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## Towards a Theory of Pure Procedural Climate Justice

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**ABSTRACT** *A challenge for the theorising of climate justice is that even when the agents whose actions are supposed to be regulated are cooperative and act in good faith, they may still disagree about how the burdens and benefits of dealing with climate change should be distributed. This paper is a contribution to the formulation of a useful role for normative theorising in light of this bounded nature of climate justice. We outline a theory of pure procedural climate justice; its content, function in relation to international climate diplomacy, and justification. The theory is 'pure' in the sense that it does not rely on an independent criterion of what are just outcomes in negotiations of climate responsibilities. Rather, it specifies procedural fairness norms, such as transparency, reciprocity and participation, which make the process of negotiation fair independently of which account of substantive climate justice happens to be correct. Such procedural fairness norms are justified in part by being expressions of an ideal of a reasonable negotiator, an ideal which itself commands respect. They are also justified as means to an effective coordinated response to dangerous climate change in virtue of their capacity to create trust, predictability and accountability.*

### 1. Introduction

Prior to the Paris Agreement<sup>1</sup>, which has been described as 'a remarkable reversal of fortune for the UN-sponsored climate negotiations'<sup>2</sup>, international climate politics was in a deadlock.<sup>3</sup> Little or no progress on coordinating an effective global response to climate change was made during the first two decades of climate negotiations; greenhouse gases kept pouring into atmosphere at an increasing pace. A decisive factor behind the impasse was the persistent disagreement about how climate responsibilities should be distributed between countries.<sup>4</sup> The different proposals brought to the table were all found unacceptable. Developed countries objected to proposals they thought would compromise accustomed ways of living or threaten international competitiveness, and so demanded reciprocal commitments from developing countries, which in turn saw that as jeopardising poverty reduction and economic development. The distribution of the upfront costs of climate change abatement was thought to lead to unacceptable trade-offs.

The Paris Agreement is premised on the expectation that much of this normative disagreement can be left unresolved in coordinating an effective global response to climate change. Countries will only need to agree on the way in which they formulate and communicate the climate actions they intend to take, but not on what specific actions they should take or on what reasons should guide such decisions. The Paris Agreement is a procedural turn of international climate diplomacy: a shift from the 'what' and 'why'-questions to the 'how'-questions. The formerly predominant idea that the countries should agree on what are fair shares of the burdens of dealing with climate change is abandoned. In its place, the Paris Agreement outlines a pledge and review system.<sup>5</sup> Normative guidance still has a role to play. It is just that the normative expectations are placed not on substantive questions about fair burden sharing but rather on fair procedures.

To the extent that climate ethics can and should serve some supportive role to the practice of the UNFCCC<sup>6</sup>, it is now imperative that it too shifts its focus to procedural normative questions. The substantive questions, which climate ethicists so far have been largely concerned with<sup>7</sup>, have

become less practically relevant. However, questions of procedural fairness and equity are far from obsolete. Climate ethicists could contribute to the critical scrutiny of proposed procedural norms and help to develop a robust procedural framework for international climate politics. So far, only very little has been written on the topic by climate ethicists.<sup>8</sup> Against this background, this article outlines a theory of procedural climate justice to facilitate effective climate action under the Paris Agreement.

The overarching aim of the paper is to delineate the role and function of normative theorising in relation to climate policy-making. To do so, we shall begin by describing a challenge any practically oriented theory of climate justice faces, namely how to handle the deep and persistent moral disagreement that pertains to climate politics. Even if the relevant agents were to exhibit reasonableness, by bringing to the negotiation table only claims that are morally defensible, an effective and fair agreement on the distribution of the necessary climate actions would still not emerge. This characteristic, which we call *the bounded nature of climate justice*, may partly explain the lack of progress in international climate politics. It is at any rate a challenge to the theorising of climate justice.<sup>9</sup>

We shall investigate what normative theorising can and cannot be expected to do within the confines set by the bounded nature of climate justice. Our main proposition is that normative theorists interested in contributing to the formation of a just and effective climate regime should do so by formulating a theory of *pure procedural climate justice*. A theory of procedural justice is ‘pure’ if it does not rely on an independent criterion of what makes an outcome just, but rather focuses on what makes for a fair procedure. We shall outline such a theory in section 5 and describe what it can be expected to do in relation to climate policy-making. On the way there, we first make the general case for why procedural fairness matters to climate policy, in section 3, and, in section 4, we distinguish procedural justice from substantive justice and differentiate three kinds of procedural justice: perfect, imperfect and pure. We argue that given the bounded nature of climate justice, pure procedural justice holds most promise. This does not preclude the use of moral arguments, however. It is only that these arguments cannot rely on intuitions about what distribution of climate responsibility is fair, as this is the object of reasonable disagreement. However, many constructive moral arguments can be formulated without invoking such intuitions, as we shall argue. In section 6, we respond to the objection that pure procedural climate justice would be ineffective and allow for unjust outcomes.

## 2. The Bounded Nature of Climate Justice

Ethical questions have a peculiar presence in international climate politics. On the one hand, they are generally recognised as central to the decisions discussed, such as for the setting of an overall ambition level, an appropriate discount rate, and for differentiating responsibilities. On the other hand, deep disagreements about fairness is a salient feature of the climate change negotiations, indicating a more limited significance of climate ethics. It is in any case clear that many issues discussed in the UNFCCC are evaluative and normative. Even just allowing the status quo to prevail, that is, a situation in which some countries take ambitious climate actions and others do nothing at all, is tantamount to accepting a distribution of responsibilities which may be evaluated normatively and judged unfair.

To define the role and function of normative theorising in this context it is helpful to further characterise the choice situation. Thus: it is a negotiation among several agents, where they all share an idea about where they want to end up, i.e. preventing dangerous climate change by keeping the global average temperature increase to ‘well below 2°C above pre-industrial levels’<sup>10</sup>, but disagree about how to get there, i.e. who should do which of the actions necessary to realise this desirable end-point.<sup>11</sup> The agents’ interests are in conflict and there is a need of adjudicating at least some of these conflicts to set them on a path with an acceptable expectation of meeting the overall goal, i.e. an emissions path leading to net-zero emissions of greenhouse gases by the second half of this century. Ideally, they would all agree on normative principles, which specify

what climate actions each of them is required to take in the collective effort to meet the target. But part of the problem is that they cannot agree on what normative principles are justified in this context; which normative considerations matter and what are their relative importance. One may characterise this situation as *the bounded nature of climate justice*.

The problem is an instance of the more general difficulty for normative theorising about justice known as reasonable disagreement.<sup>12</sup> It can be exemplified as follows: a representative of a country, C, may reason in good faith, be knowledgeable about what needs to be done and be cooperative, yet find itself uncertain about what normative considerations should influence the decision about what climate actions to commit to. C may, for instance, judge that it is ability to pay that should determine what climate actions to take, but recognise the reasonableness of other countries judging, say, that those who have historically contributed more to climate change should do more to prevent it now. The uncertainty comes from recognising that although C believes that ability to pay is the correct ground for distributing climate responsibilities, other countries, similarly reasonable, appeal to competing normative considerations. Even though C believes that historical responsibility is an incorrect ground for the distribution of responsibilities, C recognises that it is a reasonable judgment, which may reflect other agents' different priorities, values and experiences rather than factual mistakes or self-interest. No substantive justice-based norm regulating what climate actions to take is thus likely to emerge.

The reasonable disagreement may be interpreted either as an epistemic or an ontological thesis. On the first interpretation, there is a unique answer to what is a just distribution of responsibility, it is only that the relevant agents are unable to arrive at it because of their limited reasoning capacities. On the second interpretation, there are simply competing, irreconcilable normative reasons, leading to a genuine and intractable stalemate. We will remain agnostic about the ontological thesis, i.e. whether there is such a thing as a true account of substantive climate justice, in what follows. But either way, reasonable disagreement is a fact of our world, and so of climate policy-making.

If anything, the real-life situation is worse. C is an idealised agent; real-life representatives of countries may sometimes, or even often, fall short of C's reasonableness. In the extreme, they are unresponsive to any moral considerations and base their decisions about what climate actions to commit to (if any) solely on what is in their short-term national self-interest; they may also be biased or selective in excluding certain normative considerations in a self-serving way; or obstruct the collective process by denying and spreading doubt about climate change. However, the ideal of reasonableness is not a problematic idealisation, but one that real agents could strive to approximate. The problem, however, is that even if countries were to exhibit reasonableness, one could not expect them to accept a common principle of climate justice to resolve their clashing interests. That, again, is the bounded nature of climate justice.

### **3. How Procedural Fairness Matters to Climate Policy**

If the above description of climate politics is correct, one can expect that normative disagreement will continue to hold back an ambitious joint effort for quite some time. Climate ethicists could contribute to the search of a just distribution of responsibility in the way they already do, by proposing and testing ever more sophisticated substantive normative principles with some suitable method. However, there is another kind of contribution climate ethicists could make and which has so far been largely neglected. That is to work towards a robust and ethically justified procedural framework for how climate policies should be developed. Climate justice is not just about determining what is a fair distribution of responsibility, but also about what are fair procedures for addressing climate change. Fair procedures matter both in their own respect and as a means to effective climate policy-making.

In shifting the focus to procedures, it is important not to take a too narrow instrumental view of them. Doing so would neglect their intrinsic justification. There is also a tendency among those who focus on effectiveness to overlook the full spectrum of moral considerations relevant to

climate politics. Some climate ethicists have fallen short in this way. Consider, for instance, Eric Posner and David Weisbach's proposal, 'International Paretianism', which claims that an effective climate treaty is one which 'all states [...] believe themselves to be better off by their lights as a result of'.<sup>13</sup> Consider also John Broome's idea of 'efficiency without sacrifice', which is to evaluate climate actions in terms of Pareto efficiency.<sup>14</sup> Broome argues that there are climate actions that will benefit some without disadvantaging anyone else, and that it is these actions that should be taken to 'break the logjam'<sup>15</sup>. These proposals bracket moral requirements and so radically circumscribe the role of climate ethics. The point is that, although they may be considered substantively unfair, they are allegedly more feasible than the alternatives that may be preferred on moral grounds.

Despite what it seems, however, these proposals are not devoid of moral content. They assume either that efficiency or overall utility matters, which is a normative stance. Furthermore, other normative considerations are indirectly relevant to these conjectures. The preferences of the parties are formed partly by normative judgments about what is fair, what is their due, etc., which, at least sometimes, are underpinned by rational considerations about what indeed is fair, their due, etc.<sup>16</sup> Thus, if a treaty is to advance everyone's interests there is no way around taking other normative considerations into account.

Simon Caney has advanced an alternative approach that might be considered in light of the bounded nature of climate justice (although his motivation for advancing it has to do with dealing with noncompliance rather than reasonable disagreement).<sup>17</sup> He argues that in addition to formulating normative principles of fair burden sharing, one should adopt a perspective of harm avoidance. Climate change is an emergency situation where it is imperative that its potentially catastrophic harms are averted; thus, duties of harm reduction are justified. A wide variety of agents are responsible to reduce the risks of climate change by incentivising, enabling and promoting a political climate in which mitigation and adaptation actions are more likely to come about. The normative ground is harm reduction: those who, in one way or another, have the ability to positively influence humanity's response to climate change are morally required to do so, even if these burdens would be considered unfair on the basis of some principle of fair burden sharing. Caney's discussion of these duties, which he refers to as 'second-order responsibilities', is instructive and important. The approach we put forward below does not question their relevance or justifiability. However, we believe that harm reduction in and by itself is an insufficient moral ground for the promotion of effective climate action.

We share the contention that effectiveness should be prioritised in relation to climate policy-making but take a different view of the role of moral arguments in the advancement of an effective climate agreement. The overall goal in relation to climate change should be to keep the temperature increase to 'well below 2°C' to prevent dangerous climate change. However, recognising this priority does not preclude the relevance of normative considerations other than efficiency. Considerations of rights, obligations and fairness are central to an effective climate agreement, and so instrumental to the end of preventing dangerous climate change. That is, in addition to their intrinsic importance, to which we will return below.

With regard to the instrumental value of procedural fairness, the point is that certain moral procedural constraints may well serve the function of promoting the achievement of the overall temperature goal. It is not the abstract idea of climate justice, but rather shared justice-based norms or a just institutional order which might serve this function. Shared justice-based norms create trust, predictability and the perception of fairness of contribution, which in turn facilitate the coordination of interests and create possibilities for mutually beneficial cooperation. By 'shared norms' we mean agents holding normative attitudes with regard to actions prescribed by moral principles coupled with their knowledge that others do so too.<sup>18</sup> Their primary function is to make agents accountable to one another, that is, determine what rights and obligations hold between them, which, in turn, allow them to demand and expect certain things of one another. Such an

accountability framework facilitates cooperation; it is a coordination device, which allows the agents to rely on and to a certain extent predict what others will do.

To the extent that justice-based norms are operative in a group of agents, they make it rational for the agents to undertake actions they otherwise would not commit to because the actions are conditional on others' behaviour. Agents acting under the influence of justice-based norms are more likely to consider one another's contributions as fair and the decisions made as legitimate and therefore more willing to contribute to joint efforts, leading to a greater collective ambition.<sup>19</sup> Consider, for instance, transparency, which is an emerging procedural justice-norm in the new climate regime: countries thus judge that pledges must be formulated and communicated in a transparent manner and are disposed to disapprove of attempts to obscure what climate actions are taken or to double count emissions reductions, and they also know that other countries share these attitudes. This creates a climate of trust and predictability, which gives the countries the assurance they need to ramp up their ambitions. The theory of pure procedural climate justice we shall develop below specifies norms like this.

#### 4. On the Relation Between Procedural and Substantive Climate Justice

Before developing our own procedural theory, we must first show that the procedural dimension of climate justice is in a relevant sense independent of substantive climate justice. We do not want the justification of the procedural norms specified by this theory to reintroduce the disagreement that pertains to substantive climate justice.

John Rawls's well-known distinction between three kinds of procedural justice, *perfect*, *imperfect* and *pure*, helps sort this out.<sup>20</sup> He illustrates perfect procedural justice with a procedure for dividing a cake, in which the one cutting the cake is last to choose a piece. Assuming that she is somewhat skilled in cutting cakes and wants as large share as possible, an equal distribution is ensured. Imperfect procedural justice is exemplified by a criminal trial, where the desirable outcome is that the defendant is declared guilty if and only if he has committed the offense. The trial, however, is only an imperfect means to this result; sometimes guilty offenders are acquitted and innocent men found guilty. Common to these two conceptions of procedural justice is that there exists an independent criterion of what makes outcomes just. They differ in that whereas perfect procedural justice guarantees the independently just outcome, imperfect procedural justice only makes it likely. Pure procedural justice, on the other hand, makes no use at all of an independent criterion of just outcomes. Instead, the outcome of a process of pure procedural justice is just 'whatever it happens to be'<sup>21</sup>.

Given the bounded nature of climate justice, it is unwarranted to assume an independently justified criterion of what each agent is required to do in the joint effort of preventing dangerous climate change. This makes perfect as well as imperfect procedural climate justice inapplicable. The problem is not that there is no perfect procedure for producing a just distribution of climate responsibilities; it is that there is an unresolved substantive disagreement about the content and justification of climate justice in the first place. Instead, fair procedures must be worked out without any preconceptions about just outcomes. This is the idea of pure procedural justice. The procedure of choice or reasoning must be such that the parties are led to accept, *ceteris paribus*, an outcome as just independently of what preconceptions they may have about its moral status. The distinguishing feature thus is the independence from a criterion of substantive justice. The procedure is not devised to track any substantively just distribution. Rather, the fairness of the procedure is transmitted to the outcome, thereby giving those who have followed the procedure reason to accept, *ceteris paribus*, its outcome as just.<sup>22</sup>

Without further qualification, pure procedural justice may seem unattractive. Should we really waive any intuitions we have about just outcomes? Are we then not committed to let a coin toss decide the matter? Some elaboration is required. A first clarification is that the independence condition concerns the evaluation of the outcome in terms of fair shares and nothing else. The scope of the suspension concerns the particular allocation problem addressed. An outcome is

judged just or unjust independently of any substantive ideas about what are fair shares of the distributive good considered. This does not rule out the use of moral beliefs, judgments and principles concerning things other than that aspect in question.

To illustrate, consider first an analogy with a fair bet. The betting situation is such that intuitions about just outcomes are beside the point. Were we to solve a distributive problem by way of a coin toss, we would need to waive claims about what resulting distributions are better or worse. We would not, however, need to give up on normative expectations about what makes for a *fair* coin toss in itself. Another analogy is with democracy as a method of legitimate collective decision making.<sup>23</sup> Democracy may be seen as a way of resolving clashes of interests within a group of agents. In a democratic state, citizens differ in their ideological commitments and in their ideas about what would be an ideal society, but yet accept decisions that run contrary to their own normative views. A market-liberal citizen may, for example, prefer lower taxes, but at the same time accept high taxes if they are enacted by a democratically elected left-wing government. In this sense, the democratic procedure is not set up to track some independent criterion of just outcomes, but rather to arbitrate between conflicting conceptions of a just society. To the extent that this democratic ideal is accepted as fair, participants will be led to accept its outcomes as legitimate, even though they are not in each participant's narrow self-interest nor ones they would prefer in terms of justice were they to make the decision singlehandedly.

There are various ways in which fair procedures limit possible outcomes without assuming what is the correct theory of just distribution. First, the scope of possibilities is limited by the particular distributive problem that is addressed. The distributive cake itself sets a limit on the what different distribution that may result. There is a limited number of ways in which one can divide scarce goods, such as permits to emit greenhouse gas emissions or funding for climate adaptation. This imposes a kind of budget constraint on the process. Secondly, a theory of fair procedures may impose a relevance criterion on substantive principles of justice, which precludes outcomes which could not be justified by any reasonable substantive principle. Thirdly, the possible distributions are limited by the kind of bias control fair procedures set up. We will elaborate on these possibilities in the following two sections.

Note first a way in which an independent criterion of just outcome may still play a limited role within the bounded nature of climate justice. One might argue that the disagreement we pointed to above is not comprehensive;<sup>24</sup> that although reasonable agents cannot agree on what is the normative ground for fair shares, they can agree on the deontic status of some climate actions.<sup>25</sup> The idea could then be developed by devising a procedure which makes it likely that outcomes are acceptable to the relevant agents no matter what reasonable normative principle is correct. The independent criterion would here be formed by the agreement or overlap between the reasonable normative principles. This might lead to something like an incomplete or partial theory of imperfect procedural climate justice, which is fully compatible with the theory of pure procedural climate justice we develop below.

## 5. Towards a Theory of Pure Procedural Climate Justice

A theory of pure procedural justice should specify the ground for and content of procedural fairness, or more specifically, what it is for a process of choice or reasoning to be fair irrespective of what outcomes it gives rise to. We do not aim to fully specify or justify such a theory here, but to take the first steps towards this goal. We shall first propose an ideal of a reasonable negotiator as the normative ground of fair negotiations. On this basis, we thereafter exemplify some of the most salient procedural fairness norms which can be derived from such an ideal. Some of them are known from the literature on procedural climate justice, such as accuracy, transparency, correctability, participation, and reciprocity<sup>26</sup>; others are added. In particular we will develop a frequently overlooked means by which normative theory can facilitate a reasoned political discourse around issues such as climate justice, that is, by way of specifying a *reasons condition*, which states what substantive reasons are permissible to appeal to in the negotiation process. We also

explain how these procedural norms can be formulated and justified without invoking substantive principles of climate justice and yet play important normative roles.

### *5.1 The Ideal of a Reasonable Negotiator*

The normative ground of these procedural norms is best described as an ideal of a reasonable negotiator, the outline of which was provided already in section 2.<sup>27</sup> The reasonable negotiator certainly wants to get their will through and come out on top of whatever negotiation they participate in, but they are also reasonable in the sense of seeking to arrive at just outcomes. Such an agent exercises sound reasoning, does not make obvious logical errors, is consistent and informed by relevant empirical facts. Furthermore, the reasonable negotiator is cooperative in the sense of justifying their contribution by reference to fair terms of cooperation and is willing to act on them on the condition that others do so too.

### *5.2 Specifying Procedural Norms of Climate Justice*

A reasonable negotiator would accept and comply with certain procedural norms. Some such norms are rather straightforwardly 'pure' in the sense that they do not rely on any intuitions about just outcomes. Accuracy is an example. The negotiation process should be based on accurate information, which requires of each participant to report relevant information truthfully, such as carbon emissions related to domestic production.<sup>28</sup> Relatedly, the process should be governed by transparency, according to which all details relevant to decisions and plans about climate actions are clearly communicated in a verifiable manner. Another uncontroversial procedural norm is correctability: to the extent that new information is brought to the table, it should be possible for the agents to revise and update their pledges. Procedural norms such as accuracy, transparency and correctability are justified independently of what outcomes a process governed by them produces. As we noted in section 3, they serve the primary function of creating accountability. But they are also instrumentally useful to any constructive group decision-making process.

Other procedural norms are more controversial, although no less important. One such problematic consideration concerns the ground for participation in the process of choice. Should that be determined on account of being affected by the decision, subjected to the decision, or otherwise? Depending on the answer given to this question, different stakeholders will have a justified claim to participate (by e.g. representation or voting right) in decisions about how to deal with climate change. To arrive at a justified and principled answer to what participation dictates is much less straightforward than for the procedural norms considered above.

This is not the place to work out a specific norm about participation. The point we want to make is that one can justify such a norm without having to rely on substantive intuitions about just outcomes. Deciding who should participate in the negotiations should be done by offering reasons, but the reasons need not refer to an independent criterion of what is a just distribution in the particular case. Say that one arrives at the view that only those subjected to the pledge and review system of the UNFCCC have a right to participate. This recommendation is independent of any normative ideals about what distribution of climate actions is morally right. But it is clearly the case that such a decision will bear on what outcomes are acceptable; were non-state actors, businesses or concerned citizens to participate in addition to countries, different claims would be brought to the table and different outcomes likely result. However, the independence condition is unidirectional: the formulation and justification of procedural norms should be independent of any substantive considerations about the particular distributive problem faced, not the other way around: procedural norms should of course influence what outcomes result.

Another problematic but important procedural norm concerns the background conditions of negotiations, such as the clout and starting point that each negotiating party has. In the UNFCCC, the negotiating parties are extremely uneven in terms of access to financial resources, personnel and expertise relevant to the negotiation process. These factors could be considered procedurally unfair to the extent that they have an undue influence on what agreement point is reached. If it is

ignored, the bargaining outcome will lie much closer to the interests of the richer than the poorer countries. A theory of pure procedural justice will thus need to specify some procedural norm to protect the climate negotiations from this unjust influence. Again, doing so need not involve taking a stance on the substantive issue of how climate responsibilities should be distributed.

Specifying conditions for a fair background will, however, need to rely on normative principles, some of which may be controversial. A critic might then ask: will this not just lead to another standstill, as there is reasonable disagreement also over matters of background justice? The objection cannot be fenced off completely – it is certainly possible that shifting the focus from substantive to procedural questions will just push the disagreement to another level. However, there are reasons to believe that there is less persistent disagreement with regard to the kind of background conditions mentioned than about the substantive distributive questions. Part of what it is for an agent to be reasonable is to judge it unfair that morally irrelevant factors, such as access to qualified personnel and expertise, should influence the negotiation process. It is also important to stress that this is not a general global justice-norm requiring that any unjustified inequalities between countries be levelled out. The norm of fair background conditions is specifically focused on equalising resources relevant to the negotiation, such as access to climate science.

Related to access to relevant expertise, there is a need to introduce a procedural norm which regulates the use of empirical information, such as the basic facts about climate change. This norm should specify the conditions under which it is legitimate to defer to scientific judgement, as well as how scientific research should be evaluated in the policy process. An imminent danger in relation to climate change is that the proper boundaries between science and politics are blurred, as is often the case with climate deniers, who engage in illegitimate acts of motivated reasoning rather than rigorous assessments of the empirical data. It is paramount that the political process of dealing with climate change is informed by state-of-the-art climate science (broadly conceived, including social science), or, as it says in the Paris Agreement, that it is ‘in accordance with the best available science’<sup>29</sup>. Lobbyists and those with vested interests should not be allowed to unduly influence and obscure the negotiation process. To the extent that policy discussions are informed by empirical information, this should be gathered from comprehensive, objective, balanced and rigorous surveys of peer-reviewed scientific research that has had sufficient independence from both governments and non-state actors such as industry. The obvious example is the work by the Intergovernmental Panel on Climate Change.<sup>30</sup> Fair procedures embody not only political fairness, but also epistemic fairness.<sup>31</sup>

Let us also address what is the most controversial topic of procedural justice in the real-life international climate negotiations, namely external review and enforcement. By what means are others permitted to follow up and review climate actions individual countries undertake, and what sanctions are permissible to place on failed pledges? For an international agreement to have any teeth, some kind of sanctioning system is required. However, the experience from the first twenty-five years of international climate negotiations tells us that it cannot be an ambitious top-down legal enforcement mechanism. The Paris Agreement reinforces that point. But that does not preclude external review and other measures for making sure pledges are carried out.

Indeed, as we defined norms above, procedural norms themselves form an accountability framework of shared normative expectations, by which those who have accepted them are able to hold one another accountable. A country failing to live up to the normative expectations specified by these norms should be called out, criticised, blamed as well as being the target of other reactive attitudes. The task for the theorist is to formulate appropriate procedural norms, which can serve this function. An additional candidate norm in this context is reciprocity, which states that countries should reciprocate other countries’ actions or pledges of actions; when  $C_1$  increases its ambition, this is a reason for  $C_n$  to also increase their ambition. Another candidate norm is conscientiousness, which states a reason for following through on pledged climate actions as far as possible. These are two examples of procedural norms by which countries could hold one another to account.

### 5.3 *A Reasons Condition*

A less noted function of normative theory in relation to climate policy is that it can impose a relevance condition on what normative considerations that may be appealed to in negotiating a fair response to the distribution of the burdens and benefits of climate change. We call this *the reasons condition*. The reasons condition is imposed by the ideal of the reasonable negotiator: for an agent to be reasonable with regard to climate policy-making, it must justify what and how much it intends to do. The parties to the negotiation process can be expected to bid on the benefits of an effective agreement (climate-related benefits as well as non-climate related benefits, such as economic growth, clean air and new technologies) and claim that others should carry the burdens necessary for realising them (e.g. measures of mitigation, adaptation, technology transfer, compensation, etc.), guided by their national self-interest as they are.

However, these bids and claims are subject to normative scrutiny and may be judged unfair. Given the bounded nature of climate justice, one cannot decisively settle what makes certain claims and bids fair or unfair; but one can still judge their relevance. The reasons condition states that only those bids and claims which, after a rational reconstruction, are best understood as grounded in a reasonable moral principle and are based on evidence gathered in an epistemically responsible way should be considered. Examples of such moral principles are the contributor pays principle, the ability to pay principle, and the beneficiary pays principle. Claims and bids which are merely the expression of national self-interest, partiality or some other self-serving motive can justifiably be put aside without further consideration. Note that this points to the continued importance of substantive climate ethics: it is through engaging in substantive normative critique that the reasonable claims are separated from the unreasonable ones.

An example will further illuminate the reasons condition. A common claim in climate policy circles is the appeal to so-called grandfathering. Roughly, grandfathering is a temporary exemption or transition period which is granted to agents after a change of laws or policies.<sup>32</sup> In the context of climate policies, claims to grandfathering are raised by agents whose interests are enmeshed in the fossil fuel economy, such as oil and coal companies or countries heavily reliant on fossil fuels, in response to proposals of phasing out fossil fuels via e.g. a carbon tax or a moratorium on new coal mines. The normative difficulty in evaluating such claims is that although they may be backed up by moral considerations they may just as well be an expression of pure self-interest; deciding their moral status is highly problematic. At the same time, these decisions are essential to the transition to a low-carbon economy as justified grievances, if unheeded, may impede the process of change. The reasons condition imposed by a theory of pure procedural climate justice gives guidance as to how one should evaluate such claims. A claim to grandfathering should be taken into account in climate policy-making if and only if in the most plausible rationally reconstructed version the claim is supported by some moral principle. If the claim is best understood as an expression of pure self-interest or as motivated by a desire to obstruct effective climate policies, then it is irrelevant to the negotiation of a fair climate agreement and can safely be ignored.

Finally, it is worth considering also an extension of the reasons condition, according to which it is an explicit requirement put on the negotiating parties themselves. That is, representatives of countries and other such agents would be required to connect the claims and bids they make to reasonable moral principles, such as rights, obligations, and needs. Only if the party stated the moral ground of their concern, why it is something that others have moral reasons to care about, would it be relevant to the negotiation process. If this was accepted as a procedural norm, the negotiation process would no doubt become more focused, fair-minded and constructive. Rather than haggling, the parties would jointly scrutinise potentially relevant reasons for differentiating responsibilities in an attempt to find a fair solution to the collective action problem they face.

## 6. Objection: Pure Procedural Climate Justice Is Unjust and Ineffective

A critic might object on the following ground: according to the theory of pure procedural climate justice, any outcome of a process of reasoning guided by the specified procedural norms should be considered just, thus run-away catastrophic climate change should be considered just if this is the outcome, but this seems patently unjust. The objection, the critic can contend, also undercuts the instrumental importance of pure procedural climate justice: if catastrophic climate change is a possible result of a process guided by the theory, then theory cannot be said to promote effective climate policies.

The objection, however, rests on a misunderstanding. It conflates two separate normative questions: that of deciding an overall level of ambition for international climate politics and that of distributing the burdens necessary for realising this ambition. A theory of pure procedural climate justice, as we have conceived it, focuses only on the latter question, and in so doing assumes an already accepted overall ambition, namely that of the Paris Agreement. The normative question we have addressed is: *how* should the burdens necessary for realising this goal be shared among the relevant agents? As noted above, the choice of a particular distributive problem itself imposes a kind of budget constraint, which limits the possible outcomes of the process. The Paris Agreement imposes a budget for distributive claims. Ultimately, the sum of the individual claims must be compatible with maintaining the temperature well below 2°C.

There are, however, remaining problems related to the fact that the overall goal will only gradually be reached as more and more individual claims align with it. There are many different ways of realising the overall goal; many possible emissions pathways that lead from the status quo to the net-zero emissions world. The relevant agents may do little now and more later, leading to a steeper curvature of the emissions pathway at a later point. The pledge and review system of the Paris Agreement may best be described not as presenting one distributive question but rather a series of them; one for each of the five-year periods covered by the nationally determined contributions (NDCs).

This complicates things. First, the need for setting these progressive budgets may reintroduce the substantive disagreement. Perhaps there will be normative disagreement over the curvature of the emissions pathway, where according to some reasonable moral principles we should allow for a longer transition period and according to others make much steeper emissions reductions. One response to this worry is to introduce another procedural norm having to do with ambition. It may be considered desirable in the negotiation process that parties show ambition, and laggards may be considered objectionable as their attitudes present a risk of the joint effort not succeeding. It is also important to emphasise that any claim on deferral must be justified by some reasonable moral principle and not just be a concealed expression of self-interest.

Secondly, if the level of ambition currently expressed is not increased, if the intended ratchet mechanism of the Paris Agreement fails, an even more unfortunate situation may come to pass in which *any* distribution of the remaining burdens necessary for realising the overall temperature goal could reasonably be considered unjust. In other words, a situation might arise in which there is *no* procedurally just distribution of the burdens necessary for an effective outcome. This points to a general tension between requirements of justice and effectiveness. On some intuitively plausible principles of distributive justice, e.g. threshold views such as sufficientarianism, the sum of the justified claims may exceed the budget of the distribuendum, as in cases when triage is practiced (e.g. medical emergencies). In these instances, one might say that no particular allocation is just, although any allocation is better than no allocation in terms of effectiveness. We are not yet in such a precarious situation; there is still time to coordinate an effective and fair global response to climate change – and, if we are right, procedural fairness is a means to this end.

## 7. Conclusion

On December 15, 2018, the parties to the UNFCCC reached an agreement on the Paris Rulebook, which at least partially describes how the pledge and review system set forth in the Paris Agreement should be implemented. Although some contentious normative and evaluative matters still remain to be settled, the first steps towards a fair treatment of climate change may have been taken. There are still reasons to review the ethical grounds of these procedural norms, as well as proposing new ones as needed.

In this paper, we have outlined some ways in which normative theorising about climate justice can contribute to this assessment. We began by describing the bounded nature of climate justice, which is the situation in which the deadlock is not only due to factual mistakes and expressions of narrow self-interest, but also depends on unresolved substantive moral disagreement about what is the proper ground for distributing the burdens and benefits of dealing with climate change. We then argued that this should motivate normative theorists to shift their focus to procedural normative questions in so far as such questions can be answered without first settling the substantive disagreement. A theory of pure procedural climate justice does just that: it specifies normative considerations that should be taken into account in any fair negotiation or decision-making procedure related to climate politics, independently of which account of substantive climate justice happens to be correct. The most salient examples of such normative considerations are accuracy, transparency and ambition. The more specific formulations of these procedural norms will have to wait until another paper, though.

The candidate normative principles of a theory of pure procedural climate justice must also be more carefully justified. In this paper, we have merely pointed to the general form such justification can be expected to take. We have argued that it should be both intrinsic and instrumental. The procedural fairness norms discussed above are justified in part by being expressions of an ideal of a reasonable negotiator, an ideal which itself commands respect. They are also justified in virtue of their capacity to coordinate an effective response to dangerous climate change, where effectiveness is judged in terms of potential to create trust, predictability and to make certain conditional climate actions rational. Normative theorising thus has important roles to play in advancing an effective response to climate change.

Finally, although we have discussed procedural fairness in the context of international climate politics, the theory of pure procedural climate justice should apply more generally to climate policy-making. The theory is a promising framework for normative guidance wherever persons reasonably disagree about how to address climate change, whether in a national parliament, or in a regional or local decision-making body.

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## NOTES

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<sup>1</sup> UNFCCC (2015) *Adoption of the Paris Agreement* (Report No. FCCC/CP/2015/L.9/Rev.1). Retrieved from <http://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>

<sup>2</sup> Robert Falkner, 'The Paris Agreement and the New Logic of International Climate Politics', *International Affairs*, 92, 5 (2016): 1107-1125, at 1107.

<sup>3</sup> David Victor, *Global Warming Gridlock* (Cambridge: Cambridge University Press, 2011).

<sup>4</sup> See e.g. Radoslav S. Dimitrov, 'Inside UN Climate Negotiations: The Copenhagen Conference', *Review of Policy Research*, 27, 6 (2010): 795-821; Lavanya Rajamani, 'Differentiation in the Emerging Climate Regime', *Theoretical Inquiries in Law*, 14, 1 (2013): 151-171.

<sup>5</sup> See Falkner op. cit.

<sup>6</sup> That is, the United Nations Framework Convention on Climate Change (1992), which has been ratified by almost all countries of the world and governs international climate politics.

<sup>7</sup> See e.g. Edward Page, 'Distributing the Burdens of Climate Change', *Environmental Politics*, 17, 4 (2008): 556-575; Simon Caney, 'Climate Change and the Duties of the Advantaged', *Critical Review of International Social and Political Philosophy*, 13, 1 (2010): 203-228; Jeremy Moss and Robyn Kath, 'Historical Emissions and the Carbon Budget', *Journal of Applied Philosophy*, (2018): 1-22.

<sup>8</sup> Luke Tomlinson, *Procedural Justice in the United Nations Framework Convention on Climate Change* (Cham: Springer, 2015); Marco Grasso and Simona Sacchi, 'Impure Procedural Justice in Climate Governance Systems', *Environmental Values*, 24, 6 (2015): 777-798; Idil Boran, 'Principles of Public Reason in the UNFCCC: Rethinking the Equity Framework', *Science and Engineering Ethics*, 23, 5 (2017): 1253-1271.

<sup>9</sup> We will use international climate politics as our running example in this article, but procedural climate justice matters to climate policy-making in general.

<sup>10</sup> The Paris Agreement op. cit., Art. 2.1.

<sup>11</sup> Note that we assume here, and throughout the paper, that the overall ambition of how much climate change that should be tolerated is set by the Paris Agreement. We thus put aside the task of balancing various intra- and intergenerational considerations into a judgment about what is an unacceptable interference in the climate system. We will only address the normative questions raised once the overall aim is decided, in particular how to divide the climate actions necessary to realise this ambition.

<sup>12</sup> See Tomlinson op. cit., ch. 2; extending John Rawls, *Political Liberalism*, exp. edn. (New York: Columbia University Press, [1993] 2005).

<sup>13</sup> Eric Posner and David Weisbach, *Climate Change Justice* (Princeton, NJ: Princeton University Press, 2010), p. 6.

<sup>14</sup> John Broome, *Climate Matters: Ethics in a Warming World* (New York: W. W. Norton, 2012).

<sup>15</sup> Broome op. cit., p. 38.

<sup>16</sup> Cf. Geoffrey Brennan and Geoffrey Sayre-McCord, 'Do Normative Facts Matter... To What is Feasible?', *Social Philosophy and Policy*, 33, 1-2 (2016): 434-456.

<sup>17</sup> Simon Caney, 'Two Kinds of Climate Justice: Avoiding Harm and Sharing Burdens', *Journal of Political Philosophy*, 22, 2 (2014): 125-149.

<sup>18</sup> Cf. Geoffrey Brennan, Lina Eriksson, Robert Goodin and Nicholas Southwood, *Explaining Norms* (Oxford: Oxford University Press, 2016).

<sup>19</sup> For empirical evidence see e.g. Cristina Bicchieri, *The Grammar of Society: The Nature and Dynamics of Social Norms* (Cambridge: Cambridge University Press, 2006), ch. 4; and, in the context of environmental treaties, Scott Barrett, *Environment and Statecraft: The Strategy of Environmental Treaty-Making* (Oxford: Oxford University Press, 2005).

<sup>20</sup> John Rawls, *A Theory of Justice*, rev. edn. (Cambridge, MA: Harvard University Press, [1971] 1999), pp. 73-78.

<sup>21</sup> Rawls, *A Theory of Justice*, p. 74.

<sup>22</sup> The *ceteris paribus* clause is meant to reflect the current epistemic situation. The reasons to accept an outcome as just may be revised when substantive climate justice is better understood.

<sup>23</sup> In recent years, the role and relevance of procedural fairness has been further developed and sophisticated in discussions of democratic legitimacy. The theory of pure procedural climate justice we sketch below is closely related to what Fabienne Peter calls 'Pure Epistemic Proceduralism' about democratic legitimacy. See Fabienne Peter, 'Democratic Legitimacy and Proceduralist Social Epistemology', *Politics, Philosophy & Economics*, 6, 3 (2007): 329-353; and 'Pure Epistemic Proceduralism', *Episteme: A Journal of Social Epistemology*, 5, 1 (2008): 33-55. Thanks to a reviewer for pointing out the relevance of Peter's works.

<sup>24</sup> See e.g. Grasso and Sachi op. cit.; and Tomlinson op. cit., ch. 3. Note that this application of imperfect procedural justice goes beyond Rawls's original conception of it.

<sup>25</sup> This would be similar to Cass Sunstein's idea of seeking 'incompletely theorized agreements', see 'Incompletely Theorized Agreement', *Harvard Law Review*, 108, 7 (1995): 1733-72.

<sup>26</sup> See e.g. Grasso and Sacchi op. cit.; and Tomlinson op. cit.

<sup>27</sup> Again, see Tomlinson op. cit., ch. 2; extending Rawls, *Political Liberalism*. Thanks to a reviewer for encouraging us to make the intrinsic justification of pure procedural climate justice explicit.

<sup>28</sup> The focus of the following discussion is on climate change mitigation, but most of the specified procedural norms are relevant to other dimensions of climate policy-making too, such as adaptation. For a discussion of the procedural justice of climate adaptation see Marco Grasso ‘An Ethical Approach to Climate Adaptation Finance’, *Global Environmental Change*, 20 (2010): 74-81.

<sup>29</sup> Paris Agreement op. cit., Art. 4.1.

<sup>30</sup> In particular, those reports that government representatives only have the opportunity to ‘accept’ rather than ‘approve’, i.e. IPCC Synthesis Reports. For more information on this distinction, see [https://www.ipcc.ch/site/assets/uploads/2018/02/FS\\_ipcc\\_approve.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/FS_ipcc_approve.pdf). Thanks to a reviewer for helpful suggestions about how to formulate this paragraph.

<sup>31</sup> See also John Stephen, ‘From Social Values to P-Values: The Social Epistemology of the Intergovernmental Panel on Climate Change’, *Journal of Applied Philosophy*, 34, 2 (2016): 157-171; and Catriona McKinnon, *Climate Change and Future Justice: Precaution, Compensation, and Triage* (Abingdon, Oxon: Routledge, 2012), pp. 21-30 for elaborate discussions of the use of experts in democratic climate politics; and Peter op. cit.

<sup>32</sup> Note that we do not consider ‘grandfathering’ a moral principle in itself, but rather a category of claims. The claims to grandfathering may or may not be reformulated as involving the appeal to some moral principle.