

THE CLIMATIC DIFFERENCE PRINCIPLE

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Abstract

I seek to answer a specific question of justice: namely, how to find an equitable division of the Earth's capacity to absorb greenhouse gases, here termed as the global carbon sink. The dominant approach to date has been a variation of equal per-capita emissions. My aim is to expand on the Rawlsian legacy by presenting a viable alternative to the dominant approach in the form of an adaptation of Rawls's *difference principle* in the form of a *climatic difference principle*. The climatic difference principle takes the conceptual idea behind the difference principle – of justifying inequalities so long as they result in a compensating benefit for everyone, with a particular concern for the least advantaged – and applying it to the problem of how to divide the global carbon sink.

I begin with a critique of the dominant approach in order to rectify the lack of critical scrutiny that the scheme has enjoyed in order to illustrate that the scheme fails for two reasons: first, it violates the ideal that it purports to promote; second, the reasons to support the proposal rest on shallow, rather than deep, reasons alone. Next, I engage in a critique of past attempts to globalize the difference principle, for if it were possible to merely globalize the difference principle, we wouldn't need a distinct principle to guide emissions allocations.

The climatic difference principle itself takes the distributive outcomes of equal per-capita emissions, as measured on the Human Development Index (HDI), as a baseline to judge alternative schemes. My conjecture is that the way emissions are used will have an effect on the amount of net benefits that we can derive per unit of the global carbon sink. Shares of the global carbon sink can be used more or less efficiently, and incentives in the form of a greater share of the sink will spur technological innovation. However, Rawls was correct to insist that the most efficient scheme is not necessarily just.

A division of the global sink is considered *just* if we can compensate everyone (in particular the least advantaged) for accepting an unequal share. Specifically, when judged by improvements from the baseline created by the distributive outcomes of equal per-capita emissions, as measured on the Human Development Index (HDI). In order to realize the distributive obligations of the climatic difference principle, a green-technology transfer program will be advanced along with other forms of aid and compensation.

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List of Abbreviations

HDI	Human Development Index
UNFCCC	United Nations Framework Convention on Climate Change

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CO2 emissions / GDP using exchange rates	139
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Introduction

Amidst all the complexities and uncertainties regarding climate change, there is a virtual consensus amongst scientists and policy makers alike that anthropogenic climate change presents with an ever present danger which threatens our world at large. Much of the current debate centres around questions regarding the rate and extent of anthropogenic climate change, but the fact that our present level of global emissions far exceeds the earth's capacity to *safely* absorb those greenhouse gases is undeniable. Beginning with the Industrial Revolution, humanity has set itself on a course over which it has begun to change the composition of the planet's atmosphere by emitting greenhouse gases to fuel economic production. Our ecological reality is such that our wants and desires for ever increasing standards of living have exceeded the planet's capacity to provide for those needs.

As Paul G. Harris observes, climate change and the international collaboration required to deal with global environmental hazards pose profound benefits and burdens for all countries presenting us with important questions of justice.¹ Among the benefits that we can cite are those benefits that are derived from using the earth's capacity to absorb greenhouse gases, a situation we find ourselves in because of our present energy paradigm, which is centred around carbon intensive industries. Consequently, the burden

¹ Paul G. Harris (2000), "Defining International Distributive Justice: Environmental Considerations," *International Relations* XV (2), 52.

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we face stem from the finite nature of the earth's capacity to absorb greenhouse gases and the harmful effects that will result if we exceed that capacity. The problem of justice that we face is how to find an equitable division of the earth's capacity to absorb greenhouse gases, here termed as the global carbon sink.

The fact that there is no single unified conception of justice is a relatively uncontroversial notion in contemporary political philosophy. In a general sense, what we strive for are principles of justice that govern specific circumstances between agents in various kinds of relationships. John Rawls, for instance, in his seminal work *A Theory of Justice*, begins by remarking that many things can be said to be just or unjust, but limits his investigation to social justice. For Rawls, the subject of justice is the basic structure of society, “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation.”² By addressing the justice of institutions, Rawls was not attempting to put an end to all discussions of justice, for even his theory was limited to the special case of societies as largely closed and self-sufficient. Rather, Rawls's conjecture was that once we have a sound theory for this special case, the remaining problems of justice will prove more tractable in light of it. He believed that with suitable modifications, justice as fairness, should provide the key to some other questions of justice.

2 John Rawls (1999a), *A Theory of Justice* (Revised Edition), Cambridge: The Belknap Press of Harvard University Press, 6. All subsequent references in the notes will be made simply as *Theory*.

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My aim in this thesis is to expand upon the Rawlsian legacy and his theory of justice as fairness, specifically to apply a Rawlsian framework to the problem of dividing up the global carbon sink. What motivates this proposal is a conviction that Rawls was largely right on many of the substantive issues found within his theory, but also on the point that with suitable modifications his theory could be the key to answering other questions of justice. The modifications I have in mind include applications of familiar Rawlsian notions to separate questions of justice. Additionally, this thesis will culminate in an adaptation of Rawls's famous difference principle in the form of a climatic difference principle.

With the climatic difference principle, I will provide a viable alternative to the dominant approach of equal per-capita emissions. The proposed alternative that I advance will be grounded in theory, but also carry with it a certain practical appeal. In the context of anthropogenic climate change and the difficulties already present in trying to secure an equitable agreement, any proposal which seeks to provide a meaningful alternative must demonstrate some practical import. Philosophers engaged in any aspect of the climate change debate must present their arguments on principled grounds, but the urgency with which we must find a solution to climate change and the resistance to any binding agreements further adds to the need for a practical solution. As philosophers, though, we cannot lose sight of our principles. Proposals cannot be made simply for practical appeal, or in an effort to gain a consensus among policy makers so as to create binding

agreements. We still require a principled response, albeit one which is practical.

Moreover, the proposal which I advance here should not be interpreted as an opportunity to tackle larger issues of socio-economic justice globally. I object to approaches that use climate negotiations as an opportunity to resolve some of the world's most serious problems: the unequal distribution of wealth between the northern and southern countries, the residual harms of our legacy of colonialism, or unfair trade practices which perpetuate poverty, for instance. My principal concern throughout is to develop a principle that can be used to stabilize concentrations of greenhouse gases in the atmosphere. It may seem appealing to use the case of dividing up the global carbon sink as an avenue to redress inequalities in wealth globally in light of the potential redistributive implications of various climate agreements, but we should resist such temptations. Apart from the feasibility of addressing such problems through climate negotiations, these matters are conceptually distinct and need to be addressed separately.³

3 One may object that it is precisely because developed states used more of the global carbon sink that they are so rich. However, in response I think Joseph Heath was partially correct in that it is not that rich states are rich because they consume so many resources, rather, rich states consume so many resources because they are rich. (Joseph Heath (2005), "Rawls on Global Distributive Justice: A Defence" in *Global Justice, Global Institutions*, Daniel Weinstock (ed.), Calgary: University of Calgary Press.) I qualify my response because part of the reason for anthropogenic climate change in the first place was states since the Industrial Revolution burning fossil fuels to fuel their economic growth. Notwithstanding, the sources of the global inequality in wealth – especially that between north and south – is much more complex than just developed states burning disproportionately large share of fossil fuels. To settle on a climate change agreement as *the* moment to address such inequalities would be opportunistic in the face of a global catastrophe. The inequalities in wealth and well-being caused by developed states using a disproportionately large share of the atmosphere must be addressed; it is an imperative that developing nations be given a chance to develop. The conclusion I would like to draw is that a climate change agreement is not the occasion to rectify centuries of injustice in one fell swoop.

Additionally, the urgency which the problem of anthropogenic climate change presents us with creates the need for an immediate agreement to stabilize concentrations of greenhouse gases in the atmosphere. Climate change agreements cannot be hampered by the efforts to alleviate global poverty: these are two different problems.⁴

What is of importance for climate agreements are historical emissions and the fact that developed nations have used a disproportionately large share of the global carbon sink. Anthropogenic climate change is a problem because our collective use of the global carbon sink has exceeded the earth's capacity to absorb greenhouse gases and has fundamentally changed the composition of the atmosphere. The principle that I will advance at the end of this thesis exemplifies a forward looking approach to dividing up the global carbon sink, but any meaningful proposal must take into account backward looking principles. By omitting any inclusion of historical emissions into this proposal, my intention is not to diminish their importance, but only to highlight the need for an independent set of principles that demonstrate how historical emissions will affect future shares of the global carbon sink.

The result of my proposal, including considerations of historical emissions, will be

Efforts should be made to rectify part of the inequality, but we should bear in mind proportionality when doing so.

4 It is true that various divisions of the global carbon sink will certainly have distributional effects on wealth and well-being globally, but the point I wish to make is that climate negotiations cannot be used as a tool to alleviate global poverty. In framing a principled foundation for policy proposals our primary concern is to stabilize atmospheric concentrations of greenhouse gases. Just because it is possible to redress global inequalities in wealth and well-being through climate agreements does not entail a principled reason to do so.

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that developed nations must take the lead on cutting their emissions, but any meaningful proposal that hopes to mitigate anthropogenic climate change must include the wholehearted support of developing nations as well. The proposal that will be presented in the final chapter aims to garner global support by taking into consideration the needs of both developed and developing nations in a fair and equitable way. Many argue that an equal per-capita proposal seeks to do just that, but such proposals are far from unproblematic.

The first chapter will provide a critique of the dominant approach to allocating emissions: equal per capita emissions. Theories supporting equal per capita emissions enjoy an unparalleled degree of popular support from both philosophical advocates and policy makers, but, despite this immense popularity, the proposal has received very little scrutiny. At first glance, the proposal seems plausible in light of its simple formulation that everyone deserves an equal share, and the intuitive idea behind the proposal that there is no principled reason for anyone to deserve a larger share (when it concerns a resource which no one contributed to producing). However, this lack of critical scrutiny and intuitive appeal should not deter us from critically examining it as a candidate for dividing the global carbon sink and investigating whether the intuitive idea of equality which the principle is supposed to express is realized by the principle.

Although it remains the dominant proposal, there are several variations of the principle which ought to be considered separately. To begin with, I will appraise the simple formulation of equal per capita emissions as it is advanced by Peter Singer in an

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attempt to show that if we really care about equality then we need a modified form of equal per-capita emissions that only equalizes luxury emissions. Yet, here too it will be shown that in the end the fundamental ideal of equality is not realized and its initial fairness and simplicity do not hold for very long. While the principle attempts to herald equality as the philosophical basis for its support, the conclusion I wish to draw is that a sophisticated philosophical investigation yields a contrary result.

The search for alternative principles brings us to Rawls's theory of justice, which despite its limited application as envisioned by Rawls, has been applied to other problems of justice and political theory, including attempts to globalize the difference principle. The purpose of this thesis is to present a *variation* of the difference principle; the second chapter will demonstrate why we cannot simply *globalize* the difference principle. If it were possible to globalize the difference principle, any attempt to formulate a unique version of the difference principle for dividing up the global carbon sink would prove superfluous, because emissions would be part of the (global) social primary goods that would be covered by a global difference principle.

When we look at past attempts to globalize the difference principle by its chief advocates, Charles Beitz and Thomas Pogge, we find that such attempts must necessarily fail on normative grounds. Rawls conceived of the principle of justice (included in which is the difference principle) to apply to a largely self-sufficient and closed state wherein the problem of justice was how to divide up the benefits and burdens of social

cooperation. It will be granted that there exist certain forms of social cooperation globally, but that such forms of cooperation and the relationships we form as a result provide an asymmetrical relationship to the obligations of justice that Rawls had in mind. As noble as the Cosmopolitan Rawlsian attempt is to globalize the difference principle, it is not that it is unfeasible to do so, but not plausible in light of the normative requirements to create the bonds of justice to require obligations of distributive justice.

Failed attempts to extend the difference principle should not preclude efforts to adapt the conceptual idea behind the difference principle and apply it to dividing up the global carbon sink. My aim in the final chapter will be to provide an adaptation of the difference principle, in the form of the climatic difference principle, that is consistent with the larger Rawlsian framework. Much like Rawls's two principles of justice (the difference principle included), the climatic difference principle seeks to establish the acceptable limits on inequality, however in this case our concern is with inequalities in shares of the global carbon sink as opposed to primary social goods.

Within a Rawlsian framework, we approach the global carbon sink much like a *common-pool resource* in that it is a natural system in which it is impossible to exclude potential beneficiaries from obtaining benefits from its use. What makes the global carbon sink unique is that it transcends all national boundaries and any institutional structures operating at the nation-state level. With the exception of perhaps only water, no other resource presents such a unique challenge for distributive justice. No agent – be that

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a state or individual – can be said to have any legitimate entitlement to the global carbon sink so there is no way to establish any property rights (i.e., in an effort prevent overuse). To fully realize the climatic difference, what would have to be put in place is a global institutional structure that would govern the use of the global carbon sink with the authority to enforce the rules and regulations that are established. At present we lack such an institutional structure, but at least the beginning stages of one can be found within the United Nations Framework Convention on Climate Change. Once such a structure is put in place, we can treat the global carbon sink as a common asset; what is up for distribution are the benefits and burdens associated with using the global carbon sink.

Rawls proposed that the first natural solution to the problem of justice is equality, but he did not rest content on equality as the final solution. Rather, the two principles of justice mark justifiable departures from equality, treating equality as a baseline from which to judge distributive outcomes. Likewise, the climatic difference principle will take the distributive outcomes of equal per-capita emissions as the baseline for measuring the justice of alternative divisions of the global carbon sink. Our distributive aim is to compensate everyone, bearing in mind a special concern for the least advantaged, for inequalities in shares.

The metric that will be used to determine the justice of each arrangement will be how they affect states in the calculation of benefits according to the Human Development Index. Burdens, on the other hand, are more tangible. These are the negative effects of

climate change that we are already experiencing today: rising sea levels causing the disappearance of Bangladesh comes to mind as a prime example. A portion of the distributive output from the global carbon sink is owed to such climate victims as a matter of justice, as it is the overuse of the global carbon sink that is causing such devastating effects.

What motivates the climatic difference principle is the notion that dividing up the global carbon sink is not a zero sum game. How specific divisions are made will have varying effects on the distributive outcomes, in that states can use their share of the global carbon sink more or less efficiently in order to produce a greater or lesser share of benefits as measured by an increase, or decrease, on the HDI. Faced with a finite amount of the global carbon sink that can be allotted to each state, it seems prudent to attempt to extract as much benefit from it as possible. Furthermore, as they are used by Rawls, incentives will be used to spur innovation and encourage users to use their share more efficiently.

In order to compensate states for accepting an unequal share, I propose that we implement a program of green-technology transfers as part of our efforts to realize the climatic difference principle. Those states that receive a smaller portion of the global carbon sink will be able to derive fewer benefits, but no state is being asked to accept a lower share of the benefits than they would under equality. In an effort to fulfill the distributive obligations of the climatic difference principle, beneficiaries of a greater

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share of the global carbon sink will be required to participate in a green-technology transfer program as part of their duty to assist developing nations. Such a program is already in place with the Bali Action Plan and is trying to be implemented as part of the UNFCCC. So whereas some states will be asked to accept a smaller share, they will be compensated with aid that will help them achieve more benefits per unit of the global carbon sink. One of the main virtues of such a program would be that developing nations would be able to leapfrog the “dirty” path of development that developed nations took, and pursue a more environmentally sustainable course of development.

Chapter 1: Critique of Equal Per-Capita Emissions

Imagine a situation in which we are enlisted to divide a chocolate cake held in common between four individuals. Presume that all the individuals in question equally like chocolate cake, in that none would prefer vanilla over chocolate, all of the individuals have a taste for sweet desserts, and to simplify the example further, imagine that all would get an equal level of welfare from the cake. The most intuitive idea would be to divide the cake equally among the four individuals. All would claim that this is the fairest division of the cake since it is simple and avoids arbitrariness in the distributive shares. Equality here seems self-evidently fair since there is no reason to favour one individual's preference for cake over another's. Advocates of equal per capita emissions, like Peter Singer, apply this same sort of logic to the allocation of the atmosphere's absorptive capacity, cleverly coined as the global carbon sink. When it comes to dividing a cake equitably between four individuals who hold the cake in common, surely we can grant that a fair share is indeed an equal share.

But when it comes to dividing up the global carbon sink, we cannot apply the same simplifying assumptions that we used in the case of the cake. That is, we cannot demand that we all get an equal share of the global carbon sink; Henry Shue is right to suggest that when it comes to dividing up resources, an *equitable* share is not

synonymous with an *equal* share.⁵ And why would we think otherwise? Unlike dividing the cake, the individuals involved – or in this case states – do not possess the same circumstantial equality: not all their needs are equal, not everyone will get an equal amount of welfare from the same share, and, on a more general point, we simply do not divide up any other resource, not even newly found resources the same way. Yet none of this has deterred advocates of equal per-capita emissions in their commitments to equal shares of the global carbon sink.

When it comes to proposing an equitable allocation of the global carbon sink, the dominant approach is a variation of equal-per-capita emissions, with only a few notable exceptions.⁶ First introduced by Aubrey Meyer, author of *Contraction and Convergence* (2001) and member of the Global Commons Institute (GCI), in 1990, and gaining political momentum through Anil Agarwal and Sunita Narain's publication *Global Warming in an Unequal World* (1991), equal per-capita emissions have been advocated by philosophers and non-philosophers alike.⁷ Until recently, this position has received very little scrutiny from the philosophical community despite the lack of deep, rigorous

1 Henry Shue (1999), "Global Environment and International Inequality." *International Affairs* 75 (3), 532.

2 Martino Traxler's "Fair Choir Division" (2002) and Paul Baer et al's "Greenhouse Development Rights" (2011) stand out as notable exceptions which will not be discussed here. I limit the scope of my critical analysis to the dominant proposal of equal per-capita emissions in order spark a critical debate concerning the dominant proposal for allocating shares of the global carbon sink in an effort to show that a search for alternative proposals is both worthwhile and even necessary.

2 See for example: Jamieson (2001), Singer (2002), Grubb (1995), Aslam (2002), Baer (2000), Athanasiou and Baer (2002) for some of the most notable examples. Recently Athanasiou and Baer have departed from their support of equal-per-capita emissions in favour of a Greenhouse Development Rights approach which they claim to be "more fair" than equal shares.

analysis that is necessary to support the position. This chapter hopes to synthesize some of the main criticisms against equal per-capita emissions as well as provide some original insights into why we should reject this proposal.

I begin with Peter Singer's formulation of equal per capita emissions as outlined in *One World* because Singer is the leading philosopher to advocate this proposal, but I will also draw on others, such as Tom Athanasiou and Paul Baer, to provide a richer account of what is entailed by equal per-capita emissions. While laying out the argument for equal per-capita emissions, I shall raise various problems with the argument in an attempt to defuse some of the intuitive appeal behind it. After having laid out the general argument for equal per-capita emission, I proceed to discuss the central criticism that equal per-capita emissions is not sensitive to geographical circumstances, which leads to a modified version of equal per-capita emissions that equalizes luxury emissions, thereby granting that all people have their subsistence emission met.⁸ This sort of modified version of (strict) equal per-capita emission is advanced by Athanasiou and Baer, who rightfully claim that, while not adhering to strict equality, their proposal will not undermine the underlying normative ideal behind equal per-capita emissions.

Once the strongest formulation of equal per-capita emissions is set forth, the result will still yield a flawed philosophical basis for the allocation of emissions shares. Contrary to Singer's proposition, we cannot base our conclusions on what seems self-

4 I borrow these terms from Henry Shue (1993) "Subsistence and Luxury Emissions" *Law and Policy* 15 (1).

evidently fair. The sophisticated nature of philosophical analysis demands a deeper and more rigorous analysis of the issue at hand. The last bastion of support for equal per-capita emissions based on deep reasons must be derived from claims of common atmospheric ownership.⁹ However, while I do not challenge the common ownership thesis, the claim I will advance is that we cannot derive equal shares from that basis. The demand for equality makes too strong a claim, one which cannot be derived from common ownership without an extensive set of human rights, which we cannot merely presuppose.

Singer's Fairness: A Proposal

Implicit in Singer's position on why we should favour equal per-capita emissions is the claim the global carbon sink is common property, an argument made explicit in many other accounts, and which has become known as “common atmospheric ownership”. Singer looks at John Locke's famous account of how things previously held in common become private property, asserting that we have reached the point where our present appropriation of the global carbon sink fails to leave “enough and as good” for others, therefore instituting the need for a distributive principle. Our present emissions have spiked to such a level that we cannot continue to emit the same amount of greenhouse gases without causing drastic anthropogenic climate change. By not having

5 See for example, Darrel Moellendorf (2011), “Common atmospheric ownership and equal emissions entitlements,” however, Dale Jamieson also holds a similar view through his writings on climate change ethics.

“enough and as good,” conflicting interests must be reconciled, and the present unbridled appropriation of the global carbon sink must come to an end, for the appropriation of all future emissions must now be justified to our fellow co-habitants. Indeed, even with the cumulative emissions present in the atmosphere now, some degree of climate change is unavoidable (according the most recent IPCC studies).¹⁰

We have now reached a point where there are various parties with competing claims to a finite resource which is necessary for human well-being and flourishing. Certainly, we can satisfy our needs without emitting dangerous levels of greenhouse gases, but as Shue persuasively argues, we are presently locked into a carbon-intensive energy infrastructure through the decisions of our political leaders, who failed to invest in the research and development of alternative energy sources to fossil fuels. Moreover, our history of economic development has locked developing nations into the same path of development for those who control the economy, and energy policies have chosen fossil fuels as the driving force behind economic development, leaving the developing nations powerless to alter the course of their development.¹¹ Appeals to switch to a greater dependency on renewable sources of energy, and to abandon our present dependency on fossil fuels will certainly be a key factor in mitigating climate change, but on the level of political realism we must operate within our present energy paradigm, one in which the majority of our energy needs are satisfied through the burning of fossil fuels which

6 See IPCC Fourth Assessment Report [IPCC] (2007), *Fourth Assessment Report*, Geneva: IPCC.

7 See Henry Shue (1996) “Avoidable Necessity,” in *Theory and Practice: NOMOS XXXVII*, Ian Shapiro and Judith Wager DeCew, New York: New York University Press.

contribute to the growing concentration of greenhouse gases in the atmosphere.

Our present dependence on a fossil fuel energy infrastructure will be a guiding assumption throughout this work. Shue is right to point out that the present catastrophe we face with climate change is avoidable if decisions are made at top political levels towards renewable energy sources and to lower our dependence on fossil fuels. If such advances are made, the demand for an allocative scheme to divide up the global carbon sink will become less of an imperative, and a lighter burden to bear by all those concerned. However, the urgency with which the climate change problems presents us forces us to work within our energy paradigm by devoting our energies to developing allocative schemes that are compatible with our present circumstances, as opposed to forming idealistic schemes for a world that doesn't face the same danger we face. Once we begin to shift our energy paradigm into a greener infrastructure, changes to the allocative scheme can certainly be made, but such a shift is not within the foreseeable future.¹²

Faced with competing claims on an increasingly scarce resource which are necessary for human well-being and flourishing, Singer asks: “Why should anyone have a greater claim to part of the global atmospheric sink than any other?”, quickly concluding

8 At least foreseeable in the context of how urgent it is to mitigate climate change. To avoid triggering irreversible tipping points, such as the global sea ice melting resulting in a significant emissions of methane gas buried beneath the ice, greenhouse gas emissions would have to be stabilized at 1990 level immediately, and cut by between 50-90% by 2050. With less than 40 years to reach the target cut, and present emissions being well above 1990 levels, maintaining hope that a major shift in our energy infrastructure will have a significant enough effect on our emissions of greenhouse gases seems unrealistic.

that the simplest reason is: “No reason at all.”¹³ Singer grounds his claim on the (unfounded) assertion that this kind of equality is self-evidently fair, and should be treated as a starting point for discussion. He further concludes that if there is no good reason to move away from this claim – which he thinks is the case – then it should be the end of the discussion. Singer's argument is similar to one proposed by Dale Jamieson (2001), who believes that if all persons are morally equal, then there is no reason why someone deserves a greater than equal share. Singer does not make the direct appeal to the moral equality of persons, but it is clear that this is implicit in Singer's appeal that there are no grounds for granting a greater share to any parties involved.

This appeal to the equal moral worth of persons to justify equal per-capita shares has become common among its advocates, for Athanasiou and Baer make a similar appeal. Yet, unlike Jamieson, Athanasiou and Baer proceed in a similar fashion to Singer, in citing that the case for equal per-capita emissions is obvious by drawing on basic ethics and enlightenment philosophy. What distinguishes Athanasiou and Baer from Singer is that they do not advocate equal per-capita emissions shares, but rather equal per-capita emissions rights.¹⁴ Thus the appeal to basic ethics and enlightenment philosophy: since all persons morally equal, they all deserve an equal set of human rights; which for

9 Peter Singer (2004), *One World*, New Haven: Yale University Press, 35.

10 What distinguishes Athanasiou and Baer's account is that it is a rights based account. As opposed to holding that each person deserves an equal share, Athanasiou and Baer stipulate further that persons have a right to emit greenhouse gases and by granting persons a share of the global carbon sink we are not allocating a piece of property to them, but rather fulfilling a human right that they possess.

Athanasίου and Baer includes a right to emit greenhouse gases.¹⁵

Grounding their argument for equal per-capita emissions as a rights-based theory has a tremendous amount of intuitive appeal seeing as how the global community is so adamant to ensure the preservation of human rights. But we should not get caught up by the intuitive appeal of this rights-based defence as the authors provide no justification for why emitting greenhouse gases ought to be considered a human right. Miller addresses this argument in his critique of equal per-capita emissions by demonstrating that we do not have a right to create greenhouse gas emissions themselves. Emissions are at most instrumental in attaining basic human needs, they are considered a means to an end, further asserting that we cannot claim a right to whatever means by which we may prefer to have our needs met.¹⁶

Miller may be right to point out that we do not have a right to meet our needs through whatever means we choose, but this type of claim ignores the present unavoidability of emitting greenhouse gases as presented by Shue. Yet, even if we claim a right to emit greenhouse gases due to the present necessity of those emissions for human

11 Tom Athanasiou and Paul Baer (2002), *Dead Heat*, New York: Seven Stories Press, 86. In a separate article, Athanasiou, Baer and their co-authors attempt to further substantiate this claim by drawing on the equal rights that all persons are granted within modern ethical and legal codes, Baer et al (2000), "Equity and Greenhouse Gas Responsibility", *Science* 289, 2287. Here, the authors make an additional claim that equal rights are especially pertinent in relation to common pool resources that exist outside the legal control of individuals or nations. The authors attempt to compare the United Nations Convention on the Law of the Seas which stipulates that resources found on the ocean-bed are to be treated as part of the Common Heritage of Mankind (CHM). The CHM states that the value of any resources found on the ocean-bed are to be distributed equally among all humanity.

12 David Miller, "Global Justice and Climate Change: How should responsibilities be distributed? I and II", *Tanner Lectures on Human Values*, 28, 141.

survival, why should this right entail a right to emit equally? Modern ethical and legal codes state that we all have a right to life, but this right to life does not entail a right to life which is equal in every respect to everyone else's. It does not entail a right to equal welfare, resources, or opportunities. Baer et al's argument posits a substantial list of human rights which extends far beyond any of the basic human rights found in our modern ethical and legal codes.

But let us return to Singer's argument. Setting aside the self-evidence for equal per-capita emissions, Singer also looks at the positive outcomes that would result from equal per-capita emissions. He cites how equal per-capita emissions would benefit developing nations most. In light of their current low levels of per-capita emissions, developing nations would be able to either sell off excess emissions credits, or increase their emissions to allow for greater development. In either case, developing nations would be the net beneficiaries of equal per-capita emissions, as developed nations would be required to either cut their emissions, or purchase credits from developing nations with low per-capita emissions rates.

Additionally, Singer makes a pragmatic appeal for equal per-capita emissions, asserting that due to “its simplicity, and hence its suitability as a political compromise, and because it seems likely to increase global welfare, that we support...equal per capita future entitlements...”¹⁷ With the threat of dangerous anthropogenic climate change

13 Singer, 42.

looming if we continue with our present policy of business-as-usual, the need to find an allocation scheme which will ensure global cooperation becomes more pressing. As such, any proposal which will garner support from the global community to take action immediately ought to be accepted, even if that acceptance is merely on pragmatic grounds.

Anticipated Criticisms of Equal-Per Capita Emissions

With the Kyoto Protocol facing intense scrutiny and major criticisms from developed nations, Singer and other advocates of equal per-capita emissions anticipate criticisms against their own proposal, which would be much more demanding on developing nations than Kyoto. Each of the criticisms that the authors raise will be mentioned and analyzed in turn. Paul Baer's comments regarding these objections are especially instructive: he asserts that practical objections do not show that equal per-capita emissions are not ethically justified. It will be shown that, while it is true that practical arguments should not dissuade us from accepting the proposal, on ethical grounds, the last of the three objections should encourage us to reject the proposal because it violates its own normative ideal of respecting equality.

The first of these objections is that adhering to equal per-capita emissions would be tremendously dislocating for the economies of developed nations which rely on high levels of greenhouse gas emissions and currently emit several times more than would be

required of them under equal per-capita emissions.¹⁸ Regarding this objection, any advocate of equal per-capita emissions can come up with the plausible response that emissions trading schemes will ease the transition towards equal shares. Even if states are not able to reduce their own emissions to equal per capita shares over time, they would still be able to purchase emissions credits from low-per-capita emitters and the revenues secured could be used for development projects in those states. So as it stands, the first objection has no ethical force despite its practical implications. However, the issue of emissions trading leads to the second of the objections.

As the program is currently understood, the funds raised from emissions trading will go to the states that sold the emissions quotas, but an objection is raised in that there is no guarantee that the funds raised will be used to help the most disadvantaged people within that state. In a world occupied by illegitimate governments and corrupt world leaders, it is conceivable that funds will be diverted away from the public good and either syphoned off to line the pockets of the corrupt political elite, or squandered by these corrupt or inept political elites. Not devoting the money to socio-economic development is not itself an ethical objection against emissions trading; it is a practical concern which could be remedied, as Singer suggests, through a trustee account setup by the United Nation.¹⁹ While not perfect, it would be an adequate practical compromise to ensure that the funds are directed towards legitimate ends.

14 Ibid, 45.

15 Ibid, 49.

The last of these criticisms is that by allocating emissions on the basis of population, states will have an incentive to increase population level so as to get a larger share of emissions. Singer believes that this is far from a fatal objection against equal per-capita emissions, due to the fact that allocative shares could be indexed based on a predetermined population baseline. Initially, 1990 is posed as a potential candidate for a baseline year, as this is the year when there was a sufficient amount of scientific certainty to determine that the climate was changing as a result of anthropogenic factors. But Singer rejects the 1990 baseline year, as it would be unfair to states with younger populations. Instead, Singer suggests establishing the population baseline on UN population projections for the year 2050, thereby granting states an incentive to decrease their population size in order to get a larger share of emissions quotas.²⁰

On the surface it appears as though advocates of equal per-capita emissions are able to successfully evade the criticism that their proposal will provide an incentive to increase population. But we need to ask what are the normative ramifications of setting any baseline year? Miller responds that if the guiding normative ideal behind equal per-capita emissions is equality, and this equality is to be represented by granting each person an equal share of the global carbon sink, then any population baseline year would violate the supposed guiding normative ideal. If the population happens to rise above the baseline, – or, if the argument is made in the reverse, if the population falls below – we

¹⁶ Ibid, 43.

no longer have equal access. If the advocates of equal per-capita emissions think that it would be wrong for someone to have a lower share of the global carbon sink as a result of the initial allocation, then it would be equally wrong for someone to get a lower share because of population changes for which they are not responsible.²¹

The most obvious response to this objection that simultaneously respects the underlying normative ideal behind equal per capita emissions would be to have each person's allocative share be based on real-time population. The complexities behind such a proposal would be so preposterous as to render the entire proposal meaningless, and advocates could no longer rest their support for it on grounds of simplicity.²² Advocates of equal per-capita emissions must then sacrifice their guiding normative ideal for the sake of simplicity, a pragmatic compromise which would essentially undermine the whole scheme if its advocates were seriously concerned with equality.

Modified Equal Per-Capita Emissions

Having addressed the practical objections against equal per-capita emissions, what remains is arguably the most central objection, namely that the proposal is insensitive to geographical circumstances which result in varying needs for emissions necessary for subsistence. Before presenting the case for a modified per-capita entitlement, I will

17 Miller, 144.

18 To illustrate the complexities involved, what we are dealing with is a fixed stock of emissions shares which can be allocated and an every changing world population. At every moment of every day, people are dying and being born, changing the population of every state at almost every moment in time. In order to have substantive, rather than merely formal equality in shares, each state's or person's emissions shares would have to fluctuate with the birth and death of every person on the planet.

address two advocates who disregard geographic circumstances as irrelevant and maintain strict equality in emissions.

The Significance of Geographic Circumstances in Determining Allocative Shares

Singer does not seem concerned that those people in colder climates will require a greater share of emissions to meet their subsistence needs. He argues that people living in Canada, for instance, will be able to purchase extra emissions credits through emissions trading to meet their increased needs. Further adding “citizens of rich nations could choose to pay that price and keep themselves warm, or cool, as the case may be.”²³ We can find several initial flaws in Singer's argument here. The first is that Singer ignores the possibility that poor people in rich nations will not be able to afford the increased costs associated with meeting their subsistence needs. A related point is that, Singer ignores the potential that poor nations might be located in colder climates and therefore face the same financial burdens to meet their subsistence needs as poor people in rich nations. This second part of the objection has less force, since it can be argued the majority of nations in these northern geographic regions are indeed developed nations with the surplus capita to afford the extra costs. But this ignores the fate of developing Eastern European states already struggling to develop in a post-Communist era. We could further claim that it would be unethical to place such states at a disadvantageous position by forcing them to spend more of their emissions entitlement on subsistence emissions while other states

19 Ibid, 49.

would not in light of their geographic location.

Singer's argument seems to be analogous to Axel Gossiers, whose claim is that living in cold climates is a matter of option luck, as opposed to brute luck.²⁴ In fact, if Singer were making his proposal on egalitarian grounds, he would be forced to argue along the same lines as Gossiers, since it is customary for egalitarians to recognize the differences between brute luck and option luck, and only adjust distributive shares for the former (since they are morally arbitrary reasons which should not adversely affect one's distributive share). Gossiers concedes that we could grant people living in colder climates a grace period before we punish them for their expensive taste to live in a cold climate, since we only knew about the dangerous effects of greenhouse gas emissions in 1990. As time went on, however, the choice of where people live would change from a matter of brute luck to option luck. Those who choose to remain in cold climates should not be compensated for their choice of residence, since they knew that it required a greater share of their emissions entitlement to meet their subsistence needs.

Gossiers' unwillingness to classify geographical circumstances as a matter of brute luck reflects a misunderstanding on Gossiers' part of how and why people find themselves

20 Axel Gossiers (2007), "Cosmopolitan Luck Egalitarianism and the Greenhouse Effect," *Global Justice, Global Institutions*, Daniel Weinstock ed. Calgary: University of Calgary Press. The distinction between option and brute luck receives its conical statements from Ronald Dworkin (2000) who classifies option luck as the outcome from a deliberate choice (or gamble) wherein we are held accountable for the outcomes. Brute luck on the other hand does not involve the same kind of deliberate choice (or gamble) and is simply the result of how things fall out. A classical example that can be given is that if you suddenly succumb to a genetic disease, you may be said to have bad brute luck, but if you lose your savings due to fluctuations in the stock market, you may be said to have bad option luck. The general sense is that you can be held accountable for the results of bad option luck to a greater degree than bad brute luck, seeing as how you have no control over your brute luck.

in cold climates. Aside from the irony of considering living in cold climates an expensive taste, since we would normally consider living in tropical climates as a matter of expensive taste, people have no choice as to where they are born. While Gossier would be willing to concede that people have no ability to control where they are born, this is reflected in his willingness to transition geographic choices from option to brute luck. Yet, this still ignores the fact that people may not be able to move to a more temperate climate as a result of the financial burdens associated with moving to such a climate. Moreover, since a substantial portion of the world is located in these cold climates, in a world with an ever-increasing population, it remains possible that people will not be able to move to a more temperate climate. This point leaves the immigration issues aside, although the possibility to emigrate may also contribute to why people are not able to move to a more temperate climate. The point I wish to make is that in light of an ever-growing population, some portion of the population will have to live in colder regions. Admittedly, winter sports enthusiasts, and those with an aversion to tropical weather may choose, as a matter of (expensive) taste to reside in these colder regions, but we cannot generalize these circumstances for all those who currently find themselves in these cold regions.

Finally, it would seem unreasonable to uproot those without the financial means to meet their basic subsistence needs who find themselves in colder regions with which they share a cultural heritage. For instance, many Nordic people feel a sense of cultural affinity

with their motherland: their history, their roots, and familial heritage all reside within this land. The point I wish to raise here briefly is that Gossier greatly underestimates the importance of a group's cultural heritage in addition to the potentially harmful psychological effects of being dislocated from a person's homeland, a point that ought to raise its own ethical concerns.

Once advocates of equal per-capita emissions admit that geographical circumstances are a matter of brute luck, an admission they are forced to make if they defend their proposal on egalitarian grounds, they must advance a modified version of equal per-capita emissions. This type of modified equal per-capita emissions is advanced by Athanasiou and Baer, who affirm that their equal per-capita emissions (rights) must adequately take into account distinct national characteristics, while not endangering the overall per-capita framework. Athanasiou and Baer not only claim that geographical circumstances related to varied climatic conditions matter, but extend their discussion of national circumstances to include resource endowments.

The Significance of Natural Resource Endowments in Determining Allocative Shares

The authors do not specify what they mean by resource endowments, but presumably the authors are referring to access to renewable resources which do not contribute to the growing concentration of greenhouse gases in the atmosphere. Much like variations in climate conditions as a result of geography, variations in access to renewable resources would have an effect on how much access to the global carbon sink a state

would require to meet its needs – subsistence or otherwise – albeit in the opposite direction. If a state has greater access to hydropower, or uranium for nuclear power, it would require fewer emissions that result in increased concentrations, while colder climates would require a greater share of emissions.

Simon Caney addresses both of these aspects in his critique of versions of equal per-capita emissions which do not compensate for either element.²⁵ The basis for Caney's critique is that geographic circumstances and access to renewable resources have an effect on a state's need to generate emissions, which would result in either a greater or lesser share of emissions if we want to make a coherent argument on egalitarian grounds. However, authors such as Caney, Athanasiou, and Baer, who argue that access to renewable resources should play a role in the allocation of either emissions shares or rights do so on the presupposition that a state does not legitimately own its resources (be it renewable or otherwise).

Under the assumption that the global carbon sink is unowned, and that any attempts to appropriate shares of it must be justified (since we cannot satisfy the Lockean proviso), we are faced with competing claims on a common resource. The same cannot be said for natural resource endowments that are found within national borders, as they fall under the political and legislative control of the occupying nation. Other nations can stake a legitimate claim on a share of the global carbon sink, but they cannot stake an

21 See Simon Caney, "Climate Change, Energy Rights, and Equality" in *The Ethics of Global Climate Change*, Denis G. Arnold ed., Cambridge: Cambridge University Press.

analogous claim on natural resource endowments found within nation's borders, a point which is affirmed by present conventions on national property rights in international law and general global governance. Additionally, however, such proposals also ignore other potential factors which may influence a state's needs for emissions to meet its needs.

In addressing the first presupposition, the underlying assumption is an endorsement of cosmopolitan justice, for only if we accept a version of cosmopolitan justice can we do away with the arguments of state sovereignty and a state's ability to do what it may with its own resources. But the dominant philosophical view is that a state has legitimate control over its own resources, an implicit rejection of cosmopolitan justice. While it is true that defenders of cosmopolitan justice, like Caney, seek to alter this dominant worldview, they cannot do so without first defending it as the most plausible, or attractive, philosophical position to take. This objection may seem superficial, since it is contingent upon a rejection of cosmopolitan justice which some may endorse, so a second (stronger) objection will have to be made in order to exclude variations in access to renewable resources as a reason for modified emissions allocations under an equal per-capita framework.

The second objection has to do with the fact that it is not only access to renewable resources which may have an effect on a state's need for emissions to meet its needs. Certainly, an abundance of renewable, or non-greenhouse gas intensive resources, may indeed lower a state's dependence on greenhouse gas emissions to meet its needs, but so

can the efficiency with which a state uses its greenhouse gas emitting energy sources. For example, one of the dangers that China's extensive use of coal-fired power generators – aside from the simple fact of burning coal which is one of the most hazardous ways to create energy in terms of carbon-intensity – is that China's coal-fired power plants are not as efficient as those in the United States. By placing economic development above and beyond the need to protect the environment, China has forgone investments into cleaner sources of fossil fuel combustion in order to meet its development needs. Following Baer et al's proposal would effectively reward China for their chosen inefficiency by granting them a greater allocative share of the global carbon sink so they can produce a comparable output.

Having already broadened the scope of our egalitarianism beyond emissions themselves through the inclusion of access to renewable resources, we would have to broaden the scope further still to include the efficiency of greenhouse gas emitting energy sources. The example above only looked at differences in efficiency regarding a single energy source, namely coal. But, for the sake of consistency, we would have to broaden the argument further to look at the differences in greenhouse gas intensity between various energy sources. Natural gas is a less greenhouse gas intensive energy source than oil, and oil is a less greenhouse gas intensive source of energy than coal. These further variations in greenhouse gas intensity would also have to be incorporated into our modification of equal per-capita emissions, as variations in access to low greenhouse gas

intensive energy sources would lessen a state's need for emissions which would lower its share of emissions rights.

Finding an Answer to “Equality of What?”

Now the original problems we had with the allocation of emissions shares are complicated by two further concerns. First is that incorporating further variations in access to resources, and the types of resources which contribute to a state's need for emissions, threatens to undermine the normative ideal of equality which is meant to be the basis of equal per-capita emissions. This may not seem problematic at first, since we can claim that what we are after is a variation of equality of capabilities, but to make this argument, any advocate of equal per-capita emissions would have to persuasively argue for equality of capabilities over equality of resources, which seems to be the underlying equality we are searching for through equal per-capita emissions. Moreover, this type of argument presupposes the endorsement of a global equality of capabilities, which is far from accepted. On the other hand, advocates could deny that what they seek is equality of capabilities, and instead maintain that what they actually seek is equality of resources with regards to the global carbon sink.²⁶

This type of claim leads us directly into the second of the two problems. By incorporating more than just climatic variations to determine modifications in emissions

22 The point I wish to stress here is that I am in no way trying to clear up some of the conceptual problems concerning “equality of what” that the authors confront, but only to highlight their inability to answer the very question at hand. All of the advocates of equal per-capita emissions call for equal shares, but in no instance do they clarify what equal shares consist of and what form of equality they are striving for (resources, capabilities, or otherwise).

shares on an equal per-capita basis, we run the risk of proposing a global equality of resources that goes beyond the scope of emissions shares themselves. Implicit in the argument for equal per-capita emissions is the position that what we are trying to equalize are either emissions themselves in a limited sense, or what we are trying to equalize is broader than that, and includes other factors that contribute to one's need for emissions. What is absent (and rightfully so) is an argument for global distributive justice that attempts to hedge such a proposal around climate change and to use the need to find an equitable solution to the allocation of the global carbon sink as a means to resolve larger global distributive problems. If as a result of equal per-capita emissions, its advocates are able to alleviate some of the global disparities concerning wealth or welfare (or what have you, few would find grounds for complaint.

Such alleviation would be considered a positive upshot of their proposal, but it cannot be the basis for supporting equal per-capita emissions. When we are considering any plausible candidate for the problem of climate justice we need to bracket out other concerns of justice, such as social justice or broader problems concerning economic justice globally. The problem we are faced with (that an equal per-capita emissions proposal is meant to resolve) is that of finding an equitable allocation of the global carbon sink in an effort to mitigate anthropogenic climate change. It would not be prudent to attempt to resolve larger global problems related to social and economic issues under the guise of fighting climate change. The point I wish to stress is that while we should be

concerned with various global disparities, attempting to resolve these disparities within the context of climate justice is inappropriate for at least two reasons. First, curbing anthropogenic climate change by limiting our emissions through allocations of the global carbon sink is conceptually distinct from other social and economic issues; and second, the pressing need to mitigate climate change cannot be hampered by attempts to resolve other global disparities.

What remains is a response to the question of why climatic differences as a result of geography should matter in our allocation of the global carbon sink. What distinguishes such climatic variations from variation in access to resources which would offset (or increase) the need for emissions, is that such climatic variations are external to the state. We are not intruding on a state's sovereignty by including climatic variations when modifying emissions shares, since a state's climate is not considered a resource over which it can claim legitimate control. Once we conclude that climatic variations are a matter of external circumstances, and therefore encompassed within brute luck, we have a legitimate claim to modify emissions shares. Also, the inclusion of climatic variations would merely delimit the scope of our allocation, for we are no longer allocating all emissions shares, but only those that fall beyond the scope of subsistence emissions.

Shue has forcefully argued that we ought to have an inalienable right to minimum emissions necessary for survival, human decency, or more broadly construed, a right to a

“minimal standard of living for those impoverished people.”²⁷ By making what Shue classifies as subsistence emissions inalienable, they would fall outside the scope of our allocation. States would be granted these emissions on the grounds of a human right to subsistence, and what we would be left with is the allocation of luxury emissions: emissions used for the satisfaction of other needs which are inessential for either decency or survival.²⁸ Limiting our allocative scheme to luxury emissions would not violate the underlying normative ideal behind equal per-capita emissions (in that all would have an equal share of luxury emissions while having their subsistence emissions already satisfied). Shue admits that the definition of what counts subsistence emissions will vary according to technological capabilities,²⁹ but this admission is distinct from Athanasiou and Baer's call for emission rights to be modified according to access to renewable resources. A state with greater technological capabilities would not receive either a greater or lesser share of allocatable emissions, for each state would have an equal share of luxury emissions. The difference would be the amount of luxury emissions that we would have available to allocate globally.

One major problem remains with Shue's proposal for the inalienability of subsistence emissions, and that is that there is no agreement on what counts as subsistence emissions, as opposed to luxury emissions. But this problem should be properly construed as a practical objection, which should not deter from the ethical

23 Shue (1993), 42.

24 Ibid, 56.

25 Stephen Gardiner, (2004) “Ethics and Global Climate Change,” *Ethics* 114, 585.

justification of Shue's claim. Shue's interpretation of subsistence emissions appears to have a minimalistic character by stipulating that *only* those emissions necessary for the satisfaction of basic needs ought to be considered inalienable. There could be disputes regarding what counts as the satisfaction of basic needs. Martino Traxler, for instance, interprets subsistence emissions in a broader sense to include those that a society deems necessary – ones that a society finds indispensable in order to survive.³⁰ The obvious problem that we encounter here is proposed by Stephen Gardiner, who relates this point back to former President George W. Bush's proclamation that the American way of life is non-negotiable.³¹ We then might be obligated to treat all American emissions as subsistence emissions on Traxler's interpretation, since Bush would argue that those emissions are a social necessity. But we do not have to follow Traxler down this slippery slope. By interpreting Shue's subsistence emissions in a minimalistic sense, we can conclude what I believe Shue intended, and specify that subsistence emissions are those necessary to meet our basic needs (full stop).

Shallow vs. Deep Reasons

The strongest formulation of equal per-capita emissions is one that grants subsistence emissions as an inalienable right, while equalizing luxury emissions. Doing so allows advocates of equal per-capita emissions not only to address many of the practical objections against their proposal, but one of the most central theoretical

26 Martino Traxler, (2002) "Fair Chore Division," *Social Theory and Practice* 28 (1), 108.

27 Gardiner (2004), 586.

objections against it. The one practical objection that remains is the use of population baseline years, and the associated problems of basing emissions share on real-time population levels. Since advocates of the proposal may not be jarred by this assessment, what remains is a criticism of the fundamental basis of the proposal itself which is designed to completely undermine the entire framework.

Deep vs. Shallow Reasons to Support Equal Per-Capita Emissions

If we follow Miller in distinguishing between deep and shallow reasons to support equal per-capita emissions, it becomes evident that support for the proposal is based entirely on shallow reasons. Singer holds that the reasons to support the proposal are self-evident: primarily its simplicity, which in turn would lead to a pragmatic acceptance of the proposal, since it would avoid arbitrariness in the allocation scheme. Miller defines these as “shallow reasons” to support equal per-capita emissions.³² In almost every other field of philosophical analysis, we would be skeptical of those who purport to base their thesis on grounds of self-evidence. Our philosophical instincts would urge us to probe the issue further, to scrutinize the basic tenets of the position, to demand verification of its underlying normative foundation, and challenge vigorously any attempt to ground a theory or proposal which fails to meet the standards for philosophical analysis to which we have committed ourselves.³³

28 Miller, 141

29 An objection can be raised that contrary to holding on to equal per-capita emissions for “shallow” reasons, philosophers such as Singer maintain their position as a result of their philosophical commitments. Being a staunch utilitarian, it can be said that Singer may advocate for equal per-capita

What is curious about many advocates of equal per-capita emissions is the lack of deep philosophical analysis that is involved. Non-philosophical advocates may be excused of this fault as they are not trained to rigorously defend their positions on philosophical grounds, but we should hold our philosophical counterparts to a higher standard. Nor should the difficulty involved in finding an alternative proposal absolve these advocates for their failures in providing a deeper philosophical foundation for their proposal. It is true that the pressing need to find a solution of the allocation of the global carbon sink makes this task more urgent than perhaps determining the correct epistemological theory, but nor should this allow us to rest our proposals on shallow reasons alone. The sophisticated nature of philosophical inquiry demands a deeper inquiry into the grounds to support equal per-capita emissions, but when this is done, do we still have reasons to support equal-per capita emissions?

In order to answer this question, we must first return to the question which Singer proposes to anyone who wishes the challenge equal per-capita emission: “Why should anyone have a greater claim to part of the global atmospheric sink than any other?” What this analysis has shown is that there are reasons why someone should have a greater

emissions on pragmatic grounds, but that he does so as a result of his commitment to the greatest happiness principle and equal per-capita emissions is the best way to achieve the greatest happiness for the greatest number. If this were the case, my position that Singer is maintaining equal per-capita emissions would be unfounded because of his insistence on sticking to principles (in this case the principle of greatest happiness), even in the face of conflicting principles. But when we read Singer's position in *One World* we find that his support for equal per-capita emissions is not founded on a utilitarian basis, instead deriving his position from the premise that everyone deserves an equal share of the global carbon sink. Had Singer grounded his proposal more strictly on utilitarian grounds we could plausibly say that he had deeper reasons to support equal per-capita emissions, but this is not the case.

share. The first is difference in climatic conditions that result from geographical circumstances. On the surface, this is not a fatal objection against equal per-capita emissions since we can alter the question to state: “Why should anyone have a greater claim to the global atmospheric sink than any other in terms of luxury emissions?” Here too we can answer that the reasons why someone has a greater claim are based on variations ranging from access to renewable resources to the efficiency in using greenhouse gas intensive energy sources. More importantly, unlike climatic conditions, these cannot be incorporated in order to generate a modified version of equal per-capita emissions.

Despite the lack of deep reasons to support equal per-capita emissions, as Miller declares, advocates of equal per-capita emissions are not disconcerted by these consequences. It has been the goal of this analysis to show that advocates of equal per-capita emissions ought to be disconcerted by these consequences if they committed the proposal on the normative grounds of equality. Its advocates can discount the force of these objections on one final account: by grounding equal per-capita emissions as a consequent of the global carbon sink being common property. Although, here too, there is a curious lack of deep philosophical analysis in any attempt to either ground the global carbon sink as common property, nor an attempt to derive equal shares from common property.

***The Case for Equal Per Capita Emissions
Grounded in Common Atmospheric Ownership***

The two leading philosophical advocates of equal per-capita emissions, Singer and Jamieson, both take the claim of common atmospheric ownership as basic. Additionally, Darrel Moellendorf, one of the newest philosophical advocates of both common atmospheric ownership and equal per-capita emissions, acknowledges the lack of scrutiny in such claims and purports to remedy this in a recent article, but even Moellendorf's assessment fails to provide an adequate amount of scrutiny since he merely posits both claims (common ownership and equal shares) and seeks to derive their basis from contemporary liberal (and libertarian) accounts on property.³⁴

A single notable exception emerges in the philosophical literature concerning common atmospheric ownership and equal per capita emissions that offers a careful and detailed argument. Mathias Risse shares Miller's concerns regarding the lack of deep philosophical analysis surrounding both common atmospheric ownership and equal per-capita emissions and seeks to actually rectify the situation. Risse correctly asserts that we cannot take claims about resource ownership as basic, for any such claims require an account of why we should take that particular view.³⁵ Through a lengthy and meticulous account concerning the original appropriation of the Earth, Risse concludes that we ought

30 See Darrel Moellendorf "Common Atmospheric Ownership and Equal Emissions Entitlements," in *The Ethics of Global Climate Change*, Denis G. Arnold ed., Cambridge: Cambridge University Press.

31 Mathias Risse (2008), "Does Left-Libertarianism Have Coherent Foundations?" *Politics, Philosophy & Economics* 3(3), 343.

to accept a form of collective ownership as the most plausible account.³⁶ I shall not attempt to recite Risse's detailed argument here because my concern is only with the portions of Risse's argument that are especially pertinent to the issue at hand; namely, that of common atmospheric ownership and whether we can derive equal per capita shares from that position.

What Risse finds through his investigation is that we can derive a non-theological account of common property through an appeal to natural rights, in that we can only guarantee human rights when we take the position that resources are held in common.³⁷ But we do not have to rely on a conception of natural rights to at least accept the view that some resources ought to be held in common. This view gains philosophical traction when we take into account that for any philosophical position to be plausible it must at least treat persons as equals in a moral sense, and guarantee the satisfaction of basic human needs as a right. Moreover, the right to have our basic needs met does not need to be interpreted as a natural right.

Attempts to defend (at least some) resources as common property gains further philosophical traction when we take into account two additional features of natural

32 At this point it is worth mentioning that while I do not subscribe to the common ownership thesis on the grounds that we cannot have any legitimate entitlements outside of an institutional structure, in the final chapter I will defend my own version of a collective ownership thesis. What this discussion is meant to highlight is only that we cannot derive an equal per-capita proposal *even if* we accept the common ownership thesis.

33 Ibid, 349.

resources proposed by Risse.³⁸ The first is that resources are necessary to secure human survival, and the second is that resources come into existence without human interference. Limiting our investigation to the global carbon sink, it is evident that both claims apply, and if we are truly committed to satisfying the right to having our basic needs met (or the right to subsistence in Rawlsian terms), the only way to do so would be to hold the global carbon sink in common. By denying common ownership here we are left without recourse to prevent others from excluding some group of persons from access to the global carbon sink in order to meet their needs.

All of this is consistent with arguments made by advocates of equal per-capita emissions, and is at least implicit in their accounts. What Risse's account reveals, however, is that from this view of common ownership we cannot derive equal per-capita emissions. Emphasizing the equal status of persons, along with the equal opportunity to satisfy basic needs – in so far as such needs require the use of common property like the global carbon sink for their satisfaction – we derive an account of common ownership understood in sufficientarian terms. There is no requirement of actual equality in one's shares. Contrary to Singer and Jamieson, equal status as moral persons only implies equal opportunity to satisfy basic needs, and not an entitlement to an equal share of what was previously held in common.³⁹ According to Risse, any attempt to derive actual equality in shares either pushes collective ownership beyond its intended limits, or is based on a

34 Mathias Risse, "Original Ownership of the Earth: A Contemporary Approach" *Kennedy School of Government Working Paper* RWP08-075 (http://web.hks.harvard.edu/publications/working_papers), 10.
35 Ibid, 16-17.

more comprehensive system of human rights, which includes rights above and beyond the satisfaction of basic needs and subsistence. If advocates of equal per-capita emissions are going to take on the second horn of the approach, an argument is needed to account for this comprehensive set of human rights. This argument is obviously absent in any of the accounts, for its supporters often choose to ground their arguments on the basis of self-evidence.

Conclusion: Debunking the Intuitive Appeal of Equal Per-Capita Emissions

The allure of the self-evident intuitive appeal behind equal per-capita emissions centring around its simplicity and fairness has garnered it a considerable amount of support among philosophers and non-philosophers alike. But it has been shown that this intuitive appeal is merely superficial, for a critical analysis of equal per-capita emissions has shown that while supporters of equal per-capita emissions rest their proposal on the ideal of equality, their own proposal ends up violating this normative ideal. It is true that it is able to overcome several practical objections without taking away from the force of its ethical justification, but the same cannot be true for normative objections against the proposal. So while its advocates do not seem disconcerted with the incoherence of their theory, as philosophers we should be.

Attempts to derive equal shares from common atmospheric ownership are admirable since it is supposed to rest on a foundation of justice, fairness, equity and equality. But what is just and equitable does not always translate into what is equal. This

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analysis was meant to debunk the intuitive appeal behind equal per-capita emissions in order to lay the foundation for an alternative proposal based on an adaptation of Rawl's justice as fairness. The purpose of this critique was not only to show that the dominant proposal is flawed, but also that despite the difficulties in finding an alternative, we ought to do so nonetheless for the sake of philosophical coherence.

Chapter 2: Why Not Just Globalize the Difference Principle?

In the previous chapter, my intention was to defuse much of the intuitive appeal behind equal per capita emissions as a basis for emissions allocations. A critique of equal per capita emissions was necessary, as it is the dominant proposal for emissions allotments among philosophers and policy makers alike. The importance of the critique is to pave the way for an alternative proposal that I will present in the next chapter based on an adaptation of Rawls's difference principle in the form of a *climatic difference principle*. While the difference principle operates within domestic society as a justification for a departure from equality in the distributive shares of primary social goods, it would be tempting to conclude that the climatic difference principle is presented as an analogous departure from equality in emissions share, but it is not. There is no presumptive equality in emissions shares from which the climatic difference principle is meant to justify a departure. However, it is presented in opposition to equal per capita emissions as an attempt to share in the intuitive appeal behind the difference principle by improving the situation of *everyone* in comparison to how each would fair under an equal shares model.

What I classify as an adaptation of a Rawlsian principle is nothing novel among Rawls scholars, as there are several other attempts to utilize Rawls's principle beyond his

original intentions (through modifications, extensions, adaptations, or otherwise⁴⁰). What follows is a critique of past attempts to globalize the difference principle made by Charles Beitz and Thomas Pogge. The critique is meant to illustrate my conviction that Rawls was largely right to limit the scope of distribution, and the reach of the difference principle in particular, as it is presented as a part of justice as fairness.⁴¹ I grant that globalization has changed the world in innumerable ways – especially since the time when Rawls first began to develop justice as fairness – and that the notion of societies as largely closed and self-sufficient is a purely theoretical construct that does not reflect the present state of the world.⁴² Changes to the world's social, political, and economic order can warrant changes in our conceptions of global distributive justice, but the point that I wish to stress here is that such changes do not warrant globalizing the difference principle.⁴³

We can agree that the obligations of global distributive justice found within *The Law of Peoples* are too lax and do not fulfill our obligations to the global citizenry at

1 See for instance Chris Wyatt (2008), *The Difference Principle Beyond Rawls*, New York: Continuum and Derek Bell (2004), “Environmental Justice and Rawls' difference principle” *Environmental Ethics* 26 (3).

2 I maintain that Rawls was largely correct because, while I agree with the parameters of Rawlsian distributive justice and its limitation to domestic societies, Rawls's theory does not account for certain global issues such as climate change which create new demands of distributive justice. To that end, the final chapter will seek to apply some Rawlsian principles to global climate change and to supplement justice as fairness with a global principle to address such problems.

3 A conservative estimate on when societies were actually largely closed and self-sufficient would have to date back to before the age of discovery, and arguably long before then to when national boundaries became porous during the early civilizations.

4 For an account of global justice in virtue of globalization, see for instance Nicole Hassoun (2012). *Globalization and Global Justice*. Cambridge: Cambridge University Press.

large, and especially the world's most disadvantaged citizens. But such a conviction does not imply that we must be thrust into the arms of a globalized difference principle and the radically redistributive effects that such a principle would entail. What I wish to point out here is that we need a distinct set of principles to govern global distributive justice. The appropriate principles are found neither in justice as fairness as it applies to domestic societies, nor in Rawls's formulation of the law of peoples. Domestic societies provide a unique instance of distributive justice because of how goods and services are produced, how people relate to one another as cooperative agents, and because of the effects of our national boundaries and institutions. Likewise, our global encounters present a unique instance of distributive justice because of how people relate to one another, either as persons or cooperative agents, and because of the effects that nations/corporations have on one another and the global citizenry at large.⁴⁴

My intentions are not to present a theory of global justice, or even a more limited theory of global distributive justice. The problem that I confront is how to allocate the global carbon sink in a fair and equitable fashion. Implicit in my analysis is a rejection of cosmopolitanism, but also a belief that some form of global justice is possible with a liberal (and even statist) framework that grants the importance of our own domestic

5 Neither of these lists is exhaustive by any account. They are meant to illustrate that different instances of distributive justice provide unique instances of distributive justice that must have their own distributive principles. The obligations of distributive justice that we share with our fellow compatriots are not the same as we share with the global citizenry at large.

societies while recognizing that our obligations of justice extend beyond our own frontiers, albeit in a more limited sense.

Rawls on Social Justice and Cosmopolitan Rawlsians

Having set aside equal per capita emissions, and having made allusions to an alternative proposal, some preliminary remarks need to be made before I can present the climatic difference principle itself. *A Theory of Justice*⁴⁵ had a tremendous effect on contemporary political philosophy by offering a wide-ranging, systematic treatment of political philosophy unmatched since John Stuart Mill. Upon its release, Robert Nozick declared, “Political philosophers now must either work within Rawls's theory or explain why not.”⁴⁶ Philosophers were now split between those offering competing conceptions of justice, such as Nozick's Libertarianism and Walzer's Communitarianism, and amongst those working within the theory, such as Beitz and Pogge, who attempt to extend the scope of Rawls's principles.

Rawls's principal concern in *Theory* is limited to domestic justice, as he makes only passing remarks on a law of nations, which he would later rename his law of peoples. Famously, Rawls opens *Theory* by declaring that “Justice is the first virtue of social institutions.” This opening remark sets the tone for the rest of the book by

6 John Rawls (1999a) *A Theory of Justice* (Revised Edition), Cambridge: The Belknap Press of Harvard University Press. All future references in the notes will be made simply as *Theory*.

7 Robert Nozick (1974), *Anarchy, State and Utopia*, New York: Basic Books, 183.

stipulating that justice as fairness – Rawls's particular conception of justice – is a matter of social justice. Thomas Scanlon observes that, “Rawls is only concerned with one of the many senses of term [justice].”⁴⁷ He defers until much later in his life any detailed comments on international justice, which would later become “The Law of Peoples”, presented initially as the Oxford Amnesty Lecture on Human Rights in 1993. Unlike Cosmopolitans, he is not concerned with justice among individuals independent of whatever relationships and institutions they may or may not share. Justice as fairness is a political conception of justice, an idea that resonates throughout *Theory*, but one which Rawls feels was not sufficiently stressed when it was first published. The principles of justice as fairness, then, are to apply to the basic structure of a largely closed and self-sufficient society, and apply to us as individuals *qua* citizens partaking in that basic structure.

It is not that we are bound by justice only insofar as our institutional relationships stretch, or that no principles of justice apply to us as individuals (as opposed to the institutions under which we live); rather, these principles apply to different forms of justice, each with its own distinct subject. There are, as Rawls thinks, problems of justice to which justice as fairness may fail to provide an answer. Rather than seeing this as a flaw in the Rawlsian framework, it is an admission on Rawls's part that political justice

8 Thomas Scanlon (1975), “Rawls' Theory of Justice” in *Reading Rawls*, Norman Daniels ed. Oxford: Basil Blackwell, 191.

does not cover everything, nor should we expect it should. The problem may be one of political justice, as in the case of justice between states in terms of international justice, where justice as fairness may not be the correct set of principles. Additionally, by the time that *Political Liberalism* (1993) was published, Rawls limits justice as fairness to apply to modern constitutional liberal-democracies. No longer did he think that his theory was a comprehensive political theory for all societies, at all times, as he did implicitly in *Theory*.

Despite these frank admissions of the limits of justice as fairness and the arguments presented in *Theory*, Cosmopolitan Rawlsians such as Beitz and Pogge advocate an extension of (at least parts of) Rawls's work to apply globally. Pogge's admiration of Rawls is well known, despite what he sees as shortcomings in Rawls's theory. These he hopes to overcome, in part, by reconceptualizing the notion of a closed society to include the world as a whole, for, according to Pogge, that is the only truly closed and self-sufficient society. Beitz may not have admired Rawls in the same way as Pogge did, but he saw the relevance of Rawls's contractualism to questions of global distributive justice.

With Beitz offering the most explicit case for a global difference principle, along with his personal conviction in support of the application of such a principle, much of the discussion concerning the case for a globalized difference principle will focus on his

account. Pogge too offers a case for a similar principle through a more direct extension of the Rawlsian framework, but he personally does not subscribe to a strict Rawlsian position, specifically with regard to a global difference principle. Pogge's remarks on globalizing Rawls will be used to supplement Beitz's account (since he affirms the plausibility of such an extension) along with his account of the Global Resource Dividend principle, which is to work analogously to the difference principle.

It is worth engaging with Beitz and Pogge's arguments on global distributive justice in order to show why the difference principle cannot be globalized, and to distinguish my own formulation of the climatic difference principle from the global difference principle. Both attempt to demonstrate that Rawls's criteria for distributive justice can be extended to transcend national boundaries and apply globally. Their point of departure from Rawls is with respect to his conception of society as largely closed and self-sufficient, explaining that the only society which meets such conditions is the global society at large. National boundaries are considered moral watersheds until we recognize that there exists – or at least that it is feasible for there to exist – a dense network of social interdependence, which, like Rawls's conception of the basic structure, has a profound and enduring effect on people's life prospects.

Rallying against the notion that modern societies are largely closed and self-sufficient leads Beitz and Pogge to deny that we only share bonds of justice with those

whom with we share common citizenship. The consequence is that we must now view the distribution of natural resources as just as morally arbitrary as is the distribution of accidents of natural endowment and contingencies of social circumstance.⁴⁸ The conclusion they wish to draw is that participants from behind a veil of ignorance, operating under maximin reasoning, would choose a distributive principle concerning natural resources which is sensitive to the distributional effects on the least advantaged.

It will be shown, however, that the impossibility of extending Rawlsian principles lies not in the empirical questions concerning the actual level of interdependence, or the degree to which societies are closed and self-sufficient, but rather the normative aspects of Rawls's theory. Denying that he offers a comprehensive political theory for all societies at all times, the importance that Rawls attributes to the bonds of political community lies within the normative force of such political communities. As Pogge suggests, Rawls may not offer an explicit argument for why national boundaries have a magical moral force, but an answer can be extrapolated from his position on the use of liberal public political culture and the notion of political legitimacy found in the later Rawls. Within the domestic sphere we identify ourselves as free and equal persons, but within the international sphere we find an asymmetry strong enough to distinguish the

9 Here I follow Beitz and Pogge's conception of the global difference principle and their focus on natural resources. Whereas the difference principle in Rawls applies to all primary social goods (including, but not limited to income and wealth), I limit my discussion to natural resources because that is the core of the discussion found within Beitz.

bonds of domestic justice from those of international justice. Moreover, we can add independent arguments in support of the value of nationalism, arguments consistent with Rawlsian principles.

Pogge and Beitz may concede that nationality has a greater importance than they acknowledge, but in light of globalization, and the level of socio-economic interdependence, we are therefore bound by obligations of distributive justice. This argument does not depend on the empirical extent of interconnectedness, but rather the normative significance of interconnectedness. Justice, for Rawls, is designed to answer questions of how the benefits and burdens of social cooperation are to be shared. But if we analyze Rawls's most developed arguments regarding the conditions for social cooperation, as opposed to mere voluntary associations, or weaker forms of cooperation, global social cooperation is dissimilar to Rawls's conception within the domestic sphere. It is tempting to suggest that Rawls would acknowledge that there is global social cooperation, since he nowhere denies a global basic structure; however, our domestic basic structure binds us in a way which the global basic structure does not.

Rawls does not believe that his theory implicitly rejects the possibility of extension to other areas beyond social justice within the domestic sphere. He limits the scope of justice as fairness to social justice; that is, to the basic structure which governs domestic society, because he felt that if “we have a sound theory for this case, the

remaining problems of justice will prove more tractable in light of it.”⁴⁹ But, it will be shown, we cannot simply extend Rawls’s principles, not even limiting the extension to the difference principle.

The question then becomes, how is it conceptually possible to use a formulation of the difference principle to serve as the basis for allocating shares of greenhouse gas emissions which is consistent with a Rawlsian framework? The climatic difference principle is designed to be an adaptation of Rawls's difference principle, rather than an extension, such that it will depart from the Rawlsian project of developing principles for social justice, justice which is concerned with the configuration of institutions and background procedural justice. The climatic difference principle will assess the justice of the allocation of greenhouse gas emissions amongst states in the international sphere.⁵⁰ Such a shift from Rawls marks a second fundamental departure: the climatic difference principle will not be a distributive principle, for it is not concerned with redistributing wealth around the world, nor is it concerned with reforming institutions so that the resulting distribution will be just.

Such a drastic departure from Rawls requires further justification, seeing as how Rawls was so adamant that the difference principle cannot be interpreted as an allocative

¹⁰ *Theory*, 7.

¹¹ While the allocations themselves are made out to states, the specific quantity of the allocation will be determined on a per-capita basis. I take up this point in greater detail in the following chapter.

principle.⁵¹ I intend on doing so by separating the climatic difference principle from the Rawlsian principles of justice as fairness, and by using the conceptual idea behind the difference principle (that of justifying inequalities so long as they are to the greatest benefit of the least advantaged) as an evaluative principle to determine if the allocation of green house gas emission is just. It will apply to a specific problem of justice, climatic justice, and determine not how to share the benefits and burdens of social cooperation, but how to share our allowed green house gas emissions. What will distinguish the climatic difference principle from the global difference principle which Beitz and Pogge advance, is that while the latter wrongly attempts to extend the principle to apply globally, the former will utilize the conceptual framework of the principle in an adapted form to a separate and distinct question of justice.

The Case for a Global Difference Principle

Prior to the recent surge of Cosmopolitan literature on global distributive justice, Beitz observed that within the morality of states affluent states had no obligations to their developing neighbours to promote economic development. Beitz proposes that our obligations of justice ought to be more demanding. The traditional delimitation of the boundaries of justice, to apply only to the domestic sphere, by contemporary political philosophers such as Rawls is inconsistent with our new (globalized) world order. Such a

¹² See *Theory* 56, 77 and John Rawls, *Justice as Fairness: A Restatement* Cambridge: Belknap Press of Harvard University Press, 50-51.

delimitation may have been appropriate if the empirical claim that states are self-sufficient was true, but the 20th and 21st centuries mark a period of globalization of the world economic system and provide a dense network of interdependence operating under the influence of a global basic structure. Beitz holds that even if the empirical claim was false, we can still make the case on contractarian grounds for global justice. Pogge adds that, even if it were possible to move to a world in which there is only marginal international interaction, insignificant enough to warrant distinct principles for global justice, the matter would be purely academic. Our socio-economic world has evolved in such a way that it is not, nor will it hardly be the case that a demand for criteria of global justice will be unnecessary or undemanding.⁵²

Following Rawls, Beitz and Pogge identify the morally significant features of social cooperation which give rise to our obligations of justice. According to Beitz, if there truly were no “social cooperation” on the international level, there would be no occasion for justice in the absence of a joint product to which conflicting claims might be pressed. Pogge concurs with Beitz in that it is only relevant to apply a contractarian device to the global sphere if there is a significant global interdependence. If justice applies domestically when there are benefits and burdens of social cooperation to be distributed among competing parties, then the same should hold globally, since our global

13 Thomas Pogge (1989), *Realizing Rawls*, Ithaca: Cornell University Press, 263.

interconnectedness likewise produces benefits and burdens which must be distributed among competing parties.

In order to deny global interdependence, as Rawls does, and to affirm the self-sufficiency thesis, Beitz proposes that there would have to be no significant trade or other economic relations among states. Perhaps these self-sufficient Rawlsian states would only share an international postal service and a mechanism for a limited cultural exchange with some provisions for emigration, but certainly economically, these states would be entirely responsible for their own means of production and internal exchange. However, this is simply not the case within the global sphere: international negotiations concerning trade and commerce along with international regulations governing common areas and outer space are but a few factors which support the global interconnectedness thesis.

Once we deny that states are self-sufficient, we encounter the problem of how natural resources are distributed among states. If it is the case that natural endowments which persons possess are arbitrary from a moral point of view, as Rawls so emphatically professes in *Theory*, then we must likewise view the distribution of natural resources as morally arbitrary. Beitz holds that no one therefore deserves the natural resources which are found under one's feet, so that the parties in the global original position, knowing that such resources are unevenly distributed, would appeal to a global difference principle, adding that this would apply even in the absence of global interdependence. While Pogge

clarifies that Beitz's argument for a global redistribution of resources is contingent upon Nozick's misinterpretation of how Rawls treats natural endowments, this proves to be only a minor criticism of Beitz's position which demands a clarification as to how resources ought to be redistributed.

Beitz neglects to note that it is not that resources should be distributed as such – in that we parcel out a certain share of the Earth's resources amongst states or individuals – rather the owner of those resources can only legitimately lay claim to a certain proportion of the benefit derived from those resources. The owner of the resource is able to derive an advantage from their good fortune, but the magnitude of those advantages is limited in order to optimize the position of the least advantaged (globally), according to Pogge.⁵³ In his more comprehensive extension of Rawls, Pogge would have us distribute all the benefits (or burdens) derived on the basis of nationality, not limiting the scope of natural resources as Beitz does. So, whereas Beitz would appeal to a purer redistribution of natural resources, Pogge's proposal would be more consistent with a Rawlsian framework by reforming the structure of international institutions so that the benefits and burdens are distributed justly.

Yet, what both of them have in common is in treating nationality as one of the deep contingencies (such as race, gender, social class, etc.) that creates a potential basis

14 Ibid, 251.

for institutional inequalities that are inescapable from birth. Justice as fairness operates within the domestic sphere as a set of principles which are meant to mitigate the effects of these deep contingencies, and when they are applied globally, nationality would likewise be one of the deep contingencies that would need to be mitigated against through the use of a global difference principle. By participating in a complex network of interdependence, it becomes clear, according to both Beitz and Pogge, that there are substantial aggregate economic benefits in terms of a higher rate of economic growth and greater productive efficiency. Moreover, if we look at the distributive effects of such interdependence, we notice further inequalities resulting from not just contingencies in race, gender and class, but also as a result of nationality.

By combining the institutional effects which nationality has on distributive shares with global interdependence, Beitz and Pogge argue that national boundaries no longer mark the limits of social cooperation. Consequently, national boundaries lose their moral significance and cease to be moral watersheds for our obligations of distributive justice. Pogge urges us that we need to be aware of how our society affects the long-term life prospects of foreigners and the societies they inhabit, paying close attention to the negative externalities which our political and economic interactions have on them.

Objections to Globalizing the Difference Principle

Having provided a cursory sketch of the case made for a global difference principle as envisioned by Beitz, and in part by Pogge, I would like to spend the remainder of the critical portion of this chapter to discuss the normative reasons for why the difference principle cannot be globalized. The first part of the critique will provide a response to Beitz and Pogge concerning the significance of nationality, and why it should not be treated as a morally arbitrary factor affecting our distributive decision making process. The second section will then turn to a discussion of the ideal of a fair system of social cooperation found in Rawls, focusing on what the later Rawls has to say about this ideal, looking at the more developed arguments found in *Political Liberalism* and restated in *Justice as Fairness: A Restatement*. I conclude that the brief remarks that Rawls makes concerning social cooperation in *Theory* are what tempt Cosmopolitan Rawlsians to infer the ideal of social cooperation operating at the global level.

The Significance and Non-Arbitrariness of Nationality

Citing Rawls's discussion of how accidents of natural endowment and social circumstances are morally arbitrary features of a person's life, Beitz and Pogge seek to broaden the list of morally arbitrary features to include nationality. Much as accidents of natural endowment and social circumstances are undeserved and need to be mitigated by justice as fairness because of their distributive effects, so too does nationality. Within his

discussion of (domestic) social justice, Rawls does not need to address nationality as a morally arbitrary factor, since in light of our common citizenship we all fall under the same state enclosed by national borders and therefore share in the same nationality.⁵⁴

When Rawls first published *Theory*, it was presented as a comprehensive political system that could apply to all peoples at all times. But after its initial publication, Rawls withdrew from this comprehensive view through his recognition of the implausibility of transcending reasonable pluralism, and instead recognized that reasonable pluralism was a necessary feature of any constitutional liberal democracy, one which can be accommodated through the use of an overlapping consensus. Justice as fairness in the later Rawls no longer represents a true conception of justice, rather a reasonable conception derived from a specifically liberal conception of persons.

With this in mind, his aim with *Political Liberalism* was to provide an account of a liberal principle of legitimacy; that is, under what conditions a liberal society can claim to exercise legitimate political authority over its constituents. Accordingly, Leif Wenar notes that it is only after a liberal society has met the conditions for legitimacy that it can further pursue policies and institutional reforms to make itself more just. This includes, for instance, the realization of the principles of justice as fairness presented in *Theory*,

15 Nationality here is not to be understood in a cultural sense, that is, as distinct cultures with shared histories sharing a nationality, potentially within a state containing a variety of national communities. Rather, nationality is understood as a political conception which is here equated with citizenship within a state demarcated by national borders.

such as the difference principle.⁵⁵ The legitimate political authority which a state is able to exercise over us sets the stage for how we are bound by justice, since the collective authority which the state exercises over us as citizens brings us into new institutional relationships with our fellow citizens.

Once we live within liberal society and the influence of its institutions, such as its legal system and system of property rights, we then form liberal democratic peoples which exist as a body politic. Our relationships with one another are founded on the common institutions we share, and our society's boundaries coincide with our national borders. Liberal democratic people as such are not a natural conception of persons, nor a natural conception of how persons are organized; this is purely a political conception. We thereby form artificial corporate moral agents, as David Reidy puts it, within a system of political and legal authority, and we are bound to our fellow citizens in morally significant ways in virtue of our common citizenship.⁵⁶ It appears that the point of contention which Beitz and Pogge have with Rawls's conception of the political person is the artificial nature of its inception, but we must be attentive to the fact that it is only in virtue of this political component that the demands of justice arise. Much like Hume, Rawls does not conceive of justice as a natural convention, but rather as something that we construct in light of our political ties. Moreover, our political allegiances with our

16 Leif Wenar (2006), "States, Individuals, and Equality" in *Between Cosmopolitan Ideals and State Sovereignty*, Ronald Tinnevelt and Gert Verschraegen eds., Hampshire: Palgrave Macmillian, 29.

17 David Reidy (2007), "A Just Global Economy: In Defense of Rawls" *The Journal of Ethics* 11(2), 207.

fellow citizens provide the basis for our liberal public political culture, which forms the substantive premises of our principles of justice governing our society.

It may be claimed that even globally we fall under the influence of institutions, albeit global institutions which are distinct from our domestic ones, and that consequently we form a global body politic. For the moment I will defer any discussions of how a global basic structure may influence our life prospects until my discussion of social cooperation and interdependence. Presently, what is of interest is how our domestic institutions and our liberal conception of persons distinctively shape our liberal public political culture in a way which proves an asymmetry between domestic and global society, and how this asymmetry leads to a unique set of principles which cannot be extended globally.

Rawls famously says that we relate to each other as free and equal persons, but, unlike Beitz and Pogge, Rawls does not believe that we identify ourselves as free and equal persons outside of our domestic (liberal democratic) society; it is a distinct feature of liberal societies that we relate to each other as such.⁵⁷ To see why this is the case, we

18 This characterization of how persons identify with each other refers to a very political conception of persons qua citizens. When I travel to a foreign country I interact with people on a different level, as person qua tourist/visitor. The matter is complicated when we introduce the interactions of multinational corporations, but in a legal sense, such corporations are conducting their business as “persons” within a foreign land. The fact that such corporations do interact on a “person” to person basis does create a degree of interconnectedness between societies. However, while such connections warrant some obligations of justice between the participants, the connections are not strong enough to warrant globalizing the difference principle. To reiterate a point made earlier: such interactions create the occasion for a more globalized sense of justice, but it remains unique and conceptually distinct from the

need to recall that we derive this idea from our liberal public political culture. How does this differ from how we relate to one another on the global level? According to Rawls we no longer relate to each other as individuals (that is, citizens) who view themselves as free and equal; instead we relate to one other as states (or peoples, Rawls stipulates in *The Law of Peoples*) which are considered free and equal. The distinction between the two spheres, and therefore the asymmetry, concerns the basic unit of agency: in the domestic context we relate to each other as individuals, while in the global context we relate to each other through states as peoples.⁵⁸ The legitimacy of relating to each other as states is derived from our global political institutions, and the historical global texts which form the basis of our principles of global justice. The Universal Declaration of Human Rights, for instance, concerns how domestic governments should treat their own citizens, as opposed to how citizens of different countries should regard and relate to each other.⁵⁹

Sovereign States and the Value of Autonomy and Self-Determination

Within *Theory*, Rawls is unsurprisingly silent with regard to defending a system of sovereign states in virtue of his principal concern for (domestic) social justice, which leads Pogge to assert that such a system requires justification if we are to legitimately limit moral agency in the global sphere to states. Not even in *Political Liberalism* do we find a defence of a system of sovereign states, because here again we only find Rawls

sense of justice we share domestically.

19 Wenar (2006), 30-31.

20 Wenar (2001), "Contractualism and Global Economic Justice" *Metaphilosophy* 32 (1/2), 87.

engaging with a single, largely self-sufficient and closed state, and the conditions for legitimacy, without engaging in how states or peoples ought to interact with each other. It is only when *The Law of Peoples* was published that we find a more extensive defence of sovereign states, although here too the discussion is limited. A fuller account of such a defence requires looking beyond Rawls for arguments that are consistent with his framework.

To begin with *The Law of Peoples*: while Rawls offers little insight into environmental issues, Rawls does make a note concerning the importance of national boundaries controlled by governments.⁶⁰ Such boundaries are important, as they offer a representative and effective agent to take responsibility for a state's territory and environmental integrity, in addition to controlling population size – which would have obvious effects on the environment if it went uncontrolled. According to Rawls, it is through the institution of property that agents are given responsibility for maintaining an asset, since they bear the loss if that asset deteriorates. With a state's assets being held in perpetuity (presuming national boundaries remain stable, of course) the controlling agency has an incentive to promote the well-being of those assets and ensure their sustainability, so that future generations may make use of them. This is perhaps one of Rawls's weaker arguments for the legitimacy of national boundaries, seeing as how states

21 Rawls (1999b), *The Law of Peoples* with *The Idea of Public Reason Revisited*, Cambridge: Harvard University Press, 38-39. Hereafter all subsequent references will be made as simply *Law of Peoples*.

are notorious for depleting and deteriorating natural assets such as land, water and air. For examples we need look no further than lax environmental regulations concerning the disposal of waste, or significantly weaker standards with regards to air pollution, when it becomes uneconomical to enforce such standards and regulations. Unfortunately, in the political arena, economic growth and development trump environmental concerns almost without fail. This is especially true for developing nations, particularly China, who consistently ignores potentially negative effects on its natural environment so that they can speed up economic development.⁶¹

Climate change, and any environmental problem which involves the atmosphere at large, presents a more difficult problem for Rawls to square away, in light of the above section from *The Law of Peoples*. Unlike most of the natural environment, which is confined within a state's boundaries, the atmosphere (and the ozone layer included) transcends all national borders. The majority of the remaining aspects of the natural environment can be plausibly counted as that state's property,⁶² and Rawls's argument for the institution of property to maintain environmental integrity may be valid, if not

22 China sacrificing environmental protection or conservation for economic development was especially rampant during the Cultural Revolution, but even today China continues to enact soft environmental standards so as to not slow the rate of development. For a full account of the relationship between economic development and the environment, see Elizabeth C. Economy (2010), *The River Runs Black: The Environmental Challenge to China's Future* (Second Edition), Ithaca: Cornell University Press. While China is used here because it is the paradigmatic case of economic developing trumping environmental protection, Europeans during the Industrial Revolution and Americans and Canadian today are guilty of similar offences.

23 The most obvious exclusion to this would be rivers and other sources of water that traverse through or border various states.

sound.⁶³ However, with regards to the atmosphere, we do not have a legally recognized institution of property governing this part of the natural environment.⁶⁴

Even if we deny that the institution of property can maintain environmental integrity, and therefore does not serve as a justification for a system of sovereign states, and in turn the value of nationality, Rawls presents a second argument that supports borders and nationality in virtue of the value of self-determination and collective responsibility. Rawls may not directly defend either the value of self-determination or of holding parties accountable for their collective responsibility, but such a defence can be found couched in his illustration of why it is a society's political culture that determines its developmental prospects as opposed to simply the sheer quantity of resources which it may control, or have at its disposal. In discussing his rejection of Beitz's global distribution principle, Rawls asks us to imagine two liberal or decent societies beginning with the same amount of wealth (measured in primary social goods) and having the same size population.⁶⁵ As independent societies they decide to exercise their political autonomy and sovereignty in two distinct ways: the first decides to forgo some of its leisure time and industrialize, while simultaneously increasing its rate of (real) saving; the second society, on the other hand, prefers a more leisurely and pastoral life and

24 Valid in that it is conceptually possible for the institution of property to maintain environmental integrity. I question the soundness of the proposition in light of historical data which suggests otherwise.

25 We do however have other recognized form of property for other forms of common property, such as the moon, the ocean sea bed, and offshore fishing property rights.

26 *Law of Peoples*, 117-19

instead decides to opt for an agrarian society, only saving for the immediate future when there is no harvest and failing to invest its capital to promote economic and infrastructural development. We can imagine that after some decades pass and we revisit these two societies, the country that decided to pursue a more industrial path turns out to be much wealthier than the other.

Under Beitz's global distribution principle, the first society would be required, as a matter of justice, to share its newfound wealth by applying a global difference principle. Why is it, Rawls asks, that the wealthier of the two sets of peoples, both of whom are free and responsible, and able to make independent decisions regarding their future, are required to share their wealth? In effect, the wealthier society would be taxed for their decision to become more productive, saving real funds, and investing their capital into new development and infrastructure projects. While Rawls makes these arguments in the context of the importance of a society's political culture in dictating its developmental trajectory, implicit in this argument is a positive argument for the value of self-determination and holding people accountable for their collective decisions.

Miller makes this point explicit in his argument against global egalitarianism by noting that, even if we begin with equality as the baseline, “equality will immediately be broken as political and cultural differences between nations find expression in the policies

they pursue.”⁶⁶ If we wished to maintain equality, or, in a Rawlsian sense, maintain just inequalities such that they satisfy a form of the difference principle, continual transfers of resources would be required without end. Doing so, according to Miller, undermines political responsibility and self-determination insofar as this involves selecting among various alternative futures and receiving the benefits and burdens that result from these choices. Governments may be encouraged to either pursue reckless economic policies that involve high risk coupled with high rewards, or they may pursue leisurely economic policies, relying on resource transfers that would be required of their well-off neighbours to sustain their irresponsible economic choices. Holding governments and their peoples responsible for the autonomous decisions to pursue independent policies ensures that all parties involved are held accountable for their decisions and increases the probability that such governments will secure sound economic policies. Those that pursue risky economic policies that may devastate their economies would be discouraged from doing so, as they would have to shoulder the burden for such risky policies.

Defenders of a global difference principle, and those who share Beitz's sentiments regarding some form of a global distribution principle may respond (as David Reidy suggests) that, if it would require sacrificing political autonomy and self-determination,

27 David Miller (2005), “Against Global Egalitarianism” *The Journal of Ethics* 9 (1/2), 71.

what greater altar than that of a global difference principle?⁶⁷ The motivating factor behind such a suggestion is that if political autonomy and self-determination cannot be squared away, attending adequately and fairly to the material and economic interests of all individuals, then so much the better for dispensing with political autonomy and self-determination. Critics cannot say that the more well-off lose their incentive to produce more if their productive efforts are taxed to ensure the well-being of the less fortunate, since, according to the difference principle, only the magnitude of their greater share is reduced. But it remains the case that we should maintain political autonomy and self-determination, because otherwise the less fortunate may become dependent on such transfers.

Regardless of whether or not we accept Rawls's premise that it is not the level of resources a society may have at its disposal but rather its political culture that shapes its development, the political culture itself has tremendous effects on its economic trajectory. This being said, Rawls downplays the importance of resources in economic development; rather, what matters most is what societies do with the resources they have. Additionally, we have to bear in mind that within *The Law of Peoples*, Rawls includes a distributive component in the form of the *duty of assistance*. While it is not as stringent as the domestic difference principle, the duty of assistance is not a toothless distributive

28 Reidy (2007), 223.

principle that requires little of well-ordered societies--at least when it is considered in relation to current trends in international aid development. The duty itself is designed with an intent and a target: its intent is to assist burdened societies in becoming well-ordered, and its target is a cut off point when burdened societies become well-ordered. Rawls's predisposition towards abstraction and his tendency to shy away from concreteness leads to a vague stipulation concerning the amounts of distribution necessary to get these societies to become well-ordered. But according to Reidy, Rawls's critics are wrong to claim that he limits the duty of assistance by setting the global social/economic minimum at bare subsistence. It is true that, as a matter of justice, all peoples are owed bare subsistence as a human right, but the duty of assistance requires further transfers necessary to sustain well-orderedness. So, while Rawls does not allude to the level of transfers that would be necessary to sustain well-orderedness, presumably this would exceed the standards for bare subsistence.

Without having any concrete figures with which we can compare Rawls's duty of assistance with current international aid programs, a quantitative comparison becomes difficult, but a cursory analysis will demonstrate how the duty of assistance would be more demanding than current aid programs. If we look briefly at the current state of the world and at current aid programs designed to stimulate development efforts in the developing world, it can be said that progress is being made, but at a slow pace. Often

times, aid packages are offered to these developing nations with provisions concerning trade regulations, or other stipulations which the donating country expects to receive in return for their aid packages from the recipient society.⁶⁸

On the other hand, the duty of assistance holds no such requirements or stipulations. It is not a duty of charity, but rather a political duty of justice that is designed to assist a burdened society to become and sustain well-orderedness without specifying how this is to be done, or placing conditions on how the development funds or resources are to be used to achieve well orderedness. Quantitatively as well, it would appear that the duty of assistance would require greater distributive shares to go to burdened societies in light of its aim to establish and sustain well-orderedness. Without any empirical data to make the comparison, we can at least speculate that the current aid efforts have yet to achieve Rawls's condition of well-orderedness, and therefore the duty of assistance would require greater shares of funds and resources in relation to current aid projects in order to achieve its target.

Global Interdependence and Rawls on Social Cooperation

In one of the earliest treatments of Rawls's *Theory*, Scanlon aptly notes that Rawls's conception of justice applies only to those who are related to one another under

29 Many of the traditional aid packages come with conditional clauses, such as the condition that the recipient country is required to purchase goods from the donor country. In other cases, the World Bank and the International Monetary Fund attach structural adjustment conditions that require recipient societies to eliminate state subsidies and to privatize state services.

common institutions. Thus the problem of justice arises when people are engaged in a cooperative venture for mutual benefit,⁶⁹ in which the problem is how to divide the benefits and burdens of cooperation.⁷⁰ As parties in a cooperative venture, what we owe one another is an equitable share of the social product, for the well-being of everyone depends on this scheme of cooperation. The less endowed are willing to take a small share of the social product, since they are compensated for their cooperation through an institutional design which, governed by the difference principle, maximizes the prospects of the least advantaged.

But in light of Rawls's proviso that we are bound by justice only to those with whom we share common institutions, specifically the basic structure of our domestic society, those who fall outside of those institutions are not entitled to partake in the benefits of social cooperation. Beitz and Pogge (also Scanlon's early writings on the matter) found it troubling that Rawls limits boundaries of justice only to social cooperation occurring within the domestic sphere. According to these Cosmopolitan Rawlsians, there exists both social cooperation and common institutions to which the principles of justice are to apply within the global sphere.

30 In Rawls's later work, he abandons the notion of mutual benefit in favour of reciprocity, since those engaged in social cooperation may not necessarily be advantaged in light of the fact that the parties involved may not be benefited through cooperation. At present I just wish to simply note the change in Rawls's position, offering an analysis of its significance for global justice at a later point.

31 Thomas Scanlon (1973), "Rawls' Theory of Justice" *University of Pennsylvania Law Review* 121 (5), 1063.

They may concede that nationality has some significance, but in virtue of Rawls's stipulation that common institutions and social cooperation create the conditions for justice-- conditions which are satisfied globally--the reach of distributive justice ought to be global as well. Scanlon holds that the considerations of justice should apply whenever there is systematic economic interaction, for this creates an institutional relationship in Rawls's sense,⁷¹ which Beitz and Pogge would both agree exists within the global sphere. According to Beitz, if there were no social cooperation globally, there would be no occasion of justice, since we would lack a joint social product upon which the parties might stake conflicting claims.

Rawls evades the issues of global interdependence, according to the secondary literature, by positing that societies are relatively closed and self-sufficient, a notion which they contend is an empirical falsehood. Beitz proposes that the self-sufficiency assumption would require that societies have no significant trade or other economic relations, but this is simply not the empirical reality. The societies of the world today should properly be conceived of as open and interdependent, and to affirm this proposition, Beitz and Pogge might have us look no farther than our breakfast table for an excellent case in point: the coffee we drink is imported from Colombia; the banana we have comes from a tropical plantation in Jamaica; and the wheat to produce our toast

32 Scanlon (1975), 202.

could have come from the Mid-Western United States.

Neither Rawls, nor his defenders, could deny the empirical reality of global interdependence, but what can be denied is that there exists social cooperation under common institutions in the Rawlsian sense. I will proceed by showing that there is a qualitative difference between the two types of social cooperation, which allows Rawls to legitimately limit the scope of distributive justice to domestic society, before endeavouring to analyze the difference between domestic and global institutions known by Rawls as the basic structure of a society – be that a domestic or global basic structure. Rawls's principal focus on his special sense of social cooperation is not meant to imply that he is silent with regard to this secondary cooperation operating within the global sphere, for within *The Law of Peoples* he includes terms for fair trade and fair economic relations. In discussing such terms, it will be noted that by operating within an ideal theory, Rawls lacks an account of how to cope with the oppressive effects that such cooperation may have on some societies that lead to drastic inequalities. This, however, is a methodological consequence of the Rawlsian approach; for it is not that Rawls is unconcerned with such injustices, but that they pose no theoretical problem for Rawls, since his methodology assumes full compliance.

Rawlsian Social Cooperation and Globalization

We can debate without end about the very existence, or extent, of global interdependence and social cooperation by drawing on various sources of empirical data and looking at trends or patterns in trade and economic relations. It is not beyond dispute that global interdependence is a brute fact of our modern globalized world. Neo-liberals, for instance, deny that there is truly global interdependence, and argue instead that such interdependence is primarily a Western experience.⁷² Even if we accept that global interdependence is a proven empirical fact, there are debates regarding what extent of interdependence has to be apparent before we are required as a matter of justice to initiate some principles of distributive justice.

Questions concerning the degree of interdependence before we are obligated by the bonds of justice are particularly problematic for Beitz, since he proposes that if there were only marginal interdependence or cooperation, much weaker principles of distributive justice apply – weaker, that is, compared to the demands of the difference principle. But here, Beitz must face Caney's critique concerning the vagueness of his position,⁷³ for Beitz does not set any quantitative targets, nor any guidelines for theoretical thresholds regarding when we should apply a global difference principle, and when we should apply a much weaker principle. However, such criticisms against Beitz's

33 Menno R. Kamminga (2006), "Why Global Distributive Justice Cannot Work" *Acta Politica* 41, 26.

34 See Simon Caney (2005), "Global interdependence and distributive justice" *Review of International Studies* 31, 389-399.

position, especially concerning globalizing the difference principle, turn out to be superfluous.

The untenability of Beitz's position concerning social cooperation and interdependence globally as the basis for a global difference principle occurs for deeper philosophical reasons, ones that have to do with methodological reasons for denying that there is social cooperation in a Rawlsian sense globally. If we begin with the guiding assumption that there does indeed exist some level of global interdependence and social cooperation, we can note that there exist various trade relations and consumption patterns between peoples. Living in a temperate climate with an appetite for fresh fruits and produce creates necessary trade relations between us in the North and our tropical neighbours in the South. Even many of our day-to-day products, from our cellular phones to our personal computers, are the result of some form of social cooperation between us and China for instance. The latest iPhone, which I use on a daily basis, may have been designed in California, but it was mainly assembled in China, and its various component parts are produced throughout the world. However, such trade relations and causal influences of consumption patterns between peoples do not amount to social cooperation in a Rawlsian sense of the term.⁷⁴

To get a clearer understanding of what marks the distinction between global

35 Samuel Freeman (2007b), "Distributive Justice and The Law of Peoples" in *Justice and the Social Contract*, Samuel Freeman ed., New York: Oxford University Press, 207.

interdependence and social cooperation with Rawlsian social cooperation, we need to examine what Rawls has to say in *Political Liberalism*. Here, and likewise in *Theory*, Rawls maintains his commitment to viewing society as largely closed and self-sufficient. Rawls does note that the very concept of society being closed is a considerable abstraction that he employs for the sake of theoretical clarity. According to Rawls, it is only under such an assumption that we can focus on the main questions without getting distracted by details, allowing us to formulate clear principles for domestic society prior to considering principles of justice which will hold between peoples.

In his defence of Rawls's views on the global economy, Reidy elaborates that Rawls's position on society as largely closed and self-sufficient is the result of Rawls's theoretical position that societies have no intrinsic concerns for material wealth accumulation beyond that which is necessary for well-orderedness, and that any further desire to accumulate wealth is the result of a people's own personal prerogative to do so for material satisfaction and is in no way necessary.⁷⁵ Rawls's position here seems weak, and I will in no way attempt to defend his claims concerning our capitalist psychology.

However, despite this theoretical flaw in Rawls's conception of society and of us as persons and citizens, the important point to consider is not whether society is really closed and self-sufficient – since I would argue it is not – but rather, the distinction

36 See Reidy (2007), 221.

between social cooperation in a Rawlsian sense and other forms of association. Rawlsian social cooperation is derived from the public culture of a democratic society; it concerns us as citizens, who view each other as free and equal persons operating in a well-ordered society, and who have chosen to regulate our behaviour according to public conception of justice. It is therefore distinct from merely socially coordinated behaviour, since social cooperation in a Rawlsian sense is guided by publicly recognized rules and procedures that we accept and regard as properly regulating our behaviour.

As Samuel Freeman highlights, social cooperation is distinct from efficiently coordinated behaviour regulated for the sake of efficiently achieving our purposes.⁷⁶ While Freeman cites the example of a chain gang repairing roads or picking up trash, the same can hold with regards to relations between corporations.⁷⁷ Outsourcing manufacturing to developing nations may well be the most efficient way to produce our

37 Samuel Freeman (2007a), “The Law of Peoples, Social Cooperation, Human Rights, and Distributive Justice” in *Justice and the Social Contract*, Samuel Freeman ed., New York: Oxford University Press, 266.

38 In distinguishing efficiently coordinated behaviour from social cooperation through the chain gang example, Freeman writes that, “[efficiently coordinated behaviour] people might have an assigned role in some joint activity from which they may or may not benefit. In the case of the prisoners working on a chain gang...a great deal might be accomplished depending on how effectively participant's behaviour is coordinated, but it would be a mistake to say they are engaged in *social cooperation* with their captors or even with one another.” (Freeman, *Rawls*, 334). What this example (and the comparison to corporations) is meant to illustrate is that by enlisting the service of others we are not engaging necessarily in “social cooperation”. We enlist the services of others to accomplish goals, or to produce services, because that may be an efficient way to produce products. Unlike the prisoners in the chain gang, the participants that corporations enlist are paid for their services to produce goods and services in an efficient manner. In this case we are not engaged in a reciprocal arrangement, but rather a business-like arrangement that is meant to produce goods and services efficiently. Assuming the conditions of free and fair trade are met, the relationship is counted as just.

technological luxuries, but this does not amount to Rawlsian social cooperation. What we lack globally are fair terms of cooperation grounded in the notion of reciprocity and an idea of each participant's good. We lack such notions not because we are unwilling to cooperate fairly with those who are not our compatriots, or because we cannot identify their conception of the good, but rather because on Rawls's view we simply do not identify with them as free and equal persons, and instead only as fellow peoples who inhabit their own societies and states.

Underlying Rawls's notion of social cooperation is political cooperation, in that it is under our own distinct political system that we formulate our own fair terms of cooperation between citizens. Different societies may indeed cooperate, but such cooperation occurs between different societies individuated by their own separate political systems.⁷⁸ Global social cooperation is secondary, and needs to be considered qualitatively different from social cooperation in a Rawlsian sense. After the initial publication of *Political Theory and International Relations*, Beitz has come to realize the error of his ways, indicating that it is not the existence of social cooperation (presumably in a Rawlsian sense) that creates the occasion of distributive justice, but rather the *feasibility* of such cooperation.⁷⁹ Beitz argues that only if it infeasible to have such

39 Ibid, 268.

40 Charles Beitz (1999), *Political Theory and International Relations*, Princeton: Princeton University Press, 190.

cooperation globally could we legitimately limit the scope of distributive justice to national societies.

What then would it take for it to be feasible to have social cooperation in a Rawlsian sense globally? In his critique of Beitz's original formulation of a global difference principle, Brian Barry identifies that within the global sphere we lack the requisite mutuality.⁸⁰ In order to achieve this sort of reciprocity we would no longer only view ourselves as citizens with our national compatriots, but rather with our global co-habitants as a whole. As Miller points out, changes in our economic and political configuration may indeed change our practical consideration of global justice.⁸¹ It is only if our nationality no longer constitutes that special relationship of moral and political significance that we should start making changes to our considerations of global justice.⁸²

Beitz's comments seem to suggest that if it is feasible, then we ought to strive for it, but such an argument is only persuasive to those who already accept cosmopolitanism

41 While Barry identifies it as the lack of mutuality, the more precise notion would be reciprocity since Rawls has since changed his position from society as a cooperative venture to a system of reciprocity.

42 Miller (2005), 70.

43 Having a strong sense of nationality and strong international commitments need not be mutually exclusive. Many Scandinavian people (and we would hope Canadians) have a strong sense of nationality, but also strong international commitments. The point I wish to make here is that in a general sense a strong sense of nationality usually overrides commitments to peoples globally. This is not to conclude that it is not possible for the situation to be reversed, only that at present national compatriotism still forms a uniquely strong bond between peoples which is not shared with people globally. Especially since the end of the Second World War the people in the world have become more concerned with what happens to people globally, but in the majority of cases people still feel a stronger tie to their national community as opposed to the global community at large. I take up this point again when discussing Miller's position concerning our sense of nationalism.

as the appropriate form of global justice. Moreover, we are left with the feasibility question itself, which we must assume must be satisfied without recourse to a world government, to which even many cosmopolitans would object. Social cooperation in a Rawlsian sense occurs within the basic structure of a liberal democratic society as it is governed, and only made possible, by the rules and regulations the basic structure provides. Thus the feasibility of global social cooperation depends on the potential for there to exist a comparable global basic structure without a corresponding world government. What remains open, then, is the feasibility question, but it will be shown in the subsequent section that the existence of a comparable basic structure under which global social cooperation is meant to operate is absent within the global sphere.

The Asymmetry Between a Global and Domestic Basic Structure

Some of Rawls's critics on global justice charge that Rawls ignores the fact that there indeed exists a global basic structure, which operates as an analogue to the domestic basic structure to which justice as fairness is to apply. In *Theory*, Rawls stipulates that the primary subject of justice is the basic structure, because it has profound and enduring effects on a person's long-term life prospects and is present from the start. The basic structure becomes the subject of justice because it ensures background procedural justice, for without it (a just basic structure governed by pure procedural justice), voluntary agreements in a libertarian sense may perpetuate injustices. A central feature of the

domestic basic structure is that it allows us to realize the ideal of reciprocity.

Rawls nowhere denies the existence of a global basic structure; he only denies that the global basic structure is the subject of global justice as it is in his version of domestic social justice. The fact that a global basic structure of some kind exists is undeniable. Certainly there are global institutions, a global economy, and at least the preliminary stages of a global legal system, which may not have the coercive power of a domestic legal system, but still contains established rules of conduct and prohibitions on various kinds of acts. To draw attention to some concrete examples of such social institutions, we need to look no further than the North American Free Trade Act (NAFTA), the World Bank, the International Monetary Fund (IMF), the World Trade Organization (WTO), and the list goes on.

It is not that Rawls was ignorant of these facets of the global order or, as Alan Buchanan suggests,⁸³ that Rawls unjustifiably ignores that such institutions form a global basic structure in his theory of international law: it is that Rawls does not give them the significance which his critics would have him give. Rawls recognizes these institutions and the effects that they have on people's lives, but, as Freeman highlights, Rawls refused to give them the kind of significance that warrants principles of distributive justice.⁸⁴ The reason that Rawls does not do so is because of the importance he places on the domestic

44 Allen Buchanan (2000), "Rawls's Law of Peoples: Rules for a Vanquished Westphalian World" *Ethics* 110 (4).

45 Freeman (2007a), 287

basic structure, which affects our lives to a far greater degree. The global basic structure, as such, is secondary, since as individuals we confront one another in relation to the global basic structure only as already belonging to a distinct society ruled by its own basic structure. By not denying that there exists global cooperation, it does not follow that there must be a global basic structure. Rather, what we have are global political, legal and economic arrangements that are secondary institutions and practices. Such institutions and practices are themselves the byproducts of the multiplicity of basic social institutions that constitute the basic structures of different societies.⁸⁵

Moreover, it is important to recall that for Rawls the question of distributive justice is not an allocation question. The principles of justice apply once to a basic structure of society, and the result of those principles dictates the distributive outcomes. Specifically, the principles of justice apply to share the political design of a society, for which it is necessary to have an effective government in order to enforce cooperation. Without a world state, we could not apply principles of justice to a global basic structure, because we lack the requisite enforcement mechanisms.⁸⁶ It is for this reason that Rawls establishes the basic structure of the Society of Peoples in order to govern relations between peoples.⁸⁷

The simple brute fact is that our ties to our domestic basic structure are stronger

46 Freeman (2007b), 306.

47 Heath, 201.

48 Freeman (2007b), 306.

than those to a global basic structure. Globalization and modern technologies have shrunk the world, so to speak, but, as I have argued numerous times, nationality has not lost its significance to a degree that would warrant shifting our allegiances to the world population at large. Miller makes this point quite clear when he writes that,

Despite the globalizing tendencies noted above, the great majority of people continue to identify strongly with their national community, most significant political decisions are taken at nation-state level... It is not enough to point out that new international relationships supervene upon these longer-standing national ones.⁸⁸

It is true that we live in a world with a tendency towards a global community. Along with the increased socio-economic interdependence and interconnectedness come humanitarian sentiments to those who are less advantaged than we are. But these growing tendencies do not yet constitute the relevant institutional and political relationship that is necessary for us to be conjoined under a global basic structure. We may one day reach such a point, but at present it is not within sight.

Nevertheless, critics of Rawls's stance on the significance of the global basic structure insist that it is not the bonds of political community that create the occasion for justice, but the effects that the global basic structure have on people's long-term life prospects. It is this sort of reasoning which leads Rawls's critics (e.g., Buchanan) to assert that the current global basic structure has large-scale distributional effects on individuals.

49 Miller (2005), 71.

Some reply that it is not beyond dispute that the effects truly have a global reach, instead arguing that the life prospects of the average member of any state seem unaffected by the vast mass of humanity.⁸⁹ But this proposition seems dubious at best in light of the effects that globalization has on the global economy and the effects that colonialism had on developing nations, which still reverberate after the end of colonialism and have a tremendous effect on local and national economies.⁹⁰

As Reidy puts it, this is the striking feature behind such criticisms of Rawls: both will condemn current practices and social institutions (such as the IMF), but it is only Rawls who distances himself from them in his formulation of his ideal theory of international relations.⁹¹ His cosmopolitan critics assume the coercive nature of international relations and then seek to justify the global basic structure by subordinating them to the principles of justice; under a Rawlsian framework we must object to such institutions and practices and seek institutional reforms which rectify its negative effects. Rawls does not affirm that transnational regulative systems are necessarily good, and therefore does not take these contingent facts found within non-ideal theory as the basis

50 Kamminga, 26.

51 Colonialism presents an interesting case for the asymmetry between a purely domestic basic structure, and one that has a broader reach. Developing nations, when they were under colonial rule, would have a stronger claim to make against their colonial rulers than contemporary sovereign nations, for the coercive effect which colonial powers exercised over the nations they controlled – while not completely symmetrical to that which happens within a nation – was clearly stronger than that which sovereign nations exercise over each other in our post-Colonial era. I return to this issue of Rawls on historical injustice during the final section of this critical portion, but here I just wanted to point out the unique case which colonial rule presents in relation to the basic structure debates.

52 Reidy (2007), 229 (fn. 39).

for his law of peoples.

The basic structure for Rawls – be that domestic or global – is a normative conception of a just structure which is to provide background procedural justice. It is not an empirical conception which takes the present circumstances as given, but rather aims at institutional reforms to make society just. Domestically, we apply the principles of justice as fairness in order to reconfigure institutional structures to make them more just, ideally to the point where they are perfectly just. Globally, Rawls offers conditions for free and fair trade which are meant to alleviate injustices found in contemporary economic relations between peoples.

Rawls on Free and Fair Trade Between Peoples and Ideal Theory

Rawls does not view the global order as an anarchic system of sovereign states. He does not subscribe to the view that it is analogous to a Hobbesian state of nature, despite the lack of a centralized sovereign authority. According to Rawls, the parties that formulate the law of peoples from behind the hypothetical veil of ignorance, not knowing any specifics about the size or power of their national economies, would thereby include principles to govern cooperative organizations. The parties formulating the law of peoples will set up guidelines for fair trade, cooperative banking, and a third organization similar to that of our United Nations (which he refers to as the Confederation of Peoples).

It may be true that the present system of trade and economic relations between

peoples can be neither fair nor just, but the situation is different if we realize the law of peoples.⁹² Trade between peoples is to be free and fair, so that it is mutually advantageous over the long run. Peoples are therefore supposed to refrain from monopolizing markets, forming cartels, or acting as an oligopoly. As Reidy states, they are to “restrain from frustrating free and fair international or global trade and economic relations.”⁹³ Similar to how economic relations are governed within domestic society, fair trade is to be regulated by a fair background framework. As in the domestic sphere, unless trade relations are secured within fair background conditions, market transactions may not remain fair and thus may lead to unjustified inequalities between peoples.

For those who suggest that Rawls's law of peoples arbitrarily favours the status quo, the response is simply that they ignore Rawls's remarks concerning the regulation of the global economy and trade relations. If we analyze the present situation regarding economic and trade relations amongst peoples, it is true that the most economically powerful people have failed (even if it is not obvious) to refrain from using their economic power to undermine such conditions of fairness.⁹⁴ Had Rawls not included

53 The kinds of unfairness and injustices in international trade that I have in mind concern (but are not limited to) various price controls and duties that allow wealthy nations to demand below market prices for crops from poorer nations that rely on such markets for their exports. The banana industry provides an interesting case in point because of the demand on the part of grocers for lower prices, which means lower wages for plantation employees. The problem is compounded by the fact that the Central/Latin American nations that rely on such exports must either comply or be driven out of the export game by countries that are willing to compete in the race to the bottom.

54 Ibid, 201.

55 Ibid, 205.

provisions for free and fair trade, it could be legitimately said that Rawls does indeed favour the status quo by turning a blind eye to such unfair relations, but this is not the case. Powerful economic peoples have imposed asymmetrical trade relations on those less powerful, and such conditions would run contrary to the spirit of the law of peoples.

It should be noted that my discussion thus far concerning free and fair trade relations has conflated various kinds of peoples (well-ordered, decent, burdened, etc.) into one overarching category of peoples in a broad sense. I note this here, since this marks my reformulation of the Rawlsian principles concerning cooperative organization. Reidy remarks that such conditions only apply to well-ordered people, in light of the fact that trade between well-ordered and burdened people becomes morally problematic. Being unable to sustain well-ordered domestic legal and political order, burdened societies lack property rights and a legal system which ensures genuine voluntariness in trade and the requisite reciprocity in such relations. Reidy suggests that in light of their poverty, trade relations between or with burdened societies may result in duress on one or both sides in addition to unequal bargaining positions.⁹⁵

However, such difficulties appear to be largely pragmatic and empirical, as opposed to moral or normative. If peoples as such are to relate to each other as free and equal, it becomes difficult to discern why trade relations between well-ordered peoples

56 Ibid, 201.

and burdened societies is morally problematic. If the difficulty lies in ensuring that burdened societies are not placed at an unfair bargaining position (as Reidy puts it), then it appears that the onus is on well-ordered peoples to ensure that they are not, by respecting their equality as peoples. If, on the other hand, the deficiency is in the rule of law within burdened societies, then the matter appears to be pragmatic. In light of the fair background conditions which are to apply to trade and economic relations, it is conceivable that the global institution charged with regulating such relations could extend its scope to include burdened societies, with some changes to include enforcement mechanisms that apply to such societies.

What we are left with is how to deal with injustice and unfair conditions which are distinct from current institutional designs, those to which any principles of Rawlsian justice would not apply. Pogge, in his refutation of the view that societies are largely closed, and in his discussion of the sources of poverty among the world's most unfortunate nations (and implicitly the wealth of some other nations), cites that these unfortunate nations are still reeling from the effects of slavery, colonial oppression and exploitation.⁹⁶ He further adds that such nations are also vulnerable to global market forces and destabilization from abroad, but such factors can be considered alongside the world's sordid history, since such dependence upon the global economy and potential for

57 Thomas Pogge (1994), "An Egalitarian Law of Peoples" *Philosophy & Public Affairs* 23 (3), 221.

destabilization from abroad are often corollaries of colonialism. In order to rectify such historical injustices, Pogge employs the Global Resource Dividend, to which Rawls is sympathetic in a footnote, but only as a means to achieve well-orderedness, and as part of a duty to aid.

Within the actual theory itself--that is, as part of the principles of justice as fairness or the law of peoples--Rawls offers no such retributive principles, since methodologically Rawls operates within ideal theory, which assumes (largely) full compliance. In addressing these historical injustices, Joseph Heath observes that when inequalities among nations are caused by wealthy nations imposing upon the poor, those nations have an obligation to cease and desist such action.⁹⁷ But the critics who fault Rawls for not adequately addressing the ways in which the current system imposes harm, in light of its history of colonialism, are considering things tangential to distributive justice. Operating with an idealized conception of both persons and institutions, we do not confront the same historical injustices that plague the non-ideal world that we inhabit. It is not that Rawls condones historical injustices or denies that they must be rectified, it is only that for his purposes there is no theoretical problem here, as he is strictly concerned with ideal theory. Such concerns are limited to the non-ideal world and separate principles, principles outside the Rawlsian framework, and ones which are removed from

58 Heath, 198.

how Rawls's abstracted view of international relations ought to be employed.

Conclusion: Adaptation, Not Extension

I have shown why any attempt to extend the difference principle beyond its domestic scope must necessarily fail on normative grounds. As it works within Rawls's theory of social justice, the difference principle, in conjunction with the two lexically prior principles of justice, operates as a means to distribute the benefits and burdens of social cooperation in a closed and self-sufficient society. Rawls never intended the difference principle to be global in scope, and it was only with the debut of his Law of Peoples that we see Rawls giving his own brief rebuttal as to why there can be no global difference principle.

If it were possible to simply extend the present difference principle to a global difference principle, as Beitz and Pogge propose, the case for a climatic difference principle would be superfluous, because any concerns regarding how the global carbon sink should be allocated among states would be settled within the parameters of the global difference principle. But since we cannot simply extend the original difference principle, what I will propose in the following chapter is an adaptation of the difference principle for the purpose of allocating the global carbon sink.

An adaptation of the difference principle involves taking the conceptual idea behind the difference principle – that of improving everyone's prospects when measured

against a standard of equality – so that it applies to the problem of how to allocate the global carbon sink. It is an adaptation, as opposed to an extension, since it is not the difference principle itself which is being extended. Rather, I take the concept behind the difference principle and apply it in a different context. I maintain that the climatic difference principle is a principle which is both faithful to Rawls's philosophical project and consistent with his principles of justice.

What this means is that the climatic difference principle cannot face the same objections that doom the global difference principle, while it must be able to work in addition to the original principles of justice. In this sense, the distributive obligations of the climatic difference principle are not as broad as the global difference principle, since it will be shown in the following chapter that the climatic difference principle applies to a selective subset of economic benefits. But when it is said that the climatic difference principle applies to a selective subset, this should not be understood as the climatic difference principle applying *after* the initial difference principle is applied to well-ordered societies that abide by justice as fairness.

The difference principle as it operates within the Rawlsian framework to well-ordered societies that abide by justice as fairness works to structure institutional arrangements in such a way that satisfies the principles of justice. There can be no second round upon which a further difference principle is to apply. That is, we do not satisfy the

difference principle within a well-ordered society and then attempt to satisfy a secondary difference principle. In order to be faithful and consistent with Rawls's philosophy, within well ordered societies that abide by justice as fairness, the climatic difference principle operates alongside the present difference principle, much like the just savings principle does. It does not apply after the initial difference principle is satisfied; rather it constrains the available stock of social and economic benefits and burdens that are available to the difference principle itself.⁹⁸

The result is that the climatic difference principle will either limit or expand the stock of social and economic benefits as well as burdens available for distribution by the difference principle, since a portion of those benefits or burdens will have to be given to other states to satisfy the climatic difference principle globally. In this regard, it does not operate as a secondary difference principle applied after the first, but rather works simultaneously with the present difference principle, as a constraint. On the other hand, for those states that do not abide by the principles of justice as fairness, the climatic difference principle would likewise either limit or expand the available stock of benefits and burdens available for distribution. How the principle affects matters internally will be decided by that state's own principles of distributive justice.

⁵⁹ I specify economic benefits and burdens since any difference principle only applies after the first principle of justice concerning rights and liberties is satisfied, leaving only social and economic benefits and burdens available for distribution.

Chapter 3: The Climatic Difference Principle

The overarching purpose behind this project is to present a viable alternative to the dominant approach to dividing the global carbon sink, namely equal per-capita emissions, instead utilizing a climatic difference principle to guide allocations. I begin by taking the distributive outcomes that would result from an equal per-capita emissions scheme as measured by the Human Development Index (HDI), which gives us a baseline from which to judge alternative schemes. My conjecture is that the division of shares of the global carbon sink will have an effect on the net amount of benefits that we can derive. Some states will be able to utilize their shares more efficiently and, as a result, they will be able to derive a greater net benefit per unit of the global carbon sink.

But we cannot just take the most efficient division of the global carbon sink (i.e., the one that would produce the greatest net benefits globally) as self-evidently superior. Such a scheme would almost certainly mean that some states will do worse than under equal per-capita emissions. Rawls correctly observed that efficiency alone cannot serve as a conception of justice, but it should factor into our considerations of what is just. In between the distributive outcomes of equal per-capita emissions and the most efficient, there are alternative schemes which could be considered just. Justice here is understood in a Rawlsian sense, so that unequal shares of the global carbon sink would result in compensating benefits for everyone, and in particular the least advantaged states.

At first glance my project may seem at odds with the larger Rawlsian framework, seeing as how Rawls was so adamant that the difference principle could not be globalized. In this regard, I fully concur with Rawls, and have attempted to show in the previous chapter that all attempts to globalize the difference principle, especially by its chief advocates Beitz and Pogge, necessarily fail on normative grounds. Speaking of such attempts to globalize the difference principle, Freeman writes that “Such a principle is not the difference principle, but something quite different.”⁹⁹ Freeman's comment here is quite instructive; I take it as a motivating factor in framing the climatic difference principle.

As I explained in the previous chapter, in providing an outline of a climatic difference principle I am making a departure from Rawls while remaining faithful to the Rawlsian spirit. By utilizing the conceptual idea behind the difference principle, that of improving everyone's prospects (as judged from the benchmark of equality) the climatic

1 Samuel Freeman (2007a), “Distributive Justice and *The Law of Peoples*” in *Justice and the Social Contract*, Samuel Freeman (ed.), New York: Oxford University Press, 316. Freeman makes this comment with regard to attempts by advocates such as Beitz to use the global difference principle as a global allocation principle. He uses the term global allocation principle, as opposed to a principle of distributive justice as Rawls intends to use the difference principle, since what advocates of extension are doing is separating the difference principle from the larger framework of justice as fairness and having it operate independently on the global level. No longer, then, do we have a distributive principle, since it is now separated from its larger institutional background. However, referring to it as an allocative principle may be a little misleading, since it appears that within Beitz's work it operates as a redistributive principle: it is not a matter of dividing up a set of goods to given individuals with known aims and desires, but rather an attempt to redistribute global wealth in accordance with the guiding ideal behind the difference principle. Such concerns are not relevant to my discussion, but I include them in the interest of placing Freeman's comment in the larger context in which it was made.

difference principle is both independent of, and consistent with, justice as fairness. Its scope is global, but its application is not limited to either Rawlsian societies adhering to the principles of justice as fairness or ones that do not.¹⁰⁰ For Rawlsian societies, the climatic difference principle merely operates as a prior constraint to justice as fairness – as the just savings principle operates as a prior constraint to the application of the difference principle – while for societies which do not adhere to justice as fairness, it merely specifies their allowable emissions allotment.¹⁰¹

The climatic difference principle is designed to be a different kind of difference principle. It is not meant to be a mere extension of the difference principle, as it has been shown that that extension is not only implausible but impossible. It is meant to act prior to any principles of distributive justice, either within or between societies, because it specifies the acceptable limits as to how much of the global carbon sink a state can make use of, which will in turn shape any distributive program. So long as there is a need for greenhouse gas emissions to fuel development, and so long as anthropogenic climate change presents a crisis for humanity at large, there is a need to limit (and therefore allocate acceptable amounts of) emissions globally.

Before I make any meaningful attempt to present the climatic difference principle

² I interpret Rawlsian societies in the more limited sense of liberal democracies that subscribe to Rawls's principles of justice as fairness.

³ By emissions allotment I mean the quantity of greenhouse gas emissions that a state is able to emit. The quantity itself will be determined by how large of a share of the global carbon sink they are permitted to use; the greater their share of the global carbon sink, the greater their allowed output of emissions.

itself, I would like to make a point regarding my forthcoming critical silence towards many of the substantive issues associated with Rawls, and specifically the difference principle. I consider myself Rawlsian to a great extent and share a great admiration for Rawls' work and his overall philosophical project. The body of work Rawls has left behind and his accomplishments in political philosophy will not be soon forgotten, and their influence will surely continue to be felt for a long time to come. Of particular inspiration is Pogge's note in the "Acknowledgments" to *Realizing Rawls* that, despite its shortcomings, Rawls' theory of justice provides "a basic framework of compelling scope and moral beauty."¹⁰² I share both Pogge's admiration of Rawls and his concern for some of its theoretical shortcomings. In this sense I follow others, such as Tom Beauchamp, who qualifies his discussion of Rawlsian distributive justice and the difference principle by stipulating that,

This critical silence should not be construed as a tacit acknowledgment that Rawls is correct on all, or even most substantive issues in the philosophy of justice. On the other hand, I do hold that Rawls has presented a more complex and powerful theory than his critics seem generally to have appreciated.¹⁰³

I maintain that it is plausible for my current purposes in advancing the climatic difference principle to maintain a certain critical silence, since many of the issues with which one can find fault in Rawls's account do not concern my present venture.

4 Pogge (1989), ix.

5 Tom Beauchamp, "Distributive Justice and the Difference Principle" in *John Rawls' Theory of Social Justice*, H. Gene Blocker and Elisabeth H. Smith (eds), Athens: Ohio University Press, 133.

I am not concerned with the possibility of deriving the difference principle from the original position (a common criticism of the difference principle within justice as fairness), nor am I concerned with whether there is anything left for the difference principle to do once the basic liberties and the fair equality of opportunity are actualized. While some of the criticisms against Rawls' difference principle are warranted, and reformulations need to be made to the larger project in light of them, I hope to avoid many of these flaws by separating out the conceptual idea behind the principle, and by using some of the reasoning leading to the principle in the context of climate change and emissions allocations.

The validity of the climatic difference principle rests on the possibility of improving everyone's position above the benchmark of equality within the context of emissions allocations. In this regard, I maintain that a concern for improving everyone's prospects above equality presents us with a valid basis for distributive justice, especially in comparison to utilitarianism, and more importantly strict equality (in the form of equal-per capita emissions). I emphasize the latter because *any* difference principle is only ever actualized if *everyone* can do better under inequality rather than under equality--otherwise the principle itself is null and void. Even if the improvements under the climatic difference principle turn out to be marginal when compared to the benchmark of equal per-capita emissions, what I hope to present here should be considered a viable alternative

deserving of further critical attention.

Considering that the climatic difference principle is intended as an alternative to equal per capita emissions, I should begin with a discussion of the appeal behind the difference principle. Supporters of equal per capita emissions often cite its simplicity, and hence its suitability for political compromise as one of the key motivating factors behind its endorsement as the basis for emissions allocations. It will be shown that not only does the difference principle, and hence the climatic difference principle, share the same appeal of simplicity and suitability for political compromise, but that it also offers further motivational appeal by offering a superior distributive outcome to equal per-capita emissions. Much like the difference principle itself, the climatic difference principle avoids the absurdity of equality at any price, and articulates an egalitarian impulse appealing to supporters of equal per-capita emissions in conjunction with a concern for efficiency, which will serve as a basis for political compromise.¹⁰⁴

At present we approach the global carbon sink as a common pool resource, as it is impossible to exclude potential beneficiaries from making use of it, and there are no exclusive claims to use even portions of it. In the absence of an institutional structure, legitimate entitlements cannot arise. Therefore we must first establish such a structure to

⁶ These points concerning the motivational appeal of the climatic difference principle are taken as an adaptation of Phillippe Van Parijs' position regarding the motivational appeal behind the difference principle as it was presented by Rawls as part of justice as fairness. Philippe, Van Parijs, (2001), "Difference Principles." In *The Cambridge Companion to John Rawls*, Samuel Freeman (ed.). Cambridge: Cambridge University Press, 201.

assign property and usage rights with the appropriate enforcement mechanisms. Once the global carbon sink falls under an institutional structure, we can treat it as a common asset. The result is that what are to be distributed are the benefits and burdens that arise from making use of the global carbon sink. Note that it is not the whole global product that is up for distribution; the climatic difference principle is limited to the proportion of benefits and burdens that are derived from using the global carbon sink alone. States maintain a legitimate entitlement to the proportion of benefits that they are able to derive from resources found within their national boundaries (as is consistent with a Rawlsian framework).¹⁰⁵ Ultimately, what is up for distribution is a subset of the benefits that are produced by any state, specifically those that are produced by making use of the global carbon sink.

Once these preliminary conditions are established, I proceed to present the climatic difference principle itself. Stylistically, it will resemble Rawls' first formulation of the difference principle; while substantively it will cover emissions allocations as opposed to social and economic advantages. At this time I will undertake a discussion of the role of efficiency and incentives, because in light of the fact that emissions allocations are not a zero-sum game, not only do we have reason to seek distributive principles other than strict equality, but we must consider how the allocation of emissions will affect

⁷ I interpret resources in a broad sense to include both human and material resources.

eventual outcomes. Emissions can be used more or less efficiently, and it is the task of the climatic difference principle to put these resources in the hands of those that will use them most efficiently. Inequalities in emissions shares will be used as incentives for users to get a larger share of the global carbon sink, and these inequalities are justified so long as everyone's prospects are improved by them.¹⁰⁶

With the principle itself presented, what remains to be specified is a mechanism needed to realize the climatic difference principle, an aspect of the Rawlsian framework on which Rawls himself only makes a few cursory remarks. Whereas Rawls's preference for a consumption tax has been seen as controversial within justice as fairness, a consumption tax will be shown to be much more appropriate when considering the global carbon sink. Operating as part of the climatic difference principle, such a scheme of taxation will be used to raise revenues in order to improve everyone's prospects, if the revenues generated are used to aid developing nations in their development efforts. Specifically, the revenues generated will be used towards programs such as a green-technology transfers program, to allow developing nations to pursue a “greener” development path in an effort to mitigate consumption of the global carbon sink by allowing them to develop in a more efficient and environmentally friendly manner.

Finally, to close this chapter and the broader project at hand, I return to Singer's

8 At this time I will undertake a discussion of the appropriate metric and define what it means to improve everyone's prospects about equality.

position in order to formulate a response. Within a brief section of *One World*, Singer denies the plausibility of a Rawlsian framework being able to offer a meaningful solution to the allocation of greenhouse gas emissions. Moreover, I would like to make some concluding remarks regarding the superiority of the climatic difference principle over an equal per-capita emissions scheme. My reason for doing so is to answer Singer's question of why anyone should get a larger share of the global carbon sink, concluding that they should for the reason that *everyone's* prospects will be improved as a result.

Intuitive Appeal and the Case for Political Compromise

It is argued by supporters of equal per-capita emissions that the central appeal behind their proposal lies within its pragmatism, centring around its simplicity, and consequently, its suitability for political compromise. An equal division of shares not only garners support from a wider group of states which are disadvantaged by the present inequalities in emissions shares,¹⁰⁷ but will also tend to increase global welfare as a result. Any proposal which offers us the opportunity to make a meaningful impact to mitigate climate change should be seriously considered. But does this mean that the impending threat climate change presents us with should make us thrust ourselves towards equal shares, despite the practical and conceptual flaws that were presented in the first chapter?

If a central criterion for a viable alternative is one that is simple, then the climatic

9 By emissions share, I mean the amount of greenhouse gas emissions that a state currently emits annually.

difference principle presents us with a live option. As Philippe Van Parijs puts succinctly, “the core of the principle is a simple and appealing idea: that social and economic inequalities should be evaluated in terms of how well off they leave the worst off.” The most appealing idea behind any difference principle is that it avoids the absurdity of prioritizing equality at any price, without the potentially outrageous distributive effects that can result from maximizing the aggregate.¹⁰⁸ Appeals to avoiding such costs for the sake of equalities are nothing new, as it is a common criticism against radical egalitarian policies, the argument being that it would have a crushing effect on incentives and jeopardize efficiency.¹⁰⁹ There are several costs related to equality that we can cite here, the first of which would be equality would have to be maintained regardless of what the outcomes may be. Recall that what we are equalizing in equal per-capita emissions is not the distributive effects that will result from a particular allocation, but instead the emissions allowances themselves. By adhering to strict equality without considering the distributive effects, not only are we violating the egalitarian impulse, which is supposed to guide our actions, but it may have debilitating effects on those recipients who require

10 Van Parijs, 200.

11 Andrew Williams (1998), “Incentives, Inequality, and Publicity” *Philosophy and Public Affairs* 27 (3). G.A. Cohen (*Rescuing Justice and Equality*. Cambridge: Harvard University Press, 2008, particularly Chapter 1: The Incentive Argument, pp. 27-86). of course offers an argument against incentives as a justification for inequalities, arguing instead that we should rely on an egalitarian ethos to guide our actions and persuade us to be just. But as will be shown in a subsequent section on efficiency, such an ethos, while it may be possible to develop, is clearly absent on the global level, and the pressing need to curb climate change should urge us to make use of the resources we have available to find a more immediate solution.

more than an equal share to satisfy their basic needs.¹¹⁰

Even if we grant for a moment the possibility that advocates of equal per-capita emissions offer a coherent and philosophically defensible scheme, why should we acknowledge this initial proposal to be final? This search for alternatives to equality is what motivates Rawls' project within *Theory*, wherein he argues that if inequalities can generate an improvement in everyone's life prospects, why not permit them? Rawls's well-known answer here is that from the benchmark of equality, so long as those who have gained have done so on terms that are justified as judged by those who have gained least, then inequalities should be permitted.¹¹¹ Regarding such departures from equality, Brian Barry argues that, so long as nobody is asked to accept a less preferred outcome, when it is judged from this benchmark, however much others might gain in comparison, then it is possible to move away from the benchmark so long as everyone is made better off.¹¹²

The central point here is that no one is asked to accept a less preferred outcome as judged from the benchmark of equality. For if no one is asked to accept a less preferred outcome, even the least advantaged have no grounds for complaint.¹¹³ Why? Simply because when the difference principle is realized, even though the least advantaged have

12 Certainly we can rely on the modified version of equal per-capita emissions presented in the first chapter, but as has been shown this has its own distributive effects which violate the egalitarian impulse.

13 *Theory*, 130-131.

14 Brian Barry (1989), *Theories of Justice*, Berkeley: University of California Press, 228.

15 Joshua Cohen (1989), "Democratic Equality," *Ethics* 99 (4), 740.

the lowest share of primary social goods, they have no legitimate grounds for complaint, since under any other reasonable scheme *someone* would be worse off than they are now.¹¹⁴ This line of reasoning is meant to answer Singer's question of why should anyone accept less than an equal share, with the reason being that they have no grounds to complain, as they would do better under a climatic difference principle than under equal per-capita emissions.

According to Singer, at the heart of an equal per-capita emission allocation scheme lies a firm basis for political compromise which, if we accept Singer's position, can be found nowhere else. A central obstacle to mitigating climate change and reducing our greenhouse gas emissions is that developing nations will not agree to binding targets so long as industrialized nations fail to move towards their targets. What makes the equal per-capita emissions scheme particularly suitable for political compromise is that

16 It is important here to distinguish between someone being worse off, and the particular people defined under a given scheme which happen to be defined as the least advantaged. As will be explained in further detail at a later point, the least advantaged group is not a fixed designator for any particular segment of the population, or group of states, rather they are the least advantaged since they enjoy the least amount of primary social goods under a given scheme. Other distributive outcomes may make them less advantaged than some, but not the least advantaged. However, even if it were possible to improve their prospects to make them more advantaged in relation to some more unfortunate group, we cannot legitimate such a position, since we are not maximizing the prospects of the least advantaged. Such reasoning would be consistent when we consider the argument from the original position, and from behind the veil of ignorance wherein we do not know what social position we will fall. Operating under maximin reasoning, we will always opt to maximize the prospects of the least advantaged, whoever they may be, since it is equally likely that we ourselves will fall into that class. Once the veil is lifted, if it turns out that we fall into the least advantaged we still lack a legitimate ground for complainant, since under any alternative scheme *someone* would be worse off than the present scheme, and we would lack the fundamental justification necessary to ask these members to accept lowers prospects.

developing nations would magnanimously withdraw their claims to hold industrialized nations liable for their historical emissions.¹¹⁵ If developing nations maintained their position to hold industrialized nations liable for their historical emissions, the effect would be a drastic decline in allowable emissions; on the most radical estimates, industrialized nations may have negative allowable emissions quota, in light of the prodigious use of emissions in the past to fuel their industrial development.

Once historical emissions are forgiven and we agree to start anew, under equal per-capita emissions we would have an allocative scheme which benefits both industrialized nations and developing nations: industrialized nations, since their emissions shares would not be reduced in light of their historical emissions; developing nations, since they would be given an allowable emissions surplus which could either be put towards economic development or sold off to industrialized nations under a cap-and-trade system.¹¹⁶ Using a utilitarian calculus we would certainly have an aggregate net benefit in well-being, since the combined populations of developing nations dwarf those of developed nations, and because they would arguably be the net beneficiaries of an equal per-capita scheme, global welfare would increase.

However, such lofty proposals spurred by a strict egalitarian impulse will almost

17 This call for developing nations to magnanimously forgive developed nations for their historical emissions is strictly Singer's position, which I do not endorse, but instead examine in order to formulate a response to Singer.

18 Singer classifies these as “surplus emissions” because based on his calculations, developing nations currently utilize less than what they could under an equal per-capita emissions scheme.

certainly not be welcomed with open arms by some of the most economically powerful nations, such as the United States, which currently has a per-capita emissions averaging five times higher than Singer would allow for under an equal per-capita emissions scheme.¹¹⁷ Neo-conservative sects within the United States would more likely rally around Eric Posner, Cass Sunstein and David Weisbach's position that, even as a matter of distributive justice, the United States should not accept any such proposal centring around equal per-capita emissions, seeing that the United States would be net losers in such a scheme. It would demand a drastic decline in present emissions though the United States itself is not nearly as vulnerable to the effects of climate change.¹¹⁸

By making this claim, I feel it is necessary to stipulate that I in no way give credence to Posner et al's position, only that if we are searching for a suitable solution to climate change, such appeals by neo-conservatives need to be addressed head on, or else any meaningful solution to mitigate climate change is unlikely to succeed. Some may say that it is not necessary to address such radical right critiques, but, while they express a radical position, a significant portion of the United States accepts a more moderate position. The general sentiment within the United States is that in virtue of their affluence and bargaining power, even the relatively lax conditions imposed by Kyoto would be too

19 Singer, 35.

20 Eric Posner, and David Weisbach (2010). *Climate Change Justice*. Princeton: Princeton University Press, 120.

draconian and damaging to their economy to be acceptable.

The position I wish to articulate, which will lead to a more suitable political solution, endeavours to reach an acceptable balance between the priorities of developed and developing nations. It is true that developing nations will not take any meaningful steps towards mitigating climate change, nor even consider binding emissions targets; but it is also true that many of the most powerful and carbon-intensive developed nations would refuse to take such steps until the growing developing nations, in particular China and India, agree to take similar strides.

What we have is a virtual standoff between the developed and the developing nations. While the Cold War saw us going to the brink over nuclear weapons, the 21st Century will see an equally dangerous standoff, albeit one that will not go down with a bang, but with a whimper. No longer are we facing a potential nuclear holocaust with the potential to wipe out the world's population with the push a button. Climate change will present a slow destruction of the world through a gradual warming of the Earth's climate that will dislocate populations, make vast tracts of tropical climate uninhabitable, decimate our food supply, and potentially cause a water crisis that may lead to wars and further plight.¹¹⁹

I do not deny that developing nations, especially those most vulnerable to the

21 See Gwynne Dyer, *Climate Wars*, Toronto: Random House, for the dire consequences.

effects of climate change (and who have contributed least to the problem), have a legitimate claim against the developed nations, such that they would be responsible for taking firm and fast action towards mitigating climate change. But we cannot lose sight of the political realities when we seek a suitable political solution. This is not to conclude that the interests of developing nations ought to be sacrificed in the name of compromise, as American neo-conservatives would have us believe, but rather that a just solution needs to be developed that combines both interests in such a way that protects the interests of the least advantaged while simultaneously garnering the support of industrialized nations. It will be the goal of the climatic difference principle and the work that follows to help make this a reality.

Institutional Structures, Common Assets, Legitimate Entitlements, and the Resulting Selective Subset

Within a Rawlsian society, the difference principle is applied to divide up the benefits and burdens of social cooperation consistent with two lexically prior principles of justice. Once basic liberties and fair equality of opportunity are satisfied, an institutional structure is defined to divide up the rest of the social product. By denying the Cosmopolitan Rawlsian's charge that global interdependence is the criterion for a global application of the difference principle, wherein the global social product would be up for distribution, the climatic difference principle operates within a more limited scope. The goods available for distribution are derived from what is understood to be a common

asset, but limited by what states have a legitimate claim over under an institutional structure.

A cursory sketch of the institutional structure.

My intention is to treat the global carbon sink as a common asset. In order to facilitate the allocation of this common asset, we need a kind of institutional structure to govern the global carbon sink. There is a need to form a new kind of institutional structure because, apart from the UNFCCC, there is no institution to govern the global carbon sink. With the exception perhaps only of water, the global carbon sink transcends all national boundaries--both in a physical sense, and in terms of the harms are caused as a result of overuse.¹²⁰ All other physical resources (with the exception of water) are encompassed by national boundaries, including oceans, to which states possess a territorial right extending twelve nautical miles off their coast. The global carbon sink largely defies such delimiting, especially when we consider the atmosphere itself, its largest component. This characteristic features of the global carbon sink, in addition to our inability to prevent potential beneficiaries from making use of the resource, makes it a (global) common pool resource, and thus falls out of the purview of domestic basic structures. For these reasons we need a new kind of institutional structure devoted solely to governing concerns related to the global carbon sink.

²² I return to the harms transcending national boundaries at a later point in the chapter.

The kind of institutional structure that I have in mind is not a global basic structure; a global basic structure like the one envisioned by Cosmopolitan Rawls would have to be a supreme institutional structure that governs any and all aspects of social life. The beginning stages of the kind of institutional structure that would be required for the climatic difference principle can already be found with the United Nations Framework Convention on Climate Change (UNFCCC). Two particular features would need to be added to the current UNFCCC for the purposes of the climatic difference principle: first, specifications of how much of the global carbon sink each state can use, as opposed to regulations specifying emissions reductions; and second, an appropriate enforcement mechanism. Neither condition is unfeasible, in theory. Enforcement mechanisms could be put in place in the form of trade embargoes or sanctions for those that exceed their allotted share.

For my present purposes I believe it is sufficient to state that what is needed is an institutional structure that could be modelled on top of the existing UNFCCC to establish a set of legitimate entitlements to the global carbon sink. As a Rawlsian, my commitments are to institutions as the bearers of legitimate entitlements; prior to any sort of institutional structure there are no such entitlements. This much I think is correct: for how can we say that someone has a entitlement to something (or even any kind of claim over something) without rules and regulations to govern usages, or enforcement

mechanisms to ensure compliance? In either case, for those who do not subscribe to the Rawlsian theory of entitlements, the climatic difference principle is fully compatible with a common property/ownership thesis of the global carbon sink. This is especially true if we accept (as we should) Mathias Risse's argument that we cannot derive equal shares from common ownership. In effect, what I have provided is the Rawlsian answer to the common ownership position, one which is widely held among scholars, and stating in the broad sense that everyone has some sort of symmetrical claim on the global carbon sink. What follows is a discussion of what it means for the global carbon sink to be considered a common asset.

Common Assets

Unlike his libertarian counterparts, Rawls's theory of distributive justice posits a theory based on a common asset formulation. While libertarian theories are characterized by the premise of non-interference, Rawls denies that we have purely negative duties to our counterparts not to interfere with their distributive shares so long as they were justly acquired, adding a positive distributive duty to their theory. It is in this sense that Rawls remarks that the difference principle “can be regarded as an agreement to consider the distribution of natural assets as common property and to share in the benefits of this distribution whatever it turns out to be.”¹²¹ In a loose sense then, the collective pool of

23 John Rawls (1999b), “Distributive Justice: Some Addenda (1968)” in *Collected Papers: John Rawls*,

natural assets is treated as common property. But such a loose understanding of what Rawls means by “common property” has led to many misunderstandings, particularly by Rawls's libertarian critics.

We must be clear in our interpretation of Rawls that what is being treated as common property is the *distribution* of natural assets, and not natural assets as such. Such a misunderstanding of Rawls' point here has led Pogge to devote a significant portion of a chapter to refuting Nozick and Michael Sandel's criticisms of Rawls. Pogge writes, “one regards as a common asset *this* distribution, not the particular endowments themselves or what flows from their exercise within some economic scheme.”¹²² According to Pogge, libertarians like Nozick frequently conjure up what he terms the “horror of redistribution”, which is an idea that, on the basis of some capricious sentiment, some authority like the government will come along whenever it pleases to take away all or part of what one owns, thereby devoting it to some purpose it deems worthy, presumably without the agent's consent.¹²³

Within justice as fairness, to suppose that some authority would have the power to

Samuel Freeman ed. Cambridge: Harvard University Press, 165. Rawls correctly cites that he made this point as early as “Distributive Justice (1967),”¹⁴⁰, but here his formulation is not as clear, and it is the later formulation that dominates the remainder of the discussions being used in *Theory*, 87, and finally in *Restatement*, 75 albeit with minor stylistic changes: referring to assets as talents in *Theory* and endowments in *Restatement*.

24 Pogge (1989), 74. For the full defence, and clarification of Rawls's position by Pogge see Chapter 2 “Sandel and the Conception of the Person” in *Realizing Rawls* (pp. 63-86)..

25 Ibid, 17.

take someone's natural assets away--or to put it more literally, to derive an unbridled benefit from those assets since they are common property--leads to a drastic misconstruction of Rawls's position. It is not as Nozick seems to assert, that individuals are harnessed like horses, given the liberty to move or not, but *if* it decides to move it must drag the wagon along.¹²⁴ Such an interpretation would violate the first principle of justice, requiring the satisfaction of basic liberties. Society, according to Rawls, cannot compel those with greater natural assets to put them to work for the least advantaged.¹²⁵ Enshrined within the first principle is the stipulation that we have a right to our natural assets.¹²⁶ By treating the distribution of natural assets as common property, what Rawls envisions is not that we are not full owners of our natural assets, but only that we are not entitled to reap the unbridled benefits that such natural assets provide us; part of that benefit is owed to our fellow counterparts, as is consistent with the principles of justice as fairness operating within a closed state system of social cooperation for mutual advantage.

The discussion thus far has centred around natural assets, or as Rawls puts it in *Theory*, “natural goods”, which include goods such as “health and vigor, intelligence and imagination”. These are contrasted with social primary goods including “rights, liberties,

26 Nozick, 229n.

27 John Rawls (1974). “Reply to Alexander and Musgrave,” in *Collected Papers: John Rawls*, Samuel Freeman ed. Cambridge: Harvard University Press, 145.

28 *Political Liberalism*, 275.

and opportunities, and income and wealth.”¹²⁷ The relationship between the two is such that, while the basic structure cannot distribute natural goods in an analogous way to how it distributes primary social goods, an individual's greater share of natural goods will influence their share of primary social goods. The purpose of the difference principle, along with the two lexically prior principles of justice, is to mitigate the influence of natural goods (among others) in determining shares of primary social goods.¹²⁸ Natural assets are seen as a common asset, since a greater share of natural goods does not make one more deserving in a moral sense of a greater share of primary social goods. Only by treating them as a common asset or property can such a mitigation be actualized; for only if we affirm that natural assets are common assets or property can we limit the legitimate benefits an individual is able to derive from their possession.

The relevance of this discussion as applied to more tangible forms of common property, such as land or resources, becomes apparent when we realize that Rawls offers only a few cursory remarks concerning such forms of property. The few arguments he presents clearly presuppose the above mentioned argument, with some necessary modification to make his account of these forms of property consistent with his views on personal integrity enshrined within the first principle of justice. In the case of natural

29 *Theory*, 54

30 While the difference principle seeks to mitigate the effects of any goods in determining shares of social primary goods, I limit my discussion to natural assets, as those are the most pertinent for my present purposes.

assets, so as to be consistent with the first principle, the question of ownership does not arise for Rawls; he further stipulates that, should it arise, persons themselves are said to own such assets.¹²⁹

Forms of property which are external to the individual, such as land and resources, do not belong to the individual in the same way as do natural assets, but a right to hold (external forms of) personal property is encompassed within the first principle of justice.¹³⁰ In this regard, Freeman correctly observes that Rawls's view on external forms of property is complex. Within Rawls's account there is no right to “property as such” which would give individuals the freedom to do with their possessions whatever they please. The right to personal property is best understood as Freeman suggests, as a formal right to hold and be secure in one's possessions.¹³¹ But even this formal right to property is constrained within the Rawlsian framework.

To understand the full implications of this claim, we have to take the institutional structure of Rawls' account seriously, as Pogge does. If we recall that the subject of the principles of justice is the basic structure, the consequence is that the principles of justice

31 *Restatement*, 75.

32 *Restatement*, 114. In a strict sense, individuals at least have a personal right to external (or, in Rawls's terms, real) property which includes things like dwellings and private grounds. Rawls considers these minimal conditions for personal property, since as a matter of first principles of justice he is agnostic as to whether a well-ordered society should regard the means of production and natural resources to be owned privately or socially. The merits of either conception is decided at a later stage in Rawls's political constructivism, when more information about a society's circumstances and historical traditions is available to the representatives in the original position (*Political Liberalism*, 298).

33 Samuel Freeman (2007), *Rawls*, London: Routledge, 49-50.

offer content for the rules governing the basic structure. Rules for first acquisition, changes of ownership – in addition to the potential usages of what we own – are dictated by the principles of justice as they apply to the basic structure. Here Pogge aptly notes that it is not the capricious will of some authority which enacts redistributions at a whim, but rather the particular content of these rules which dictates how landholdings arise, how they are to be transferred, and the degree of benefit that an individual is able to derive from those holdings.¹³²

We therefore are able to discern that, within a Rawlsian framework, all forms of property are considered common *in the sense that* individuals are not *full* owners of their property, as they would be under a libertarian conception of justice. As Freeman explains, excluded from the right to personal property are rights to unlimited accumulation, absolute ownership of the means of production, and an unregulated use and transfer of economic resources. Rights to property are subordinate to regulations by the law, so that the principles of justice might be satisfied. Governments may, in accordance with the principles of justice, restrict certain usages, but such restrictions are not arbitrarily imposed, and are only seen as legitimate so long as they are consistent with the particular content of the rules specified by the principles of justice.¹³³

Returning now to the global carbon sink, we find that, by classifying it as common

34 Pogge, (1989), 17.

35 Freeman (2007c), 50.

asset, what we mean is that while the global carbon sink belongs to all states, each nonetheless retains a formal right to hold their own portion of that property. What remains common is the distribution of the productive output resulting from the collective use of the global carbon sink. With regards to their respective shares, each state is able to develop their share in whatever way they please, but the consequence is that the benefits derived must be shared in accordance with the climatic difference principle.

It may seem that this characterization lends credence to Nozick's assertion that we are treating the agent as a horse harnessed to a wagon, which would be true if not for the fact that participation in this global scheme is predicated on a pre-established set of principles governing rules for acquisition and legitimate use. While the global community we form is not analogous to a Rawlsian closed state with its fair system of cooperation (since we lack the relevant normative prerequisites to be considered as such), we nevertheless form a much looser system of cooperation.

If it were the case that we could live atomistically, such that each state or individual was able to use as much of the global carbon sink as they desired to satisfy their needs, we would not even have a need for this looser form of cooperation. But our unbridled use of the global carbon sink has brought about our present need to govern future usages and establish allocative shares. The result may be that we are all horses harnessed to a wagon, but we willingly pull the wagon forward on the understanding that

we share in the productive output, since we are all tilling the same plot of land. Such is the result of treating the global carbon sink as common asset: each participating state is entitled to a share in the distribution. But this does not present the whole of the story, since our legitimate shares derived from the property held in common must be reconciled with what each is legitimately entitled to under a broader Rawlsian framework.

Legitimate Entitlements

In the previous section, the conclusion I drew is that once we treat the global carbon sink as common asset, then each participating state is entitled to a share of the distribution. However, the final portion of the conclusion concerning what is meant by a share of the distribution remains rather vague. To clarify: the global carbon sink itself, like any other resources, asset, or commodity, has no value in and of itself apart from the value attributed to it either through its use or through the value we put on the resource or commodity. When it is said that each participating state is entitled to a share of the distribution, what this means is that each participating state is entitled to a portion of the benefits derived from our collective use of the global carbon sink. However, this entitlement to a share of the benefits needs to be reconciled with a state's legitimate entitlements to its own resources and the subsequent benefits they can derive from those resources that they legitimate own.

What distinguishes the climatic difference principle from a global difference

principle is that it is not the entire share of the global benefits and burdens that is up for distribution. Consider hypothetically what distributive shares would be like in a world where there is the requisite kind of global interdependence and a suitable global institutional structure for the global difference to apply: states would no longer be able to claim that they possess a legitimate entitlement to their own natural resources found within their national boundaries. According to Rawls, it is the background institutions that allow for such entitlements to arise. He adds further that, “apart from existing institutions, there is no prior and independent idea of what we may legitimately expect, or what we are entitled to...”¹³⁴ But it has already been demonstrated in the previous chapter that on the global level we lack the necessary form of interdependence and requisite institutional structure to deny states their legitimate entitlements to their own natural resources, and consequently the benefits derived from those resources. Certainly we have various global relationships, but justice as fairness as envisioned by Rawls applies to features of political relationships as distinct from those of other relationships.¹³⁵

The point that I wish to draw out of this discussion is that states are not entitled to their natural resources as a matter of moral desert. Pogge is certainly correct to conclude that the natural resources that a state possesses do not reflect the moral worth of either the state or the citizens that make up the state. But it is inappropriate for Pogge to assert that

36 *Theory*, 72.

37 *Restatement*, 40.

the distribution of natural resources is morally arbitrary in a Rawlsian sense, which leads Pogge to conclude that resource-rich states have no claim to reap the rewards from those resources.¹³⁶ The matter is not one of moral desert, as Pogge would have us believe. Moral desert implies that someone possesses a superior moral character or virtue, in light of which they are entitled to something. Rather, the more fortunate deserve their better situation because their claims are the result of the legitimate expectations, which are established by a set of background social institutions and that the community is obligated to meet.¹³⁷

We can even grant Pogge the fact that it would seem questionable to take the present distribution of natural resources as morally acceptable, in light of the historical fact that such resources were first acquired through war, colonialism and imperialism.¹³⁸ Our global history is rife with immoral seizures of one nation's possessions by conquering forces; but these historical facts have no distributive implications, especially when we consider that Rawls operates within an ideal theory. In his ideal theory, particularly within the Law of Peoples, we find prohibitions against war for the sake of seizing more territory. Such unjust seizures are not rectified through distributive justice, but instead

38 Pogge (1989), 250.

39 John Rawls (1968), "Distributive Justice: Some Addenda," in *Collected Papers: John Rawls*, Samuel Freeman ed. Cambridge: Harvard University Press, 170. This stipulation within Rawls operates within ideal theory and on the assumption that the background set of social institutions themselves are fully just. A moral case for reparations can be made on the grounds that the institutional structure was unjust in that it did not allow for employment equity or allowed for discriminatory laws.

40 Pogge (1989), 250.

would have be a matter of retributive justice.

Moreover, we find Rawls addressing Pogge's concerns head on in the *Law of Peoples* when he writes that,

It does not follow from the fact that boundaries are historically arbitrary that their role in the Law of Peoples cannot be justified. On the contrary, to fix on the arbitrariness is to fix on the wrong thing. In the absence of a world state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances.¹³⁹

A quintessential liberal may fault Rawls for favouring the status quo in terms of how the world is divided up, but not over the fact that the world is divided. If we set aside the possibility of a single world-state, which Kant warns us will lead to a world despotism, when we seek to tear down the walls of the state, what are we left with? Here Rawls cites Walzer approvingly for his assertion that when we do tear down the walls of the state, we are not left with a world without walls, but rather a world composed of a thousand tiny fortresses.¹⁴⁰

On Rawlsian terms, Pogge may continue to object to this division of resources into national properties on the grounds that such a division is a social fact, adding that such a division has negative distributive effects and subverts the fairness of international economic relations,¹⁴¹ but we find that such a division is a necessary for Rawls. It may be desirable on egalitarian grounds to abolish national democratic control over national

41 *Law of Peoples*, 39

42 Michael Walzer (1983), *Spheres of Justice*, New York: Basic Books, Inc., Publishers, 39.

43 Pogge (1989), 256.

resources, but such a move is not possible in Rawlsian terms for two reasons.

First, it is not possible because the national units themselves define what are a person or state's legitimate entitlements. We simply lack a global basic structure – short of a world despotism – to govern all forms of property and distributive share which would be a suitable analogue to the domestic basic structure. Secondly, the division itself is not a matter of moral acceptability or impermissibility; instead it is just social fact. It may be true that Rawls believes that once we are troubled by either social contingencies or natural choice in the determination of distributive shares, on reflection we are bound to be concerned by the other, but this only holds true within the context of prescribed entitlements offered by political communities.¹⁴²

The theoretical implication of the climatic difference principle is that we must grant that states are legitimately entitled to the natural resources found within their national boundaries. It is not the case, as Caney, and Athansion and Baer suggest, that inequalities in access to natural resources should have an effect on a state's allocative share of the global carbon sink. Under Rawls's formula for legitimate entitlements, natural resources which may decrease a state's dependence on the global carbon sink, or, conversely, allow them to generate more benefits from their allocative share, do not fall within the purview of the climatic difference principle. What are held in common, and

44 Rawls (1968), 164.

therefore up for distribution, are the benefits derived from the usage of the global carbon sink. States rich in hydro or wind power thus possess a legitimate entitlement to the resource itself and the subsequent benefits.

So while Cosmopolitan Rawlsians would hold that it is the whole share of a state's productive output that is up for distribution, an advocate of the climatic difference principle will have a more limited stock up for distribution. Due to the complexities involved in identifying precisely what is and what is not available for distribution, the following section will make some simplifying theoretical assumptions along with a clear restatement of the selective subset of benefits that may be distributed.

The Selective Subset and Some Simplifying Assumptions

By concluding that states are legitimately entitled to the natural resources found within their boundaries, that does not mean that they are entitled to the entire productive output generated within or by the state or its citizens. For the production of goods and services which generates such benefits is not solely contingent upon resources to which they have a legitimate entitlement. Within our present energy paradigm, centred around carbon-intensive industries and the other sources of economic benefits that are responsible for anthropogenic climate change,¹⁴³ we find that states not only derive benefits from what they are solely entitled to, but also the global carbon sink (which we

143 In this regard I have in mind such things as raising livestock, which while it may have a low carbon impact does have a negative effect upon anthropogenic climate change by contributing methane gas into the atmosphere.

consider to be a common asset).

In one sense then, Rawls was correct to insist that societies are largely closed and self-sufficient, due to the lack of normatively significant features of global interdependence. However, we must recall that Rawls makes this point as a simplifying theoretical assumption; because it is only once we form principles of justice for a closed society that further questions of justice prove more tractable. Having settled the principles of justice for a closed society, we now move on to other problems of justice that do not fit the paradigmatic case of closed and self-sufficient societies. A prime example is the case of anthropogenic climate change and how to divide up the global carbon sink.

Our inability to use as much of the global carbon sink as we have, whilst leaving enough and as good left over, creates a problem of justice and a case for property. Once the global carbon sink is understood as property held in common, we take from Rawls the principles governing common assets and reconcile that with those governing legitimate entitlements. The result is that there are resources and economic benefits that states are legitimately entitled to, but also a common resource and a set of benefits that must be distributed according to the climatic difference principle.

Excluded from the purview of the climatic difference principle is any source of benefits that a state can generate that does not make use of the global carbon sink. In this regard, the benefits that are derived from renewable sources of energy, such as wind and

hydro, fall within the scope of what a state is legitimately entitled to possess for themselves. Since the benefits derived from these sources of energy do not produce any harmful greenhouse gases, they do not use up a state's share of the global carbon sink. It would be wrong to deny these states the benefits derived from these sources of energy, as other states do not have a legitimate claim to these resources.

However, due to the complexities involved in disentangling which benefits are derived from using a portion of the global carbon sink, and which are not, some simplifying assumptions will need to be made. While we may not be able to distinguish specifically which benefits are derived from what kind of energy sources, it is nevertheless possible to distinguish the various sources of energies in percentage categories. That is, if a state derives 80% of its benefits from sources that consume a portion of their share of the global carbon sink, then that state is legitimately entitled to keep 20% of those benefits, such that they would not be subject to the climatic difference principle. States would not be forced to develop either, but if they chose to generate a productive output from their share of the global carbon sink, then those benefits would be available for distribution, in light of the global carbon sink being common property. If it is only the benefits that are derived from using the global carbon sink that are up for distribution, it becomes possible to reconcile legitimate entitlements with the conception of the global carbon sink as common property.

Introducing the Climatic Difference Principle

Having established what falls within the legitimate scope of what the climatic difference principle governs, the time has come to define the principle itself and to illustrate how it is an adaptation of the difference principle as it is understood by Rawls. It is an adaptation, in that Rawls utilizes the difference principle as a part of his theory of distributive justice, whereby he was only concerned with a specific question of justice: how to divide up the benefits and burdens of social cooperation. Limiting his investigation to what he terms “social justice”, the subject of justice concerns the basic structure of society: its major social institutions, such as the political constitution and principal economic and social arrangements, which distribute fundamental rights and duties and determine the division of the benefits and burdens of social cooperation.¹⁴⁴ How institutions are arranged will form different distributive outcomes, but the outcome which will be most just is the one that satisfies the two principles of justice (including the difference principle). According to Rawls's first formulation of the difference principle:

Social and economic inequalities, for example inequalities in wealth and authority, are just only if they result in a compensating benefit for everyone, and in particular for the least advantaged members of society.¹⁴⁵

While the majority of the discussion of the difference principle concerns primarily income and wealth, the actual application of the difference principle is much broader,

⁴⁶ *Theory*, 6.

⁴⁷ *Theory*, 13.

including all social primary goods.

In this adaptation of the difference principle, the climatic difference principle seeks to answer a different question of justice. It seeks to find an equitable solution to how to divide up the benefits and burdens that result from using the global carbon sink. In this case we are not concerned with all primary and social goods, nor all forms of benefits, as a portion of those constitutes a legitimate entitlement of states. What we are concerned with is the selective subset of benefits that are derived from the use of the global carbon sink, and the subsequent burdens. When we consider the global carbon sink as a common asset, we can begin as Rawls does. According to Scanlon, this is by taking equality as a natural first solution to the problem of justice. In a similar vein to the argument for the difference principle, the climatic difference principle will then specify the acceptable limits of inequality.¹⁴⁶

By utilizing the conceptual idea behind the difference principle and applying it to the problem of allocating the global carbon sink, the climatic difference principle holds that,

Inequalities in shares of the global carbon sink are just only if they result in a compensating benefit for everyone, and in particular the least advantaged states facing anthropogenic climate change.

Like Rawls with his first formulation of the difference principle, I must acknowledge that

48 Scanlon (1973) 1063-64.

there are certain ambiguities found here,¹⁴⁷ but unlike Rawls I will not attempt to resolve them with further formulations of the climatic difference principle. Rather, I will attempt to clarify what the principle holds and its implications through an investigation of the principle itself. Also, since Rawls acknowledges that all three formulations of the difference principle represent the same substantive idea, with the changes being only stylistic, I find this first formulation to best encapsulate the ideal which the climatic difference principle hopes to express by justifying inequalities by recognizing how they compensate other states.

In a general sense, within our present energy paradigm, centred around carbon-intensive industries, a greater share of the global carbon sink will result in a net increase in benefits that a state is able to derive. Apart from those benefits generated from sources of energy that do not make use of the global carbon sink, development is generally predicated on the production of goods and services, many of which depend on emitting greenhouse gases and therefore take up a portion of a state's allocative share of the global carbon sink.

When we take equality as the benchmark from which to judge the distributive outcomes of potential allocations, what we are not doing is giving credence to equal per capita emissions as a valid theory for dividing up the global carbon sink. We take equality

⁴⁹ In particular, Rawls has in mind that the phrase “everyone's advantage” is left ambiguous (*Theory*, 13), but the ambiguities I have in mind are broader, including such things as which states will get a larger share and how this will result in compensating benefits.

as the benchmark, since we are treating the global carbon sink as common asset. Moreover, we take equality as the comparative benchmark, since we find that none of the states involved have an initial reason to be given either a larger or smaller share. Moral desert cannot be a factor that affects distributive outcomes, as it is not the moral character of states that makes them more deserving of a greater or lesser share, only legitimate entitlements founded on institutional relationships. In this regard we find all states on an equal footing, since no state has a prior claim to the global carbon sink. Any such claims without a principled reason for why states should possess such entitlements are implausible.

By taking equality as a benchmark, as Rawls does with his formulation of the difference principle, we are not committed to treating equality as the final solution to the problem of distributive justice. What motivates the appeal behind the difference principle (and provides its intuitive support) is that the total amount of goods and services that can be produced with a finite amount of resources is not a zero-sum game.¹⁴⁸ Taking resources away from those who will use them less efficiently, and placing them in the hands of who can use them more efficiently, ultimately produces a greater share that is up for distribution, but any such departure from equality must be done on terms that

⁵⁰ I will return to the role of efficiency and incentives in the following section. At present my principal concern is to specify that the amount of goods and services that can be produced is contingent upon the structure of the distributive scheme.

everyone will find reasonable.¹⁴⁹

In a Rawlsian society, the better endowed are asked to accept a lesser share than they might have had otherwise for the sake of others, once the difference principle is satisfied.¹⁵⁰ A similar situation occurs within the context of the climatic difference principle; for here too we are asking some to accept less than they would otherwise have, but in a different sense. We are asking some states to accept a lower share of emissions than they would get on an equal shares scheme, but we can justly ask them to accept a lower share of emissions on the grounds that we are compensating them for their lesser share in other respects.¹⁵¹

What drives the Rawlsian argument for sacrifices and compensation is the notion of society as a cooperative venture for mutual advantage, wherein the underlying ideal spurring the need for distribution is that of reciprocity. Rawls holds our intuition supports that everyone's well-being depends on a scheme of cooperation, without which no one would have a satisfactory life. We agree to terms that will govern our cooperation in an attempt to fulfill our disparate aims in a world of finite resources.¹⁵² Globally, however, it has already been shown that we lack the requisite kind of social cooperation to warrant the demands of distributive justice that would be needed to enlist a global difference

51 Scanlon (1975), 198.

52 Scanlon (1973), 1062.

53 I take up the issue of compensation in the final section of the chapter before the conclusion.

54 *Theory*, 13.

principle. Nevertheless, within the context of climate change and the global carbon sink, we find that here too our well-being and ability to attain a satisfactory life too depends on a scheme of cooperation, except now the cooperation is limited to sharing the global carbon sink in an equitable way, so as to avoid dangerous anthropogenic climate change.

The overwhelming majority of the discussion has been concerned with how the benefits that result from using the global carbon sink should be distributed; however, as I stipulated at the outset, what is up for distribution is not just the benefits, but also the burdens. As a result of our collective use of the global carbon sink, people around the world are already facing many burdens. While the question of how to distribute the burdens that result from making use of the global carbon sink is certainly relevant, unfortunately the current project does not allow for an in-depth examination of these concerns. Nevertheless, it is worth mentioning that one of our distributive concerns should be to ensure that states that are suffering the effects of our collective usage of the global carbon sink are compensated accordingly. Specifically, the kinds of aid that these states will need are associated with adaptation: that is, helping states cope with existing and future changes to the climate, and maintaining basic public standards.¹⁵³ These include (but are not limited to) issues related to receding coast lines and threats to food security due to changing conditions that effect temperature and precipitation levels

⁵⁵ Simon Caney (2011), *Beyond Technology Transfer: Protecting Human Rights in a Climate Constrained World*, Geneva: International Council on Human Rights Policy [Policy Report], 81-113,

(which have an affect on food production).

This brings us to one of the tragic ironies of climate change: it is often those least responsible for climate change that will face the most devastating effects. What characterizes the overuse of the global carbon sink is that when we exceed the earth's capacity to absorb greenhouse gases, the negative effects that result seldom remain localized within the state that produced the excessive emissions. The emissions that are being produced by China and the United States have not yet caused any substantial harm to either region. To further the irony, it is likely that the United States is presently experiencing a temporary benefit from climate change, due to warmer temperatures allowing for longer growing seasons. All the while, people across the world in Bangladesh are experiencing the loss of seasons, flooding, and severe coastal erosion as a result of their emissions. It is estimated that by the year 2150, the sea level will rise so high that Bangladesh will be enveloped by water. Even though Bangladesh presents us with a singular example, given that a state's well-being is contingent upon the cooperation of all states to limit their emissions and mitigate climate change, unless something is done it will become the paradigmatic case of what happens when states do not limit emissions.

As a result of the fact that our collective well-being is tied to a successful sharing of the global carbon sink, we are confronted with the need for a just and equitable division. Equal shares seems to be the appropriate benchmark from which to judge

distributive outcomes, but it should in no way be considered the final solution. Faced with the potential of unequal shares that will generate corresponding inequalities in economic benefits, we must turn to the climatic difference principle as a means to justify the inequalities in shares. Whereas the difference principle for Rawls structures institutions in order to justify social and economic inequalities, the climatic difference principle governs the division of the global carbon sink. However, it is not only concerned with the division of the global carbon sink as a resource, but also with the distributive outcomes resulting from its use.

A concern for the distributive outcomes entails that what is up for distribution is not only limited to shares of the global carbon sink, but also with the distribution of benefits that are derived from its use. In the regard, the climatic difference principle resembles Rawls's difference principle, as it justifies inequalities in outcomes by specifying the magnitude of benefits that a state is able to derive from their share of the global carbon sink. In this way it becomes possible to compensate those who receive a smaller share of the global carbon sink, because while they may receive a smaller share of the global carbon sink itself, the compensation they receive exceeds the benefits they would otherwise have received under equal shares. What makes such a distributive scheme plausible is the role that efficiency and incentives play in generating economic benefits from the global carbon sink, in light of the fact that economic benefits and the

global carbon sink are not a zero-sum game.

Efficiency and Incentives in Generating Economic Benefits

We encounter an example of a zero-sum game wherever the amount of the goods we are dividing is fixed; in these cases the distribution of goods is analogous to dividing up a cake.¹⁵⁴ In these situations all that we are capable of doing is shuffling around an existing stock of goods; the amount of goods that are available for distribution is not dependent on changes in the distributive scheme. In the context of a zero-sum game, barring any relevant differences between the parties that would make any of them more deserving, or any prior claims on the goods up for distribution, there is a general consensus that justice requires equality.¹⁵⁵ If we apply this reasoning to the global carbon sink on the *hypothetical* assumption that the benefits produced through its use was indeed a zero-sum game, we would have no principled reason to favour one state over another, and equal per-capita emissions would be the de facto choice for distributive principles. I stress “hypothetical” here, because if we are concerned with the outcomes of our distributive schemes, the result is far from a zero-sum game.

When it comes to dividing up the global carbon sink, we *are* dealing with a zero-sum game in one sense, because the earth's capacity to absorb greenhouse gases is in fact finite. Finding the precise limits of the earth's capacity to absorb greenhouse gases is an

56 Van Parijs, 203.

57 See for instance Barry (1989), but Van Parijs (2001), comes to the same conclusion.

inherently complex matter, due to the fact that there are ongoing debates about what the threshold may be and about the longevity of carbon dioxide within the atmosphere.¹⁵⁶ In either case, the matter would be reduced to a zero-sum game, barring significant enhancements in actually removing excess carbon dioxide produced by industrial activities from the atmosphere. We have a finite resource to divide amongst an aggregate of states, and no matter how the division is made, we cannot make any significant efforts to increase the earth's capacity to absorb greenhouse gases.

However, the finite nature of the global carbon sink should not lead us to impulsively jump to the conclusion that justice requires equal shares. Rather, the finite nature of the global carbon sink should urge us to be concerned with the distributive outcomes of various schemes, finding those schemes which generate the greatest net benefits while satisfying the climatic difference principle to be the most plausible candidates. Additionally, what the critique of equal per capita emissions earlier demonstrated was that, if we are actually concerned with equality as a guiding ideal for our distributive scheme, we ought to be concerned with outcomes rather than strict resource equality, due to varying needs for emissions for subsistence.

58 There are some controversial debates presently ongoing as to the longevity of carbon dioxide in the atmosphere. The considered opinion among scientists was that carbon dioxide remained in the atmosphere for approximately 100 years, but some recent research may indicate that its longevity may be upwards of 1000 years, if not indefinitely. In either case, if carbon dioxide does remain in the atmosphere for 1000 years or more, this will severely limit the thresholds of the global carbon sink resulting in drastically reduced emissions allotments.

Rawls recognized that social cooperation was mutually advantageous, seeing that it was not a matter of shuffling about a fixed stock of goods.¹⁵⁷ The production of goods and services is a dynamic process in which we participate to make a social product, and how the basic structure is arranged in a Rawlsian society will have tremendous effects on the quantity of the social product. We accept the addition of the principle of efficiency into our considerations of justice, as we generally want to maximize what we can out of our life prospects. This is especially true when we consider what the principle of efficiency entails.

The principle of efficiency that Rawls employs is simply that of Pareto optimality, which states that a configuration is efficient when it is not possible to produce more of one good, without simultaneously producing less of another. In a Rawlsian sense, the principle of efficiency applies to individuals within society, stipulating that a configuration is efficient if it is impossible to improve the circumstances of one individual without at the same time making other individuals worse off.¹⁵⁸ When we look at the global carbon sink, we find that we can apply the principle of efficiency to the problem at hand, because states can be said to use emissions more or less efficiently (as is seen in the table below).¹⁵⁹

59 *Theory*, 66.

60 *Ibid*, 58.

61 IEA Statistics (2011), *CO2 Emissions From Fuel Combustion: Highlights*, Paris: International Energy Agency. While the table illustrates efficiency in relation to global domestic product (GDP), it is my

Divided into regions, the table shows how many kilograms of carbon dioxide are produced per US dollar of gross domestic product. What the table highlights is how efficiently a region is able to utilize its share of the global carbon sink, citing Europe and Asia Oceanic as the most efficient regions. However, the table does not reflect many of the details involved in producing goods that individuals need; for example, certain necessities may have a low economic value, but are carbon-intensive. It is for reasons such as these that we do not use the principle of efficiency alone in deciding matters of distributive justice.

CO₂ emissions / GDP using exchange rates

Kilograms CO₂ / US dollar using 2000 prices

	1971	1975	1980	1985	1990	1995	2000	2005	2007	2008	2009	% change 90-09
World *	1.10	1.06	1.00	0.91	0.88	0.80	0.73	0.74	0.73	0.73	0.73	-15.4%
Annex I Parties	--	--	--	--	0.70	0.61	0.55	0.51	0.48	0.47	0.46	-34.6%
Annex II Parties	0.84	0.77	0.69	0.58	0.52	0.49	0.45	0.42	0.40	0.39	0.38	-27.2%
North America	1.11	1.02	0.92	0.76	0.70	0.65	0.59	0.53	0.51	0.49	0.47	-32.8%
Europe	0.75	0.67	0.63	0.54	0.46	0.43	0.38	0.36	0.34	0.33	0.32	-31.3%
Asia Oceanic	0.46	0.45	0.38	0.32	0.30	0.30	0.30	0.30	0.29	0.28	0.28	-7.8%
Annex I/EIT	--	--	--	--	4.72	4.47	3.57	2.84	2.56	2.44	2.42	-48.7%
Non-Annex I Parties	--	--	--	--	1.49	1.43	1.29	1.36	1.33	1.33	1.34	-9.9%

The principle of efficiency supplements both Rawls's conception of the difference principle and the climatic difference principle.¹⁶⁰ Alone it cannot identify the best

conjecture that the greater GDP that we can raise means the greater benefits we can generate on the HDI. That being said, increases in GDP are not synonymous with increases in the HDI. What the chart is supposed to illustrate is simply that how shares of the global carbon sink are distributed will have an effect on the productive output.

62 Rawls (1967), 135.

distribution, but rather it identifies a class of efficient distributions, at which point the most just distribution is the one that falls within the range of distributive schemes that satisfy both principles. Thus justice in a Rawlsian sense is consistent with efficiency.¹⁶¹ This kind of concern for efficiency is pertinent with respect to climate change and the finite status of the global carbon sink, especially if we hope to maintain the standard of living we currently enjoy in the western world. Our present emissions have already exceeded the capacity of the global carbon sink.

In an effort to encourage states under the climatic difference principle to be more efficient, we can apply Rawls's notion of using inequalities as incentives. In a Rawlsian society, individuals are rewarded for training and educating their endowments, in turn creating a larger share of benefits by giving them unequal shares of the social product in the form of an incentive. While the individuals themselves are rewarded with a greater share of primary social goods for their efforts, the positive effects trickle down to the less endowed when the difference principle is satisfied, thereby contributing to others' good as well as their own.¹⁶² States too can be rewarded in a similar fashion: those states that invest in more efficient technologies and are able to produce a larger net benefit will be granted a larger share of the global carbon sink. However, when the climatic difference principle is satisfied, the states who receive these incentives will only be legitimately

63 *Theory*, 69.

64 *Restatement*, 75.

entitled to a portion of those benefits because the climatic difference principle, while it allows for inequalities to act as incentives, constrains the magnitude of benefits a state can derive. The remainder will be distributed amongst the rest of the states in an effort to maximize the prospects of the least advantaged.

China, for example, has decided to sacrifice efficiency in greenhouse gas emissions for the sake of its own economic growth. Applying the climatic difference principle would identify the Chinese as poor innovators and unwise investors. Consequently, it would take a share of China's portion of the global carbon sink and provide it to those who can make the economic process more efficient. By using inequalities as incentives, Rawls believes that the inequality, “provides an incentive so that economy is more efficient, industrial advance proceeds at a quicker pace, and so on.” Much of this rings especially true in the context of climate change, since it is only going to be through technological advancements that make our emissions usages more efficient that the Chinese (for instance) will be able to achieve the standard of living they desire. In this regard, Rawls adds, “the end result of which is the greater material and other benefits are distributed throughout the whole system.”

Many states seek to share in the standard of living that we enjoy in the West, and so we face an unsustainable desire to increase the global material well-being. Even the current material standard of well-being that we enjoy in the West is the result of our

living beyond our planet's present ability to cope with the pollutants that are caused by our economic growth. In addition to curbing our emissions and scaling back our desires for material well-being, we can simultaneously strive to derive as much economic benefit as we can from the finite nature of the global carbon sink. In this way we can strive to satisfy our desire for material wealth in a sustainable fashion. In order to actualize these often competing interests, we should seek to make our means of production as efficient as possible, and in an attempt to do so, use incentives to cover the costs of training and investment that will be required to achieve efficiency.

Realizing the Distributive Ends of Principle

Having already said a great deal about what is up for distribution under the climatic difference principle, and our distributive ends (i.e., of compensating those who accept an unequal share), what remains to be shown is how to realize our distributive ends. Under the climatic difference principle, some states will be required to accept a smaller share of the global carbon sink than they otherwise would have under equal per-capita emissions, because we have incorporated a concern for efficiency as a matter of justice. The result is that we have a larger net benefit is that up for distribution, but what is needed is a mechanism to ensure that the requisite transfer payments are made in order to realize our distributive ends.

Within justice as fairness, Rawls employs a distributive branch whose “task is to

preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments in the rights of property.”¹⁶³ Unlike libertarians, Rawls understood that to maintain a just social order, there will need to be transfers made from the better endowed to the lesser endowed. As they operate in justice as fairness, taxes are used to raise revenues that justice requires, in that social resources must be released to the government so that they can provide public goods. Additionally, resources would need to be released in order to fulfill the transfer payments required to satisfy the difference principle.

In terms of the climatic difference principle, both propositions apply in a unique fashion: first, while we are not raising funds for public goods, funds will need to be raised for adaptation effects. As part of distributing the burdens associated with climate change, those states that are fortunate enough not to suffer any major environmental changes and/or are able to generate a greater share of benefits are obligated to make transfers to those who do suffer such burdens. Funds and various kinds of assistance will be required to assist states like Bangladesh, which is experiencing drastic coastal erosion, or to regions experiencing variations in agricultural conditions as a result of the changing climate.

More importantly, however, is the second issue concerning transfer payments to

⁶⁵ *Theory*, 245.

satisfy the principle. Up to this point it has only been stated that those that are asked to accept a smaller share of the global carbon sink do so on the condition that they will be compensated. It is precisely these transfer payments that will be utilized to satisfy the climatic difference principle-- in part, at least, through a green-technology program. The qualification of 'at least in part' is necessary because it is likely that more will need to be done to satisfy the climatic difference principle than a green-technology transfer program alone. Some states may require less in terms of technology to increase their well-being, and more in terms of concrete funds or other aid packages; any of these would be consistent with satisfying the climatic difference principle.

I highlight a green-technology transfer program because, as Caney observes, any solution to anthropogenic climate change will depend upon a robust set of technology policies. While it is true that there is no quick technological fix, technology development and diffusion will prove indispensable for addressing anthropogenic climate change. In terms of mitigation efforts, a dramatic shift towards low-carbon intensive technologies will be required globally. Moreover, states that lack access to such technologies will find their development efforts increasingly limited.¹⁶⁴

This brings us to one of the key virtues behind a green-technology transfer program. In addition to satisfying the climatic difference principle, a green-technology

66 Caney (2011), xiii.

transfer program will have the added benefit of allowing developing nations to increase the amount of benefits they are able to derive from their share of the global carbon sink, independently of any other aid they will receive in order to satisfy the climatic difference principle. Developing nations will not be dependent on the transfer of funds alone to improve their prospects; rather they will be able to leapfrog the phase of greenhouse gas-intensive development and continue to enjoy the benefits of development without the environmental costs.

What adds to the viability of such a program is that the basic framework for a green-technology transfer program is already enshrined within the present UNFCCC, and has reappeared in every major document since.¹⁶⁵ Article 4.6 of the UNFCCC stipulates that:

The developed country Parties and other developed Parties included in Annex 2 shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know how to the other Parties, particularly to developing countries, to enable them to implement the provisions of the Convention. In the process, the developed country Parties shall support development and enhancement of endogenous capacities and technologies of developing country Parties.¹⁶⁶

While the current program faces some practical impasses in the international arena, such difficulties remain *practical* concerns, which should not detract from their theoretical possibility.

67 Ibid, xiv.

68 Ibid, 34.

Turning now to the second portion of the distribution, under the climatic difference principle we find that property rights are assigned to the global carbon sink by granting each state a portion of the sink. While the rules that govern the assignment of property rights are fixed by the climatic difference principle, the specific property allocations themselves do not remain fixed in perpetuity.

Consider for a moment the possibility that after fifty years of the climatic difference principle being in place, states like China and India drastically improve their efficiency in generating benefits from the global carbon sink. The improvements are such that if we granted China and India a greater share of the global carbon sink than they presently enjoy, after fifty years of the climatic difference principle being in place, we can generate a greater share of net benefits while still satisfying the climatic difference principle. The result would be that we would be required, as a matter of justice, to grant the Chinese and the Indians a greater share, because we could produce a superior distributive outcome.

All of this remains consistent with both justice as fairness and the climatic difference principle, because in both cases what states retain is a right to hold property as such. They do not retain a right to a specific amount of property. The parties involved would be required to comply with this re-designation of property allocations, because one of the conditions of their participation is that the specific allocations of property are

contingent upon satisfaction of the climatic difference principle. One of the benefits of such a scheme is that it is sensitive to fluctuations in how benefits are produced, and no party involved would be forced to accept their initial share of the global carbon sink in perpetuity.

States are initially favoured with a larger share of the global carbon sink because of their high level of efficiency, but this is only the case because granting them a larger share is required to produce a greater share of net benefits. It is hoped that, with the aid of the green-technology transfer program, states that receive an initially smaller share will be able to develop and become more efficient. It may turn out that the initial advantage that some of the more developed states enjoy in terms of efficiency and the production of benefits remains as such indefinitely, and they continue to become more efficient and to generate greater net benefits that benefit people globally. However, the final outcome remains just for two reasons: first, each of the participating states still has a distributive outcome which is superior to equality; second, when we are able to produce a greater share of net benefits within developed states, in order to satisfy the climatic difference principle, those benefits would have to be distributed to all the other participating states accordingly.¹⁶⁷

⁶⁹ An obvious objection comes to mind that plagues both the climatic difference principle and the difference principle as it operates within justice as fairness, and that is the issue of the gap between richest and the poorest. So long as everyone's prospects are better under inequality than equality, Rawls is not concerned with the actual gap between the parties. The consequence is that even a drastic increase

Conclusion: A Reply to Peter Singer

When it comes to dividing up the global carbon sink, we are confronted with the problem of how to find an equitable division that has led many advocates, such as Peter Singer, to propose a variant of equal per-capita emissions. These proposals enjoy a tremendous amount of intuitive appeal, in light of their simplicity and prima facie fairness, and this appeal has led to equal per-capita emissions becoming the dominant proposal for how to settle our problem of justice. What could be more fair, and more simple, than providing each person an equal share of a resource which no one has played a part in creating?

But it was argued in the first chapter that we should not rest content with what merely appears simple and fair, and endeavour to investigate the proposed scheme, in order to avoid accepting it for shallow philosophical reasons. Beginning with Singer's formulation of strict equal per-capita emissions, we find that when we allocate emissions without compensating for geographic circumstance, we violate the initial fairness which

in the prospects of the better endowed can be justified through a marginal increase in the prospects of the least advantaged. Surely this is a theoretical flaw within the Rawlsian framework, and unfortunately, by subscribing to such a framework the climatic difference principle suffers from the same fault. What does salvage any kind of difference principle is still that fact that we have a superior distributive outcome under inequality as opposed to equality. To that end, the distributive outcome generated by the climatic difference principle would still be superior to the one generated by equal per-capita emissions. That being said, while Rawls may have not been concerned with the gap, that does not preclude the possibility of incorporating such a concern into both the difference principle and the climatic difference principle. While I do not have the conceptual tools to spell out precisely how this can be done, I must rest content with the possibility of closing the gap and make a qualification that when we are concerned with selecting the most just scheme that satisfies the climatic difference principle, we should be mindful to close the gap as much as possible without jeopardizing efficiency.

the scheme is supposed to generate. By not compensating for geographic circumstances, those states in the northern regions must use more of their emissions allocations just to meet their subsistence needs. However, fortunately for advocates of equal per-capita emissions, we can reformulate the scheme to equalize only luxury emissions.

Here we are presented with a proposal which on the surface seems self-evidently fair, but upon reflection we must conclude that it ultimately rests on shallow grounds. Upon a deeper philosophical reflection we find that any variation of equal per-capita emissions violates the underlying ideal of equality it is supposed to represent, which leads us in search of a new candidate. One seemingly obvious place to look would be the philosophy of John Rawls, whose theory of justice has spanned not only internal modifications and extensions, but also various theories which draw much inspiration from Rawls's work.

Rawls never imagined that his justice as fairness would be the definitive theory of justice that would answer all questions of justice. Rather, he applied justice as fairness exclusively to the problem of social justice. Nevertheless, his principles of justice as fairness have inspired others, myself included (with the climatic difference principle), to find ways to apply Rawlsian principles to other questions of justice. The initial challenge that the climatic difference principle faced was Rawls's insistence that the bonds of distributive justice, including the application of the difference principle, must remain

localized within domestic societies. If it were possible to merely apply the difference principle globally, there would be no reason to find a distinct principle to deal with allocating the global carbon sink, as it would fall within the purview of the globalized difference principle.

As such, the second chapter substantiated Rawls's position that the difference principle cannot be globalized, despite attempts by Beitz and Pogge to do so. For Rawls, the difference principle applied to divide up the benefits and burdens of social cooperation. The initial reason for the division was the various normatively significant relationships we share under the domestic basic structure. Beitz and Pogge attempted to show that the earth as a whole could be considered an analogous case, maintaining that there ought to be no principled reasons why the demands of distributive justice should end at our national borders. They argued that there does in fact exist the requisite kind of global interdependence to warrant global principles of distributive justice and, consequently, nationality should be treated as an additional arbitrary contingency.

But when we come to realize that national borders present us with moral watersheds for distributive justice broadly construed, the case for a globalized difference principle crumbles. However, just because we cannot fully globalize the difference principle should not preclude all attempts at global distributive justice. The purpose behind the climatic difference principle is to adapt the conceptual idea behind the

difference principle as it is envisioned by Rawls, and apply it to the problem of how to allocate the global carbon sink.

As opposed to past attempts at extending the difference principle, the climatic difference principle is designed to be both consistent with a Rawlsian framework, while simultaneously being independent of it. It is consistent in that it remains faithful to the Rawlsian spirit, by drawing on Rawls's views concerning common assets and legitimate entitlements, and it is applicable to Rawlsian societies. It is independent in that, whereas it would act as a prior constraint on the available goods up for distribution under justice as fairness, it can also act as a stand-alone principle for non-Rawlsian societies in determining their allocative share of the global carbon sink. The final result is a different kind of difference principle, one which shares the intuitive appeal behind the difference principle, but which is specially tailored to the problem of climate change justice.

In part it was the intuitive appeal behind the difference principle that motivated a search for an alternative to equal per-capita emissions. Supporters of equal-per capita emissions hail its suitability for political compromise as one of its key virtues, but as we have seen, not only does the climatic difference principle share a common virtue, but it also goes one step further. It may not be as simple as equal-per capita emissions, but the concern for maximizing the prospects of the least advantaged certainly embodies a sense of fairness. Moreover, the additional virtue of the climatic difference principle is that it

only becomes effective so long as we can improve everyone's circumstance beyond the baseline of equality.

The principle itself draws from Rawls's views on common assets and legitimate entitlements, carving out a selective subset that is up for distribution. Unlike attempts to globalize the difference principle, the climatic difference principle only treats the global carbon sink as a common asset, and distributes the economic benefits derived from it. That is, the benefits that are derived from resources which do not emit greenhouse gases fall within a state's legitimate entitlements. What the principle illustrates is a theoretical basis for allocating emissions shares, consequently some simplifying theoretical assumptions were needed. So while the principle holds that efficiency should guide our distributive scheme and use incentives to generate greater efficiency gains, much of this represents a broad stroke theoretical guideline for emissions.

Obviously, the complexities involved with climate change – from debates over the actual allowable amount of emissions before triggering dangerous and unstoppable changes, combined with the controversy over how long carbon dioxide remains in the atmosphere – are daunting enough. The complexities that the climatic difference principle must grapple with present us with further difficulties. It is the role of the philosopher to present and defend a theoretical guideline for how to allocate the global carbon sink, and with the aid of various professionals and specialists, to help implement the proposed

scheme. There will be numerous details to work out after this theoretical foundation is laid; for instance, calculating industry specific efficiencies and seeking to place emissions allocations into the hands of those who can use them best whilst being concerned with how this will affect other aspects of the carbon and monetary economies, and how this will work to benefit the least advantaged.

The core idea that I defend here is that we should divide the global carbon sink in such a way that benefits everyone and compensates those who are required to receive a lesser share of the sink itself. When distributions occur in a non-zero sum game, how the distributions are made will affect the net distributive outcome, both in terms of how much is produced, but also who receives the benefits and burdens. What the principle seeks to do is to put shares of the global carbon sink into the hands of the technological innovators who will use them to their fullest. Doing so will inevitably mean that some are given a lesser share, but we can justify supplying these states with a lower share on the grounds that they will be justly compensated. Apart from some cash transfers, which will likely be inevitable to realize the principle, our principal form of compensation should be green-technology transfers and other related mechanisms. The purpose for such transfers would be to create a long-term solution, not only to anthropogenic climate change, but also as a means to get states to become less dependent on international aid and to create sustainable economic growth globally.

Finally, although the climatic difference principle represents a viable alternative to equal per capita emissions, Singer expresses grave doubts concerning the ability of Rawlsian principles to form a basis for emissions allocations. Singer considers Rawls's principles, because he considers equal shares to be a good starting point, only considering rival principles if we have a good reason to depart from equality. Hence, we are presented with Rawlsian principles as a potential alternative, seeing that Rawls's principles focus upon improving everyone's circumstances. According to Singer, the strength in the Rawlsian position stems from the fact that, unlike many egalitarian principles, especially those advancing strict equality, Rawls's principles are immune to the levelling down objection.¹⁶⁸

Regardless of this immunity, Singer remains skeptical that Rawls can offer an adequate solution, for he believes that the Rawlsian framework fails on ethical and factual grounds. In actuality, Singer's arguments fail because of his misunderstanding of Rawls. I classify it as a misunderstanding, because Singer claims that former President George W. Bush uses a Rawlsian argument to support their excess emissions. Bush put forward that economic growth would mark the solution to climate change, as opposed to worsening the problem. On Singer's reading of Bush's Rawlsian argument, it is emissions efficiency alone which will solve the problem, on the grounds that granting the United States a

70 Singer, 37.

greater share of emissions will generate a greater productive output with fewer emissions. As a result, Singer finds an ethical fault with the argument: the greatest benefactors of American emissions are primarily American consumers. Further, we find a factual flaw: the United States proves to be less efficient than other states, such as China and India, in generating greater economic benefits from the same stock of emissions.¹⁶⁹

Singer misunderstands Rawls by isolating efficiency as the sole criterion for satisfying the demands of Rawlsian distributive justice. Efficiency alone cannot be the sole criterion for distributive justice; rather, it provides a class of efficient distributions which must also satisfy other principles of justice. So while it may be true that American consumers are the principal beneficiaries of American emissions, under the climatic difference principle, the United States is not fully entitled to all its economic benefits. A portion of those benefits must be reserved to satisfy the principle in an effort to compensate those who receive a lesser share. Contrary to Singer, Rawls does not endorse the status quo, and instead offers us a framework for how to structure economic arrangements in a way that compensates everyone. By neglecting to consider various transfer mechanisms, Singer fails to realize that any Rawlsian framework is not just a matter of allocating one particular resource, but a larger framework that allocates resources within a distributive scheme that couples such allocations with transfer

71 Ibid, 39.

mechanisms to satisfy its principles.

As for the practical flaw concerning the inefficiency of American emissions, this argument bears no force against a Rawlsian proposal. If it is true that the United States are not efficient producers, a Rawlsian framework will not reward them for their inefficiency, but rather move those emissions allotments to those who can use them more efficiently. What is curious about Singer's position is that he singles out China and India as potential sources of greater emissions allotments, in light of their superior efficiency, when the most recent data by the International Energy Agency (IEA) suggests an entirely different story. While China in particular has made great strides to improve its efficiency, at 2.33 kilograms CO₂ / US dollar (using 2000 prices), even the United States proves to be more efficient, producing only 0.46 CO₂/US dollar. The most efficient producers turn out to be OECD Europe and OECD Asia Oceania, with production ratios of 0.38 and 0.33 CO₂/US dollar respectively.¹⁷⁰

The conclusion that we should draw is not that a Rawlsian framework fails to provide an adequate solution to anthropogenic climate change, but the status quo in emissions allocations fails to satisfy a Rawlsian framework, and that when the climatic difference principle is satisfied we can find a feasible alternative to equal per-capita emissions. In this sense, Rawls and I would agree that efficiency cannot be the sole guide

72 See IEA Statistics, 91-93.

to allocating the global carbon sink, but this should not deter attempts to incorporate a concern for efficiency in indicating emissions allotments. The climatic difference principle's suitability for political compromise and concern for compensating those who receive a lower share of emissions supports the fact that it would be an effective way to allocate the global carbon sink, but only as part of a larger Rawlsian framework.

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