

## A RIGHT TO SUSTAINABLE DEVELOPMENT

The United Nations Framework Convention on Climate Change is the legally authoritative deliberative framework for international climate-change negotiations.<sup>1</sup> It is established in order “to achieve, in accordance with the relevant provisions of the Convention,<sup>2</sup> stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>3</sup> The Convention alone is unsuited to this aim since in negotiating it no agreement could be reached on determinate obligations regarding mitigation and therefore no enforcement mechanisms could be established.<sup>4</sup> But in addition to establishing various reporting requirements, the Convention lays out norms that proposals to advance its aims should observe on pain of being inconsistent with the agreed upon frame work for deliberation.

One such norm is expressed in Article 3 paragraph 4:

The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.<sup>5</sup>

The institutional complex of the Convention and several UN resolutions and reports give content to a conception of the right to sustainable development. I call the conception of the right to sustainable development provided by that content “the institutional conception of the right to sustainable development.” I shall argue that this conception of the right to sustainable development places significant constraints on reasonable policy proposals concerning climate change in UNFCCC context. In the first section I discuss the content of the institutional conception. Section two discusses the constraints that the institutional conception of the right places on reasonable proposals in the UNFCCC deliberative context. In

section three I turn to a discussion of the norm of reasonableness. In the final section I respond to some skeptical challenges about whether there is a *right* to sustainable development. The general approach of this paper is to use philosophical argumentation and analysis as a guide to policy formation. I take it to be a virtue of efforts of such as this that they avoid deeply perplexing, although possibly resolvable, philosophical disputes where this can be done without loss of support for the account. I flag where I am doing this; and I hope that sufficient philosophical interest remains. This may disappoint philosophers interested in such disputes for their own sake, but there are better occasions for those rich philosophical investigations.

### *1. The Institutional Conception of the Right*

In the context of the United Nations, the concept sustainable development has fairly determinate content. United Nations General Assembly resolution 42/187 of 1987, which welcomed the Brundtland Report, “Our Common Future,” affirms “that sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, Governments and private institutions, organizations and enterprises. . . .”<sup>6</sup> This passage is drawn verbatim from the Brundtland Report chapter 2 paragraph 1.<sup>7</sup>

The Brundtland Report distinguishes development from economic growth:

[S]ustainable development clearly requires economic growth in places where such needs are not being met. Elsewhere, it can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment.<sup>8</sup>

Human needs are manifold, but the Brundtland Report speaks of “essential needs . . . for food, clothing, shelter, [and] jobs . . . .”<sup>9</sup> This list of essential needs might be taken to rest on a conception of human nature, but it is not most charitably read that way. We do not need jobs in virtue of our nature. And although we need nutrition and shelter naturally, food has other, more socially rich, connotations. This list—or at least some the items on it—might be better understood to refer to the basic needs of typical persons in modern societies.<sup>10</sup> Elsewhere the Brundtland Report speaks more expansively of “human needs and aspirations.”<sup>11</sup>

In the Convention, however, the right to sustainable development is not limited to meeting basic needs. Rather it licenses energy intensive and poverty eradicating economic growth. In its preamble the Convention claims to be “taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty;” and it recognizes “that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consumption will need to grow.”<sup>12</sup> The paragraph that follows the declaration of the right holds that “The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change.”<sup>13</sup>

In the Brundtland Report the qualifier “sustainable” expresses a limitation on development in order to maintain intergenerationally the human capacity to satisfy needs. Sustainability contains a core notion of fairness to other (future) persons, not first and foremost natural preservation. The Brundtland Report is explicit about this: “Every ecosystem everywhere cannot be preserved intact. A forest may be depleted in one part of a watershed and extended elsewhere, which is not a bad thing if the exploitation has been planned and the effects on soil erosion rates, water regimes, and genetic losses have been taken into account.”<sup>14</sup> Preserving the capacity of future generations to meet their needs may require the conservation of some natural resources but also the transformation of others into capital assets. This anthropocentric conception of sustainability is echoed in Principle 1 of the Rio Declaration: “Human beings are at the centre of concerns for sustainable development.”<sup>15</sup>

In the Convention the bearer of the right to sustainable development is taken to be Party to the Convention. Facially the right is a group right because it is possessed and exercised by states rather than individuals.<sup>16</sup> This affirmation of a group right is consistent with other forms of treaty law under the auspices of the UN. Article 1, paragraphs 1 and 2, of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural rights declare the rights of people to self-determination and to disposal of natural resources. The right to sustainable development fits with these sweeping expressions

of state sovereignty insofar as it attributes to states license over the domain of development-conducive macro-economic policy.<sup>17</sup>

How does sustainability limit the license of a state to pursue development? One might suppose that the development policy of a state should be scrutinized to see if its policy, taken in isolation, is consistent with the norm of sustainability. There is language in the Brundtland Report that suggests this approach: "A society may in many ways compromise its ability to meet the essential needs of its people in the future—by overexploiting resources, for example."<sup>18</sup> This approach might be credible in cases in which the resource is peculiar to the state, for example aquifers that are not shared by other states, but not when the resource is shared with other states. The Brundtland Report seems aware of this and suggests a standard that takes into consideration the policies of other states. "Living standards that go beyond the basic minimum are sustainable only if consumption standards everywhere have regard for long-term sustainability."<sup>19</sup> According to this standard a state's policies are unsustainable if they produce living standards beyond a basic minimum and if the standards of other states are also unsustainable. This, however, does not provide sufficient clarity concerning the standard of sustainability since it takes unsustainability in one state to be a function of unsustainability in others, and thereby produces a regress problem. But it does suggest something helpful, namely that sustainability—at least with respect global natural resources—has to do not merely with the policies of a single state but with those of all states taken together.

The Earth's climate and capacity for CO<sub>2</sub> absorption are global resources. Sustainable development in the context of climate change depends upon total greenhouse gas emissions, and not, for the time being at least, upon the emissions of any one state. A state may emit more than average, but this is sustainable so long as the total global emissions are consistent with what is owed to future generations, however that is construed. Sustainability with respect to greenhouse gas emissions is a constraint on total emissions, not on the emissions of a particular state taken in isolation.

This is consequential for the account of the limitation that sustainability places on the license of a state to develop. The limitation that sustainability imposes is on total global emissions. International policy does not contravene the limitation of sustainability simply because it allows some states to emit more than would be sustainable if all states emitted the

same total or per capita amount. The limitation that sustainability puts on the right to development is violated only if global emissions are unsustainable. And because the right to sustainable development is also the right to development of a certain kind, policy must allow emissions sufficient for development. The right to sustainable development is the right to develop in the context of a sustainable global energy policy.

## *2. Sustainable Development and Climate-Change Policy*

The institutional conception of the right to sustainable development significantly constrains proposals for climate-change policy. This can be shown by assuming for simplicity's sake that the only policy lever available for mitigating climate change is the maintenance of a schedule of CO<sub>2</sub> emissions reductions. According to this assumption, the task of respecting the right to sustainable development involves ensuring that developing and underdeveloped states are allowed emissions allotments sufficient to achieve development within a plan of global emissions reductions. Given this assumption what sort of policy proposals would be reasonable? To answer this question an additional assumption has to be made about the extent of global emissions reductions that are necessary to satisfy the norm of sustainability. In the Copenhagen Accord the parties to the Convention agreed upon a goal of limiting warming to two degrees Celsius.<sup>20</sup> I take this warming limit to be consistent with the norm of sustainability.<sup>21</sup>

What sort of a global distribution of CO<sub>2</sub> emissions within the warming limit is consistent with human development? The answer has to make assumptions about technological capacity and the relative costs of fossil fuels. In that sense any particular answer is only as useful as those assumptions. One way to answer the question is by looking at recent history, although the matter could change if there were a technological breakthrough or an increase in the cost of emitting CO<sub>2</sub>. How much do highly developed states currently emit? The only useful measure is per capita CO<sub>2</sub> emissions since counting total emissions does not control for population size and therefore does not sufficiently isolate the relationship between development and emissions. There are thirty-eight states in the United Nations Development Program's most highly developed category, ranging from Norway in first place to Malta in thirty-eighth.<sup>22</sup> The list of the states in between includes the USA in thirteenth place, Singapore in twenty-third, South Korea in twenty-sixth, and Portugal in thirty-fourth.

Of these thirty-eight states, Portugal has the lowest per capita CO<sub>2</sub> emissions at 5.4 mt (metric tons). In comparison, Norway's per capita emissions are 8.7 mt; the USA's are 19.18 mt; South Korea's are 11.2 mt; and Malta's are 7.9 mt.<sup>23</sup>

Looking at the per capita emission of these states, the lesson is unclear. South Korea is the new comer on this list. In 1975 South Korea had the same human development rank as Jamaica, which now, at ordinal rank one hundred, is still below the median and solidly in the middle of the medium human development group of states. We might conclude then that rapid human development requires per capita CO<sub>2</sub> emissions of approximately 11 mt. On the other hand, Singapore—up from thirty-fifth place in 1990—has staggering per capita emission of 34.6 mt. Perhaps it is then too much to expect a state to achieve high human development while emitting only 11 mt of CO<sub>2</sub> per capita. Singapore, however, relies heavily on entrepot trade, importing vast amounts of oil, refining it, and re-exporting it. This contributes to its remarkably high level of per capita emissions. Moreover, Portugal is able to maintain its presence among the group of states characterized as containing very high human development with per capita emissions of 5.4 mt. Still, expecting a state to *achieve* high human development with emissions similar to Portugal's might be unrealistic since it might be easier to invest in less carbon-intensive forms of energy production and use once a state is already highly developed. It would be a case of misplaced confidence to rely too heavily on any one emissions figure from the survey of the most highly developed countries. Instead, the range of 5 to 11 mt of CO<sub>2</sub> per capita will serve as a reference for the following discussion of emissions and human development.

The Intergovernmental Panel on Climate Change (IPCC) holds that limiting warming to two degrees will probably require global CO<sub>2</sub> emissions 50 to 85 percent below 2000 levels by 2050.<sup>24</sup> Average global per capita CO<sub>2</sub> emissions in 2000 were 3.92 mt for a population that was just over 6 billion.<sup>25</sup> If we assume that population growth yields a global population of 9 billion in 2050, average per capita emission entitlement of a 50 to 85 percent global reduction would be in the range of 0.4 to 1.33 mt of CO<sub>2</sub>. Of the 91 countries in the top half of the UNDP's 2009 Human Development Index only two—Albania and Peru—have per capita emissions within the 0.4 to 1.33 mt of CO<sub>2</sub> range. The survey of very high human development states suggests that we have good reasons to believe that, in

current technological and economic conditions, making significant advances towards very high human development will require average per capita emissions to be considerably higher than the 0.4 to 1.33 mt range, perhaps between 5 to 11 mt of CO<sub>2</sub> per capita.

International policy that required developing countries to conform to an equal per capita emissions regime would most likely be inconsistent with permitting human development. Allowing trading in emissions entitlements could provide some relief from the constraints on human development that an equal per capita emission regime would impose. Through the purchase of additional emissions entitlements, states or their populations could increase the volume of allowed emissions. But this would also raise the cost of human development and could result in delayed or forestalled human development. This analysis of the equal per capita approach demonstrates the constraints that the right to sustainable development places on proposals for climate-change mitigation.<sup>26</sup>

Domestic policy is also constrained by the right to sustainable development. Consider the American Power Act, the proposal from Senators John Kerry and Joseph Lieberman that might have (but did not) become law in the USA in the summer of 2010. The bill called for domestic CO<sub>2</sub> emissions in 2050 to be eighty percent less than 2005 emissions.<sup>28</sup> This is, of course, considerable improvement over the status quo in the USA of no required emissions reductions, but almost certainly inconsistent with the right to sustainable development. The proposal would have produced per capita US emissions of about 3 mt (given a constant rate immigration to the USA). But the USA is the second largest total emitter of CO<sub>2</sub>.<sup>28</sup> In order both to achieve global emissions within the assumed sustainable range of 0.4 to 1.33 mt of CO<sub>2</sub> per capita and to allow the USA to emit so much beyond that range, all other states would have to compensate with emissions significantly below the sustainable per capita range. This would consign developing and underdeveloped states to emissions schedules that are almost certainly less than what is needed to achieve very high human development.

The discussion above is based on several assumptions. It assumes that the only policy lever available for climate-change mitigation is a schedule of CO<sub>2</sub> emissions reductions. In reality an international treaty on mitigation could combine emissions reductions with the requirement that very highly developed states transfer intellectual property rights to cleaner technology to less developed states or that very highly developed states



make significant capital investments in clean technology in less developed states. But this merely underscores the demandingness of the right to sustainable development since then the duties that the right incurs are not merely negative duties to let developing and underdeveloped states pursue development within the constraints of sustainability. Rather they are positive duties to provide resources conducive to such development.

Moreover, an international policy will also have to address adaptation since even limiting warming to two degrees will produce sea-level rise and climatic changes. Some of this will threaten human development gains. The provision of resources to certain developing and underdeveloped states will be necessary just to sustain human development gains and to continue where progress is being made. The right to sustainable development in the context of formulating adaptation policy is not plausibly limited only to the negative duty of allowing states to develop within a globally sustainable framework. But once again this is just to reinforce the main point of this section, namely that the institutional conception of the right to sustainable development is profoundly consequential for a climate-change treaty under the auspices of the UNFCCC.

The discussion above also assumes that global climate-change policy should be consistent with all states attaining the level of human development characterized as “very high” by UNDP criteria. This is not how the right to sustainable development is understood in the Brundtland Report. It speaks merely of development as meeting basic needs. If the Brundtland Report’s conception were taken as the ideal of development, perhaps the right to sustainable development is less constraining than the discussion above suggests. It seems unlikely, however, that a proposal that limits the ambitions of underdeveloped and developing states merely to meeting basic needs would be considered reasonable in UNFCCC negotiations. As we have seen, the Convention is concerned to license energy intensive and poverty alleviating economic growth. Moreover, the goal of climate-change negotiations is to establish equitable policies of mitigation and adaptation especially on behalf of future persons. Article 3, paragraph 1 of the Convention holds that “The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.”<sup>29</sup> A proposal that would achieve



the aim of protecting the climate system by means of a principle that would restrict the development ambitions of some countries while allowing very high human development in countries that have already achieved it would be objectionable on grounds distributing the burdens of achieving the good of sustainability in an inequitable manner.

Finally, the discussion above makes assumptions regarding the volume of CO<sub>2</sub> emissions necessary to achieve high human development. If there were a technological breakthrough in energy generation or conservation, satisfying the constraint that sustainability puts on the right to development would then be less onerous.

### *3. The Reasonableness of the Right*

The Convention is the treaty framework in which multilateral negotiations concerning climate change under the UN auspices are to take place. These Conferences of the Parties of the Convention are the deliberative venues in which international climate-change policy is negotiated, proposed, and decided upon. As such they employ norms that constrain and direct negotiations and limit proposals. There is a familiar sense of the term “reasonable” that is associated with constraining one’s conduct to the terms of a prior agreement in an effort to advance deliberation. Making a proposal that contradicts a prior agreement regarding the framework for deliberation threatens the framework and the possibility of progress in deliberation. Such proposals are unreasonable and offering them is acting unreasonably.

Advancing proposals that knowingly contradict the norms of the legal framework is a special instance of failing both to take account of the internal aspect of the law and to take the kind of critical attitude toward one’s own conduct that is required by the normativity of the law.<sup>30</sup> The role of legal norms in a norm-ordered deliberative framework is to guide deliberation to make advances in law-making in an unfinished project. Proposals that contradict the norms of the deliberative framework undermine the deliberation-guiding role of the framework and threaten the process of deliberation itself. Parties knowingly making such proposals are, in the absence of excusing conditions, expressing contempt for the framework of deliberation as the process through which the project is to be advanced.

There are conditions in which a party might be excused for neglecting legal norms previously agreed upon. For example, exceptional or emergency

circumstances could require acting in illegal ways to prevent moral disaster. In 1994 when Rwandan Hutu militias slaughtered hundreds of thousands of Tutsi and moderate Hutus and the UN Security Council failed to offer protection to those attacked, it would not necessarily have been unreasonable for a party to act unilaterally in violation of international law to protect those who were threatened. Additionally, morality often requires revising conventional norms, and sometimes the civilly disobedient may be excused for violating legal norms as part of a morally responsible strategy of normative revision.<sup>31</sup> But with respect to a norm that is part of the framework for deliberation for the purposes of law-making, neither of these excusing conditions seems likely to obtain. With respect to the first possible excusing condition, deliberation about law-making is not a context prone to emergencies in which laws must be passed by disregarding accepted norms. Indeed, doing so would threaten the legitimacy of the new law. With respect to the second, in the deliberative context it is difficult to imagine why a proposal to revise the background norms should not simply be introduced, rather than a proposal that contradicts those norms. In the context of norm-ordered deliberation directed towards law-making there is a very strong presumption that the norms of deliberation should be followed by participants.

The presumption could be defeated if the norms were morally illegitimate. Such norms have no moral authority to command our allegiance. The legitimacy of international norms may be compromised in at least five different ways. There may be legitimacy problems of two kinds stemming from their genesis. The states that are principal parties to the norms may suffer from legitimacy problems or the norms may be generated by processes that are insufficiently voluntary. Third, there may be legitimacy problems due the negative externalities produced by the observance of the norms. Observance of the norms may profoundly harm the important interests of persons who are not citizens of states that are parties to the norms.<sup>32</sup> Fourth, norms may be illegitimate due to implementation problems. If there are no effective institutional means for implementing a norm or if the moral costs of implementing it are too high, the norm could not be morally authoritative. Finally, norms may lose their legitimacy as the context changes and the nature of global problems changes. For example, a norm of extensive state sovereignty might need to be altered due to global climate change.<sup>33</sup>

Taking these five kinds of illegitimacy as characteristic of illegitimacy in international norms, is the norm of sustainable development in the UNFCCC deliberative context plausibly illegitimate? First, there are 194 parties to the UNFCCC. A great many of these are states that fail to satisfy plausible liberal democratic criteria for legitimacy, including democratic contestation of political offices, protections of civil rights, and gender equality. But all of the major liberal democracies, including new ones such as South Africa, have ratified the Convention. It is not then particularly a treaty of authoritarian and anti-egalitarian states. Second, the motivation for ratifying the Convention, unlike for example the motivation for World Trade Organization membership, is not that there are no reasonable development prospects outside of the treaty.

Third, there need be no significant negative externalities associated with respecting sustainable development. Persons most negatively affected by development induced climate change are members of future generations, but it is precisely their interests that sustainable development is meant to protect. Fourth, there do not appear to be institutional barriers to implementing the right to sustainable development. Although recognizing the right to sustainable development will require dramatic emissions reductions in the developed world, these do not appear to come at excessively high moral costs since the states of the developed world can absorb the economic costs of clean energy production without human development setbacks.<sup>34</sup> Fifth, the license to pursue human development is part of a package of powers of sovereignty. And although insistence on the full enjoyment of the powers of sovereignty in all traditional state domains is problematic for both environmental and global justice reasons, the Convention is part of a process in which sovereign states seek concessions from each other regarding enjoyment of their powers of sovereignty. In sum, the survey of these five kinds illegitimacy suggests that it would be implausible to claim that the presumption in favour of the norm of the sustainable development within the deliberative framework of the Convention is defeated on grounds of illegitimacy.

The gravity of the charge of being unreasonable in a deliberative context is, however, dependent on the purpose of the deliberation and the party's role in achieving that purpose. We might be exasperated with someone who confounds our plans to have supper as a group at a restaurant by constantly changing his availability, but we should not think the person culpable

of grave immorality. After all, we may leave him out of our plans and have an enjoyable—perhaps even a more enjoyable—supper without him. Neither the larger purpose nor the person's role in it is world-historical.

In contrast to the supper example, the purpose of the Convention to “prevent dangerous anthropogenic interference with the climate system” is exceedingly important. The consequences of unmitigated climate change are likely very severe, but uncertain in two distinct respects. One of these is due to moral uncertainty—what will happen depends in very important ways on the pattern of globalization and the uses of energy that result from human choices. This makes projecting into the future a policy-dependent exercise, not merely with respect to whether or how we mitigate, but also with respect to how we do not mitigate. It is in an effort to be sensitive to such moral uncertainty that the IPCC utilizes several different business-as-usual forecasts for unmitigated climate change, rather than a single one.<sup>35</sup> The IPCC's *Fourth Assessment Report* (AR4) forecasts a 21st Century global temperature increase from 1.1 to 6.4 degrees Celsius and a sea-level rise 0.18 to 0.59 meters. This range of sea-level rise is very conservative since it incorporates the rate of melting of the Greenland and Antarctic ice sheets seen from 1993 to 2003, rather than the as-of-yet-unpredictable rapid dynamic melting of these sheets—melting that is more probable the higher the warming.<sup>36</sup> This is an example of the second source of uncertainty, epistemic uncertainty. Such uncertainty is a function not of what we might do, but of what we do not know. Scientists do not understand the dynamics of ice-sheet collapse well enough to assign probabilities of massive collapses in Greenland or Antarctica. But that is no reason to consider such events unlikely.

The AR4 considers it very likely that hot extremes, heat waves, and storms bringing heavy precipitation will become more frequent. It is likely that tropical cyclones will become more intense. Heat waves will contribute to droughts in some regions and melting of glaciers and snow pack will produce flooding in other areas. By 2020, between 75 and 250 million people in Africa are expected to be exposed to increased water stress due to climate change and in some African countries yields from rain-fed agriculture could be reduced by up to 50 percent. This is expected to erode food security and exacerbate malnutrition, with as many as 600 more million people suffering from food insecurity.<sup>37</sup> The United Nations Development Program warns that nearly a hundred million people in mega

delta regions could be inundated due to sea-level rise, some 70 million in Bangladesh, 6 million in Egypt, and 22 million in Vietnam.<sup>38</sup>

Once again in contrast to the supper example above, the role of some parties in the effort to mitigate climate change is especially important. The Convention prominently recognizes an important role for developed countries. “[T]he developed country Parties should take the lead in combating climate change and the adverse effects thereof.”<sup>39</sup> These parties carry the brunt of the historical responsibility for climate change. Leading in the negotiations to combat climate change is an expression of taking the purpose of the Convention seriously. Moreover, as developed countries, they have greater capacity to absorb the costs of mitigating and planning for adaptation without serious human development losses. But most importantly, an effective regime of lowering global emissions depends crucially on the participation of the states with very *high total* emissions; and many of these are developed states. The United States is the second largest emitter, Japan fifth, Germany sixth, Canada seventh, and the United Kingdom eighth. But the role of several developing countries is important in climate-change mitigation as well. China is the largest total emitter and India is fourth.<sup>40</sup> Given the great importance of climate-change mitigation, unreasonableness on the part of these important parties is a serious moral fault.

#### *4. A Right to Sustainable Development?*

The arguments of the previous sections support two conclusions. First, in order to ensure that human development in the developing world is consistent with sustainability, proposals for responding to climate change must place significant burdens on developed countries. Second, within the context of the UNFCCC deliberations, proposals that do not respect the right to sustainable development are unreasonable. The right to sustainable development and other group rights are often referred to as “third generation human rights” following a convention of referring to civil and political rights as “first generation” and social, economic and cultural rights as “second generation.”<sup>41</sup> Many philosophers, jurists, and policy-makers find third generation human rights to be suspect.<sup>42</sup> Sometimes this is due their character as group rights, which may be suspicious on liberal individualist grounds; and sometimes it is due to a concern about rights inflation, which may devalue the currency of other rights.

My response to these suspicions, on behalf of the right to sustainable development only, is fourfold. First, I briefly review the normative claims about sustainable development defended above. Second, I argue that the right is consistent with very important individual interests and widely recognized individual human rights. Third, I note the advantages of appealing to a group right in the climate-change context. And finally, I suggest that the norm's status as a *real* human right matters very little to its moral credibility if the three preceding arguments are compelling.

First, the main normative appeal of the argument that I have been making is to reasonableness. The claim is that when deliberating with others about how to proceed in the face of a common and commonly recognized problem, it is unreasonable to offer proposals that violate previously agreed upon norms that constrain proposal formation. Knowingly doing so expresses contempt for the deliberative process and for the other parties in the deliberation. Moreover, it threatens to undermine the capacity of the group to achieve the good that the deliberative process is directed towards. Although there are times when norms should be broken, reformed, or considered illegitimate, these do not apply with respect to the right to sustainable development in the context of climate change.

It is a virtue of this approach that it is philosophically modest. It rests on a conception of the reasonable that is commonly understood in practice, not a product of philosophical theorizing. As such it is better suited to solve practical problems than a conception of a norm that derives from subtle and complex philosophical arguments or that rests on more controversial normative grounds.

Second, the project of human development is directed towards satisfying immensely important individual interests. As developed and employed by the UNDP, the concept of human development provides a cardinal measure of human well-being and an ordinal ranking of the development levels of states. The human development of a state is a measure of its average life expectancy, average educational attainments (understood as a weighted combination of its adult literacy rate and the percentage of the school-aged population enrolled in school), and its per capita income. These three indices are averaged to obtain a cardinal number between zero and one and ordinal list of rankings on the Human Development Index.

Human development is morally valuable because its constituents are morally valuable to typical persons in contemporary societies. Education,

health, and income are recognized as valuable across a wide variety of moral orientations. There are, of course, certain religious orientations that encourage voluntary poverty, but this is not the same as advocating involuntary limited access to income.

Electrification is centrally important to human development. According to the UNDP, indoor pollution caused by the burning of wood and animal dung results in 1.5 million deaths per year, mostly of children under the age of five. This is more than the annual global deaths due to malaria and is nearly equal those caused by tuberculosis. “[I]n Bangladesh, rural electrification is estimated to increase income by 11 percent—and to avert 25 child deaths for every 1000 households connected.”<sup>43</sup> The burning of fossil fuels is for many states the most economical form of electricity production, given current technological capacity and market pricing. Electrification, generated by means of burning fossil fuels, propels rapid human development. In the absence of establishing a price on carbon emissions, the need to generate electricity is expected to increase the global consumption of coal approximately fifty percent by 2035, with almost all of this growth occurring in Asia. During this time period China’s use of coal is expected to increase fifty-five percent and its number of coal-fired plants is expected to double.<sup>44</sup>

The right to sustainable development protects important interests in education, health, and income. In so doing the right is consistent with individual human rights that do the same. Article 25, paragraph 1, of the Universal Declaration of Human Rights states,

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>45</sup>

Article 26, paragraph 1, holds that, “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages.”<sup>46</sup> And Article 26, paragraph 2, affirms that, “Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.”<sup>47</sup> The assignment of a group right of sustainable development to states does not appear to undermine or cheapen the value of important individual



rights. I am not attempting an independent justification of the right to sustainable development, but it seems plausible that any liberal justification would rely on the service that the group right plays to securing the enjoyment of individual rights.

Third, an appeal to the rights of states to sustainable development has distinct advantages over appeals to individual human rights in the context of developing appropriate policy responses to climate change.<sup>48</sup> These advantages derive from theoretical controversies concerning appeals to the individual human rights in the case of climate-change policy. I cite these controversies here neither to resolve them nor to claim that they are irresolvable, but merely to indicate the advantages of an account that can avoid such controversies.

One of the controversies is normative. The threat that climate change will produce massive human suffering and negatively affect vital human interests is real. But so is a similar threat from climate-change mitigation policies that drastically curtail the use of fossil fuels around the globe, thereby prohibitively raising the costs of development projects such as electrification in impoverished rural areas. Presumably there is a possible policy that can satisfy individual rights maximally and produce minimal violations. Although there are philosophically respectable theories of rights that take them as the objects of maximizing strategies, these are controversial because they seem to deflate rights' apparent deontological status.<sup>49</sup> My point is not that the maximizing approach to individual rights is incorrect, merely that it is deeply controversial, and that is a liability in the context of developing climate-change policy. There are also several conceptual complications associated with appealing to individual rights to guide climate-change policy. One derives from the nonexistence of persons affected by climate change two or three generations from now. The claim is that people who do not exist can have no rights and we can have no rights-based duties towards them.<sup>50</sup> Three other complications derive from the contingent existence of particular future persons.<sup>51</sup> Who will exist depends, among other things, on the energy policy we adopt. If persons would not exist but for our energy policy, and if their existence is not bad, then perhaps we have harmed no rights of theirs in fashioning our policy. Or, perhaps we cannot violate their rights if we could not have acted in an alternative manner that would have respected their rights. Finally, even if we do violate their rights, perhaps we can count on them waiving these

rights, given the alternative of nonexistence. Now, elsewhere I have argued that there are compelling answers to these four conceptual problems.<sup>52</sup> But I doubt that my responses—or anyone else's for that matter—will find universal assent. Hence, to criticize climate change on the basis of its impact on individual human rights is to invite perplexing discussions regarding the warrant for employing individual rights in the case of future and contingent persons. This diminishes the capacity of such critiques to direct the practice of responding to climate change.

An appeal to the right to sustainable development is not susceptible to the problems of appealing to individual rights. First, the institutional conception of the right is sensitive to both human development and inter-generational sustainability. The policy justified by the right will both permit human development and be consistent with the entitlements of future generations. Second, the four conceptual problems surveyed above arise because the (individual) rights bearer is in the future with an existence contingent, in part, on climate-change policy decisions. This is not the case with states (with a continuous existence) that claim and exercise the right to sustainable development. There is nothing conceptually puzzling about the claim that the rights of an existing rights bearer constrain the action of other parties or the policy of a common political authority.

Finally, I have argued that it is reasonable to respect the right of states to sustainable development in the UNFCCC context. The right that is respected in this context is not obviously, and perhaps not all, a human right, third generation or otherwise. It is a group right. That it is ascribed to states, however, need not automatically disqualify it as a right. It may play a role in an international context analogous to the role that individual rights play in the domestic. It protects rights-holders against the actions of other parties and against overreaching by the common political authority. Furthermore, states may agree to accept the duties imposed by such a right because all agree that the right protects sufficiently important human interests.<sup>53</sup>

I have not argued that the right to sustainable development rests on deep philosophical grounds, such as those appealed to in natural law theory or deontology. If that is what is required in order for a norm to *really* be a right, then the right to sustainable development may not really be a right. But that would not in the least diminish the reasonableness of taking sustainable development, for climate-change policy purposes, as a positive group right constraining reasonable policy. The previous three

responses underscore the merits of appealing to the right both out of respect for the other parties in UNFCCC climate-change deliberations and to maintain hope for an adequate outcome of those deliberations.

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#### NOTES

1. I would like to thank the Institut für Interkulturelle und Internationale Studien (InIIs), Universität Bremen, which hosted me while this paper was written, the University of Richmond, which invited me to present the paper, and two anonymous referees, who provided me with comments on an earlier version.

2. I use “the Convention” to refer to the document, and “the UNFCCC” to refer to the institution.

3. United Nations Framework Convention on Climate Change (UNFCCC), Art. 2. Available on line at <http://unfccc.int/resource/docs/convkp/conveng.pdf>. Accessed 15 July 2010.

4. See S. Halpern, *United Nations Conference on Environment and Development: Process and Documentation* (Providence: Academic Council for the United Nations System, 1992) for some of the history of the Convention. Available on line at <http://www.ciesin.org/docs/008-585/unced-ch1.html#PC-climate>. Accessed 15 July 2010.

5. UNFCCC, Art. 3, para. 4.

6. United Nations General Assembly, A/RES/42/187, 96th plenary meeting 11 December 1987. Available on line at <http://www.un.org/documents/ga/res/42/ares42-187.htm>. Accessed 14 July 2010.

7. Report of the World Commission on Environment and Development, *Our Common Future*, ch. 2, par. 1. Available on line at <http://www.un-documents.net/wced-ocf.htm>. Accessed 14 July 2010.

8. *Ibid.*, ch. 2, para. 6.

9. *Ibid.*, ch. 2, para. 4.

10. See Charles Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2009), 110, for the interests that human rights protect as “important in a wide range of typical lives that occur in contemporary societies.”

11. World Commission on Environment and Development, ch. 2, 15.

12. UNFCCC, preamble.

13. UNFCCC, Art. 3, para. 5.

14. *Ibid.*, ch. 2, para. 11.

15. United Nations Environment Program, “Rio Declaration on Environment and Development,” Principle 1. Available on line at: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>. Accessed 20 July 2010. In Principle 3 the right to development has no qualifier “sustainable” although the principle requires meeting the needs of future generations.

16. According to one account collective values are individual rights that “can only be implemented by the combined efforts of every one.” See Karl Vasak, “A 30-year Struggle:

The Sustained Effort to Give Force of Law to the Universal Declaration on Human Rights,” *UNESCO Courier* 30 (1977): 29. Available on line at <http://unesdoc.unesco.org/images/0007/000748/074816eo.pdf#48063>. Accessed 20 July 2010. According to another they are “values whose importance for the individuals who enjoy them can only be explained by referring to the facts of these individuals’ group membership.” See Beitz, *The Idea of Human Rights*, op. cit., 113. But in the Convention sustainable development is a group right in the sense that only societies possess the property of being developed.

17. For sovereignty as final authority in a domain see Darrel Moellendorf, *Cosmopolitan Justice* (Boulder: Westview, 2002), 103.

18. World Commission on Environment and Development, ch. 2, para. 8.

19. *Ibid.*, ch. 2, para. 5.

20. The UNFCCC’s Copenhagen Accord is available on line at <http://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf>. Accessed 28 July 2010.

21. Assuming that the warming limit of two degrees instantiates the norm of sustainability skirts a great deal of philosophical controversy about the norm of sustainability. See Brian Barry, “Sustainability and Intergenerational Justice,” *Theoria* 45 (1997): 43–65 and Bryan Norton, “Ecology and Opportunity: Intergenerational Equity and Sustainable Options” in *Fairness and Futurity*, edited by Andrew Dobson (Oxford: Oxford University Press, 1999), 118–50. But this warming limit is authoritative for present purposes. It could be that the UNFCCC parties are in error about the nature of sustainability, but it is not my purpose here to give an independent account of sustainability.

22. UNDP 2009, 169–74.

23. U.S. Energy Information Administration, “International Energy Statistics.” Available on line at <http://www.eia.doe.gov/oiaf/ieo/highlights.html>. Accessed 14 June 2010.

24. IPCC, *Climate Change 2007: Synthesis Report*, 20–21.

25. See the United States Energy Information Administration web page [www.eia.doe.gov/](http://www.eia.doe.gov/). Accessed 29 Jan. 2009.

26. I discuss the right to sustainable development in relation to other proposals for distributing emissions entitlements in Darrel Moellendorf, “Treaty Norms and Climate Change Mitigation,” *Ethics and International Affairs* 23 (2009): 247–65 and in Darrel Moellendorf, *Global Inequality Matters* (Basingstoke: Palgrave Macmillan, 2009), ch. 6.

27. For a short summary of the American Power Act see <http://kerry.senate.gov/imo/media/doc/APAShortSummary1.pdf>. Accessed 29 July 2010.

28. This ranking is based on 2006 emissions. See Union of concerned Scientists, “Each Country’s Share of CO<sub>2</sub> Emissions.” Available on line at [http://www.ucsusa.org/global\\_warming/science\\_and\\_impacts/science/each-countrys-share-of-co2.html](http://www.ucsusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html). Accessed 20 July 2010.

29. UNFCCC, Art. 3, para. 1.

30. H.L.A. Hart, *The Concept of the Law* (Oxford: Clarendon Press, 1961), 55–56.

31. This distinction between an emergency violation and violation as a reform strategy is discussed in Allen Buchanan, “From Nuremburg to Kosovo: The Morality of Illegal International Legal Reform” in Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force* (Oxford: Oxford University Press, 2010), 299–300 and in Robert Goodin, “Toward an International Rule of Law: Distinguishing International Law-Breakers from Would-Be Law-Makers,” *Journal of Ethics* 9 (2005): 225–46.

32. These three possibilities are discussed in Allen Buchan and Robert Keohane, “The Legitimacy of Global Governance Institutions,” op. cit., 111–14.

33. Henry Shue, “Eroding Sovereignty: The Advance of Principle,” Robert McKim and Jeff McMahan, eds., *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), 340–59.

34. For an estimate of the costs to the USA of limiting CO<sub>2</sub> emissions to 83 percent below 2005 levels by 2050—a decent start but not enough—see *CBO Economic and Budget Issue Brief*, Nov. 23, 2009, 12. Available on line at [http://www.cbo.gov/ftpdocs/104xx/doc10458/11-23-GreenhouseGasEmissions\\_Brief.pdf](http://www.cbo.gov/ftpdocs/104xx/doc10458/11-23-GreenhouseGasEmissions_Brief.pdf). Accessed 22 July 2010.

35. For a brief discussion of these see Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report*, 44. Available on line at [http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4\\_syr.pdf](http://www.ipcc.ch/pdf/assessment-report/ar4/syr/ar4_syr.pdf). Accessed 19 July 2010. For a more substantial discussion see Nebojsa Nakicenovic and Rob Swart, eds., *Emissions Scenarios* (Cambridge: Cambridge University Press, 2000.)

36. IPCC, *Climate Change 2007*, 45.

37. *Ibid.*, 50. See United Nations Development Program, *Human Development Report 2007–2008, Fighting Climate Change: Human Solidarity in a Divided World*, 9. Available on line at [http://hdr.undp.org/en/media/HDR\\_20072008\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf). Accessed 19 July 2010.

38. UNDP, *Human Development Report 2007–2008*, 9.

39. UNFCCC, Art. 3, para. 1.

40. See Union of Concerned Scientists, “Each Country’s Share of CO<sub>2</sub> Emissions.”

41. This characterization goes back to Vasak, “A 30-year Struggle,” 29.

42. See Jeremy Waldron’s “Can Communal Goods be Human Rights?” in his *Liberal Rights: Collected Papers 1981–1991* (Cambridge: Cambridge University Press, 1993), 339–69.

43. UNDP, *Human Development Report 2007–2008*, 45.

44. U.S. Energy Information Administration, “International Energy Outlook 2010—Highlights.” Available on line at <http://www.eia.doe.gov/oiaf/ieo/highlights.html>.

45. Universal Declaration of Human Rights, Art. 25, para. 1. Available on line at <http://www.un.org/en/documents/udhr/index.shtml>. Accessed 21 July 2010.

46. *Ibid.*, Art. 26, para. 1.

47. *Ibid.*, Art. 26, para. 2.

48. For a human rights-based critique of climate change, see Simon Caney, “Cosmopolitan Justice, Rights, and Global Climate Change,” *Canadian Journal of Law and Jurisprudence* XIX (2006): 255–78.

49. For maximizing approach to rights see Amartya Sen, “Rights and Agency,” *Philosophy and Public Affairs* 11 (1982): 3–39. Deontological approaches include rights as trumps (see Ronald Dworkin, *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1978)), rights as side constraints (see Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1977)), and rights as protectors of important interests (see Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986)).

50. See Wilfred Beckerman and Joanna Pasek, *Justice Posterity, and the Environment* (Oxford: Oxford University Press, 2001), 15–23.

51. See the discussion of the non-identity problem in Derek Parfit, *Reasons and Persons*, (Oxford: Oxford University Press, 1987), ch. 16.

52. See Darrel Moellendorf, “Common Atmospheric Ownership and Equal Emissions Entitlements,” in Denis Arnold, ed., *The Ethics of Global Climate Change* (Cambridge: Cambridge University Press, 2011). See also Darrel Moellendorf, “Justice and the Inter-generational Assignment of the Costs of Climate Change,” *Journal of Social Philosophy* 40 (2009): 204–24.

53. See also Waldron, “Can Communal Goods be Human Rights?” 362–64.