANGE AND FOREIGN POLICY* (Routledge, forthcoming) and *THE POLITICS OF CLIMATE CHANGE* (Routledge, forthcoming).

been terribly insufficient in addressing the growing menace of global warming. While serious consideration of interstate justice has been a practical and ethical prerequisite for garnering broader participation in the climate change regime, doing so has diverted all responsibility to states, thus failing to discourage consumption and pollution by capable *people*. This includes the tens of millions of people in the developing world whose governments have no obligation to limit nationwide pollution. The bulk of literature on justice and climate change, and all related treaties, speak of obligations of *states* to act (or not) to limit their emissions of greenhouse gases, or to act in ways to mitigate the effects of these emissions, and to assist poorer states to help them develop in less polluting ways. There is almost no discussion of the obligations of *individuals*. Increasingly, however, individuals matter: more and more of them, who are not now subject to any legally binding climate-related obligations, are able to afford lifestyles that lead to unnecessary greenhouse gas emissions and more climate change. This is especially true given the rapid increase in the numbers of affluent people in the developing world. Given this poor fit between existing international environmental law on climate change and the problem it is intended to address, this article assesses whether individuals should be brought into the equation. It goes around the still important question of interstate climate justice to explore what could be viewed as a possible cure for the impotence of extant international law: *cosmopolitan* climate justice. Cosmopolitan justice can locate more obligation to act on climate change, and to aid those people who will suffer from it, in capable *individuals* in both affluent *and* poor states.

## I. Introduction

The existing international legal framework designed to combat global warming and resulting climate change was given a foundation with the 1992 signing of the Framework Convention on Climate Change.<sup>1</sup> The fundamental objective of that convention is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>2</sup> In order to garner participation in the convention and the nascent international climate change regime, governments agreed to apply the developing international legal principle of *common but differentiated responsibility*.<sup>3</sup> According to this principle, all states are

---

1. See U.N. Framework Convention on Climate Change art. 2, May 9, 1992, available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

2. *Id.*

3. See Paul G. Harris, *Common but Differentiated Responsibility: The Kyoto*

responsible for addressing climate change, but affluent states—the largest historical polluters of the atmosphere—are obligated to act first to reduce their emissions of greenhouse gases *before* the developing states are required to limit theirs.<sup>4</sup> Diplomats heeded recommendations of philosophers and experts on international cooperation who saw this keystone of interstate justice as essential to broad agreement among states on the need to combat climate change.

Some governments have started to act on their obligations, as reflected in recent efforts by the European Union and several European states to start limiting their greenhouse gas emissions and to plan for more robust cuts in the future.<sup>5</sup> However, these efforts have been minuscule compared to what is required. By almost any measure, anthropogenic interference with the climate system is already “dangerous,” contributing to widespread environmental damage and growing human suffering, especially in the poorest parts of the world—and, barring change, this phenomenon will only worsen with time.<sup>6</sup> In short, by the measure set out in the founding treaty to combat climate change, and indeed by scientific findings of the Intergovernmental Panel on Climate Change and other experts, the climate change regime is failing.<sup>7</sup> Even if fully implemented, the Kyoto Protocol to the climate change convention will yield only the smallest of reductions in climate change in the distant future. Furthermore, the prospects for a very robust secondary Kyoto Protocol agreement, leading to the necessary reductions in greenhouse gas emissions—on the order of at least 80-90 percent, according to scientists<sup>8</sup>—are poor. The arguments for interstate justice

---

*Protocol and United States Policy*, 7 N.Y.U. ENVTL. L.J. 27, 27-48 (1999) (analyzing this principle in climate change negotiations).

4. See Christopher D. Stone, *Common but Differentiated Responsibilities in International Law*, 98 AM. J. INT’L L. 276, 276-301 (2004) (discussing common but differentiated responsibility).

5. See Paul G. Harris, *Europe and Environmental Change: Sharing the Burdens of Global Warming*, 17 COLO. J. INT’L ENVTL. L. & POL’Y 309, 309-355 (2006). See generally, PAUL G. HARRIS, *EUROPE AND GLOBAL CLIMATE CHANGE: POLITICS, FOREIGN POLICY AND REGIONAL COOPERATION* (Edward Elgar Publishing, 2007).

6. See Intergovernmental Panel on Climate Change, Working Group II, *Climate Change Impacts, Adaptation and Vulnerability*, <http://www.ipcc-wg2.org/> (last visited Mar. 30, 2008) (depicting the impacts of climate change).

7. See Paul G. Harris, *Collective Action on Climate Change: The Logic of Regime Failure*, 47 NAT. RESOURCES J. 195, 195-224 (2007) (discussing the predictability of the failure of the climate change regime). See also Intergovernmental Panel on Climate Change, Working Group I, *Climate Change 2007: The Physical Science Basis*, available at <http://www.ipcc-wg2.org/> (last visited Mar. 30, 2008) (on the international consensus on climate change science).

8. *The Weather Forecast of the Century*, EUROPEAN PARLIAMENT NEWS, Nov. 24, 2005, available at [http://www.europarl.europa.eu/news/expert/infopress\\_page/064-2707-327-11-47-911-20051121IPR02661-23-11-2005-2005-false/default\\_en.htm](http://www.europarl.europa.eu/news/expert/infopress_page/064-2707-327-11-47-911-20051121IPR02661-23-11-2005-2005-false/default_en.htm).

that have permeated the international deliberations on climate change, although leading to legal instruments, have proved to be impotent. By diverting all responsibility to the participant states, focusing on interstate justice has not discouraged consumption and pollution by affluent *people*, i.e. private individuals, tens of millions of them—and very soon hundreds of millions—in the developing world whose state governments have no obligation to limit nationwide pollution (often appropriately from narrower perspectives of interstate justice—if not from the perspective of environmental necessity).

The bulk of literature on justice and climate change, and all of the associated international treaties, have understandably been preoccupied with the role of *states* to act (or not, as the case may be) to limit their emissions of greenhouse gases, or to act to mitigate the effects of these emissions, and to assist poorer states to help them develop in less polluting ways. Understandably, given that diplomats represent states, climate change-related international agreements have very little to say about the obligations of *individuals*. Increasingly, however, individuals matter: more and more of them who are not now subject to any climate-related obligations are able to afford lifestyles that lead to substantive greenhouse gas emissions and thereby contribute to more climate change. This is especially true given the very rapid increase in the numbers of affluent people in the developing world, most prominently in China and India. As Bradley Parks and Timmons Roberts remark, “Climate scientists can barely fathom a world in which the families of China and India will drive their own cars.”<sup>9</sup> But that is exactly the world that is very quickly emerging, much more quickly than existing agreements are able to cope with. In China alone, many tens of millions of people are already adopting Western consumerist lifestyles, and many tens of millions of other people will follow them in the very near future.<sup>10</sup>

Given that international environmental law, premised on interstate justice, as well as the resulting actions by states, have barely limited the increase in global emissions of greenhouse gases, and will not prevent the atmospheric harm the climate change convention seeks to address, this article explores the obligations of *individuals* to act to limit climate change and, additionally, to aid those who suffer from it. The analysis and argument go beyond the normal—but still very important—matter of climate justice among *states* to explore what might be a “cure” for the

---

9. Bradley C. Parks & J. Timmons Roberts, *Environmental and Ecological Justice*, in PALGRAVE ADVANCES IN INTERNATIONAL ENVIRONMENTAL POLITICS 329, 345 (Michelle M. Betsill et al. eds., Palgrave Macmillan 2006).

10. This phenomenon and the underlying driving forces are described in Paul G. Harris, *Getting Rich is Glorious: Environmental Values in the People's Republic of China*, 13 ENVTL. VALUES 145, 145-166 (2004).

demonstrated impotence of international law: *cosmopolitan* climate justice. One important conclusion is that cosmopolitan obligations should be part of future international agreements intended to combat climate change.

The discussion that follows attempts to do what Molly Cochran suggests that cosmopolitans do: they “seek to interrogate and complicate the value conferred upon sovereign states in the contemporary international system, since cosmopolitans take individuals, not states, to be the starting point for moral consideration.”<sup>11</sup> Cosmopolitan justice locates obligation to act on climate change, and to aid those people who are suffering from it and especially those who will suffer from it in the future, in capable (i.e., affluent) *individuals* in both affluent *and* poor states.<sup>12</sup> Thinking in terms of common but differentiated *individual or personal* responsibility directs our attention to the obligations of people who are affluent, consume the most, and usually generate the most atmospheric pollution per capita, and suggests that they must do much more to address this problem, regardless of whether they live in affluent or poor states, and that treaties and subsequent laws must address this responsibility.

Ethicist Henry Shue argues that,

[j]ustice is about not squeezing people for everything one can get out of them, especially when they are already much worse off than oneself. A commitment to justice includes a willingness to choose to accept less good terms than one could have achieved—to accept only agreements that are fair to others as well as to oneself.<sup>13</sup>

It is well established that states have obligations to implement climate justice.<sup>14</sup> When people have asked who is obliged to act on climate change and to aid those who suffer from it, the answer has almost invariably been that obligation lies with states, period. Most diplomats and scholars seem to take this as given, as evidenced by deliberations at international climate change negotiations and demands that industrialized states must bear the primary burden of reducing greenhouse gas

---

11. MOLLY COCHRAN, *NORMATIVE THEORY IN INTERNATIONAL RELATIONS: A PRAGMATIC APPROACH* 21 (Cambridge University Press 1999).

12. The affluent also have obligations to act to protect and to aid non-humans and the biosphere, but that is something not discussed here. See, e.g. Mary Midgeley, *Individualism and the Concept of Gaia*, in *HOW MIGHT WE LIVE: GLOBAL ETHICS IN THE NEW CENTURY* 29, 29-44 (Ken Booth et al. eds., Cambridge University Press 2001), and John Barkdull & Paul G. Harris, *The Land Ethic: A New Philosophy for International Relations*, 12 *ETHICS AND INT’L AFF.* 159, 159-78 (1998).

13. Henry Shue, *The Unavoidability of Justice*, in ANDREW HURRELL & BENEDICT KINGSBURY, *THE INTERNATIONAL POLITICS OF THE ENVIRONMENT* 373, 385 (Clarendon Press 1992).

14. Harris, *supra* note 3.

emissions.<sup>15</sup> Many might, of course, argue that other actors, notably corporations and perhaps international (i.e., intergovernmental) organizations, also have obligations. But there is another answer to the question: *Affluent individuals everywhere* (absolutely everywhere, including in the poorest countries) are obliged to act to limit greenhouse gas emissions and to aid people who suffer from the effects of global warming. It is not unusual to say that rich people in economically developed states have obligations, so this discussion has more to say about affluent individuals in the developing countries, which is something remarked on quite rarely. The present situation, whereby affluent individuals in poor countries are completely off the hook, directly (as are most people in affluent countries) and indirectly (unlike people in some European states, who must pay more for energy as part of those countries' early efforts to act on climate change), hardly fits Shue's conception, and indeed many other conceptions, of justice. Furthermore, this "affluent individual" loophole, while being inequitable and unethical, may well undercut the efforts of even the most diligent states.

One impetus for this interrogation of the current state of international environmental lawmaking, in the context of climate change, is a dissatisfaction with the usual arguments (including this author's) suggesting that solutions to this problem can come from operationalizing and implementing interstate justice while ignoring the individual level of obligation and, especially, action.<sup>16</sup> This article is therefore a critique of the status quo "statism" of most official and scholarly discourse, as well as national and international action, on climate change. It must be acknowledged that many or even most of the solutions to climate change will have to involve states. However, this reality need not absolve capable *individuals* from explicit responsibility and obligation, nor should it prevent diplomats, activists and scholars of international law, along with laypersons, from discussing it and attempting to integrate such considerations into future international environmental law. Successful *interstate* efforts to address climate change can be bolstered by *cosmopolitan* justice. Under this "cosmopolitan" theory, those who have the capability to further combat climate change should assist in this

---

15. See Earth Negotiations Bulletin, Archives, [http://www.iisd.ca/vol16/vol16\\_01.html](http://www.iisd.ca/vol16/vol16_01.html) (last visited Mar. 29, 2008) (on diplomatic negotiations); see, e.g., PAUL G. HARRIS, INTERNATIONAL EQUITY AND GLOBAL ENVIRONMENTAL POLITICS 3-88 (Ashgate, 2001) (on scholarly views).

16. Rare exceptions can be found in the arguments of some cosmopolitan scholars, such as Peter Singer, but even they tend to say very little about the obligations of capable persons, usually leaving it to states to act on the collective obligations of their citizens toward persons in other states, at least in the context of climate change. See *below* and PETER SINGER, ONE WORLD: THE ETHICS OF GLOBALIZATION (Yale University Press 2004).

worthy goal; they cannot be allowed to hinder the effort or be left without any responsibility to positively contribute to this needed change.

While changes in affluence in the world may not be fully apparent to people in the developed countries, anyone living in, say, most of Asia can see that the number of affluent people in the developing world is now very large, and that it is growing rapidly. It is simply not practical—and not just—to let the most affluent *people* in poorer countries (which includes affluent expatriates from the West living there) avoid this issue simply because the affluent *states* have been recognized to be legally to blame for most present and much future climate change. We can of course say that the wealthy states are also *practically* to blame for most climate change, both by aggregate (historical) and average per capita measures. However, this may be the wrong, or at least a very much inadequate, discourse. To talk of climate justice in that way frames the issue in terms of states, which is acceptable only if it is supplemented with much more talk of the obligations of affluent *individuals* and critiques of their consumption choices. In short, our preoccupation with interstate obligations has become lopsided, and it may benefit from more attention to the obligations of affluent people *everywhere*, including in places where their obligations are tacitly ignored: the less affluent states.

This essay is written by a concerned resident of our planet and directed at those similarly concerned. Philosophers are invoked to find ethical support for expanding the locus of where obligation to act and to aid lies, even though one must recognize that it will be very difficult to foster action on that obligation and to integrate it into future international environmental law. Mine is a normative argument necessitated by the failure of existing interstate arrangements and the suffering (human and nonhuman) that is underway and will arise from that failure. Having said that, this essay does not undertake the task of detailed philosophical exegesis. The aim here is to start reorienting the discussion away from strictly that of state obligation to that of obligations inherent in everyone living within states.

## II. The Impotence of Interstate Justice

Justice requires identifying to whom rights are owed and to whom associated duties should be assigned; as well as how much of the burdens of protecting those rights each actor with duties should bear.<sup>17</sup> The political world is made up of sovereign states, so it is normal for most discussions of climate justice to be about national communities vis-à-vis

---

17, Cf. CHARLES JONES, *GLOBAL JUSTICE: DEFENDING COSMOPOLITANISM* 5-6 (Oxford University Press 1999).



one another, with international environmental law being a logical reflection of this reality. According to the theory of dominant morality of states,<sup>18</sup> states have rights and bear the burden of, at minimum, not violating other states' rights. This author, elsewhere, has joined others in arguing that affluent states have an obligation to reduce their greenhouse gas emissions and to aid poor countries that will suffer from climate change.<sup>19</sup>

This is not profound nowadays; the developed states are the ones who have caused most of the problem and the developing countries are the ones who will suffer the most from it. Common conceptions of fairness demand that the former act first and aid the latter accordingly. The climate convention and associated international agreements have affirmed this. But the climate change regime may be doing something similar to what the longstanding international trade regime has been doing: the focus on state obligations, acted upon by way of interstate technology transfers and a growing number of interstate climate funds, tend to empower national elites and well-off people within states, while saying nothing about how those people ought to behave themselves. The result is much talk of addressing the problem, but (at least outside Europe) little robust action intended primarily for that purpose. Further, those who benefit from the status quo—rich people—continue to win, often at the expense of the poor.

What is fair and just from the perspective of interstate justice is not necessarily fair and just from other perspectives. It can be the opposite. To be sure, it would not be fair if poor states (least of all the very poorest among them) were required to take on the same obligations to combat climate as the United States and other affluent states.<sup>20</sup> But it is also not fair (and environmentally unsound) for the many affluent people in the developing world, such as rich elites in China and India, to be absolved of duties regarding climate change. Why, ethically, should a *poor* person in, say, France be lumped with the wealthy of France to aid both the poor *and* the rich in China or other developing countries, especially when the latter may pollute far more? The belief that affluent states ought to aid poor ones in the context of climate change, and that the former ought to be drastically cutting their greenhouse gas emissions while allowing the

---

18. See CHARLES R. BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* (Princeton University Press 1979).

19. See e.g., HARRIS, *supra* note 15; see also Paul G. Harris, *Fairness, Responsibility, and Climate Change*, 17 *ETHICS AND INTERNATIONAL AFFAIRS* 149, 149-156 (2003).

20. I am avoiding the important debate about Singapore, Saudi Arabia and other affluent "developing" countries, some of which have higher per capita incomes than even very wealthy states, which are not legally obliged to do much of anything in the context of the climate change regime.

latter to increase theirs, seems grossly inadequate.

Developments in China demonstrate how the interstate (communitarian and “realist”) perspective of justice is lacking in the context of global warming and climate change. China is now the largest national source of greenhouse gases,<sup>21</sup> overtaking the United States,<sup>22</sup> and its emissions will continue to increase. To be sure, much of the pollution from China is a consequence of feeding the material appetites of Western consumers. However, at the same time, millions of Chinese are joining the global consumer culture. The car culture in China has become a craze. The number of passenger cars in China doubled every 30 months during the 1990s,<sup>23</sup> and official estimates predict that the total number will reach 140 million by 2020.<sup>24</sup> According to one report, there are an estimated “450 m[illion] people in eastern China with a purchasing power of over \$7,000 a year; \$6,000 is the usual threshold at which car-ownership begins to take off.”<sup>25</sup> China is now the largest market for cars and appliances, and, according to David Wilson, energy use and consumption will grow worse as “the 100-million-strong middle class—the nation’s leading consumer group—is set to double in numbers over the next five years.”<sup>26</sup>

Complicating matters further is the fact that many Chinese are becoming affluent, consuming and living more like the stereotypical American conspicuous consumer, and “the locomotive of the global economy in terms of incremental annual consumption demand will have changed from the US consumer to the Chinese consumer.”<sup>27</sup> It has been predicted that the number of Chinese households earning more than \$10,000 per year will increase from 3.8 million in 2003 to 151 million in 2013.<sup>28</sup> Between 2004 and 2013, the number of urban households in

---

21. See Press Release, Netherlands Environmental Assessment Agency, China Now No. 1 in CO<sub>2</sub> Emissions; USA in Second Position (June 9, 2007), available at <http://www.mnp.nl/en/service/pressreleases/2007/20070619Chinanowno1inCO2emissionsUSAinsecondposition.html>; Press Release, Netherlands Environmental Assessment Agency, China Contributing Two Thirds to Increase in CO<sub>2</sub> Emissions (June 13, 2008), available at <http://www.mnp.nl/en/service/pressreleases/2008/20080613ChinacontributingtwothirdstoincreaseinCO2emissions.html>.

22. INTERNATIONAL ENERGY AGENCY, WORLD ENERGY OUTLOOK 2006 41 (2006), available at <http://www.iea.org/textbase/nppdf/free/2006/weo2006.pdf>.

23. KELLY SIMS GALLAGHER, CHINA SHIFTS GEARS: AUTOMAKERS, OIL, POLLUTION, AND DEVELOPMENT (MIT Press 2006).

24. *China to Have 140 Million Cars by 2020*, CHINA DAILY, Sept. 4, 2004. This is roughly the same number of cars as in the United States.

25. *Dream Machines—Cars in China*, ECONOMIST, June 2, 2005.

26. David Wilson, *Designs on Sustainable Development*, SOUTH CHINA MORNING POST, Feb. 14, 2006, at T6.

27. JONATHAN GARNER, THE RISE OF THE CHINESE CONSUMER: THEORY AND EVIDENCE 13 (John Wiley and Sons 2006).

28. *Id.* at 73. The number of households in the United States with the same annual

China “able to make discretionary consumer purchases beyond meeting basic needs” will increase to 212 million from 31 million, rising from 17.4 percent of households to 90.6 percent.<sup>29</sup>

The existing system of creating international environmental law, like international relations generally, is biased against—and indeed premised upon—*not* placing any obligations directly on individual people (no matter how wealthy or capable) within state boundaries. To do otherwise would violate state sovereignty, or at least the usual conception of it. But our preoccupation with interstate justice diverts attention and action exclusively to the national and international levels, when what is needed is simultaneous attention to localized and individual responsibility and action. The current solutions—international agreements—will not do enough to address, fundamentally, the current global trajectory of greenhouse gases unless they seriously consider and incorporate some of the concerns of cosmopolitans. This is because, without very substantial changes in behavior at the personal level, climate change will become much worse.

The real locus of climate action, and of climate justice, is at the individual level.<sup>30</sup> However, this is rarely emphasized in the literature on climate ethics and policy, and least of all at the level of diplomacy and treaty making. Insofar as per capita emissions are discussed by diplomats, such as when the developing countries rightly point to the very high emissions per person in the developed world, they are used by those developing states to argue that they and their people, even the most wealthy among them, ought not bear any burden.

One might retort that, in their relations to one another, states have always downplayed the role of many people; many rich elites in poor countries have always avoided responsibility. For example, corrupt officials and their families in poor states have for decades siphoned off development aid to increase their personal fortunes. However, that has always been viewed as wrong—and usually illegal—even as it has happened. In contrast, for elites in the developing world to pollute the global environment that will come back to cause suffering, including among their compatriots, is rarely subjected to comment.<sup>31</sup>

---

income was 102 million in 2003.

29. *Id.* at 73-74. This level of “significant discretionary consumer spending” is set by Garner at \$5,000. In comparison, the number of Americans with income over this amount was 108 million in 2003—96.6 percent of all households. *See id.*

30. *See* RONNIE D. LIPSCHUTZ, GLOBAL ENVIRONMENTAL POLITICS: POWER, PERSPECTIVES, AND PRACTICE 2-3 (CQ Press, 2004).

31. Indeed, the consumption driving this growing pollution is encouraged by global businesses seeking to benefit from increasing buying power in the developing world. In other words, that which is downright unjust from a cosmopolitan perspective is seen by many people as the fuel of sustained growth in the world economy. *See id.* at 2.

Another problem with interstate conceptions of climate justice is that they can make people lazy; by definition, they push duties and responsibilities upon the government. Individuals can assert, "I pay *my* taxes and follow regulations. I've done *my* duty." This applies to affluent people in rich and poor countries alike. But neither affluent people in rich countries nor affluent people in poor countries should be allowed to disaffirm their individual responsibility if their governments have failed to implement policies necessary to push or force them to act. Nor should they be allowed to shirk their duties to limit their greenhouse gases and, in the case of those in democratic societies, to elect leaders and support policies that will address climate change and its consequences. Given the importance of individual contributions to climate change, if international environmental treaties and regimes are to be effective, it is high time for them to include explicit obligations and duties for affluent individuals to implement.

In a discussion of distributive justice, Stanley Hoffman describes two versions of what might constitute global justice: the "classical," which is concerned about states and serves as the basis for most international environmental law, and the "radical," which is concerned about people.<sup>32</sup> One problem with the first version, which demands that rich states provide aid to poor states, is that it "really amounts to a reinforcement of the state system."<sup>33</sup> If obligation is only between states, there is no assurance that individuals in the recipient communities will benefit. The radical version, which is concerned about people, notably an "extreme radical" variant concerned about the causes of unequal distributions of wealth "not just among states . . . but among individuals in most states,"<sup>34</sup> is significant here because "it blurs the distinction between states and individuals, and even deems the distinction illegitimate. It states that problems of distributive justice in international affairs are problems of duties to individuals, and it suggests that the problems of state inequality, which the first view stressed, are either irrelevant or subordinate."<sup>35</sup> Hoffman identifies a "minimalist" position—there is no moral obligation to individuals because there is no community of mankind, etc.—and a "maximalist" position, reflected in the ideas of Charles Beitz,<sup>36</sup> which asserts that "our obligation concerning justice is universal, that despite the existence of separate

---

32. See STANLEY HOFFMANN, *DUTIES BEYOND BORDERS: ON THE LIMITS AND POSSIBILITIES OF ETHICAL INTERNATIONAL POLITICS* 144, 147 (Syracuse University Press, 1981).

33. *Id.* at 147.

34. *Id.* at 148.

35. *Id.*

36. See BEITZ, *supra* note 18.

states and nations we have a duty to all mankind,”<sup>37</sup> because, among other reasons, there is a kind of global community and that is what we would choose if (borrowing from John Rawls) we were in an original position, behind a veil of ignorance, not knowing our nationality and so forth.<sup>38</sup>

As Hoffman portrays this position, “[t]o put it bluntly, our obligation of justice toward the Bantus is exactly the same as our obligation toward our immediate neighbors.”<sup>39</sup> Sensibly enough, Hoffman rejects both of these ideal positions, ending up “with the philosophically untidy and politically elastic notion that the scope of our obligation to individuals in other societies varies in time and in space.”<sup>40</sup> What is germane to the present discussion is that Hoffman is advocating some medium between focusing on the obligations (and especially the needs) of individuals and those of states. Preoccupation with the latter is neither ethical nor practically reasonable. If anything, climate change seems to provide support for radical-maximalist arguments for justice by placing everyone, everywhere, in a situation of mutual dependency. There is no American or Chinese climate system (as distinguished from weather systems); there is only one atmosphere, and every person contributes to changes in global climate, albeit with varying effects in different places, regardless of where he or she is located. Obligations—for states *and* for people—arise from this circumstance.

### III. Climate Change and Cosmopolitan Justice

The current emission scenario, allowed to persist due to the inadequacies of the current emissions treaty regime, with affluent persons having the ability to harm others, notably the poor and weak of the future, seems patently unjust. On what basis can we say it is unjust? Not based on strictly *interstate justice*, which does not ascribe obligations to individuals per se; an alternative justification is required. This alternative justification can come from *cosmopolitan* conceptions of justice that identify *individuals* as citizens of one world.<sup>41</sup> It is hard to deny the empirical argument often made by cosmopolitans: borders do not matter the way they did in the past.<sup>42</sup> As Charles Beitz put it,

---

37. See HOFFMAN, *supra* note 32, at 153.

38. JOHN RAWLS, A THEORY OF JUSTICE (Harvard University Press, 1971).

39. See HOFFMAN, *supra* note 32, at 153.

40. *Id.* at 157 (stating that we owe aid to states to assist poor individuals within them, except “insofar as there are violations of the most elementary human rights of other individuals”; thus, he is still very much acknowledging sovereignty). *Id.* at 158.

41. Borrowing the title of one of Peter Singer’s books. See SINGER, *supra* note 16.

42. ROBIN ATTFIELD, ENVIRONMENTAL ETHICS 159 (Polity Press 2003); see also ROBIN ATTFIELD, THE ETHICS OF THE GLOBAL ENVIRONMENT (Edinburgh University Press 1999).

[w]hen, as now, national boundaries do not set off discrete, self-sufficient societies, we may not regard them as morally decisive features of the earth's social geography. For purposes of moral choice, we must instead regard the world from the perspective of an original position from which matters of national citizenship are excluded by an extended veil of ignorance.<sup>43</sup>

#### A. *Cosmopolitan Ethics*

Philosopher and ethicist Thomas Pogge sums up the core elements of cosmopolitanism as individualism, universality and generality.<sup>44</sup> Cosmopolitans are fundamentally concerned about human beings. In Pogge's words, "persons are ultimate units of concern *for everyone*."<sup>45</sup> A cosmopolitan approach places rights and obligations at the individual level and discounts the importance of national identities and state boundaries. People in one state do not matter more than people in others, and rich people do not matter more than poor ones: the "life of everyone matters and matters equally."<sup>46</sup> According to Robin Attfield,

[c]osmopolitan ethicists maintain that ethical responsibilities apply everywhere and to all moral agents capable of shouldering them, and not only to members of one or another tradition or community, and that factors which provide reasons for action for any agent, whether individual or corporate, provide reasons for like action for any other agent who is similarly placed, whatever their community may be or believe. They also deny limits such as community boundaries to the scope of responsibilities; responsibilities (they hold) do not dwindle because of spatial or temporal distance, or in the absence of reasons transcending particular facts or identities.<sup>47</sup>

It is not enough to identify with all of humanity to be a cosmopolitan; it is necessary to act (or be willing to act) to realize cosmopolitan ethics. From this basis, it stands to reason that affluent individuals are obliged to act even if they live in dissimilar communities (i.e., rich or poor countries), and those who are more capable are more responsible to do so.

Cosmopolitans are global citizens. As Attfield describes them,

---

43. BEITZ, *supra* note 18, at 176. Beitz is invoking John Rawl's "original position" and "veil of ignorance." See RAWLS, *supra* note 38.

44. THOMAS POGGE, *WORLD POVERTY AND HUMAN RIGHTS* 169 (Polity Press 2002).

45. *Id.*

46. Kai Nielson, "Cosmopolitanism," Presentation to the Institute for Ethics and Public Affairs, San Diego State University (Nov. 18, 2003), available at <http://ethics.sdsu.edu/Past-GlobalJustice.html>.

47. ATTFIELD, *supra* note 42, at 162.

“[g]lobal citizens recognize ties of loyalty and obligation not only to fellow citizens of their political state but also to those of the world; the people who recognize such ties are well on their way to becoming global citizens.”<sup>48</sup> Attfield argues that,

[g]lobal citizenship essentially involves commitment (whether implicit or explicit) to one or another form of *global ethic*, for which obligations do not stop short at national boundaries and are not grounded solely in any less-than-universal interest. Far from being absurd, such global citizenship is morally as important as it has always been, and for practical purposes increasingly urgent too.<sup>49</sup>

This is similar to the notions of the philosopher Janna Thompson, who speaks of the planetary citizen, “someone who assumes her share of responsibility for the collective achievement of good which she and virtually everyone else values.”<sup>50</sup> Planetary citizenship “requires that individuals accept responsibilities . . . and regard each other as fellow citizens because of shared responsibilities.”<sup>51</sup>

To be sure, different people in different places will disagree on what must be done to act on shared responsibilities, and under what circumstances. Thompson acknowledges that finding the right ways to act on planetary responsibilities will not be easy, and that states will still be in the picture. However, “[t]he fact that political means for effective collective action do not exist means that individuals cannot fully realize their role as planetary citizens, but *they can aim toward this idea and try to make it a reality.*”<sup>52</sup> Planetary citizenship and the cooperation it engenders will provide “at least a psychological and moral basis for transcending” differences that may arise from national affiliations.<sup>53</sup> This cooperation is already reflected in growing cross-border linkages among environmentally conscious people and organizations.<sup>54</sup>

Attfield argues that only cosmopolitanism (specifically a consequentialist variant of it based on needs) provides the foundation for global sustainability and justice: “only cosmopolitanism does justice to the objective importance of all agents heeding ethical reasons, insofar as they have scope for choice and control over their actions, and working

---

48. *Id.* at 160.

49. *Id.*

50. Janna Thompson, *Planetary Citizenship: The Definition and Defense of an Ideal*, in *GOVERNING FOR THE ENVIRONMENT: GLOBAL PROBLEMS, ETHICS AND DEMOCRACY* 135, 145 (Brendan Gleeson & Nicholas Low eds., 2001).

51. *Id.*

52. *Id.* at 144 (emphasis added).

53. *Id.* at 145.

54. *See id.* at 146.

towards a just and sustainable world society.”<sup>55</sup> Importantly, cosmopolitanism is not only about the rights of people everywhere, it is also about their duties. Everyone has basic rights, and everyone has latent basic duties, which are a function of his or her condition—but not necessarily his or her location. Most people can probably agree that affluent people in the rich countries should bear some ethical responsibility for harm they do to the world’s poor. This notion is arguably already incorporated as part of civic responsibility in developed democracies.<sup>56</sup> It follows, then, that the affluent in rich countries ought to give aid to the poor of the world simply because that aid is needed. The question is whether affluent people everywhere have the same responsibility, and whether we are willing to acknowledge that more than we are at present.

### *B. Cosmopolitan Ethics and Climate Change*

If any issues cry out for a cosmopolitan response, climate change is one of them—for it is a global problem with individual causes and consequences. Appropriately, therefore, the notion that individuals have rights to some environmental minimum, and not to suffer from environmental harm caused by others, has already found its way into the climate change regime. However, those who have some duty to protect or at least limit violations to those rights are, almost exclusively, states. Generally speaking, the most that individuals must do is pay taxes and comply with minimal regulations imposed by national governments, usually indirect in the form of slightly higher costs for products produced by industries meeting emissions standards imposed by the state. Thus, where cosmopolitan justice is especially important is in placing obligation—to stop harming the environment on which others depend and to take steps to aid those who suffer from the harm to the environment—on the shoulders not only of governments but also of capable individuals. As Attfield points out, “[t]he global nature of many environmental problems calls for a global, cosmopolitan ethic, and for its recognition on the part of agents who thereby accept the role of *global citizens* and membership of an embryonic global community.”<sup>57</sup> Cosmopolitan justice, and the associated obligations, should supplement the traditional interstate justice view and its associated obligations—although it should not dilute the common but differentiated responsibilities of states.

---

55. ATTFIELD, *supra* note 42, at 205.

56. See Debra Satz, *What Do We Owe the Global Poor?*, in 19.1 ETHICS AND INT’L AFFAIRS J. 47, 50 (Joel Rosenthal & John Tessitore eds., 2005).

57. ATTFIELD, *supra* note 42, at 182.



Communitarians will say that obligations obtain only within one's own political community—one's own nation or state. However, in the environmental area, and especially in light of the causes and consequences of climate change, everyone is living in one interdependent community. As Singer reminds us,

[w]hen different nations led more separate lives, it was more understandable—though still quite wrong—for those in one country to think of themselves as owing no obligations, beyond that of non-interference, to people in another state. But those times are long gone. Today [greenhouse gas] emissions alter the climate under which everyone in the world lives.<sup>58</sup>

Rights and responsibilities are associated with this reality. Everyone has a basic right not to be harmed by the pollution of others, whether they be next door or on the other side of the planet, at least if the polluters have any ability to control their pollution. Everyone, and especially those most capable (usually the most affluent), also has an obligation to act in ways that do not violate these rights. That we are living in this single world also suggests that we have obligations to aid others, even those very far away, who we have harmed or will harm.

Singer proposes two basic principles of fairness related to climate change: equal per capita shares—it is hard to argue ethically, although many have tried, for *unequal* shares—and the principle of “you broke it, you fix it.”<sup>59</sup> He points out that this latter principle applies in the case of the affluent states. But it also applies in the case of affluent *individuals*, including more than a few in the poor countries who have been polluting for generations. Those who are affluent ought to act, *regardless of whether the state in which they live is ethically or legally obliged to do so*. This of course means raising the sticky issue of neglected ethical obligations and what should be associated new legal obligations for affluent people everywhere, including those living in poor states.

In the past we could overlook (from an environmental perspective) the relatively few affluent individuals in poor countries; their overall impact on the global environment was relatively low. That is no longer the case. We cannot continue to ignore them simply because interstate justice assigns no obligations to them. Thus Parks and Roberts ask a fundamental question that needs to be explicitly addressed: “Are states the relevant units of analysis in the study of climate justice?”<sup>60</sup> As they

---

58. SINGER, *supra* note 16, at 197.

59. Peter Singer, Remarks to the Carnegie Council on Ethics and International Affairs (Oct. 29, 2002), *available at* <http://www.cceia.org/resources/transcripts/164.html#2>.

60. PARKS AND ROBERTS, *supra* note 9, at 347.

importantly point out, “the notion of the nation-state contributing to, being vulnerable to, and responding to climate change may obscure important intra-country distinctions. Many developing nations now have a sizable middle class that affects and is affected by warming of the earth’s atmosphere much differently than the rest of society.”<sup>61</sup> (These notions will be discussed in greater detail later in this article.)

It seems self-evident that it is wrong for affluent people to harm the planet and the poor who are most dependent on it. Justice at least demands that we end the harm that we cause. As Henry Shue has argued, while some will say that there is no obligation for me to help strangers whom I have not harmed,

[i]t is a very different matter if I have in fact wronged the person whose plight is under consideration—if that person’s plight was caused by harm that I did. The question, ought I now to help someone whose need for this help results from harm that I myself inflicted? is radically different from the question, ought I to help a stranger whom I have never harmed? And the reason that the situation is so different when harm has been done is that one of the most basic principles of equity in every culture . . . is: Do no harm. One may or may not be expected to help in this or that context, but one is always expected not to harm (but for exceptional overriding circumstances). Consequently, the obligation to restore those whom one has harmed is acknowledged even by those who reject any general obligation to help strangers. Whatever one’s obligation to help people with whom one has no previous connection, one virtually always ought to “make whole,” insofar as possible, anyone whom one has harmed. And this is because one ought even more fundamentally to do no harm in the first place.<sup>62</sup>

This suggests that the basis for our obligations to act and to aid is quite fundamental, and to argue otherwise would contradict ethical norms nearly everywhere.

One can argue that we also have an obligation to aid those in need who we have not harmed. The philosopher and environmentalist Dale Jamieson believes that causing harm is not as important for determining moral responsibility in the case of climate change as the *ability to benefit or prevent harm* (helpfully, because harms from climate change are diffuse and hard to pin down): “those who are in a position to prevent or mitigate climate change are responsible for doing so regardless of their

---

61. *Id.*

62. Henry Shue, *Equity in an International Agreement on Climate Change*, in *EQUITY AND SOCIAL CONSIDERATIONS RELATED TO CLIMATE CHANGE* 386 (ICIPE Science Press 1994).

causal contributions.”<sup>63</sup> So here we see a basis for affluent people everywhere to act now to limit their greenhouse gas emissions; their obligation does not depend on anticipated future harm to others. Jamieson argues that those who are able to do so “should seek to stabilize climate, and they should also do what they can to help those who are most vulnerable to the change that may already be occurring.”<sup>64</sup> From this it follows that affluent individuals everywhere ought to promptly aid those suffering now from climate change.

Governments and policymakers are largely ignoring the consumption habits of affluent people in developing countries contributing to greenhouse gas emissions. Can we justify, in ethical or practical terms what those affluent people (and affluent people in the developed world, of course) are doing? Some affluent people in, say, China, might argue that what they are doing is not unethical, that China—and by implication, *all Chinese people*—have no obligation to limit their activities that contribute to climate change, let alone being obligated to aid people in other countries who might suffer from it. However, one must challenge this national focus. As Singer remarks,

[o]ne of the clearest cases where [it] must be challenged is . . . climate change. Think about the difference that it makes to our conceptions of thinking ethically either within a community or globally once we understand that things that people do entirely within their own territory—like, for example, decisions about what kinds of vehicles we drive—could lead to making it impossible for, let’s say, villages in Bangladesh to continue to farm low-lying delta lands where tens of millions of Bangladeshis make their living, because it may contribute to the rise in sea levels, which may mean that those lands become inundated and too salty to farm. Or it may contribute to changes in climate patterns in sub-Saharan Africa, which eliminates the reliable rainfall needed to grow crops.<sup>65</sup>

Consequently, it should not be the case that we focus entirely on state obligations to cut greenhouse gases and to aid those suffering from climate change. We should focus more than we do now on the obligations of affluent people, not just affluent states. But even Singer

---

63. The ethical basis for this is simple: we should help those in need even if we did not get them into trouble; if you come upon a drowning child, you do not turn away but rather try to provide immediate assistance. Dale Jamieson, *Global Responsibilities: Ethics, Public Health, and Global Environmental Change*, IND. J. GLOBAL LEGAL STUD. 5, 99-119 (1997). Jamieson sees the positive duty to aid as being a stronger moral argument than one based on negative duties to end harm, whereas Pogge’s argument seems to be the other way around, although he too believes there are (weaker) positive duties. POGGE, *supra* note 44.

64. Jamieson, *supra* note 63, at 11.

65. Singer, *supra* note 59.

makes the arguments, true enough, about how the United States has used five times its collective per capita share of greenhouse gases and China has used only three-quarters of its share. Singer's discourse lapses into that about states. Nevertheless, Singer's individual utilitarianism recognizes that "decisions and actions of human beings can prevent [extreme human] suffering,"<sup>66</sup> and suggests that *all* of the world's affluent have an obligation to act differently. Applying his principle—"if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it"<sup>67</sup>—in the context of climate change seems to demand this (unless one assumes that frivolities and luxuries are more important than human survival and basic needs, not to mention ecological health).

Two principles of justice, described by the political philosopher Brian Barry, based on the premise that what is just is what the least well off could not reasonably reject, also seem particularly appropriate to the analysis. Barry's principals of justice are: (1) personal responsibility and compensation, and (2) the priority of vital interests.<sup>68</sup> According to the first principle, people may fare differently "if the difference arises from a voluntary choice on their part; conversely, victims of misfortunes that they could not have prevented have a *prima facie* valid claim for compensation or redress," and "where the voluntary act of some person (or persons) is the cause, redress should be looked for in the first instance from that source."<sup>69</sup> According to the second principle, "the vital interests of each person should be protected in preference to the nonvital interests of anyone."<sup>70</sup> As we have seen, the first principle suggests obligations by the world's affluent because climate changes they help create cause harm to others (at least in the future).

Barry's second principle is especially provocative, requiring that the material luxuries of the rich be curtailed to limit harm and to provide resources for redistribution to help protect the vital interests of the poor. Similarly, in a discussion about the importance of international climate justice, Shue makes a claim that is just as well suited to cosmopolitan climate justice: "it is unfair to demand that [the poorest] be sacrificed in order to avoid our sacrificing interests that are not only not vital but

---

66. Peter Singer, *Famine, Affluence and Morality*, 1 *PHILOSOPHY AND PUBLIC AFFAIRS* 229-43 (1972), available at <http://www.utilitarian.net/singer/by/1972---.htm>.

67. *Id.*

68. See Brian Barry, *International Society from a Cosmopolitan Perspective*, in *INTERNATIONAL SOCIETY: DIVERSE ETHICAL PERSPECTIVES* 148-49 (Princeton University Press 1998). Barry identifies two other principles of justice: the presumption of equality ("All inequalities . . . have to be justifiable in ways that cannot reasonably be rejected by those who get least") and mutual advantage. *Id.* at 147.

69. *Id.* at 148.

70. *Id.*

trivial.”<sup>71</sup> This is the heart of the matter to a great extent: after a point that meets our needs and then a bit, the world’s affluent are contributing to climate change for relatively trivial reasons at the expense of the truly vital interests of the world’s poor. This is unjust, some very hard (and heartless) utilitarian and state-centric arguments notwithstanding. The upshot is that, drawing upon Shue’s words, justice does not permit poor persons to be told to sell their blankets in order that rich persons may keep their jewelry.<sup>72</sup>

Individual obligation and action can be justified from other perspectives. For example, Onora O’Neill’s Kantian cosmopolitanism locates duty in individuals, who by definition share a common humanity, suggesting that we at least ought not undermine the capacity of others to be independent moral agents.<sup>73</sup> Bearing in mind that climate change will affect human rights, particularly the most basic rights to sustenance and even survival, another way of looking at climate justice is from a human-rights perspective.<sup>74</sup> As Ciaran Cronin and Pablo De Greiff sum up this perspective,

a person’s human rights are not only moral claims *on* any institutional order imposed upon that person, but also moral claims *against* those—especially, the more influential and privileged—who collaborate in its imposition. Since human rights-based responsibilities arise from collaboration in the coercive imposition of any institutional order in which some persons avoidably lack secure access to the objects of their human rights, it follows that there are transnational obligations that fall primarily on the more influential and privileged agents (individual and collective) who collaborate in the imposition of the current international order [which here is the “order” that results in climate change] since it satisfies this condition.<sup>75</sup>

Note the way that obligation is explicitly placed on the shoulders of

---

71. Shue, *supra* note 13, at 394.

72. *Id.* at 397 (noting that “whatever justice may positively require, it does not permit poor nations to be told to sell *their* blankets in order that rich nations may keep *their* jewelry”).

73. See CHRIS BROWN, *INTERNATIONAL RELATIONS: NEW NORMATIVE APPROACHES*, 169-70 (Columbia University Press 1992) (noting the rejection of the concept of interstate justice premised on individual action and instead arguing for those focusing on institutions). See also Onora O’Neill, *Hunger, Needs, and Rights*, in *PROBLEMS OF INTERNATIONAL JUSTICE* (Westview Press 1988).

74. See Thomas Pogge, *Human Rights and Human Responsibilities*, in *GLOBAL JUSTICE AND TRANSNATIONAL POLITICS* (MIT Press 2002) (noting that one way climate change violates human rights is by denying individuals a choice about whether to live in a degraded environment). See also POGGE, *supra* note 44.

75. CIARAN CRONIN AND PABLO DE GREIFF, *GLOBAL JUSTICE AND TRANSNATIONAL POLITICS* 18 (MIT Press 2002).

*privileged individuals.* We might think of this as a sort of corollary of the argument that people have rights to a stable and clean environment, or the right to sustainable development. People (not just governments) are obliged, especially if they are affluent (but not if they are poor), regardless of their nationality or where they may reside, to act in ways that do not undermine others' environmental and sustainable development rights, and, if doing so is not a great hardship, they ought to aid those who suffer from a lack of those rights.

There is no attempt here to mediate among these and other philosophical viewpoints. Rather, they are offered to show that there is ample ethical justification for saying that, in the context of climate change, obligations of justice lie with capable persons everywhere, not just with capable states.

#### IV. Affluence and Climate Justice

It can be assumed that states would prefer that we not talk about climate change in cosmopolitan terms. States prefer the locus of rights and, albeit less so, obligations to remain squarely with them. Cosmopolitan justice threatens state sovereignty. While developing country governments certainly welcome greater obligation on the part of affluent individuals in affluent states to provide aid to the world's poor, on top of wealthy governments' existing ethical and legal obligations to do so, those governments would not want such burdens placed on their own affluent people. This is because the associated individual rights are generally anathema to them (and perhaps because that would include burdens for the individual governors themselves). To actualize cosmopolitan climate justice would likely bring into some question the good thing that developing states have now: concessional aid and investment linked to climate change. China, for example, has already experienced a minor windfall of investment under the climate convention's Clean Development Mechanism. In 2005 alone, the CDM brought an additional \$250 million investment into China, with double that expected within five years.<sup>76</sup> The International Energy Agency expects international carbon trading to bring China more than \$1 billion per year by 2010.<sup>77</sup> Any suggestion that affluent Chinese ought to be required to add to this as a matter of global justice would be a non-starter in China.

It is now routine for philosophers and even statespersons to argue

---

76. Antoaneta Beziova, "China Sends Smoke Signals on Kyoto Protocol," Inter Press Service News Agency, January 20, 2006, available at <http://ipsnews.net/news.asp?idnews=31842>.

77. *Id.*

that affluent people in affluent countries have obligations to the poor and destitute of the world.<sup>78</sup> It is also common to hear that rich tyrants in poor countries have obligations to their own people. Cosmopolitans like Singer rightly complain about the preoccupation with national boundaries and a charity-begins-at-home attitude, particularly in the United States.<sup>79</sup> They do this to point out the moral obligation to aid the poor abroad, irrespective of state borders. It is much less common to hear arguments that affluent people in poorer countries share the same obligation toward the world's destitute that exists among affluent people in affluent countries.

Nevertheless, if one accepts the cosmopolitan ethic (and logic), one is left with this rather obvious but closeted conclusion that the affluent in poor countries have the same obligation as affluent people in affluent countries to restrain their consumption and pollution. Is it fair to largely ignore these obligations? When there were relatively few affluent people in the developing world, as was the case until quite recently, we could overlook their impact on climate change and let them "free ride" on the limited obligations of their states, much as the rich have always been free riders. However, with the numbers of affluent and even wealthy people in the poor countries expanding rapidly into the tens of millions, the ethical and practical importance for them to take responsibility and act accordingly is no longer something we can ignore—at least not if we want to robustly combat climate change and address the injustices experienced by those people and communities most affected by it.

The familiar "polluter pays" principle ought to apply: each individual who pollutes is obliged to act and to aid if he is capable of doing so (i.e., he is affluent), regardless of whether that individual lives in a rich or poor state. Thus, all things being equal, a poor person (measured by some reasonable standard of purchasing power parity) in the United States might be less obligated to act on climate change than is an affluent person in, say, China or Chile, if the former pollutes less. There is even an argument to be made for going a bit easier on affluent people in the industrialized world, where people did not know until quite recently that they were doing harm to the global climate and because they are stuck in economic structures and with infrastructure premised on

---

78. See Singer, *supra* note 16 (for an example of the former); see Speech to the United Nations in New York from Gordon Brown (July 31, 2007), available at <http://www.number10.gov.uk/output/Page12755.asp>. The last two British prime ministers are fine examples of the latter. Of course, there are those who would argue that no such individual obligation across borders exists. See communitarian literature, for example, ALASDAIR MACINTYRE, *AFTER VIRTUE* (University of Notre Dame Press 1981); see also MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* (Cambridge University Press 1982).

79. SINGER, *supra* note 16, at 152.

the use of fossil fuels. And not all of those people have benefited greatly from the fossil fuel-based economies in which they live (compare, for example, the consequences of Hurricane Katrina for the people of rich New Orleans to those of poor New Orleans).

However, affluent people in less affluent countries *know* the harm they are doing even as their communities adopt the polluting ways and infrastructure of the developed world. Thus, the newly affluent people in developing countries arguably may have some greater moral obligation to keep their consumption down—or to bring it down if they have already started to consume more than they need—because they are not yet habituated to a highly consumptive lifestyle—and especially if they are not yet “trapped” in a national economy predicated on unnecessary consumption and pollution (as in the United States, where many even very poor people must drive old polluting cars to reach their workplaces or the nearest welfare office).

For example, affluent Chinese may have more obligation than do many or most affluent Canadians because the latter are saddled with infrastructure and longstanding habits that were created before they knew that climate change was a problem. Educated Chinese people (and their government, media, etc.) know better (or should) because scientific knowledge about climate change, and associated high-profile international diplomacy, has coincided with China’s economic rise.<sup>80</sup> Indeed, one might expect that history will judge affluent Chinese even more harshly than many people in North America, Australia and Europe because the former had (and still have, to a great extent) a choice about whether to jump on the consumption bandwagon. Of course the Chinese government is responsible and complicit. It is sending people on patriotic orbits of Earth and preparing to send Chinese to the moon while hundreds of millions of its own people live in squalor. At the same time, it is all but certain that among the first space tourists will be wealthy Chinese who have themselves conspired in the country’s environmentally harmful growth.<sup>81</sup>

While average per capita greenhouse gas emissions in China are well below the averages for the world and especially the developed world—but above those for the whole developing world<sup>82</sup>—a burgeoning

---

80. China’s shift to capitalism began in earnest about 1980, which is about the time the climate science started to become prominent.

81. See Agence France Presse, Seven Chinese apply to be space tourists (October, 26 2007), [http://www.space-travel.com/reports/Seven\\_Chinese\\_apply\\_to\\_be\\_space\\_tourists\\_999.html](http://www.space-travel.com/reports/Seven_Chinese_apply_to_be_space_tourists_999.html).

82. See WORLD RESOURCES INSTITUTE, STATE OF THE WORLD 2006 9 (W.W. Norton 2006) (By way of comparison, carbon emissions per person in 2004 were 0.8 tons in China, 0.3 tons in India, 2.5 tons in Europe, and 5.5 tons in the United States. From 1990 to 2004, total carbon emissions from China increased by 67 percent to 1,021 million tons



middle and upper class is hiding behind this average. It can do this for only so long. In many respects, China is really two countries: one still very poor, where per capita income and purchasing power is (too) low—and where “survival emissions” should go up—and another where income and purchasing power ranges from more than adequate to downright obscene—where “luxury emissions,” notably among China’s new super-rich elites, are multiples of Chinese and global averages, and indeed well above the averages of the major polluting states of the developed world. Similarly, in the rest of the emerging developing world, the growing middle classes, while still only minorities within their own countries, are consuming above their weight. Among Asia’s 3 billion people, increasing numbers are involved in discretionary material consumption.<sup>83</sup> As the spending on luxury goods and travel explodes in China and India, this practice of hiding behind their overall relative poverty becomes more and more perverse, not least because the majority of those who will suffer most from greenhouse gas emissions from these newly affluent people will be people living in the poorest parts of the world in the future.<sup>84</sup>

Environmental globalization means that we all increasingly affect each other regardless of where we live. However, the causes of our pollution, notably through our use of fossil fuel energy and other activities leading to emissions of greenhouse gases, are often manifested in pockets of affluent people in poor countries. These affluent individuals join the majority of people in the developed world in polluting the atmosphere, and its consequences are seen in pockets of poor people in the affluent states who join the majority of people in poor countries who are affected by climate change (e.g., many of hurricane Katrina’s poorest victims, who have yet to begin recovering their lives).

If typical Americans are equivalent to upper-middle class people in

---

per year, by 88 percent in India to 301 million tons, by 6 percent in Europe to 955 million tons, and by 19 percent in the United States to 1,616 million tons.). *Id.*

83. See Rajat Bhattacharya, *Rest of Asia to overtake Japan in economic race*, THE STANDARD, Dec. 30, 2005 (The number of people in Asia earning more than US \$5,000 per year was, by one estimate 80 million in China, 15 million in Thailand, 12 million in India, 12 million in Indonesia, 9 million in Malaysia and 6 million in the Philippines.). *Id.*

84. Central Intelligence Agency—The World Factbook: Field Listing GDP—Per Capita—(PPP), <https://www.cia.gov/library/publications/the-world-factbook/fields/2004.html> (last visited Mar. 14, 2008) (By way of comparison, PPP in the US was roughly seven times that in China in 2004 according to the CIA. This is across the entire Chinese population, which includes hundreds of millions of people earning very much less than the national PPP average. The obligation discussed here does not apply to those people, but instead to the affluent and wealthy in China—and everywhere else, regardless of the size of their *national* economy, its total PPP figure or per capita PPP.). *Id.*

the developing world,<sup>85</sup> it follows that we can at least say that everyone who is in the upper-middle class (or higher) in the developing world has about the same moral obligation to act as do typical Americans. It is also safe to say that the number of people who fit this category in the developing world is at least in the many tens of millions, and soon to be in the hundreds of millions. That is a lot of greenhouse gas. Cosmopolitan justice demands that we explicitly recognize this reality rather than ignore it in the international legal instruments on climate change. The solution is not in simplistic and unrealistic classifications of “Annex I” and “Non-Annex I” countries, where all citizens carry labels of rich and poor regardless of their real wealth and well being.<sup>86</sup>

Mahathir Mohamad, during his term as the Prime Minister of Malaysia, was one of those who strongly criticized the notion (which still prevails in many quarters, not least apparently in the Bush Administration White House)<sup>87</sup> that the world’s poor should cut their pollution. Mahathir argues that what the *rich* do is what matters:

We know that 25 percent of the world population who are rich consume 85 percent of its wealth and produce 90 percent of its waste. Mathematically speaking, if the rich reduce their wasteful consumption by 25 percent, worldwide pollution will be reduced by 22.5 percent. But if the poor 75 percent reduce consumption totally and disappear from this earth altogether the reduction in pollution will only be by 10 percent. It is what the rich do that counts, not what the poor do, however much they do it. That is why it is imperative that the rich change their life-styles. A change in the life-styles of the poor only, apart from being unfair, is quite unproductive environment-wise. But the rich talk of the sovereignty of the consumers and their right to their life-styles. The rich will not accept a progressive and meaningful cutback in their emissions of carbon dioxide and other greenhouse gases because it will be a cost to them and retard their progress. Yet they expect the poor people of the developing countries to stifle even their minute growth as if it will cost them nothing.<sup>88</sup>

It is very hard to disagree with this logic from both practical and

---

85. See *Marketplace* (National Public Radio Aug. 1, 2005).

86. Annex I countries include most developed states who signed the Framework Convention on Climate Change. Non-Annex I signatories are mostly developing states.

87. See Larry Elliott and Patrick Wintour, *Bush Agrees to CO2 Cut, with Strings Attached*, THE GUARDIAN, June 8, 2007, available at <http://www.guardian.co.uk/world/2007/jun/08/politics.g8>.

88. Mahathir Mohamad, *Statement to the U.N. Conference on Environment and Development*, in GREEN PLANET BLUES: ENVIRONMENTAL POLITICS FROM STOCKHOLM TO RIO 325-326 (Ken Conca, Michael Albery, and Geoffrey D. Dabelko eds., Westview Press, 1998).

ethical perspectives. What he argues to be unjust is indeed unjust. The problem is that he and other developing country politicians and statespersons, and their advocates in the developed world, have used this argument in the context of *international* negotiations on climate change. He used it, and rightly so, to help developing *states* avoid requirements that they limit their greenhouse gas emissions and other pollution at the expense of poverty eradication. Meanwhile, the “sovereignty” of rich people in Malaysia (of which there are many) and other developing countries to consume at will has been defended and even encouraged. One can only conclude that Mahathir is against people in the developed states polluting the planet, not his rich co-nationals doing exactly the same thing.<sup>89</sup>

Des Gasper’s description of modern India helps to demonstrate that the problem is not only the indifference of the affluent living in the developed countries:

If one walks the streets of a metropolis in India nowadays, one can sometime get a feeling that not only the rich but also increasing numbers of the professional classes have morally seceded from the nation. Many seem to live the same in various ways as Indian professional emigrants abroad, or foreign tourists, or those same tourists when back home in the North. The smartly dressed well-to-do proceed from gleaming cool office or home interiors, communicating to each other on their cell phones, through streets with many wretched begging people whom they generally ignore, to shops and hotels full of luxuries and imports from America, Britain and Singapore for which they can evidently afford to pay world prices. In the 1990s while consumerism reached new levels in India, public sector expenditures were squeezed. The affluent seem to have become semi-detached in their own country, inhabitants of a quasi-apartheid system moving further in the direction of Brazil or South Africa. In effect they declare that if the elites and middle classes of other parts of the globe are entitled to live in a certain way, then so are they—by the principle of equal real income (post-taxation) for equal work.<sup>90</sup>

Admittedly, the number of wealthy people in India is only in the tens or hundreds of thousands, compared to the country's population of over 1 billion. But the number of those wealthy people is growing, and already there are more than 53,000 “millionaire” households earning the equivalent of about \$232,000 per year.<sup>91</sup> In India—where headlines

---

89. By way of example, Mahathir was a big advocate of car production in Malaysia.

90. Des Gasper, *Beyond the International Relations Framework: An Essay in Descriptive Global Ethics*, JOURNAL OF GLOBAL ETHICS, 6-7 (2005).

91. Somini Sengupta, *India's nouveau riche eager to flaunt status symbols*, INT’L

read, “Splurge. Because you can now”<sup>92</sup>—the per capita carbon emissions of the most affluent 10 percent of urban dwellers was 13 times that of the poorest 50 percent of rural people in 1989-90.<sup>93</sup> To be sure, these often newly affluent are not yet collectively causing the same amount of harm as the rich countries’ affluent classes, but this does not absolve them of obligation.

The very good argument that Mahathir makes is another *distraction* from individual obligations that are increasingly part of the climate change problem and potential solutions to it. This way of thinking—diverting all of our attention to mostly selfish states—may have contributed to the failure of the climate change regime. If the rich in the poor countries were seen to be behaving responsibly, it would be much harder for the Americans and Australians to sustain their patently unjust argument that the developing world must act robustly before their governments will agree to do so. This means that common but differentiated responsibility among *states* is no excuse for some people in developing countries to delay cutting or limiting their greenhouse gas emissions.

Many of the world’s affluent and privileged will no doubt argue that climate change is really not their fault, and additionally that their personal contributions to climate change are really quite small. This is largely true, but of course if everyone who is affluent thinks this way, and behaves accordingly, the result can be catastrophic, especially as the number of affluent people grows. This practical truth is belied by the immorality of avoiding responsibility.

As Pogge argues with regard to global poverty, “Even a very small fraction of responsibility for a very large harm can be quite large in absolute terms. . . .”<sup>94</sup> In the case of climate change, affluent people consume disproportionately more and in so doing emit disproportionately more greenhouse gases than do the poor. Additionally, Pogge notes that, “Even if each privileged person typically bears only one billionth of the moral responsibility for the avoidable underfulfillment of human rights caused by the existing global order, each of us would still be responsible for significant harm.”<sup>95</sup> Pogge acknowledges that “nearly every

---

HERALD TRIBUNE, Feb. 26, 2006, available at <http://www.iht.com/articles/2006/02/26/news/wealthy.php> (citing a headline from HINDUSTAN TIMES, Jan. 12, 2006).

92. *Id.*

93. C.E. Karunakaran, *Clouds Over Global Warming*, CORPWATCH, Oct. 24, 2002, available at <http://www.corpwatch.org/article.php?id=4548>.

94. Pogge, *supra* note 74, at 170.

95. *Id.* at 192; *but see* Jamieson, *supra* note 63, at 10. Jamieson might say that this kind of causal connection should not serve as the primary basis for moral obligation in the case of global environmental change; rather, the ability to prevent or mitigate climate change is a stronger basis for obligation.

privileged person might say that she bears no responsibility at all because she alone is powerless to bring about a reform of the global order.”<sup>96</sup> He points out, however, that this “is an implausible line of argument, entailing as it does that each participant in a massacre is innocent, provided any persons killed would have been killed by others, had he abstained.”<sup>97</sup> While it might be hard for affluent people to consume less, we can at least work hard toward that end (as Pogge suggests in the case of human rights) and contribute to organizations working to “help prevent or mitigate some of the harms caused by the global order.”<sup>98</sup>

Where the present argument differs with Pogge, at least insofar as one extends his argument to climate change, is in his focus on the responsibility of citizens of wealthy countries.<sup>99</sup> In the up-and-coming developing countries, affluent people have choices and are actively involved in perpetuating and extending the global “order” that seems certain to hugely exacerbate the West’s excesses and thereby set climate change running wild. Indeed, some might say that the best opportunity to reform the current global order exists primarily in places like China; if affluent Chinese could avoid the greed and avarice of most Americans, they might set an example for people in the United States and affluent people throughout the developed world. In the words of Debra Satz in her critique of some of Pogge’s arguments, “[i]s a laid-off American steelworker, for example, really more responsible for global poverty [or, we might add, global warming] than a rich citizen of a poor country?”<sup>100</sup> Pogge’s emphasis is also on negative duties<sup>101</sup>—here this would mean not contributing to climate change—which is a good and essential start. However, the affluent people of the world ought to do more; we also ought to aid the poor who suffer from the effects of climate change. As Jamieson has said, the behaviors responsible for climate change “are part of a lifestyle that is characteristic of the rich but largely foreign to the poor. To a great extent, global environmental change involves the rich inflicting harms on the poor in order to maintain their profligate lifestyles.”<sup>102</sup> This is essentially what Pogge is arguing; we ought to help others because we cause them harm.<sup>103</sup> We might say that we ought to act regardless of whether we cause the harm, but we have even more obligation to do so, and to provide aid, if we are indeed the cause.

---

96. Pogge, *supra* note 74, at 170.

97. *Id.*

98. *Id.* at 171.

99. *Id.* at 175.

100. Satz, *supra* note 56 at 51.

101. *See id.* at 47.

102. Jamieson, *supra* note 63, at 9.

103. POGGE, *supra* note 44.

Wolfgang Sachs is one of the few people who has been vocal about obligations of *all* of the world's affluent people. He is critical of our usual focus on what he calls the "zombie category of the nation-state":

The nation-state is an artifact. It's a category that does not reflect reality adequately, but we are stuck with it for diplomatic reasons, because there are people sitting there negotiating. Most importantly, what is being covered up by that artifact is that the real gulf in the world is not between the Northern and the Southern countries, but between the global middle class and the marginalized majorities, and that a quarter to a third of the global middle class is sitting in the South. . . . You have a Germany sitting right in India. Germany has 82 million inhabitants, not all of them are really rich; I mean, there are easily 70 million middle class in India.<sup>104</sup>

In Sachs's view, the most important questions of justice and equity are not those to do with states; rather, "[t]he real equity issue is between the global middle class and the marginalized majority. They are . . . the victims of climate change. Now that is the serious equity question. It's a different level. There are two levels of equity in the climate discussion. And that's the more serious one."<sup>105</sup>

#### V. Implications for International Environmental Law and for the Individual

What might cosmopolitan climate justice mean for international environmental law and for individual behavior?

##### A. *Implications for International Environmental Law*

To say that affluent individuals have obligations to act and to aid is to establish cosmopolitan obligations for individuals. Nevertheless, state governments remain very important because they have a role in facilitating action by individuals on their cosmopolitan obligations. Taxation, regulation and infrastructure come to mind. Cosmopolitanism would, Brian Barry suggests, "be best satisfied in a world in which rich people wherever they lived would be taxed for the benefit of poor people wherever they live," thereby considerably derogating sovereign states while allowing them a role for raising funds and their international

---

104. EcoEquity interview with Wolfgang Sachs, Senior Research Fellow, Wuppertal Institute of Climate, Environment and Energy (May 18, 2001) *available at* [http://www.ecoequity.org/ceo/ceo\\_3\\_4.htm](http://www.ecoequity.org/ceo/ceo_3_4.htm).

105. *Id.*

organizations a role for distributing them.<sup>106</sup> This would include, among other things, taxing international airline flights, luxury goods and other non-essential polluting activities and goods.<sup>107</sup> The United Nations could administer the funding to limit climate change and aid those who suffer from it the most. Some or most of the money raised from these taxes might be deposited into one of the existing funds, such as the Global Environment Facility, the Special Climate Change Fund, the Least Developed Country Fund, and/or the Kyoto Protocol Adaptation Fund.<sup>108</sup> There might be a new fund, perhaps a Future Climate Fund, specifically designed to aid future generations, perhaps funded primarily from a tax on fossil fuels used by affluent people everywhere, to help future generations cope with climate change caused by past, present and future greenhouse gas emissions.

One way of raising the money, suggested by Barry, is to tax states based on their proportional GNP, but another way might be,

taxes on infliction of global environmental damage. The object here would be two-fold. In part it would be driven by considerations of equity: those who make use of inherently limited facilities should pay, and those who impose burdens on the rest of the world should compensate for the damage they cause. But it would also work to modify behavior by providing an incentive to economize on scarce resources, and to reduce pollution.<sup>109</sup>

Among the specific measures could be a carbon tax on greenhouse gas emissions, which Barry says would ideally be collected “directly from the users or polluters,” which is preferable to taxing states based on per capita GNP because “individual income acts as a proxy for resource use wherever the person with income lives.”<sup>110</sup> More of the money should come from earmarked climate change-related taxes on non-essential activities. It can be assumed that this would raise new money and

---

106. Barry, *supra* note 68, at 153. To avoid the familiar problem of the rich in poor countries stealing the funds, the transfers might have to be made to individuals, not governments.

107. As always, the super rich will simply pay taxes on activities that are not regulated.

108. For discussions of these funds, see Hermann E. Ott, *International Environmental Agreements: The Bonn Agreement to the Kyoto Protocol: Paving the Way for Ratification*, 1, 4 (December 2001): 469-476; Saleemul Huq, *The Bonn-Marrakech Agreements on Funding*, CLIMATE POLICY 2 (2002): 243-46; Christiaan Vrolijk, *A New Interpretation of the Kyoto Protocol: Outcomes from The Hague, Bonn and Marrakesh*. Sustainable Development Programme Briefing Paper No. 1 (London: Royal Institute of International Affairs, 2002); Suraje Dessai and Emma Lisa Schippe, *The Marrakech Accords to the Kyoto Protocol: Analysis and Future Prospects*, GLOBAL ENVIRONMENTAL CHANGE 13, 149-53 (2003).

109. Barry, *supra* note 68, at 155.

110. *Id.*

restrain harmful activity. Here we see the affluent aiding and acting to address climate change, in congruence with claims of cosmopolitan justice. Actualizing such a scheme would admittedly run up against all sorts of practical obstacles, but Barry confronts this head on: “unless the moral case is made, we can be sure nothing good will happen. The more the case is made, the better the chance.”<sup>111</sup> Importantly, none of this absolves affluent governments from continuing and increasing the types of international transfers that obtain at present or are envisioned in the context of the interstate climate change regime.

Governments can also assist the actualization of cosmopolitan climate justice by regulating more strictly the non-essential polluting activities of residents, with emphasis on such activities particular to affluent people. Along with taxes, this will deter harmful behaviors and spur development of technologies that allow people to do things for their enjoyment without harming other people (or other species) in the future. The most obvious activity to regulate is the use of fossil fuel energy, for example by banning large private automobiles so common in the United States, restricting the use of all private automobiles where their use is not necessary, and restricting fossil fuel-intensive recreation.

Insofar as these regulations and the taxes suggested above adversely affect poor people, as heavy restrictions on international leisure travel might hurt people in poor parts of the world dependent on tourism, governments should step in with assistance. The needs of present generations should not be ignored for those of the future; the present does not trump the future and even some poor people may have to rely on different forms of income in light of the consequences for climate change. But in so doing, those poor people who might suffer from the changes in lifestyle among the affluent ought to be compensated so that they can live happy and decent, albeit differently financed, lives.

Taxes and regulations are states’ sticks to persuade or force affluent people to live in ways that are consistent with cosmopolitan climate change obligations. There should also be carrots, perhaps in the form of tax rebates for activities that are good for the environment or to encourage new, more environmentally benign activities. At the very least, governments ought not create economic and other structures—and infrastructures—that make it more difficult or nigh impossible for individuals to act on their cosmopolitan obligations. An example is China’s repeat of the mistake made in the West, especially the United States: building highways and encouraging a car culture at the expense of mass transit.<sup>112</sup> Indeed, in China, bicycle lanes are being *removed* from

---

111. *Id.* at 156.

112. Mass transit systems are indeed being built in China, but the same infatuation



cities to make way for cars, not being installed as sometimes now happens in Europe and North America.<sup>113</sup>

Governments ought to instead do more to create economic and physical infrastructures that are consistent with cosmopolitan climate justice. This would include creating new, efficient and comfortable (and affordable) mass transit systems, while making the use of cars less attractive in the medium and long term (unless a new climate-friendly personal transport vehicle is developed), and creation of distributions systems for alternative energy (perhaps hydrogen). Governments could also build new “virtual” infrastructures, such as educational objectives premised on a “green,” much more environmentally benign future. Instead of presidents and prime ministers insulting citizens’ intelligence and ethics by saying that climate change is really not a problem and that the world’s poor are unfairly avoiding responsibility (as we have heard from Washington, at least until very recently), leaders could push for education that promotes responsible, ethical behavior on the part of the world’s affluent people, perhaps by encouraging them to spend more time with people than with things.

This would require new economic assumptions, namely those that are not premised on physical consumption and economic “growth” as currently measured. As Sachs points out, “in a closed environmental space, the claim for justice cannot be reconciled any longer with the promise of material-intensive growth, at least not for the world’s majority. For this reason, the quest for justice will need to be decoupled from the pursuit of development with a capital ‘D.’”<sup>114</sup> Governments ought to start refocusing their societies and economies, through new economic policies and education, toward emphasizing happiness over consumption:

An emphasis on qualitative betterment rather than economic growth, while not appropriate for the poor among us but certainly reasonable for the rich, could significantly reorient the economic forces that animate the world. If codified in thought and cultivated in widespread practices, qualitative development could provide meaningful avenues for investing savings from lifestyle choices and thereby create a more environmentally benign economic system.<sup>115</sup>

---

with the car and responses to the consequences seen in the United States and elsewhere—more highways and more ring roads—are underway with a vengeance.

113. GALLAGHER, *supra* note 23, at 7-8.

114. Wolfgang Sachs, *Development: The Rise and Decline of an Ideal*, WUPPERTAL PAPER NR. 108, 24 (August 2000), available at <http://www.wupperinst.org/Publikationen/WP/WP108.pdf>.

115. Paul Wapner and John Willoughby, *The Irony of Environmentalism: The Ecological Futility but Political Necessity of Lifestyle Change*, ETHICS AND

Governments already do most of these things to varying, if grossly inadequate, degrees. But what is needed is new impetus, and new policies, based on cosmopolitan obligations and the contract that governments have with citizens to assist them in living a good life where they can and do fulfill their obligations to others, obligations which in this case almost invariably will benefit fellow citizens as well as foreign nationals. This is a case where doing the right (cosmopolitan) thing is not only good for others but good for oneself and one's compatriots. For developing countries, the "right" to develop and pollute the way the affluent countries have done is trumped by the obligation not to do so insofar as alternatives are available. Instead (by way of example), the Chinese government has chosen a highly polluting path to development, for which it has rightly condemned the developed world, rather than trying very hard to advance in a more environmentally sustainable way. This has ethical implications for the government (interstate justice) and for affluent Chinese people (cosmopolitan justice). It means that the rich *states* ought to aid their poorer counterparts as they attempt to create the infrastructures that allow *people* to act on (cosmopolitan) climate justice.

*B. Implications for Individuals*

Short of people acting and organizing themselves to implement cosmopolitan climate justice, of which there are some signs at the local level in Europe and North America, but which hardly approach what is needed to halt global warming, we cannot ignore states. Perhaps Luigi Bonante has a point when he writes that "the application of criteria of justice is aimed (materially and effectively) at individuals but also that, *without* the mediation of the state, no justice can be really achieved."<sup>116</sup> However, some might not agree. For example, Michael Mason argues that there is environmental responsibility across borders because "both state and non-state producers of significant harm have a moral obligation effectively to consider the interests of all affected parties, whether those parties are fellow co-nationals or foreigners."<sup>117</sup> This requires "an appreciation of expressions of well-being not mediated by states."<sup>118</sup> Jamieson has pointed out that, in the case of global environmental justice, the notion that governments have duties to one another is problematic. Given the nature of environmental problems and the

---

INTERNATIONAL AFFAIRS 19, 86 (2005).

116. LUIGI BONANTE, *ETHICS AND INTERNATIONAL POLITICS* 118 (University of South Carolina Press 1995), (1992).

117. MICHAEL MASON, *THE NEW ACCOUNTABILITY: ENVIRONMENTAL RESPONSIBILITY ACROSS BORDERS* x. (Earthscan 2005).

118. *Id.* at 12.

environmental interests and actions of different individuals and organizations, “rather than thinking about the problem of the global environment as one that involves duties of justice that obtain between states, we should instead think of it as one that involves actions and responsibilities among individuals and institutions who are related in a variety of different ways.”<sup>119</sup> Consequently, the common notions of global environmental justice (e.g., obligations of states to aid one another in this context), ought to

be supplemented by a more inclusive ecological picture of duties and obligations—one that sees people all over the world in their roles as producers, consumers, knowledge—users, and so on, connected to each other in complex webs of relationships that are generally not mediated by governments. This picture of the moral world better represents the reality of our time in which people are no longer insulated from each other by space and time. Patterns of international trade, technology, and economic development have bound us into a single community, and our moral thinking needs to change to reflect these new realities.<sup>120</sup>

What comes from these views is the need to do more than leave it to states to implement climate justice. We need to correct the preoccupation with governments and states, and focus much more on the needs, obligations and actions of individuals. Cosmopolitan climate justice means that obligations to act on climate change, and to aid those people harmed by it, apply to all affluent individuals regardless of where they live. If governments do more by way of using taxes, regulations, infrastructure and education to change behaviors, many people would be pushed to do the right thing. However, if governments are not up to the task (which is likely until environmental conditions grow very bad indeed), affluent individuals will have to find it within themselves to act on cosmopolitan obligations. They should act responsibly by, insofar as possible given where they live and the structures that rule their lives, cutting their greenhouse gas emissions if they are already emitting more than their fair share of greenhouse gases or, if they are not emitting much more than their fair share of greenhouse gases, by limiting them to somewhere near that level.<sup>121</sup> Even if it is not clear where this limit is set, affluent people should do everything they reasonably can to limit

---

119. DALE JAMIESON, *MORALITY'S PROGRESS: ESSAYS ON HUMANS, OTHER ANIMALS, AND THE REST OF NATURE* 306 (Clarendon Press 2002).

120. *Id.* at 306-07.

121. A fair share of greenhouse gas emissions is arguably equal per capita emissions. I will avoid that debate here, although I realize that it is crucial to helping people decide exactly how to behave. See Paul Baer et al., *Equity and Greenhouse Gas Responsibility*, 289 *SCIENCE*, 2287 (2000).

their greenhouse gas emissions. Non-essential polluting activities should be avoided.<sup>122</sup>

This suggests a lot about the role of affluent people in developing countries. For example, the more affluent people in China—those living more like Americans, for example by driving private cars and living in new developments in the suburbs—have an obligation to cut their (fossil-fuel) energy use and to aid those in China and beyond who will suffer from climate change. To be sure, they would be most likely to aid only fellow Chinese, which is most practicable, but their obligation to aid those in other developing countries (and, in the future, in developed countries) still exists. Deng Xiaoping implored the Chinese people to adopt a Western economic lifestyle, and declared that “to get rich is glorious.”<sup>123</sup> This is exactly the wrong thing to do, environmentally speaking. Furthermore, there is ample evidence that this will not make affluent Chinese any happier,<sup>124</sup> and there is a strong argument that more wealth—more economic growth in national terms—is terrible for the environment even when not accompanied by more individual consumption (because money not spent, unless stuffed in the mattress, is invested in harmful material production).<sup>125</sup> Basic material needs must be met, but the basic needs of China’s and the rest of the world’s vast poor ought not be trumped to fulfill the limitless material desires of China’s and the world’s affluent people. Instead of living more like Americans, affluent Chinese and Indians ought to upstage them by showing how living simpler, more environmentally benign lives can make them happier and can be more rewarding. The same can be said for affluent people in other developing countries, and of course applies fully to most people in the developed world.

Singer argues for education to achieve this sort of objective:

In a society like America, we should bring up our children to know that others are in much greater need, and to be aware of the possibility of helping them, if unnecessary spending is reduced. Our children should also learn to think critically about the forces that lead to high levels of consumption, and to be aware of the environmental

---

122. The palliative of buying emissions credits from a website, while possibly helpful, is inadequate to fulfilling the cosmopolitan obligations. The pollution itself ought to be limited.

123. See Harris, *supra* note 10.

124. See ETHICS OF CONSUMPTION: THE GOOD LIFE, JUSTICE, AND GLOBAL STEWARDSHIP 502 (David A. Crocker and Toby Linden, eds., 1998) (for discussions of how consuming less can actually make people happier, and how consuming more does not make them so).

125. Wapner and Willoughby, *supra* note 115, at 77-89.

costs of this way of living.<sup>126</sup>

How could anyone disagree with this proposal (not least because it appears that Singer's audience is mostly American)? At the risk of being provocative, one might say that only a narrow-minded (free-market obsessed) individual could think otherwise. But what if we are to say the same of people in China and India? Perhaps Singer would say that his argument applies to them as well. At present, however, millions of children are being raised in affluent families in developing countries whose educational systems are most decidedly not advocating restraint on consumption.<sup>127</sup>

These notions imply that affluent people everywhere will have to live differently. They will have to enjoy airline travel much less because it quickly puts them over their fair per capita share of lifetime greenhouse gas emissions. One easy new behavior that the affluent could adopt would be to stop eating animals because meat production uses large amounts of fossil fuel energy and other resources and produces methane, a powerfully destructive greenhouse gas. Affluent individuals also ought to push for political and economic changes that will lead to widespread environmental action by more individuals.<sup>128</sup> Even where this not so easy, as in authoritarian states like China, affluent individuals can and should still act to restrain their consumption, at least thereby contributing to what should be a global collective effort of the affluent. Put another way, just because one cannot change his national system or because the international climate change regime does not encourage individual responsibility, there is no excuse to "live like Americans." To do so, at least in a material sense, is immoral; it is a violation of cosmopolitan justice and a recipe for climate disaster.

At present, most of us follow (although we would not admit as much) the (un)ethical concept of "us-here-now": "to deny that we have obligations to any but present generation or those living now, to deny that we have obligations to non-humans, and to deny we have obligations to human beings outside our own society" and state.<sup>129</sup> However, without entering a long discussion on the topic, living a life of *sufficiency* seems to be the best ethical and environmental course. Sachs argues that,

the move toward models of frugal use of wealth among the affluent is a matter of equity, not just of ecology. However, conventional development thinking implicitly defines equity as a problem of the

---

126. Singer, *supra* note 16, at 164.

127. Of course there are exceptions, just as there are in North America and Europe.

128. *But cf.* Wapner and Willoughby, *supra* note 115.

129. NIGEL DOWER, *WORLD ETHICS: THE NEW AGENDA* 161 (Edinburgh University Press 1998).

poor. But [in] designing strategies for the poor, developmentalists worked towards lifting the bottom—rather than lowering the top. The wealthy and their way of producing and consuming weren't under scrutiny, and the burden of change was solely heaped upon the poor. In future, however, justice will be much more about changing lifestyles of the rich than about changing those of the poor.<sup>130</sup>

Sachs identifies an obligation of the affluent everywhere: “the global middle class, which includes Southern elites, have got to search for forms of well-being which are capable of justice.”<sup>131</sup> The world's affluent are having an adverse impact on the environment and everyone (including future generations of people), especially the poor and the weak, who depend upon it. This is unjust. We cannot know our precise individual impact on them now or in the future. Rather than use that as an excuse for doing nothing, we ought to consume what we need from the earth to survive and to fulfill our basic needs, and perhaps a bit more, doing all we reasonably can to limit the impact of that consumption, and no more. The affluent ought to consume what they need, full stop. By behaving this way, affluent individuals *everywhere* would be actualizing cosmopolitan justice.

Affluent individuals also ought to *aid* those who are suffering from climate change and those who will suffer in the future. They should, along with governments, aid current sufferers because they have almost certainly benefited indirectly (at least) from past pollution that is causing present harm. They should aid future sufferers because their emissions of greenhouse gases during their lives will affect people in the future, particularly the poor of the future (who will mostly live in poor countries of the future, as it happens). Obligation to act—to limit our own contributions to greenhouse gas concentrations in the atmosphere—is a negative responsibility because we “participate in, and profit from, the unjust and coercive imposition”<sup>132</sup> of climate change on those who will suffer from it the most, and the obligation to *aid* those who are suffer or will suffer from the climate change is a positive responsibility because we “could improve the circumstances”<sup>133</sup> of those sufferers. As Thomas Pogge puts it, “[t]hose, usually the affluent, who make more extensive use of the resources of our planet should compensate those who,

---

130. Sachs, *supra* note 114, at 25.

131. EcoEquity interview with Wolfgang Sachs, *supra* note 104.

132. Using the words Thomas W. Pogge in his argument about severe global poverty. Thomas W. Pogge, *A Global Resources Dividend*, in *ETHICS OF CONSUMPTION: THE GOOD LIFE, JUSTICE, AND GLOBAL STEWARDSHIP* 502 (David A. Crocker and Toby Linden, eds., 1998).

133. *Id.*

involuntarily, use very little.”<sup>134</sup> According to Attfield, “carbon emissions which exceed one’s fair share of agreed totals amount to deprivation for others, and thus amount to harm that requires compensation.”<sup>135</sup>

A new fund for the purpose of providing climate change-related aid could be set up, perhaps again administered by the United Nations, to receive donations from affluent individuals, or money could be given directly to a Future Climate Fund along with tax revenue from governments. Individuals can also give money to nongovernmental organizations doing credible work to alleviate the suffering of those affected by climate change now and in the future. The money should also be used to assist the poor of the world to live less polluting lives without denying them health and happiness (i.e., to promote environmentally sustainable development). Given that this responsibility to aid is largely (but not wholly) based on responsibility for suffering, affluent individuals in affluent states have more obligation to provide aid because they benefit more from their own and others’ past pollution. However, the responsibility of affluent people in less affluent countries to aid starts from the moment they live an affluent life, and of course increases the more they consume and pollute.

Singer’s arguments regarding aiding the world’s poor are an appropriate model:

Not all residents in rich countries have income to spare, after meeting their basic needs; but . . . there are hundreds of millions of rich people who live in poor countries, and they could and should give too. We could advocate that everyone with income to spare, after meeting their family’s basic needs, should contribute a small amount of their income to organizations working to help the world’s poorest people.<sup>136</sup>

Singer proposes that

anyone who has enough money to spend on luxuries and frivolities so common in affluent societies should give at least one cent in every dollar of their income to those who have trouble getting enough to eat, clean water to drink, shelter from the elements, and basic health care (all of which, we might add, will be more difficult to get with climate change). Those who do not meet this standard should be seen as failing to meet their fair share of a global responsibility, and

---

134. *Id.* at 510.

135. ATTFIELD, *supra* note 42, at 94 (drawing on Shue); *see generally* Shue, *supra* note 62.

136. SINGER, *supra* note 16, at 193 (emphasis added).

therefore as doing something that is seriously morally wrong.<sup>137</sup>

Here we see the kind of explicit discussion we need much more of, alongside discussions of interstate obligations in the context of climate change.

In sum, if a person's emissions of greenhouse gases are above an acceptable global per capita average (currently and for their lifetime) *and* his or her basic needs are met, and he or she is significantly above the poverty level in his or her local community (how this level is defined is of course important),<sup>138</sup> then he has an obligation to bring those emissions down at least to an acceptable global per capita amount that would prevent climate upset (or as near as possible, given his or her circumstances). If a person's lifetime emissions exceed his or her share of the global per capita limit, that person is also obliged to aid those who suffer from climate change now and especially in the future, at least insofar as his or her excess emissions were something he could control, and arguably, he or she ought to do this even if his personal emissions are low.

## VI. Conclusion

As every day passes and increasing numbers of people join the affluent classes of the world, a cosmopolitan ethic of climate change becomes more urgent. Interstate climate justice has proved to be impotent as a model for confronting the cascading threats of global warming and climate change. Indeed, the international preoccupation with interstate justice, and what we might call a sort of pathological focus on it by diplomats, activists and scholars, may be part of the problem. A possible cure for this pathology, or at the very least one key part of a cure, may be found in much more serious consideration of cosmopolitan climate justice.

It follows from what has been said here that diplomats and others devising future international treaties on climate change should stop talking exclusively about national obligations. Instead, they should talk much more about individual obligations (of affluent persons) and consider these obligations when thinking about the national policies that will be required to implement the treaties. More generally, international

---

137. *Id.* at 194.

138. Official poverty levels vary greatly, with some people in "poverty" in wealthy countries well off indeed by global standards, while many people above official poverty lines in many poor countries still lack many basics. Consequently, the level chosen must provide for all basic needs and a reasonable level of human development (e.g., it might be set to include higher education) without being perversely generous for some or stingy for others.



environmental laws ought to be consciously designed to spread the burdens of preventing and addressing global environmental pollution. In particular, diplomats should stop negotiating agreements that permit affluent people in certain places to avoid all responsibility simply because no *state* obligations pertain. Most people in the rich countries are of course the most to blame, but it may be counterproductive (and unfair, albeit unfair to those who more often than not treat others unfairly) for diplomats, leaders and international environmental treaties to keep sending the message to the American middle class that they should drive their cars less while they watch Chinese roads fill with the same vehicles.<sup>139</sup>

Some people will strongly disagree with the idea that we need to focus more on individual obligations in the context of international environmental law. For example, in questioning the relevance of Peter Singer's utilitarianism in the case of climate change,<sup>140</sup> political scientist Matthew Paterson complains that,

Singer's version places the location of obligation also at the level of the individual, rather than at the level of social and political institutions. Therefore, while this might be a guide to action for individuals (for example, at the crude level, "stop using your car to help those in small island states"), it is not clear how political institutions should respond.<sup>141</sup>

This is because it is difficult for them to decide how to do so (e.g., discourage the use of cars or increase their efficiency). They have competing obligations and "the relationship between the intention of the action and its result is much less clear than in the case of individuals."<sup>142</sup> However, this seems to be a strong argument *for* individual action: there is a clearer "relationship between the intention of the action and its result." A lack of this clarity is hardly an excuse for governments to do nothing, but it need not be one or the other: both individuals and states (and other social and political actors) can and should act.

Paterson has other complaints about the utilitarian/individual approach and has remarked that it "may well be impossible to apply at the global level. The complexities involved in global warming lead to it being impossible to ascertain what might improve the general level of

---

139. This is a slight exaggeration because the Chinese government has mandated more stringent fuel-efficiency standards for China's cars than obtains in the United States.

140. See generally Singer, *supra* note 66.

141. Matthew Paterson, *International Justice and Global Warming*, in BARRY HOLDEN, ED., *THE ETHICAL DIMENSIONS OF GLOBAL CHANGE* (St. Martin's Press 1996), p.190.

142. *Id.*

welfare” and “most importantly, global warming throws up great questions concerning the *meaning* of human welfare. Do we value material goods and economic growth over risks to do with climate change impacts and so on?”<sup>143</sup> Given the scale of harm and suffering that is on the horizon, the answer becomes less and less difficult to see. Regardless, if we care, morally and ethically, about individual responsibility and action, none of this matters very much even though it matters in practice (but not as much as Paterson argues) because people presumably will need to be nudged to behave ethically. More generally, these criticisms, while worthy of consideration, seem to be (unintentional) foils that deflect obligation away from (affluent) persons and onto (affluent) states. However, both are ethically obliged to respond to climate change.

We ought to be sympathetic to those who point out that looking at per capita emissions identifies the United States as far and away the world’s greatest polluter: most people there pollute heavily, even grotesquely, and it was, until recently overtaken by China, the largest national source of greenhouse gas pollution (and most other pollution).<sup>144</sup> This is very unfair.<sup>145</sup> Developing countries rightly focus on the unjust *luxury* emissions of the rich versus the *survival* (or subsistence<sup>146</sup>) emissions of the poor, noting that the former ought not come at the expense of the latter. But developing countries are talking about the luxury emissions of the rich in rich countries. They almost never talk about the luxury emissions of the rich in *poor* countries. It is as though those people do not exist in ethical terms. To be sure, their practical importance has been much less than that of people in the developed world, but that is changing very rapidly. While nobody says it outright, we are almost saying that the luxury emissions of the affluent in poor countries are in some sense in the same ethical category as survival emissions of poor people in poor countries. Cosmopolitanism by definition rejects the negligence that leads to this result; ethical obligations (and rights) exist regardless of nationality. Consequently, the affluent in Shanghai have just as much of an ethical obligation to

---

143. *Id.*

144. See generally International Energy Agency, <http://www.iea.org> (last visited March 12, 2008). As pointed out above, while China has overtaken the United States in aggregate emissions, its average per capita emissions will remain far lower for a long time to come. See generally Netherlands Environmental Assessment Agency, <http://www.mnp.nl/en/index.html> (last visited March 12, 2008).

145. See generally ANIL AGARWAL AND SUNITA NARAIN, *GLOBAL WARMING IN AN UNEQUAL WORLD: A CASE OF ENVIRONMENTAL COLONIALISM* (Centre for Science and Environment 1990).

146. See generally Henry Shue, *Subsistence Emissions and Luxury Emissions*, 15 *LAW AND POLICY* 39, 39-59 (1993).

consume less and limit their greenhouse gases as do the rich in New York. As the number of the former grows, we ought to acknowledge the importance of this in practical terms, in the process being more ethically consistent.

The historical evolution of international social justice has looked something like this:

(1) states had very few if any obligations to other states, apart from non-intervention and perhaps respecting emissaries; this stage lasted until the last century;

(2) affluent states now have some obligations to poor states, certainly to aid in case of widespread famine and major natural disasters; this stage arguably became entrenched in the last century, especially during its latter half; and

(3) affluent states have some obligations, albeit not necessarily legally binding ones, to individuals abroad who are very badly off (e.g., aiding those persons suffering from endemic poverty or widespread human rights abuses).<sup>147</sup>

We now seem to be in a fourth stage in which there is some agreement that affluent *individuals* in wealthy states have obligations to people in poor states suffering from severe poverty (and other major ills). This is an important and positive development. What one might hope for now is an extension of this most recent stage of development to include the obligations of affluent individuals *everywhere*. This would bring us to a fifth stage in the evolution of international social justice that is characterized by cosmopolitanism: a world that does not merely see people in poor countries as objects of assistance but, if they are fully capable and especially if they are affluent, a world that also sees them as holders of obligations—obligations to assist those who are badly off in their own countries, to help the poor in other states, and to work toward ending the harm that they do to people everywhere.

The general question of interstate climate justice is settled; nobody is arguing very vigorously that the developed world does not have special obligations. There remains much debate about the details, to be sure. Diplomats argue about how to implement common but differentiated responsibility among states, not whether to do so. However, the general question of global, *cosmopolitan* climate justice seems still very much unsettled. We have not decided whether certain *people* have responsibility for justice toward others, especially if those people and the others we are concerned about are both living in poor countries. At the very least, insofar as one accepts a standard of ethics

---

147. See generally DAVID H. LUMSDAINE, *MORAL VISION IN INTERNATIONAL POLITICS: THE FOREIGN AID REGIME, 1949-1989* (Princeton University Press 1993).

that identifies behavior harmful to others in this context as being wrong, we have, by definition, an ethical deficit. We have devoted so much diplomatic and philosophical capital to arguing for interstate justice that we avoid looking at the actual locus of environmental harm, which is the individual and, from an ethical perspective, especially the affluent individual with a major impact on climate and a choice about whether to end or exacerbate that impact. The solution to our ethical deficit, and climate change, is, at least in large part, cosmopolitan justice. Ultimately what that means is a combination of political *and* personal morality, and international environmental laws to match.

