The Prospect of 'Just Emissions' as an International Norm of Environmental Governance

(6,269 words)

Abstract:

The international system, as it presently exists, has proven woefully inadequate in its efforts to prevent the global injustices of massive ecosystem loss and environmental degradation. These issues have disproportionally affected individuals living in impoverished countries and in zones characterized by precarious living standards and negligible welfare status both well below the per capita income enjoyed by the Global North since the onset of the industrial revolution. The brunt of the harms to result from climate change will inevitably affect the Global South to a higher degree, because of underdeveloped infrastructure and weaker ability to adapt ex ante and respond ex post. International agencies, such as UNEP, the UNFCCC, and the IPCC, that are dedicated to instituting international agreements to combat rising surface temperatures, are struggling to create international momentum for realizing the growing necessity for radical action. This essay takes a critical perspective on theories of international culture, society, governance, competition, and great-power rivalry that call for remediations (on the part of industrialized nations) for climate-related loss and damage required by theories of environmental and economic justice. I argue that these theories must consider both the differential capacity for country-specific economic growth potential *and* the inequality of wealth that exists between developed nations and developing ones when measuring responsibility for climate damages and allocating environmental legal regulations such as financing and cost burdens. Governance and management of the biosphere is desperately needed to ensure equitable transnational standards of environmental justice which, through multilateral adherence to a regime of ecological justice, will create an international coalition of sustainable societies. International justice for the developing world is not only about development. The Global South requires allowances for subsistence emissions, necessary for the purpose of growth—allowances that are due to them through norms of fairness and distributional justice. In addition, it is possible that any level of emissions above zero after the revelations of climate science are unjust, ethically speaking. This claim draws on the idea that justice extends to non-human life, and requires action too. I address this in the latter sections of this essay. If we return to current social conditions, so-called "luxury emissions" of Global North countries need to be curtailed in line with, and also more rapidly than, the increase in emissions from Global South nations. In the conclusion I argue there is a growing need for radical social austerity and climate conservatism on the part of large emitters.

Introduction

The sustained effort on the part of diplomats, economists, and philosophers to reach consensus about the specific duties wealthy nations have to provide developmental aid for poorer nations, has largely been characterized by failure. In addition, even the work of proponents of climate action has yet to reach unanimity or agreement on issues including allowances for poor nations within the framework of international

environmental law to emit increased greenhouse gases in the future,[1] as well as firm limits on the emissions of the Global North. In addition, despite the international consensus, there has been little effort on the part of developed nations to finance international environmental policies that aim to level the global distribution of per capita emissions.[2] I argue Global South countries' per capita emissions should be allowed to rise, and Global North countries' emissions must immediately fall—both conditions must be met on the path to net zero.[3] The concept of "just emissions" defines the obligations that the Global North has to allow proportional and fair growth through the use of fossil fuels within the developing world. Yet *whether* "just emissions" allows free reign to pollute for the Global South, and an immediate cap on emissions for the Global North, remains unclear. What also remains unclear is whether the world can afford *any* additional emissions without respect to what would be just. This argument regarding a zero-emissions scenario is supported by ecological justice and environmental jurisprudence theories which claim strong and egalitarian rights for non-human life, severely restricting humanity's impact on the globe to ensure sustainability in the present. While my primary focus will be on globally oriented human affairs, we cannot ignore arguments which support climate action that come from ecology.

Our environment, already subject to weather events worsened by climate change, will only continue to deteriorate without immediate action. I do not take the side of hopelessness in this paper: while some suspect that what is *just* no longer matters, and what is *necessary* for ecological survival is all that can be reasonably politically accommodated,[4] I suggest that there is a dire need for justice alongside technical and economic change. Some scenarios of politically extreme carbon austerity might entail a threshold of per capita or gross emissions that constrains the growth of developed nations, where anything above a specified cap would not be permissible.[5] It is true that the sustainable transition may entail limits to growth for both poor nations and wealthy ones—and arguably this would harm Global South nations more.[6] Wealthy nations need to view their obligations to abate carbon pollution coming from heavy industries,

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[1] Baer, Paul, et al. "Greenhouse Development Rights: A Framework for Climate Protection That Is 'More Fair' Than Equal Per Capita Emissions Rights." *Climate Ethics: Essential Readings*. Oxford University Press, 2010, pp. 215-230.

[2] Hironaka, Ann. *Greening the Globe: World Society and Environmental Change.* Cambridge University Press, 2014, p. 3.

[3] Agarwal, Anil, and Sunita Narain. *Global Warming in an Unequal World: A Case of Environmental Colonialism.* Centre for Science and Environment, 1991. Henry Shue ("Global Environment and International Inequality." *Climate Ethics: Essential Readings*. Oxford University Press, 2010, pp. 101-111, at p. 101) notes that rich, industrialized, nations "would like the poor states to avoid adopting the same form of industrialization by which they themselves became rich."

[4] Bandarage, Asoka. "Ethical Path to Ecological and Social Survival." *Globalism and Localization*. Routledge, 2019, pp. 151-171.

[5] Baer et al. (n 1) *supra* at 216.

[6] Gonzalez, Carmen and Sumudu Atapattu. "International Environmental Law, Environmental Justice, and the Global South." *Transnational Law and Contemporary Problems*. vol. 26, no. 2, 2017, pp. 229-242; Porter, Libby et al. "Climate Justice in a Climate Changed World." *Planning Theory and Practice*. vol. 21, no. 2, 2020, pp. 293-321. Gonzalez, Carmen. "Environmental Justice, Human Rights, and the Global South." *Santa Clara Journal of International Law*. vol. 13, no. 1, 2015, 151-196.

transportation, and power generation as tied up with the concomitant rights of developing nations to emit (possibly substantially more than) subsistence emissions. Multilateral abatement in the present would reduce poor countries' growth rates, setting them further behind on the difficult path to middle- or high-income status. Can a cap on carbon-intensive development within poorer nations—even in service of combatting climate change—be justified?

In this essay, I argue that there is a just, equilibrium level of emissions that developing nations must be allowed, if egalitarian politics aimed at reducing poverty and global inequality are to prevail. This international norm would allow an increase in the level at which some developing nations pollute and must be met with ambitious reductions on the part of many wealthy and historically prolific polluters. The first section below argues that climate inaction has led to increasing inequalities in not only wealth, but also environmental impact, and that the world needs to meet its emissions targets swiftly and justly. The section on the economic background conditions of climate change details the international landscape of environmental politics as defined by social injustice perpetrated by Global North countries most responsible for emissions. Here, I describe the ideological basis for equating growth rates and income levels across heterogeneously endowed nations at different stages of development. This builds to my main thesis where, in the section on solutions, I propose what I call "egalitarian leveling down," whereby emissions are first equated between rich and poor nations and then reduced in a uniform fashion. The section on dissent raises some objections to my proposal, and the final section concludes.

The Origins of Climate Inaction

In this section, I argue that within the international arena, the historically modest efforts to fight climate change need to be remade with greater ambition and an emphasis on multilateral consensus. Such consensus can only come when it is led by the developing nations most at risk from climate change itself. In other words, wealthy nations may be largely immune to the shocks that climate change will bring, and themselves more dependent on fossil fuels, leading to hazardous moral conditions which incentivize the same nations not to act. As Sengupta argues, "the failure of the international system to substantively address these key climate justice concerns poses significant risks to the future maintenance of global order and stability."[7] The promise of exacerbated conflict, migration, and crop failures portends that inequalities will also become more pressing—because the adverse effects of climatic warming will be felt most acutely by poorer nations.[8] Remedying these inequalities is both a difficult moral problem (i.e., how much assistance rich nations owe to poorer ones), as well as one of economic justice and feasibility (i.e., managing the green transition in as egalitarian a manner as possible).[9] The

[7] Sengupta, Sandeep. "Climate Change, International Justice and Global Order." *International Affairs,* vol. 99, no. 1, 2023, pp. 121-140, at p. 121-122.

[8] Harlan, Sharon, et al. "Climate Justice and Inequality." *Climate Change and Society: Sociological Perspectives*. Oxford University Press, 2015, 127-163.

[9] See Shue Henry. "Subsistence Emissions and Luxury Emissions." *Law & Policy,* vol. 15, no. 1, 1993, pp. 39-60 at p. 49 for motivation: "So far, of course, nations and firms have behaved as if each of them had an unlimited and unshakable entitlement to discharge any amount of green-house gases that it was convenient to release…. The danger of global warming requires that a

freedom that wealthy nations have had to industrialize and develop—without limits on their carbon emissions—has effectively placed limits on the upper bound of emissions that developing countries can produce as they industrialize. That is, if the world is to remain within a targeted atmospheric carbon dioxide concentration budget.[10] Justice requires reaching an equilibrium emissions threshold where nations settle into a balanced distribution defined by equal per capita emissions between all countries. If some individuals are harmed disproportionately by the effects of climate change, they should share equally in the benefits which create those effects. This is partially why consensus has it that the Global South should be exempt from emissions cuts in the near term. Their smaller historical record of emissions and their equally minimal per capita contribution have deprived them of wealth generated by carbon emitting industries owned and operated by the Global North. Equal per capita emissions would still allow for disparities in wealth but would only allow that wealth to be generated in a sustainable manner. This could set the scene for additional protections against various types of other social inequalities in international law. As a baseline, Global South countries therefore deserve larger allowances within the remaining global carbon budget.[11]

Currently, in global environmental politics, individual nations agree to non-binding restrictions on their emissions that are chosen in accordance with what they are reasonably capable, economically, of committing to. Chan notes that in the context of the Paris Agreement, "states *themselves* justify the fairness and 'ambition' of their own contributions."[12] As it currently stands, "flexibility" and "discretion" on the part of individual nations dictates the level of action. In order to attain an egalitarian distribution of emissions, flexibility must be coopted into rigid structural rules and binding obligations—primarily applied to developed countries.[13] International law, prescribed by the United Nations, as well as environmental governing bodies such as the IPCC, the UNFCCC, and UNEP is, at present, non-binding, making the implementation of proposals to achieve economic and social justice in the context of emissions and climate related reparations difficult to enforce. Multilateralism becomes crucial in these contexts because justice will only work when the project of sustainability is a *shared* end—an end which requires cooperation, not competition.

Some international affairs realists, and advocates of zero-sum realpolitik, believe that international intervention should only extend insofar as it *prevents* harm—i.e., environmental intervention is effective only when it refuses to participate in, and actively

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ceiling—probably a progressively declining ceiling—be placed upon total net emissions. This total must somehow be shared among the nations and individuals of the world."

[10] Meadows, Donella, et al. *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind*. Universe Books, 1972.

[11] Falkner, Robert. "The Unavoidability of Justice—and Order—in International Climate Politics: From Kyoto to Paris and Beyond." *The British Journal of Politics and International Relations,* vol. 21, no. 2, 2019, p. 270-278.

[12] Chan, Nicholas. "Climate Contributions and the Paris Agreement: Fairness and Equity in a Bottom-Up Architecture." *Ethics & International Affairs*, vol. 30, no. 3, 2016, pp. 291-301, at 295, emphasis in original.

[13] Michaelowa, Axel and Frank Jotzo. "Transaction Costs, Institutional Rigidities and the Size of the Clean Development Mechanism." *Energy Policy*. vol. 33, no. 4, 2005, pp. 511-523; Toman, Michael, Richard Morgenstern, and John Anderson. "The Economics of 'When': Flexibility in the Design of Greenhouse Gas Abatement Policies." *Resources for the Future Discussion Paper 99-38-REV*.

works to end environmental degradation.[14] Under a norm calling for equal per capita emissions, rich nations would gain obligations to invest in the sustainable development of poorer countries, bring industry and (monetary and human) capital to impoverished regions, and aid in the transition to net-zero.[15] In what follows, I argue that climate inequality is an issue best solved through the sophisticated economic tools we already have at our disposal to ensure transnational justice in the Anthropocene.[16]

Capitalism, Modernity, and the Economic Background Conditions of Climate Change

In this section, I examine the implications of implementing environmental justice for the structure of the global economy as well as for practical economic policymaking. The theory that Spaargarten and Mol call "ecological modernization" suggests that institutional reform is crucial in efforts to spur ambitious efforts to mitigate emissions.[17] Institutional and structural reform could be a key cornerstone for enabling the Global South to achieve climate justice. Justice for these developing nations includes the opportunity for development and modernization—yet, in the context of arguments which contest unlimited possibilities for economic growth, it is not clear what rights—or capability—industrialized nations have to continue to grow.[18] In other words, sustainable growth may mean no growth at all—at least for countries that are already rich. Whether environmentalism, as a virtually socialist ideology incubated over decades outside and within the modern academy, allows for growth to continue in some form at least resembling capitalism, remains to be seen. Without growth, which has been historically determined by carbon intensive energy use, it is possible that ideological forces, including contrarian beliefs inclusive of anti-environmental conservatism, but also progressive, liberal democratic socialism,[19] will drive innovation in new ways that do *not* create social, economic, and environmental externalities. This new operating space for the economy, it has been convincingly argued,[20] will do away with the consumption and extraction that currently dominates and drives the demand for goods and natural resources. The

[14] Vanderheiden, Steve. *Atmospheric Justice: A Political Theory of Climate Change*. Oxford University Press, 2008, at p. 91-96. Vanderheiden argues that realism is crucial to understanding the position of western powers in the global environmental policy regime.

[15] Torpman, Olle. "Isolationism and the Equal Per Capita View." *Environmental Politics*. Vol. 30, no. 3, 2020, pp. 357-375.

[16] Vanderheiden (n 10) *supra* at p. 88-91.

[17] Spaargaren, Gert and Arthur Mol. "Sociology, Environment, and Modernity: Ecological Modernization as a Theory of Social Change." *Society and Natural Resources,* vol. 5, no. 4, 1992, pp. 323-344. See also Mol, Arthur and Gert Spaargaren. "Ecological Modernization Theory in Debate: A Review." *Environmental Politics,* vol. 9, no. 1, 2000, pp. 17-49 and Fisher, Dana and William Freudenburg. "Ecological Modernization and its Critics: Assessing the Past and Looking Toward the Future." *Society and Natural Resources,* vol. 14, no. 8, 2001, pp. 701-709.

[18] As Meadows et al. (n 7) supra at p. 126 note: "under the assumption of no major change in the present system, population and industrial growth will certainly stop within the next century, at the latest." If this prediction holds true, then by the second half of the 21st century we should see global growth slowing and a new economic paradigm—yet to be determined—rising in its place.

[19] Meadows et al. (n 7) supra at p. 128.

[20] See Schnaiberg, Allan and Kenneth Alan Gould. *Environment and Society: The Enduring Conflict*. St. Martin's Press, 1994; Schnaiberg, Allan. *The Environment: From Surplus to Scarcity*. Oxford University Press, 1980.

institution of capitalism degrades the earth's natural resources, and also degrades human agents themselves—relegating them to "revolting, unproductive, meaningless, drudgery, such as work at the treadmill, which deadens both body and mind."[21] This Achilles heel of capitalism creates injustice not only within industries and nations, but also across them—dividing humanity at the same time that it corrodes our ecosystem and limits our ability to use natural resources without constraint.[22]

Capitalism as a system is fundamentally extractive,[23] but can also develop market-based solutions to negative environmental externalities. The negative drawbacks that we attribute to the failures of the human endeavor to actively contribute to sustainable world society can be overcome—whether through creative destruction of inefficiencies, or through innovation in service of sustainable utopian metropolises. As Attfield argues, we have no alternative but to work within the system as it presently exists.[24] But the system provides opportunities as well as challenges: Falkner claims that "[m]any environmental problems are transboundary in nature, requiring international cooperation by states, but because they tend to have roots in complex social and economic processes they are difficult to address through environmental diplomacy alone."[25] Multilateral diplomacy—the origin of the majority of environmental treaties to date—promises equitable solutions within the regulatory market system, enabling subaltern and Global South voices to be heard. Yet multilateralism also faces challenges and headwinds from entrenched political interests who serve traditionalist values whereby climate change does not warrant deviations from the status quo, and any potential solutions to the crisis are swept away in service of profit and competitive growth. Despite these downsides, any solution which legislates justice and equitable carbon allowances for developing nations will have to come from international institutions within the global community—however, such solution has not yet been raised to the fore.

Of course, while most activists, political theorists of the environment, climate scientists, and climate diplomats and negotiators believe that a sustainable future is possible, climate denialists have interests defined by an entrenchment of continued political inaction. Governments need to inculcate strong national belief in the power of international institutions, combined with ambitious domestic interventions to regulate various forms of externality-generating profit-seeking which come at the expense of the environment.[26] These solutions, drawing on concern for all people and maintaining radical ecological solidarity across various forms of life on Earth, can be an asset for nations which seek to assert the importance of ecological solidarity in service of

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[21] Karl Marx, cited in Foster, John Bellamy. "The Treadmill of Accumulation: Schnaiberg's Environment and Marxian Political Economy." *Organization and Environment,* vol. 18, no. 1, 2005, pp. 7-18, at p. 9.

[22] Yet, as Hironaka (n 2) supra, at p. 22, claims, global environmentalism now has the "ability to challenge fundamental aspects of capitalism." So, environmentalism, if effective, could be a salve to capitalist degradation and overuse.

[23] Attfield, Robin. "Sustainability and Management." *Philosophy of Management,* vol. 14, 2015, pp. 85-93, at p. 92.

[24] Attfield (n 18) supra.

[25] Falkner, Robert. *Environmentalism and Global International Society*. Cambridge University Press, 2021, at p. 273.

[26] Zywicki, Todd. "Environmental Externalities and Political Externalities: The Political Economy of Environmental Regulation and Reform." *Tulane Law Review*. vol. 73, no. 3, 1999, pp. 845-922.

developing an alternative paradigm of ecological economics in the Anthropocene.[27] There is a difference between economic and political theories of international climate action and the activist social movement of environmentalism that actually serves to make changes in society. Namely, "[i]n contrast to perspectives that view governments as rational actors pursuing their economic or environmental interests…external *global forces powerfully shape governments* by providing cultural models, scripts, norms, and even identities."[28] In other words, what Hironika proposes in this quote is that cultural ideologies, practices, and understandings of historical justice, in the context of the environment, can be deeply influential in the creation of environmental economic policy, and can make unexpected but valid demands on economic and political policymakers. Hironika's models, scripts, norms, and identities define the nature of the calls for justice, often originating outside the traditional policymaking sphere, and such calls are legitimized and furthered by demands on the part of developing nations for equitable climate action.

To remain within the planetary boundary of atmospheric carbon concentration, radical economic austerity is required from those nations who have historically emitted more. This will represent a divergence from the past regime of unabated emissions, seemingly unlimited wealth accumulation, and massive, government sponsored energy and infrastructure projects with damaging environmental consequences.[29] Because developed, industrialized, and wealthy countries have used up a greater proportion of available natural and artificial carbon sinks, their responsibility for already existing warming and damage is greater. In addition to emitting a larger percentage of historical emissions, the Global North continues to emit carbon pollution at orders of magnitude more than the Global South. My claim is that this requires the Global North to radically reduce emissions through ambitious social austerity which will inevitably impose steep costs. As Moellendorf has convincingly argued: "Those who have either had a greater share in creating the problem or enjoyed more benefits from past emissions may not be entitled to emit as much as those who have not."[30] The Global North, including Western, developed nations meet both of those criteria: 1) they have a greater share in creating the problem—they have largely been the cause of the vast majority of historical emissions—and 2) they have benefited from the emission of vast amounts of carbon and have sequestered and secured those benefits by creating empire and industry, and sovereign, inheritable, wealth for citizens and affiliates. As footnote (30) describes, allowances in the global carbon budget need to be made in order to ensure that still developing nations get a fair chance at securing the benefits of industrialization that the Global North has experienced for much of the past 200 years.

Solutions and Allowances for "Just" Emissions

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[27] O'Sullivan, Meghan, Indra Overland, and David Sandalow. "The Geopolitics of Renewable Energy." Harvard Kennedy School Working Paper, 2017.
[28] Hironika (n 2) supra, at p. 15, emphasis mine.
[29] Attfield (n 18) supra, at p. 88.
[30] Moellendorf, Darrel. "Climate Change Justice." *Philosophy Compass,* vol. 10, no. 3, 2015, pp. 173-186, at p. 178. Moellendorf on the same page (178) goes on to argue that "Reconciling increased energy consumption needed for poverty eradicating development and climate change mitigation would require developed states either to make emissions reductions sufficient to offset emissions growth in states that are developing or to subsidize the use of renewable energy in these states so that increased energy costs do not slow economic growth."

This section introduces a long-term proposal for achieving a just and broadly acceptable, global net-zero. Olúfẹ́mi Táíwò argues that if the restrictions on emissions that are being undertaken by developed nations were to be enforced on those states who have had relatively small amounts of historical emissions, this would amount to oppression, discrimination, and the enforcement by the Global North of a deeply unjust "poverty trap." In this case, continued emissions by the developed world essentially denies to the Global South economic benefits which they have a right to, a right their population has by virtue of the Global North's historical use of the same methods of industrialization.[31] As Táíwò writes, drawing an analogy to colonial oppression:

> "It is not that every aspect of today's global racial empire is rooted in the impacts of climate change. But every aspect of tomorrow's global racial empire will be. Climate change is set not just to redistribute social advantages, but to do so in a way that compounds and locks in the distributional injustices we've inherited from history. If we don't intervene powerfully, it will reverse the gains toward justice that our ancestors fought so bitterly for, ushering in an era of what the United Nations Special Rapporteur on extreme poverty and human rights calls 'climate apartheid.'"[32]

Not all commentators are so critical of the Global North's leadership when it comes to climate.

Andrew Hurrell describes how "the consolidation of what is loosely termed the global environmental movement is seen as one of the most significant and substantial pillars of an emerging transnational civil society."[33] Falkner echoes Hurrell when he claims that a kind of global solidarity arises when nations of a variety of stripes and levels of development agree on principles that should govern their shared but differentiated responsibilities towards the environment. Falkner writes, "[i]f normative world society is taken as a merely abstract idea…then environmentalism can count as a major source of moral inspiration for ecological one-worldism and planetary stewardship."[34] How can we reconcile the necessity for a global memorandum and multilateral coalition to tackle environmental degradation with the fact that the demands of the Global South, considered broadly, make claims *against* the economic interests of much of the developed world? Does planetary stewardship, as Falkner conceptualizes it, contain clauses which allow for inequalities? Or should we suppose that global solidarity calls for a technocratic solution which takes aim at inequality and climate change simultaneously? Critically, the Global North's culpability in continued inaction could be prosecuted from the standpoint of legally prescribed "common but differentiated" levels of responsibility for climate change that the North has neglected to obey or acknowledge. The Global North also retains responsibility for the near future environmental damages that will result from the crisis that some, weaker nations, are far more vulnerable to.

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[31] Agarwal and Narain (n 3) supra. One way out of this is compensating developing, resource-rich countries for the costs of mitigating their current and future emissions if mitigation would be costly to them. See Blomfield, Megan. *Global Justice, Natural Resources, and Climate Change.* Oxford University Press, 2019, at p. 112.

[32] Táíwò, Olúfémi. *Reconsidering Reparations*. Oxford University Press, 2022, at p. 171.

[33] Hurrell, Andrew. "A Crisis of Ecological Viability? Global Environmental Change and the Nation State." *Political Studies,* vol. 42, no. 1, 1994, pp. 146-165, at p. 147.

[34] Falkner (n 20) supra, at p. 260.

Justice requires that the international community, and particularly the Global North, at least in a legislative capacity, take joint action to repair the Earth's atmospheric composition, and stabilize humanity's massive ecological footprint. Whether global societies can mitigate the increased levels of global poverty, hunger, and conflict that this crisis will cause, should not simply be an afterthought – instead it must be addressed concurrently with climate change itself. "By reconciling the normative demands of both developed and developing countries, the global environmental compromise became an integral part of the emergence of a *global* international society in the aftermath of decolonization." [35] The world has seen many counterproductive efforts to control, dominate, exploit, and enslave people and resources, primarily by a small subset of the world's territorial powers. The climate crisis is no different than colonialism—both are unjust and call for multi-pronged efforts to mitigate and repair the damage done. In large part, this damage *continues* to be perpetrated—in Táíwò's examples, through "climate apartheid" and modern Neo-colonial hegemony.[36] What Táíwò means by these terms is merely that climate change is contributing to increased levels of structural inequality and poverty, and that carbon emissions are unequally harming those who are already marginalized in the Global South because of their race, class, ethnicity, gender, religion, or disability. If we are to avoid the perils of "climate apartheid" we need to recognize that developing nations in the Global South cannot be held back in their pursuit of growth—but that it is plausible that developed nations should be.[37]

One prominent solution, put forward by Edward Page, is to continue to allow emissions, yet only in line with a principle of legislation which states the necessity for an even distribution of *per capita* emissions across both wealthy and poor nations.[38] What this would mean in practice is that per capita emissions in developed nations would fall, while per capita emissions in developing nations would rise to meet the per capita emissions of the developed world. Despite the objection that this would lead to a stringent form of carbon austerity in many countries where per capita emissions are high, Page's suggestion is appealing for a few reasons. One reason for equal per capita emissions is that such a hypothetical regime prohibits allowances based on historical emissions, i.e., it does *not* allow higher current emissions capacity for developed nations simply because they have historically emitted more. This seems fairer than a requirement which would cap all emissions in proportion to current levels—under this scenario, all countries would have to abate. [39] Another reason might be that Page's "emissions egalitarianism" requires a greater level of action from historically large polluters than from nations which have emitted less—in fact it allows developing nations to *continue* to

[35] Falkner (n 20) supra, at p. 283.
[36]See also Warlenius, Rikard. "Decolonizing the Atmosphere: The Climate Justice Movement on Climate Debt." *Journal of Environment and Development,* vol. 27, no. 2, 2018, pp. 131-155.
[37] Note that "just emissions" are far from zero emissions. Net zero needs to be realized urgently for the Global North, while the developing world needs to be allowed time to catch up and only then abate. Development, and so some level of emissions, might benefit us—but perhaps not the environment—if it were to be seen as a "right."
[38] Page, Edward. "Climate Change Justice." *The Handbook of Global Climate and Environment Policy.* Wiley Blackwell, 2013, pp. 231-247.
[39] Further, under the egalitarian scheme, "[t]he poor in the developing world would be guaranteed a certain quantity of protected emissions, which they could produce as they choose. This would allow them some measure of control over their lives rather than leaving their fates at the mercy of distant strangers" Shue (n 6) supra, at p. 58.

develop, using fossil fuels, at the same time that developed ones would be required to immediately phase out carbon intensive energy production and use.[40]

Dissent Within the Theory of Just Emissions

If one were to object to Page's claim, one might criticize the lack of economic research proposing substantive findings about the effects of changes in the relative speeds by which rich countries abate, and by which poor countries develop. Different countries would make progress towards their goals at paces unique to their situation, leading to levels of equilibrium which are not uniform across, or even within, countries. Compounded with the legislative headwinds blocking access to egalitarian justice, is the Global North's refusal to provide adequate funds to compensate developing nations for loss and damage that is the direct result of industrial emissions. The level of compensation which is required is directly proportional to the benefits that the North has received from emissions and is a small percentage of the total funds needed to close the wealth and development gap that exists between the Global North and South. Some claim that compensation is required over and above the allowances within the carbon budget which must be allocated to developing nations: "the inability of the Global North to transfer USD 100 billion per year to the Global South, which is already insufficient for current needs, is in itself a failure of justice."[41] In other words, despite setting targets for climate reparations and development aid, Countries in the North have yet to meet their own self-imposed obligations, and the needs of the Global South far outweigh what has been pledged.

Whether we agree that compensation is necessary, it is clear that some action beyond allowances for future emissions are called for—particularly in light of recent agreements at the COP27 meetings that have "*Note[d] with grave concern*…the growing gravity, scope and frequency in all regions of loss and damage associated with the adverse effects of climate change, resulting in devastating economic and non-economic losses, including forced displacement and impacts on cultural heritage, human mobility and the lives and livelihoods of local communities, and [have] *underline[d]* the importance of an adequate and effective response to loss and damage".[42] This goes to the crux of matters of the just distribution of the remaining carbon budget—yet I argue that the carbon budget must include the financial possibility that not only do developing nations need to be allowed to emit beyond what they do today, but they also need monetary aid to adapt to changes in the climate which will disproportionally affect their livelihoods. Thus, leveling down must include a condition which determines and justifies the equilibrium where "level" is reached, and where ubiquitous reductions in emissions thereby begin.

Another argument raised in the context of environmental justice goes beyond national legal jurisdiction and international, multilateral, negotiations on abatement and pollution management. Ecological justice for *non*-humans requires also that vulnerable animal and plant species be protected as instantiations of precious and finite life. In many

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[40] As Shue (n 6) supra, at p. 43 notes, "the CO_2 emissions of the wealthy nations must be reduced by more than the amount by which the emissions of the poor nations increase."

[41] Gifford, Lauren and Chris Knudson. "Climate Finance Justice: International Perspectives on Climate Policy, Social Justice, and Capital." *Climatic Change*, vol. 161, no. 2, 2020, pp. 243-249, at p. 248.

[42] UNFCCC. *Sharm el-Sheikh Implementation Plan*. 2022, p. 4, emphasis in original.

cases this means immediate reparative restoration of ecosystems and habitats.[43] However, in realist terms, scholars need to be cognizant of feasibility, the scope of current environmental policies, and the current non-binding nature of international environmental law. All contributions to sustainability on the international stage are voluntary, and most nations have given human constituents and communities priority over flora and fauna, which are primarily viewed as "resources." Future studies would contribute to this space by extending "egalitarian", or even "ecological" levelling-down to incorporate not only disparities between national and international economic capabilities for mitigation, but also agential concerns affecting the most vulnerable forms of life, who often cannot speak for themselves. I do not want to stray from my main conclusion, though. Global North countries need to abate faster than Global South countries industrialize – only via this route will emissions uniformly decrease in a just fashion.

Conclusion

In conclusion, Shue puts it nicely when he writes that "Those living in desperate poverty ought not to be required to restrain their emissions, thereby remaining in poverty, in order that those living in luxury should not have to restrain their [own] emissions."[44] If the international community is going to move away from carbon intensive energy, and move away from it in a just manner, all varieties of political and industrial actors—including corporations, governments, and NGOs—need to be involved on a fundamental level. Falkner describes this cacophony of stakeholders and makes a gesture at justice when he writes that "[Global environmental politics] has witnessed the emergence of an increasingly intertwined system of public and private global governance, with states and non-state actors recognizing each other's contribution to global environmental management and seeking to weave together the fragmented elements of decentralized environmental governance that have come into existence at the global level."[45] Yet what is largely missing from Falkner's work on this issue is the mechanism by which rich countries will pay their due, and by which developing and impoverished ones will share in the benefits of a globalization which is equitable, egalitarian, and sustainable.

It is my contention that we have not yet seen an image of what this positively just future looks like. Green futures, if politically viable, might entail climate change reparations that, within a developing nation's population would likely receive certain assurances from the industrial polluters and may include such things as "welfare, [economic] resources, natural resources, capabilities, and rights."[46] If we are to ensure that those left behind by unsustainable globalization have an equal chance at a livable future, we must do much more than greenwash our policies to superficially satisfy the grassroots climate movements. Legislation at the local level needs backing by international law and substantive multilateral policy mandates for the green transition. In this essay, I have argued, with Shue, Page, and others, that just emissions, for the Global South, fall somewhere above a minimum level of emissions for present

[43] Baxter, Brian. *A Theory of Ecological Justice*. Routledge, 2004.
[44] Shue (n 6) supra, at p. 42.
[45] Falkner (n 20) supra, at p. 278.
[46] Blomfield (n 25) supra, at p. 12.

subsistence[47]—yet my argument differs from Shue's, in that I claim that the international landscape of inter-state relations calls for an asymmetry of future allowances, favoring developing nations, vis-à-vis the equitable distribution of the remaining carbon budget. Not only are developing nations owed economic leeway to pollute, they should be all but required to receive assistance to pursue the energy transition for which they are not equipped to engage in alone. This asymmetry should, and probably eventually must, give a right-to-emit priority to countries which are not yet fully developed. Thus, to conclude, I argue that we must recreate our industrial, financial, economic, and political system in a way which limits the power to pollute of the countries that already have far too liberal allowances within the global carbon budget, and places control, agency, and initiative in the hands of peoples who have historically been denied the benefits of both industrialization, and cosmopolitan political autonomy, in modern society.

[47] Shue, Henry. *Climate Justice: Vulnerability and Protection*. Oxford University Press, 2014, at p. 116.