Special Issue

Normative and Conceptual Dimensions of the International Climate Negotiations
Kenneth Shockley and Gwynne Taraska, Guest Editors .......................................................... 2

Risk-Sharing: A Normative Framework for International Climate Negotiations
As countries are negotiating a new global climate agreement, this paper explores options for a mechanism on loss and damage. A highly intuitive formula is that of implementing a system of compensation based on historical accountability for past emissions. The paper highlights the shortcomings of this approach. It advances, instead, a risk-sharing approach within an adaptation framework. The central idea is to include – within the architecture of international cooperation – insurance-like policy mechanisms, extending safety nets to communities vulnerable to climate-related impacts. The merit of this approach is that it captures an important conception of justice, while responding to the challenges of multilateral decision-making. Its distinguishing feature is a convergence of considerations of justice with those of efficiency and durability.
Idil Boran ........................................................................................................................................ 4

The Problem with Consensus in the U.N. Framework Convention on Climate Change
The lack of clear procedure and the use of ad hoc consensus decision-making in the U.N. Framework Convention on Climate Change is a significant problem. Drawing on theories of international regimes formulated by Robert O. Keohane and on a conception of global responsibility based on social connection rather than liability formulated by Iris Marion Young, Vogel argue that consensus decision-making procedure in the UNFCCC is both ineffective and unjust. It obscures in a forum that is meant to clarify. It glosses over the differentiated capabilities of the world’s countries in a forum that needs to grapple with those differences. Though majority-voting rules will not solve all the problems of the UNFCCC, clear procedure is necessary if world leaders are to scale up cooperative climate action.
Jesse Vogel ........................................................................................................................................ 14

The Responsible Path between Scylla and Charybdis
Making Sense of Appeals to Equity in Climate Change Loss and Damage Mechanisms
Shockley uses equity to assess the moral significance of loss and damage in any successor treaty to the Kyoto Protocol. He argues that we might conceptualize loss and damage either in terms of the costs associated with rectifying a past wrong, a backward-looking accountability approach, or in terms of balancing uncertain future burdens in the face of unknown harms, a forward-looking distributional approach. Shockley argues that the forward looking approach is more practicable, better able to address problems that have not yet arisen but will arise, and better able to integrate intuitive strengths of the backward-looking view. He argues that there is good reason to think of loss and damage in terms of the opportunities and prospects that may accompany a changing climate.
Kenneth Shockley ........................................................................................................................... 22
The human costs of climate change are now widespread and severe. Communities across the globe are facing adverse climate impacts—including food and water insecurity, increased prevalence of tropical diseases, and the loss of lives and livelihoods—that will only escalate along with escalating global temperatures. Moreover, many regions that are particularly vulnerable to climate change—from Haiti to the Philippines and from Bangladesh to Sudan—are also relatively low emitters of greenhouse gases.

Calls for an international response to climate change that is not only effective but also sensitive to moral concerns are therefore reaching a crescendo. For example, the 2013 U.N. climate negotiations in Warsaw, which commenced just days after the devastating Typhoon Haiyan made landfall in the Philippines, saw a consuming focus on the issue of “loss and damage”—which refers to repairable damage or permanent loss due to the impacts of climate change—as well as demands for financial assistance from industrialized countries. Concerns about loss and damage and concerns about climate finance continued unabated during the 2014 climate negotiations in Lima and promise to continue as the parties to the U.N. Framework Convention on Climate Change, or UNFCCC, work toward striking an international climate agreement during the 2015 negotiations in Paris.

At the same time, the normative and conceptual landscapes of the negotiations are shifting and evolving. Developing countries such as China, India, Brazil, and Indonesia are now among the world’s top greenhouse gas emitters, and there is growing recognition that the UNFCCC’s categorization of countries into Annex I parties and non-Annex I parties—according to their states of development as of 1992—is too outmoded to serve as an organizing principle for a new climate agreement. China and the U.S., which have been notorious antagonists in the negotiations, recently came forward with a historic joint announcement on new greenhouse gas mitigation targets. Parties such as Mexico, Peru, and Colombia are aligning themselves with parties such as Japan, the E.U., and the U.S. as contributors of international climate finance and have made pledges to the nascent Green Climate Fund, which aims to help developing countries transition to pathways of low-carbon and climate-resilient growth. And all parties to the UNFCCC are currently grappling with how to represent concepts such as national responsibility and capability in the 2015 agreement.

There is therefore a great need for philosophical analysis and the clarity it provides as we head toward Paris and aim for a durable, fair, and ambitious new climate regime. This volume is part of a growing body of research that engages with the normative and conceptual dimensions of the international climate negotiations and has the potential to shape a more reflective and successful climate policy.

In this volume, each author draws substantive conclusions that arise in the context of a philosophical challenge, a worry about some feature of the negotiations that calls for detailed study. For example, we might wonder about the internal structure of the UNFCCC negotiation process, which requires consensus among the parties. Some have suggested that progress is largely made not in public
negotiations, but in informal conversations and back-room meetings among key players. While there are practical problems with generating unanimity, especially when there is need for quick action, the drive toward agreement through unofficial channels is worrying. Jesse Vogel examines the methodological problems associated with the reliance of the negotiations on consensus and finds that the UNFCCC procedure is inefficient and unjust. He concludes that a majoritarian deliberative model would better serve the UNFCCC and better serve our hopes for a reasonable and legitimate climate agreement.

We might also wonder about the way in which we conceptualize impending harm. The challenges facing humanity are clearly grave, but their precise nature is highly unknown. Indeed, this lack of specific characterization of impending harms is one of the features of climate change that makes its moral character perplexing. We need some characterization of the risk we face, and some way of understanding how we might coherently address that risk, practically, conceptually, and morally. However, risk also provides an opportunity for reframing one of the thorniest issues of climate policy: how we distribute the burdens associated with climate change. Idil Boran argues that we should frame our burden distribution process in terms of the sharing of risk. By framing the distribution of burdens, especially in the context of the Warsaw International Mechanism on Loss and Damage, in terms of risk, Boran argues we will be better able to absorb the costs of climate impacts, better able to satisfy important climate justice concerns, and better able to provide an efficient deliberative mechanism in the policy realm.

Last, we might wonder about the content of the agreements made: There is a commonly assumed need to balance our response to climate change in such a way that those who are vulnerable to the ravages of climate change are given some provision for dealing with it while also holding accountable those who, historically, have generated more than their fair share of emissions. Two different forms of responsibility are at play: distributive responsibility, according to which we are responsible for distributing goods, services, and opportunities according to some characterized need, and corrective responsibility, according to which we hold accountable those who have emitted in the past. Kenneth Shockley considers the different ways we might integrate equity into the loss and damage protocols. Different ways of thinking about equity map closely to distributive and corrective responsibility. Balancing the retrospective nature of corrective responsibility against the prospective nature of distributive responsibility provides an interesting challenge. However, the need to address future harms, and have policy that is capable of mitigating against those harms in light of a highly uncertain future, indicates we should focus less on correcting for past harms and more on preparing for harms to come. If we think of equity in terms of opportunities and capabilities, Shockley argues, we can generate a framework for dealing with loss and damage that is forward directed and focused on our responsibility to mitigate the harms faced by the most vulnerable while still capable of integrating the differential responsibilities accumulated by historically high emitters.

Clarifying the process, the way we confront evidence, and the way we address the harms and responsibilities of climate change should provide much needed clarity to several important and interrelated aspects of the climate negotiation process. It is our hope that these essays contribute to the conversation and help us to generate a response to climate change that is fair to all and unacceptable to none. As we struggle toward Paris and a successor to the Kyoto Protocol, we can only hope that theoretical clarification will contribute to practical success.

Kenneth Shockley and Gwynne Taraska
Buffalo, New York and Fairfax, Virginia
Risk-Sharing: A Normative Framework for International Climate Negotiations

Idil Boran

Climate change is expected to be costly to individuals, to communities, and to countries. In some places, the costs are likely to be greater than in others. This raises important questions about how to manage these costs. More specifically, it raises questions about how to achieve a fair allocation of costs as part of a system of international cooperation.

My aim in this paper is to delineate an appropriate normative framework for formulating these questions and looking for answers. With this broad objective in mind, this paper focuses specifically on how to manage the costs of extreme events, such as cyclones and droughts, expected to increase in frequency and severity. I draw on the debates over the terms of an international mechanism on loss and damage that dominated the climate talks at the 19th session of the Conference of the Parties (COP 19) to the United Nations Framework Convention on Climate Change, or UNFCCC, held in Warsaw in November 2013. I then outline a risk-sharing approach, which would absorb the costs of climate impacts through policy instruments based on an insurance model appropriately tailored within a climate regime. I aim to show that establishing a mechanism of cooperation on loss and damage in this way satisfies important requirements of justice within a climate regime. It is also better equipped than its alternatives for meeting the challenges of political decision-making intrinsic to multilateral negotiations.

The Search for a Normative Framework for the Problem of Environmental Change

The primary concern of this paper is to identify an appropriate framework for designing institutional arrangements to respond to the expected social and economic consequences of climate change. These expected consequences go far beyond a change in climate patterns. They include shifts in living conditions for individuals and communities. In the interest in capturing the broad range of these consequences, I refer to them broadly as environmental change. In policy debates, a distinction is commonly drawn between two patterns of environmental change: (a) what is called a “slow onset” pattern in contrast to (b) what could be called a “natural disaster” pattern.

On a slow onset pattern, environmental change is described as a change occurring incrementally (such as an incremental increase in temperatures or sea-level). On a natural disaster pattern, environmental change is described as an increase in the frequency and intensity of destructive weather events, what climate scientists call “extreme events”. These include severe storms (such as cyclones) and agricultural extremes of destructive kind (such as droughts). One of the underlying assumptions, in this paper, is that environmental change due to anthropogenic global warming is likely to manifest itself primarily in the form of increased frequency and intensity of extreme events rather than in the form of incremental changes as such. There is, of course, an overlap between the two categories, as incremental changes in temperatures and in sea-levels are likely to be associated with more frequent “extreme events”. Having noted this, it makes sense to separate incremental phenomena from extreme events for analytic reasons, and to examine them separately. For the purposes of this discussion, my concern will be on climate related extreme events, and the human and economic costs they entail.

In recent years, there has been growing interest in extreme weather-related events in formal policy
debates on climate change. Safeguarding vulnerable communities against the effects of extreme weather events is a prominent issue in the current round of negotiations leading up to a new global climate agreement. At the 18th conference of the parties (COP 18) to the United Nations Framework Convention on Climate Change (UNFCCC) in 2012 held in Doha, Qatar, a decision in principle was made to consider a mechanism to address loss and damage associated with climate change in countries that are most vulnerable to its effects. “Loss and damage” refers to permanent loss or reparable damage, encompassing both human and economic costs (Taraska 2013). The Doha decision marked a historical first by introducing the issue of loss and damage into the formal negotiations, heading toward a new international agreement to replace the Kyoto Protocol. The new agreement is expected to be reached in 2015, and to come into effect by 2020.

The Doha decision is considered to be an important step in the history of climate treaty negotiations. It reveals that that the international community now openly recognizes the need to develop an international mechanism to respond to the adverse effects of climate change, and to seek both fair and effective ways to do so.1 It should be noted, however, that the decision made in Doha was only a first step, with the understanding that the details of policy mechanism on loss and damage mechanism were to be worked out gradually through negotiations.

When the parties met again the following year in Warsaw, the idea of historical responsibility dominated the discussions on loss and damage. During the two-week conference, discussions on loss and damage revolved around claims of liability for the costs of extreme events, as well as demands for compensation leveled mostly by representatives of developing countries against those of developed countries. These highly charged debates culminated into a near-deadlock in negotiations.2 Eventually, a deadlock was averted and the negotiations gave rise to a decision known as the “Warsaw international mechanism on loss and damage,” under the Cancun Adaptation Framework (UNFCCC 2013). The draft decision does not mention compensation. Rather, it calls for “institutional arrangements” to address loss and damage caused by climate change.

There are lessons to be learned from this experience. It is not surprising that the idea of compensation based on historical responsibility was the dominant concept, at first, in formal discussions pertaining to the design of an international mechanism on loss and damage. To a considerable measure, the idea of compensation arises from a principle known as “polluter pays,” which may be the most intuitive way to think about a mechanism for addressing loss and damage due to anthropogenic climate change. It chimes well with deep-seated and widely shared moral intuitions. The “polluter pays” principle originates from a longstanding conception in tort law. In the event an agent causes damage to another party, the principle suggests, the agent is responsible for paying for the costs, either by repairing the damage or by paying compensation to the party who has been harmed. The underlying moral intuition is that of corrective justice, with the objective of restoring damaged parties to the condition that they would have been in, had the wrongful conduct not occurred.

The idea of compensation based on historical responsibility was the dominant concept, at first, in formal discussions pertaining to the design of an international mechanism on loss and damage.

As intuitively appealing as it is, however, this way of setting the moral framework for policy on climate change runs into massive problems. The literature on the ethics of climate change illustrates this well. Numerous problems have been identified, ranging from identifying the wrongdoers, identifying the beneficiaries, reconciling the tension between individual and collective responsibility, etc.

I will not rehearse these objections here. It is worth noting, however, that the idea of compensation based on historical accountability becomes especially problematic in political decision-making for policy mechanisms designed to endure over time in situations of uncertainty about the trajectory of the risks. There is a basis for compensating victims for a one-off destructive event, when it is clear who exactly the plaintiffs are and who the wrongdoers or defendants are. But in a world affected by climatic change, agreement on compensation as a matter of policy entails an agreement on compensatory...
payments on a long-term basis. An agreement will have to expect that destructive events will increase in number and intensity in that long-term time frame. A policy of compensation would establish a transfer-of-funds formula on an event-by-event basis without specifying what these funds will achieve in the countries that are to receive them over time. If this is so, a system of transfer of funds is likely to remain ineffective, very much the way ad hoc disaster relief is ineffective, as a long-term solution to natural disasters in regions that are prone to these disasters. In fact, it is a predicament of developing countries prone to natural disasters to rely on ad hoc disaster relief. What an international mechanism on loss and damage needs to establish, instead, is a policy carefully designed to implement a process of assessing the risks as the world moves into an uncertain future, and to respond to these risks as part of a system of international cooperation.

A mechanism on loss and damage should move towards a model that is based on sharing the risks of destructive weather events within a system of international cooperation.

From this perspective, it becomes clear that an alternative moral framework for designing an appropriate policy mechanism needs to be considered. In the remainder of this essay, I outline an alternative framework that moves away from historical responsibility and towards a model that is based on sharing the risks of destructive weather events within a system of international cooperation.

A Risk-Sharing Approach to “Loss and Damage” under a Policy of Adaptation

Because corrective justice is tied to powerful moral intuitions, many people regard it as being a necessary condition for achieving equitable terms of cooperation. To most, it seems unthinkable that a policy on loss and damage could capture a sense of justice if it is not organized around a principle of moral liability and compensation. This presupposition, although commonly held, unduly restricts the options. As I will explain in the remainder of this paper, there is an alternative that fundamentally departs from liability-based moral reasoning and instead establishes the terms of a mechanism on loss and damage on a risk-sharing principle. The central idea, on the risk-sharing approach, is to establish a policy mechanism specially tailored to absorb the costs associated with climate impacts through insurance-like instruments. These policies can be designed as part of a system of international cooperation.

The proposed approach is best understood in contrast with the corrective justice approach. The distinctive feature of a corrective justice moral framework is that it focuses on regulating the structure of interaction. The moral reasoning is retrospective requiring remedy against wrongdoing that has been committed. Within this framework, response to loss and damage is not only ex post, but it also consists of placing moral blame in the justification of a remedy. By contrast, a risk-sharing approach refrains from moralizing interaction between agents. The justification makes no appeal to moral blame, either explicitly or implicitly, as a basis for the allocation of costs.

This way of approaching policy design for addressing systemic risks is not new. An important turning point in the history of industrial relations in the 19th century was a move away from settling workplace accidents through compensation settlements on a one-on-one basis and replacing it with a policy of risk-protection based on an insurance model. With the advent of industrialization, workplace accidents were becoming more frequent. At first, the response to individual instances of accidents consisted of settling in court, where the victim, or victim’s family, sought compensation for the ensuing loss and damage. As discussed extensively by François Ewald, however, the logic of moral responsibility associated with tort settlements has distinct disadvantages (Ewald 1986).

First, it exacerbates social conflict rather than promoting cooperation. A system of settlements immediately separates parties between claimants and defendants, establishing an adversarial relation between them. Consequently, the relation is not that of cooperating against a risk, but rather that of winning a tort dispute. Second, if the risks are systemic and are likely to increase with time, it makes little sense to settle each case as an adversarial moral dispute. Rather, systemic risks are better addressed by
implementing institutional arrangements that address those risks, in a way that not only provides adequate \textit{ex post} response but also secures \textit{ex ante} measures that reduce exposure or vulnerability to the risks. By reinforcing a logic of moral blame, corrective justice does not offer any recommendations on how to secure \textit{ex ante} preparedness. Third, tort disputes in no way guarantee just outcomes. On the contrary the tort framework puts the party that is more powerful at an advantage. This kind of power dynamics is easy to see in industrial relations. Workers were not only exposed to systemic risks but they were also put in a disadvantaged position against the more powerful employer in showing that they were not at fault for an accident or for a disease they may suffer. For these reasons, the move to a system of insurance for workplace accidents was considered to be a major improvement over the previous system.

This turning point was highly consequential. Today, various social programs – ranging from old age pensions to social insurance, from unemployment insurance to health care insurance, etc. – are predominant features of the basic structure of modern constitutional states. These policy mechanisms put in place, in one form or another, an insurance-based mechanism often administered by the government. Put together, they are the pillars of the modern constitutional state, and they reduce inequalities significantly by creating social safety nets within the society viewed as a system of cooperation. It is worth exploring whether a risk-sharing principle can also guide a system of cooperation within a global regime. The basis for embarking on this kind of exploration is that there are parallels, on all three points enumerated above, between environmental change and the kinds of loss and damage for which insurance regimes exist.

\textit{Adversarial vs. Cooperative Approaches}

In climate negotiations, the logic of historical responsibility exacerbates polarization and aggravates adversarial relations between parties. This perpetuates an assumption that bargaining has to be \textit{zero-sum}. That is, everyone assumes that settling a dispute consists of one side winning at the expense of others. As the dynamics of negotiations in Warsaw show, this way of framing the debates leads to intractable polarization, taking the conversation away from cooperation toward antagonism. An international mechanism of loss and damage, if properly designed, can and should be \textit{positive-sum}, one in which an agreement is mutually beneficial. The point is to move away from the idea of settling tort disputes to that of building new institutions that will address loss and damage in a spirit of mutual support at the international level as the world moves toward an uncertain future.

This switch from adversarial relations to cooperation is of particular importance to the issue of loss and damage. Clearly the terms of a mechanism of loss and damage must be fair. When a proposed cooperative scheme advances a conception of fairness, however, this should be a conception that representatives of different nations who come to the negotiation table with divergent (and sometimes conflicting) interests, as well as complex domestic policy concerns of their own, can embrace. In other words, a policy proposal designed for an international agreement should do more than to rely on a powerful moral requisite. It should incorporate within itself features that make it amenable to political decision-making. The divisiveness of moral liability on the multilateral platform is a strong indication that it is inadequate, all things considered. The risk-sharing approach, by contrast, is non-adversarial and cooperative. It may not guarantee agreement. But its advantage is that it does not, from the outset, set the terms of bargaining on divisiveness and polarization.

\textit{Responding to Systemic Risk}

The merit of designing an international mechanism on an insurance model is its recognition that a number of destructive events \textit{will} occur. Having recognized this, the insurance system goes on to implement (a) a formula for pooling the funds and (b) a formula to respond to extreme events. This establishes a general agreement on how to allocate the benefits and burdens on an ongoing basis through a process of sharing the risks between the members of the community. Designed to absorb the risks through cooperative efforts, this way of establishing a mechanism of cooperation promises to be durable. It can be adapted to changing circumstances. The normative prescriptions of corrective justice within a tort framework are not flexible, the way forward-looking cooperative efforts can be. In a world affected by climate change, an increase in intensity and frequency of extreme events is to be expected,
but there is still much uncertainty about what kind of trajectory these patterns will take (Hallegatte 2009; Hallegatte, Hourcade, and Ambrosi 2007). Institutions put in place to share the risks on large scales are not only beneficial to everyone. These institutions can also be expanded and refined over time. If the risks are systemic, a move away from a rigid retrospective framework to a forward-looking alternative presents itself as a superior option. Because of its adaptability to systemic risks, the insurance model promises to use resources more efficiently – thereby achieving greater durability – than its tort-based retrospective alternative.

**Just Outcomes**

Most importantly, a risk-sharing mechanism for loss and damage is a way to extend a safety net to developing countries vulnerable to the effects of climate change. This has the virtue of capturing a conception of justice as part of the policy’s institutional architecture. In low-income countries, households and businesses are typically uninsured against environmental hazards (Murray et al., 2012). In fact, vulnerability against natural disasters is one of the predicaments of developing and least-developed countries. Households and businesses either cannot afford commercial insurance coverage or, more poignantly, insurance is simply not available. Governments in developing countries cannot easily provide government-backed risk-management, such as flood insurance, to those living in high-risk areas. As a result, natural disasters exacerbate cycles of poverty as they give rise to cascading deterioration in income, health, and education (Linnerooth-Bayer, Mechler, and Pflug 2005; Mechler 2004; Mills 2005 and 2012). In the last 25 years, “over 95% of disaster deaths occurred in developing countries and direct economic losses as a share of national income were more than a double in low-income versus high-income countries” (Linnerooth-Bayer et al. 2007).

For example, surveys done four years after Hurricane Mitch struck Honduras in 1998 reveal an increase of 165,000 poor people (Mechler 2004). In the aftermath of a disaster, as Linnerooth-Bayer and co-authors explain, a typical low-income country household may take high-interest loans, sell assets and livestock, and pull the children out of school. Moreover, it is easily overlooked that disasters affect people not only after these events occur, but also in their prospect. It is not uncommon for farmers to engage in low-risk but low-yield farming to lessen exposure to extreme events (Linnerooth-Bayer et al. 2007). Put another way, natural disasters have both ex post and ex ante effects that are detrimental to well-being and a healthy development. By extending a safety net to those low-income countries that are vulnerable to the adverse effects of climate change, an international risk-sharing mechanism opens up the possibility of capturing an important requirement of justice as part of a system of international cooperation, in a way that is unprecedented.

**The Significance of the Risk-Sharing Approach**

The idea of extending a safety net across borders is not a speculative one. Large-scale inter-governmental insurance initiatives have begun to arise and are being taken seriously at high-level policy discussions at the UNFCCC. An example of these initiatives is the Caribbean Catastrophe Risk Insurance Facility (CCrif). The CCRIF is an intergovernmental insurance pool founded with the objective of offering governments in the Caribbean region index-based insurance instruments against the impacts of disasters. What makes the CCRIF unique is its ability to offer disaster insurance at a much lower cost than it would be procured if it were to be obtained from private insurers (Burton et al. 2012). This initiative is one of the first instances of a cooperative mechanism against disasters across borders. It is administered by Munich Climate Insurance Initiative (MCII) and backed by international institutions, such as the World Bank. It is the scaling up of the insurance pool beyond state boundaries that allows affordable coverage against disasters of large magnitudes. Although these initiatives cover a broad range of natural disasters, there is now growing research interest in developing a basis for risk-sharing instruments specially tailored for a climate adaptation program (Linnerooth-Bayer and Mechler 2006; Linnerooth-Bayer, Mace, and Verheyen 2003).

From a normative perspective, the shift away from a tort-based corrective justice framework toward an insurance-based framework is a fundamental one. The process, on an insurance logic, consists of sharing the risk rather than transferring the loss. Recall that, within a tort-based framework, the idea is that of transferring the loss so it falls on the agent purportedly
to be responsible for it. As I have noted earlier, the restitution inevitably takes place after the harm has occurred, and so the response to harm has a retrospective structure. By contrast, within the proposed framework, it is the risk that is shared among multiple agents. Insurance does not reduce the “hazard” as such (that is, the likelihood of a destructive event’s occurrence). It reduces what risk-management scholars describe as “risk of damage”, which is a function of hazard and vulnerability. It does so by securing funds for ex post payments as well as by including provisions to strengthen infrastructure to make it more resilient, constituting ex ante measures. Indeed, a central point Linnerooth-Bayer and her colleagues make is that risk-sharing mechanisms can be designed to secure assistance not just after but also before extreme weather events occur. In cutting down risk of damage in this way, risk-sharing has the distinct advantage of enhancing “preparedness” against extreme events (Linnerooth-Bayer, Mechler, and Pflug 2005; Mechler 2005). The upshot is that cooperative efforts are pooled on an ongoing basis as a forward-looking guarantee against the possibility of loss and damage.

It should be noted that there are numerous challenges for developing and implementing a risk-sharing mechanism on an international scale. These mechanisms require strong institutions and a well functioning regulatory environment in order to secure “best practices” and to ensure consistent implementation across borders. Insurance schemes also need back-up mechanisms, such as reinsurance, to work efficiently. In other words, the development of an international mechanism of insurance against the effects of climate change requires investments in these preconditions in developing countries. Anyone looking for quick results may be disappointed. Nevertheless, given its strengths relative to the corrective justice approach, the risk-sharing approach presents a promising pathway for policy discussions on loss and damage.8

A significant feature of the risk-sharing approach, as I have formulated it, is its focus the creation of social safety nets, in such a way that also makes ex ante provisions for greater preparedness. It is devoid of retrospective moral blame, and is entirely based on pooling efforts within a system of international cooperation to achieve greater resilience for vulnerable communities and equality of coverage against uncertainty. A well-designed and implemented mechanism of sharing the risks of climate change is not only an instance of cooperation but also one in which everyone has a stake moving forward into an uncertain future. This is not to mean that it will guarantee agreement. The point is that, compared to its alternative, this approach presents a normative framework for policy design that is far more congenial on grounds of justice and more workable on grounds of feasibility and durability.

Response to Objections: How to Reconcile Justice and Efficiency in the Terms of Participation?

Objections could be raised against the proposed approach, two of which will be taken up here. One objection can take issue with the rationale of responding to systemic risk in the most efficient way. Recall that one line of defense I have articulated in favor of the risk-sharing approach is the efficient use of resources in policy design. Some may worry that this amounts to a weakening of a commitment to moral values when thinking about important issues such as loss and damage associated with climate impacts. For simplicity, I will refer to this as the trade-off objection, implying that the proposed approach trades off moral commitments in favor of efficiency.

---

8 A mechanism of sharing the risks of climate change is one in which everyone has a stake moving forward into an uncertain future.

Focusing on efficient use of resources without any regard to considerations of fairness and justice would, of course, be problematic. But this is not what the risk-sharing approach implies. Rather, it advances a more nuanced conception within which responding to systemic risk in the most efficient way is tied to a requirement of justice. The rationale is this: if risks are systemic, not favoring efficient use of resources will be irresponsible toward those who are exposed to these risks. I have tried to show that the risk sharing approach tends better than its alternatives to the needs and interests of those vulnerable to the expected impacts of climate change. It does so through forward-looking, flexible, and durable policy mechanisms.
This brings me to an important point. The risk-sharing approach presented here confers an important role to cost-benefit considerations in policy design. Assessment of costs and benefits are, after all, central to insurance mechanisms. Those who regard cost-benefit weighing as being in competition with moral values may find this repulsive. My aim here is not to work out the technical details of an insurance system designed for loss and damage. It is worth noting, however, that cost-benefit weighing is an important component of risk assessment and risk management within a system of cooperation designed to provide protection against environmental impacts. I have tried to show that, if properly designed, this kind of protection can satisfy important requirements of justice by alleviating cycles of poverty in vulnerable communities. The risk-sharing approach, therefore, does not imply a tradeoff between moral commitments and efficiency. It presents a normative framework in which the two can sometimes converge.

What differentiates the risk-sharing approach is a convergence of considerations of justice and considerations of efficiency and durability.

Another objection can be raised against my reliance on an insurance model for establishing fair terms of cooperation against climate-related loss and damage. The objection can be raised on the basis that insurance requires payment of premiums from beneficiaries. The objector could point to the operations of commercial insurance and suggest that an insurance mechanism is not compatible with justice. The objector may go on to explain that it will be in the interest of insurance companies to capitalize on climate-related fears to gather revenue from higher premiums.9 There is nothing, the objector may press, that resembles a conception of justice within this insurance framework. Let us refer to this as the misgivings about insurance objection.

In response, it should be noted that the risk-sharing approach defended here is not intended to replicate the features of commercial insurance, narrowly understood. The insurance model covers a broad range of policy designs. Innovative insurance mechanisms developed within public policy can be structured to be far more progressive than what is commonly associated with commercially available insurance packages. Unfortunately, commercial insurance is what commonly comes to mind, creating a bias against all forms of insurance. What is often overlooked is that commercial insurance usually does not extend to large-scale risks, but covers incidental risks. When it comes to large-scale risks—such as environmental disasters where entire neighborhoods or communities are likely to be affected—commercial insurance typically does not provide affordable coverage. Often, it doesn’t provide any coverage at all. By setting the parameters in this way, the discussion has already stepped outside the confines of commercial insurance, and has moved into the domain of public policy. In devising public policy on risk-pooling, various considerations can be taken into account. For example, some of the innovative regional initiatives are primarily donor-based; an initial pool of funds can be started from donations that are secured through negotiations, and then measures can be taken for scaling up the pool.

What an insurance model implies, then, is a range of possibilities for policy design based on insurance-like instruments. Pooling the funds internationally confers considerably low, and therefore highly affordable, premiums for communities that otherwise would not have any coverage at all. These arrangements can be established on a government-to-government basis, whereby governments are insured to respond to extreme environmental events. The advantage of these arrangements is that incentives can be integrated in order to enhance ex ante preparedness and best practices to reduce vulnerability and enhance resilience. I do not have the space to expand on these points, but the main idea is that there is a wide array of options for designing innovative and progressive policy against environmental hazards, creating the institutional conditions for cooperation against a common problem. In short, the terms of international cooperation, on a proper construal, can include mechanisms designed to protect the needs and interests of communities most vulnerable to climate change.10

Conclusion

In this paper, I have outlined the central tenets of a risk-sharing approach to address the problem of environmental change within an international treaty.
The analysis began with a review of a corrective justice approach that appeals to the polluter pays principle as a basis for establishing a system of compensation. Corrective justice appeals to powerful intuitions about moral responsibility. But a glance at the literature quickly reveals that when placed under scrutiny the corrective justice approach runs into difficulties. To review these problems, this paper has drawn on the dynamics arising from the negotiations at COP 19 in Warsaw over the issues of an international mechanism on loss and damage. I have outlined a risk-sharing approach and have defended it on the basis that it presents a superior alternative to an approach built on the principles of corrective justice. What differentiates the risk sharing approach is a convergence of considerations of justice and considerations of efficiency and durability.

I have drawn on existing initiatives and pilot programs, such as the Caribbean Catastrophe Risk Insurance Facility (CCRIF), to examine how they can inform cooperative efforts on a global scale. Overall, the risk-sharing approach doesn’t just open new directions for multilateral deliberations. It also provides a basis for new conceptions of justice that could be pursued and refined within a global regime, while being attentive to the requirements of efficiency and durability.

Robert Myers and Claudine Verheggen. For helpful comments and discussions, I am thankful to Matthew Adler, Chrisoula Andreou, Stephen Gardiner, Joseph Heath, John Kelly, Nicole Klenk, Rebecca Lefton, Dan McArthur, Theron Pummer, Sabine Roeser, Kenneth Shockley, Gwynne Taraska, and Karolina Wisniewski. I also wish to thank three anonymous referees for further insightful comments. I benefited greatly from the work of the Munich Climate Insurance Initiative (MCII). At MCII, I am grateful to Peter Hoeppe, Koko Warner, and Kristina Yuzva for discussions on innovative insurance initiatives. I am responsible, however, for any shortcomings in the paper. Research support from the Social Sciences and Humanities Research Council of Canada as well as from the Faculty of Liberal Arts and Professional Studies at York University is gratefully acknowledged.

Notes:

1 In policy discussions, the term that is favored is “equity” in descriptions of conditions of fairness in a system of cooperation. In the interest of avoiding a proliferation of terms, I use the term “fairness” as a broad concept intended to capture a range of principled conceptions of fairness and justice, specially conceived for political institutions and agreements.

2 For a review, see Taraska 2013.

3 See for example, Neumayer 2000 and Farber 2007. Farber 2007 conflates the corrective justice rationale and an insurance-based rationale for compensation. For reasons that I elucidate throughout the paper, there is a fundamental difference between the two at the level of normative justification. Because he appeals to a liability-based rationale, I take Farber to side with a tort-based framework, associated with corrective justice broadly understood, rather than being a representative of an insurance-based approach.

4 I wish to thank Joseph Heath for his contribution to this point, which is taken up in Boran and Heath (forthcoming).

5 The economic costs of Hurricane Mitch are also discussed by Dale Jamieson 2010, pp. 267-268. However, I do not share Jamieson’s reluctance to defend adaptation policy to remedy these problems. This reluctance is usually associated with a tacit assumption that adaptation and mitigation are, if not mutually exclusive, mutually competing endeavors. As a result, there is persisting worry that adaptation policy would justify a reduction of abatement efforts. Gardiner 2010 has called this “the adaptation argument”, p. 12. There is, in fact, no basis to assume that abatement and adaptation must inherently be in a zero-sum competition with one another.

6 Munich Climate Insurance Initiative (MCII) administers various pilot climate insurance projects around the world.

Acknowledgements:

Work on this paper began in Warsaw, Poland, during the 19th session of the Conference of the Parties (COP 19) to the UNFCCC, November 2013. I had the privilege to attend COP 19 as accredited observer from York University. I am indebted to Dawn Bazely, Director of the Institute in Research and Innovation in Sustainability (IRIS) at York University for securing accreditation, and to Annette Dubreuil for excellent work as coordinator. An earlier version of this paper was presented at the invited symposium on Environmental Decision-Making at the Pacific Division of the American Philosophical Association (APA), San Diego, CA, April 2014. I wish to thank Chhrisoula Andreou for inviting me to the symposium, and to members of the audience for their interest, including Idil Boran
York University
iboran@yorku.ca
including the CCRIF. MCII was initiated by Munich Re, a reinsurance company, which offers reinsurance for the CCRIF. MCII plays a role in research and development specially focused on risk-sharing solutions to climate change, and provides expert support and know-how to the UNFCCC under its adaptation pillar.

7 For a review of possibilities and challenges, see Mills 2005 and 2012.

8 Risk-pooling and innovative insurance mechanisms, such as the CCRIF, are at the forefront of climate change adaptation research and policy. The IPCC special report from 2012 focuses on managing risks of extreme events and disasters in the context of climate change adaptation (Burton et al. 2012). An important portion of the report focuses on the development of large-scale international risk-pooling mechanisms.

9 Thanks to an anonymous referee for helping clarify this point.

10 Innovative insurance-like policy instruments against environmental risks are not limited to climate related risks. They can also be designed for environmental risks independent of climate change, such as earthquakes. See, for example, Linnerooth-Bayer, Mechler, and Pfug 2005. The significance of these innovative risk-pooling mechanisms is that they can be considered within a global climate regime, which has been my focus throughout this paper.

**Sources:**


UNFCCC. 2012. Approaches to Address Loss and Damage Associated with Climate Change Impacts in Developing Countries that are Particularly Vulnerable to the Adverse Effects of Climate Change. Draft Decision -/CP. 18 (advance unedited version).
The Problem with Consensus in the U.N. Framework Convention on Climate Change

Jesse Vogel

When Russia, along with Ukraine and Belarus, shut down one track of negotiations at the intercessional conference of the United Nations Framework Convention on Climate Change (UNFCCC) last June, no one was pleased. “We need to act now, and we need to act together,” the negotiator for the Least Developed Country block said, expressing the frustration of the world’s most climate-vulnerable countries (Mathema 2013). The conference in Bonn, Germany was never to be a monumental one – it was not a full conference of the parties, rather, a smaller meeting of subsidiary bodies – but with the deadline for a new international climate agreement rapidly approaching, the Bonn conference was a potentially important step. Yet, by proposing an amendment to the provisional agenda aiming to hold “a formal discussion of meeting procedures,” the trio of Eastern European powers blocked all progress on matters most important to vulnerable nations relating to climate adaptation, forest protection, and the framework for a legal instrument to deal with climate-related catastrophic loss and damage (UNFCCC 2013b). The problem of procedure in the UNFCCC struck again.

A background document submitted to the UNFCCC Secretariat in the lead-up to the November 2013 Conference of the Parties (COP19) clarifies Russia’s concerns. In that document, the Russian Federation described an eroding UNFCCC process that limits the authority and usefulness of the institution. Legal entanglements are increasing and transparency is fading, Russia claimed. Additionally, the country wrote that, having never adopted the Draft Rules of Procedure, UNFCCC presiding officers have relied on their long-standing fallback procedure – “ad hoc consensus” – in partial and dubious ways. Russia called for discussion of five specific issues at COP19, but the messy nature of consensus was at the root of each (UNFCCC 2013a).

The de facto and ad hoc decision-making procedure employed by the UNFCCC is the way the body got around its first roadblock – a refusal by Saudi Arabia and other oil-producing states to sign on to group voting rules – and conference presidents continue to abide by it, as the body has never since formalized decision-making rules (International Institute for Sustainable Development 1995). Yet, despite clear problems, 850 environmental NGOs most dedicated to climate action responded to Russia’s concerns by slamming the country for stalling progress (Brockley 2013). The major problem within the UNFCCC is a problem of international ambition, they indicated in a press statement, and the procedural claim was nothing more than a last-ditch effort by a low-commitment loser dragging its heels.

In this article, I will argue that international climate action advocates can’t dismiss procedural problems in the UNFCCC. Though the history of procedural questions in the UNFCCC has been one of blockage, these questions must be addressed for the sake of efficacy and justice. The existing UNFCCC decision-making process is both ineffective and unjust. It is ineffective because it hinders the exchange of information necessary to spur international climate cooperation, and it is unjust because it fails to adequately differentiate between countries based on their domestic capabilities (it assumes collective rather than shared responsibility).
will develop these claims through an examination of the limits of consensus decision-making, through an analysis of the UNFCCC within an international climate regime complex, and through a discussion of shared responsibility as a response to the structural injustice of climate change. Finally, I will posit that by instituting some form of majority voting the Framework Convention could increase its fairness and effectiveness.

The Futility of Ad Hoc Consensus

Though the concept of consensus is connected to the private law principle of “consensus ad idem” – total agreement about the meaning of a contract that gives it its legal force – the principle of consensus as used in the UNFCCC lacks clear definition (Cambridge Business English Dictionary, 1st ed.). It does not mean complete unanimity. Often it is defined in the negative – the absence of “stated objection,” or of “express opposition,” leaving wiggle room when it comes to defining just what explicit objection looks like (Legal Response Initiative 2011). And sometimes, “consensus” can be declared despite the express objection of some. That’s what happened at the Cancun conference of the parties when the conference President Mexican Foreign Minister Patricia Espinosa gavelled through the conference a decision in the face of explicit objection from Bolivia. She argued that to hold everything up for one party would be to ignore the will of the other 193 states present, turning to a seemingly new understanding of consensus that one observer called “consensus minus one” (Rajamani 2011). The move appealed to those who point out that consensus decision-making is not meant to award all parties veto power. They say it ought to build the space for more comprehensive conversations, to elevate diplomacy, to form a broader base of buy-in among parties (Brunnée 2002).

Yet despite Espinosa’s success as a conference President – she achieved substantive progress where some thought it couldn’t be made – it’s hard to argue that the Cancun meetings were a procedural success. Decision-making procedures that accept objections by one party sometimes and not other times – procedures that leave that question up to the whim of the presiding officer – rest on fragile ground. One negotiator called it “terror by applause” (ibid.), perhaps a hyperbolic term, but one that raises the question: how loud must the applause be to drown out the voices of a few?

The frustrations of ad hoc consensus decision-making do not vex the political processes of the world’s most effective international environmental bodies. None, besides the UNFCCC, relies simply on consensus formation without any kind of majority voting:

• The Convention on International Trade in Endangered Species requires a simple majority to approve procedural decisions, and a two-thirds majority to approve all other decisions (Convention on International Trade in Endangered Species of Wild Fauna and Flora 2013).

• Parties to the International Whaling Convention aim to make decisions by consensus, but the rules of procedure allow majority voting if they cannot reach consensus. When voting, a two-thirds majority is required to approve changes to significant regulations on the status of water space, protection of specific species and whaling methods; in all other decisions, simple-majority rules (International Whaling Convention 2012).

• The Montreal Protocol requires a simple majority of the parties to approve procedural decisions, and a two-thirds majority to approve substantive decisions. The President determines which questions are matters of substance, and which are matters of procedure, though her discretionary power can be overruled by an appeal of one party and a ruling from a majority of the parties (United Nations Environment Programme Ozone Secretariat 2011).

• Like the IWC, the Conference of the Parties to the Convention on Biological Diversity requires parties to work towards decision-by-consensus, but provides a majority-vote-based alternative. If parties cannot reach consensus, a two-thirds majority is required to approve all decisions, except for those relating to the financial mechanism (which must be reached by consensus), or those relating to procedure (which require a less-

• The International Civil Aviation Organization requires a simple majority to approve most decisions. Parties require a four-fifths majority to admit additional states into the convention, and a two-thirds majority to amend it (International Civil Aviation Organization 2008).

The goals of these multilateral agreements are more specialized and limited in scope than those of the Framework Convention, so they cannot be taken as precise analogues. Still, within these varying procedures, there are some clues that we ought not ignore regarding what works in international bodies. Though all of the bodies listed above have established and explicit voting rules, two – the International Whaling Convention and the Convention on Biological Diversity – aim for consensus, and use voting as a last-resort when consensus on an issue cannot be achieved. Though there are limits to majority rule from the perspective of justice, the voting rules in these organizations demonstrate a useful compromise; they require parties to attempt to forge agreements based on mutual compromise that all can agree to, but refuse to sacrifice efficacy and forward momentum for the sake of the procedure.¹

The ineffectiveness of consensus is also easy to explain if one looks at the UNFCCC through the lens of international regime complex theory. The UNFCCC is just one piece of a large and adaptable arrangement of international institutions – a “regime complex,” as termed by Robert Keohane and David Victor – that together work to combat international climate change in “sometimes conflicting, sometimes mutually reinforcing” ways (Keohane and Victor 2011). It’s a flexible free-for-all made up of many forms of organizations and agreements: U.N. legal regimes like the UNFCCC and its subsidiary bodies, expert scientific assessment groups like the Intergovernmental Panel on Climate Change, specialized U.N. agencies that work on issues implicated by climate change like the U.N. Environmental Programme, “clubs” like the Group of 20, multilateral development banks, bilateral initiatives, and even unilateral programs like the California carbon trading system (ibid.). It’s an arrangement uniquely suited to tackle the issue of climate change, an issue that’s defined by both “problem diversity” (its effects are cross-cutting), and “interest diversity” (solving the problem will require action by many) (ibid.).

Information Flow and Exchange

At first, the flexibility of this arrangement seems to support the “ad hoc” nature of consensus as employed by the UNFCCC. Yet the flexibility that Keohane and Victor write about is only important insofar as it helps develop the diverse and sophisticated information necessary for international cooperation on climate change (Keohane 1984). International regimes serve to help countries overcome “political market failures” – institutional barriers to mutually beneficial cooperation – by lowering “transaction costs” associated with international action, and by developing “bits and pieces” of law that establish norms of legal liability (ibid.). But ultimately, their biggest job is to help countries share information. Countries need a lot of it if they are to make action on public goods problems worth the investment. And they need high quality, trustworthy information, which comes only from high quality, trustworthy communication. Talking doesn’t equal trusting, Keohane writes:

Not all communication reduces uncertainty, since communication may lead to asymmetrical or unfair bargaining outcomes as a result of deception. Effective communication is not measured well by the amount of talking that used car salespersons do to customers or that governmental officials do to one another in negotiating international regimes! The information that is required in entering into an international regime is not merely information about other governments’ resources and formal negotiating positions, but also accurate knowledge of their future positions. In part, this is a matter of estimating whether they will keep their commitments (ibid.).

Given all of this – given that increased exchange of reliable information is the fundamental benefit of the international regime – the flexibility of consensus decision-making must be carefully analyzed. It is only useful so long as it doesn’t get in the way of information flows and the development of international trust.
The fact is that consensus obscures more than it reveals. It makes a fundamental and prior assumption that all parties have similar goals and expectations, and that they trust one another enough to work through disagreements publicly – and it removes potentially fundamental disagreements from the public debate. In so doing, it requires that discussions take place in a kind of political vacuum where parties are just responsible to one another, not the diverse group of stakeholders they actually represent. It ignores the push and pull of political dialogue within a country, and it ignores the fact that negotiators are sent as delegates of an entire state made of heterogeneous actors with diverse short-term interests that are often at odds with prospects of long-term cooperation.

And yet despite its need to adjust its goals and expectations, the UNFCCC continues to flatten widely varying national understandings by attempting to achieve consensus, a process that cannot possibly contain the multitude of national needs. This leads to a disconnect between stated procedure and actual procedure, perverting proceedings (Elias and Lim 1998). Despite an outward dedication to consensus building, despite UNFCCC Secretariat efforts to highlight commonalities among countries (see the Secretariat’s November 2013 event about gender equity that ended in a group sing-along), deep divisions remain and the process breaks down.

We saw this happen at the November 2013 talks, when parties tasked with outlining features of a 2015 international agreement scattered into small group “huddles” after thirteen hours of group negotiation on the second-to-the-last day. Negotiators from Brazil, Venezuela, India, Bolivia, the U.S. and others “got hot and close to each other” in order to do the work that hadn’t effectively been done, drafting aloud two contentious paragraphs of negotiating text, surrounded by a large scrum of observers, desperate to hear clues to their progress. Fundamental disagreements, bottled up throughout two weeks of “consensus-building,” had impeded the way to substantive progress, and the only path forward was outside of accountable proceedings. The huddle pushed along negotiations, but it did so at the expense of transparency.

“We did not have the privilege of being in the huddle,” the negotiator from Colombia said once the group reconvened around 12:30AM, “in part because I am of small stature, and a small party” (personal observation, November 23, 2013). Furthermore, the dubious transparency of the huddle-talks took up more time as the group reconvened, leading parties to “support the nature of the huddling,” or to criticize it (ibid.). This was an example of the two-faced nature of consensus negotiations: when parties outwardly dedicate themselves to building international consensus, late-night, side-corridor huddle-negotiations become necessary in order to deal with real disagreement. This ultimate breakdown of process is obfuscatory – it damages prospects for transparency.

Consensus obscures more than it reveals.

Instead, the UNFCCC procedure ought outwardly to embrace discord in order to align expectations and stated assumptions with reality. That’s because, in a world where international cooperation is difficult – where it’s easiest in the short-run for countries to go it alone, to pursue immediate self-interest – cooperation only happens when the world is threatened by the potentially disastrous effects of a go-it-alone strategy. Cooperation “reflects partially successful efforts to overcome conflict, real or potential,” Keohane writes, and it “takes place only in situations in which actors perceive that their policies are actually or potentially in conflict, not where there is harmony” (Keohane 1984). Cooperation is a “reaction to conflict or potential conflict,” he says, since “without the specter of conflict, there is no need to cooperate” (ibid.).

Though the “specter of conflict” comes with vastly different stakes depending on the issue at hand – economic cooperation is often easier to manage than military cooperation, for example – Keohane’s argument resonates with what we’ve seen in the experiences of other international environmental bodies. Most use majority voting rules, but the two that seek to build consensus – the International Whaling Commission and the Convention on Biological Diversity – include a mechanism for voting as a last resort. In those two cases, voting is a variant of Keohane’s “specter of conflict,” albeit one scaled down, that spurs along the formation of consensus first. The same arrangement (a dedication to consensus, with explicit voting rules for decisions on
which parties cannot reach consensus) is written out in the Mexico–Papua New Guinea proposed joint amendment to the Framework Convention. That 2011 document calls on parties to “make every effort to reach agreement on all matters by consensus,” but “if such efforts to reach consensus have been exhausted and no agreement has been reached, a decision shall, as a last resort, be adopted by a three-fourths majority vote” (UNFCCC 2011). Little progress on this amendment has been made. Still, because a clean vote makes visible the conflict that is obscured by the attempted consensus-formation, it’s likely that by instituting some sort of majority voting system within the UNFCCC, parties would increase the efficacy of international cooperative efforts.

**Climate Change as Structural Injustice**

But even if the move away from the current “ad hoc consensus” decision-making method doesn’t immediately increase the efficacy of the UNFCCC, it would make the body a stronger tool in the fight against the structural injustice of climate change. Climate change is a structural problem because of its multitudinous and interconnected challenges – the crosscutting effects that disproportionately affect the poor and marginalized, the multilayered web of stakeholders it implicates, the complexity of assigning blame. And it’s an injustice because of the asymmetry of its effects, damaging the livelihoods of the most vulnerable.

Though her writing has focused on the worldwide system of sweatshop labor, philosopher Iris Marion Young provides an account of structural injustice which is easily mapped on to the climate change issue. Climate change is not the result of intentional oppression or deprivation, but rather it is the “consequence of many individuals and institutions acting in pursuit of their particular goals and interests, within given institutional rules and accepted norms,” ultimately putting “large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities” while enabling “others to dominate or have a wide range of opportunities for developing and exercising their capacities” (Young 2006; Schiff 2014). And just as this mess of problems is poorly untangled by rigid, comprehensive regimes, the structural injustice of climate change is hard to right through a “liability model” of responsibility that seeks to assign blame, punish wrongdoers, and absolve everyone else (Young 2006). When dealing with a diffuse structural injustice, where massive inequality is not the result of intentions, or even of specific actors – where everyone in some sense is implicated – the traditional conception of responsibility breaks down. That’s why Young’s “social connection model” of responsibility is so useful in the climate change conversation (ibid.). The social connection model draws from a different conception of responsibility, the sense that “people have certain responsibilities by virtue of their social roles or positions” (ibid.). In determining who has what responsibility, the model is forward looking, pushing actors to carry “out activities in a morally appropriate way and aiming for certain outcomes” (ibid.).

Young lists five main aspects of her model, but one is particularly appropriate to the procedural question. She writes that the social connection model emphasizes “shared responsibility” that distributes discrete responsibility to individual parties, over “collective responsibility” that fails to hold individual states accountable (ibid.). Collective responsibility means that a group – a corporation, an organization, or, in this case, the parties to the UNFCCC – publically takes responsibility for an injustice. Though potentially useful, in the complexity of assigning responsibility for something like climate change, that’s often a way to shift blame, as Young suggests.

Drawing on the work of philosopher Larry May, Young writes that by claiming collective responsibility, a group can gain the moral high ground “without any of its individual members being determinately responsible for it” (ibid.). Collective responsibility is deceptive – it creates an aura of action without individual accountability necessary to spur action; it is inequitable, because it’s a responsibility that glosses over the variety of skills and capabilities among a group of actors; and ultimately, in the UNFCCC setting, it is ineffective, because it doesn’t allow for an ongoing conversation about how responsibility ought to be differentiated, a major sticking point in negotiations.5

There’s an interesting parallel here. The failures of collective responsibility – deception, inequity, and ineffectiveness – are the same as the failures of consensus. In fact, it seems that consensus decision-making itself is a model of collective, rather than shared, responsibility. Consensus is certainly deceptive, enforcing an ideal of collectively shared
assumptions and goals when they don’t always exist, and the hold-ups in negotiation caused by its nebulous definition, as well as the ways in which it limits legitimate information flow between parties, demonstrate its ineffectiveness.

But comparing consensus to the concept of collective responsibility does further work for us – it demonstrates the ways in which consensus decision-making limits the justness of the UNFCCC. If a just conception of responsibility is a responsibility based on politics, however, or as Young calls it, “public communicative engagement with others for the sake of organizing our relationships and coordinating our actions most justly,” then attention to the quality of that engagement, to the quality of that communication, is crucial in any analysis concerned with global justice (Young 2006). Just process yields just outcomes.

And it’s clear, in a process analysis, that consensus does not do the job. As negotiators entered hour thirty of the final day of the Warsaw talks, the negotiator from Venezuela took the floor to remind conference organizers of the human rights of the negotiators themselves. “Small countries with small delegations are being put in a very impossible physical situation to follow this conference,” she said, contrasting her delegation with those of large countries that have more negotiators who can share the burden of grueling talks. “We are human beings. We are not machines to deliver decisions,” she said (personal observation, November 23, 2013). The long hours of the process, as well as the breakdown of large group talks into small group huddles, draw negotiations out further and further every year – observers often say they expect negotiations to last longer than the allocated two weeks. And this exacerbates existing inequity, weighing heavier on poorer countries with smaller delegations.

The problem of collective responsibility as embedded in consensus decision-making, too, illustrates the ongoing problem of differentiated responsibility within the UNFCCC. Further analysis is necessary in order to adequately treat the justness or injustice of commonly touted principles like “common but differentiated responsibility,” and the more contentious “historical responsibility,” within Young’s model. Still, it’s worth noting that that while collective responsibility, according to Young, shuts down ongoing and iterative discussions of differentiation – just as the difficulty of consensus has shut down honest conversation about the role of “developing country” major emitters like China – shared responsibility may allow for ongoing productive dialogue. A conception of responsibility as held in common, but individually accountable, may allow for a rethinking of the two sharply defined legal groupings – Annex I (so-called developed countries) and Non Annex I (so-called developing countries) – that have made true cooperation and trusting international relationships very challenging. It’s likely that the rigidity of consensus decision-making and the rigidity of collective responsibility require rigid differentiation. Yet what’s needed in a multilayered, deeply complicated regime is differentiation that accounts for the constantly changing state of the global political economy. What’s needed is ongoing honest conversation about the terms of debate in discussions of responsibility.

A system of majority voting, as proposed by Mexico and Papua New Guinea, won’t solve all of these problems. To say that majority-rule voting within the U.N.’s Framework Convention on Climate Change would lead to a new conception of global responsibility based on connection rather than liability would be outlandish. But in view of a close look at how consensus works in practice at UNFCCC conferences, as well as how it is used in other international fora, and in view of an analysis of the UNFCCC through the regime complex framework, it seems clear that the “ad hoc consensus” model is ineffective, and that a system that allows for majority voting may be more effective. “The procedure that we’re following has in fact come into conflict with the complexity of the issues we discuss,” the negotiator from the Russian Federation said on the last day of the conference in Warsaw, as fellow diplomats sat bleary-eyed after days without sleep. He’s right there, and his country’s team was right when they called for further discussion of procedure within the convention. Procedure matters, and those dedicated to the idea of international cooperation on climate change ought to pay attention.
Conclusion

In this paper, I’ve argued that the claims of Russia in November, and Ukraine and Belarus over the summer – claims that consensus as practiced does not work, and that current procedure doesn’t fit UNFCCC needs – ought to be taken seriously by the world community. Despite the claims of some that consensus, though difficult to obtain, is necessary for just decision-making and UNFCCC legitimacy, I believe that on the international scale, consensus is both ineffective and unjust. It obscures in a forum that’s meant to clarify. It glosses over the differentiated capabilities of the world’s countries in a forum that needs to grapple with those differences. And the result is procedure that suffocates ambition and frustrates diplomats to the point of exhaustion. Mexico and Papua New Guinea have proposed an alternative to the morass of consensus – voting rules – one that won’t automatically spur enhanced international action or a more just conception of international responsibility. Still, it may facilitate both. And with time running out, every procedural roadblock is a potential death knell to the world’s most vulnerable. Increased international ambition is crucial if we are to mitigate and adapt to the effects of global climate change, but a just and effective procedure must grease the wheels as the world ramps up.


3 For more on the difference between economic and military cooperation, see Lipson 1993.

4 For a concise discussion of the political challenges to instituting majority voting, see Kemp 2012.

5 For a review of the various meanings and uses of the common but differentiated responsibility principle in the UNFCCC and other international fora, see Bauer et. al. 2014.

Sources:


Notes:

1 For a justice-based criticism of plebiscite-style voting (albeit in an American political context), see Young 2000.

2 “We got hot and close to each other” in the huddle, the EU negotiator said after parties had returned to the negotiating table around 12:30 AM on Friday, and we


UNFCCC. 2011. *Revised Proposal from Papua New Guinea and Mexico to Amend Articles 7 and 18 of the Convention, Conference of the Parties 17th Session*.

UNFCCC. 2013. *Background Information Relating to the Proposal to Include a Sub-Item on the Provisional Agenda of the Nineteenth Session of the Conference of the Parties*. FCCC/CP/2013/INF.3.


The Responsible Path between Scylla and Charybdis

Making Sense of Appeals to Equity in Climate Change Loss and Damage Mechanisms

Kenneth Shockley

In ancient Greek Mythology, Scylla was said to be a giant monster, Charybdis a whirlpool. Safely avoiding one meant getting too close to the other. As the story goes, the captain, Odysseus, must carefully choose between the monster that would certainly take several sailors, and the whirlpool that threatened to destroy the entire ship. Choosing between Scylla and Charybdis now stands as a potent metaphor for a choice between evils. It is an apt metaphor for a choice climate change negotiations confront, namely, the choice between thinking of loss and damage in terms of the certain costs associated with rectifying a past wrong or in terms of balancing uncertain future burdens in the face of unknown harms.

I will show these two approaches to loss and damage correspond to two ways of addressing reasonable demands for the inclusion of equity-as-fairness into climate change policy: a forward-looking distributional approach and a backward-looking accountability approach. These forms of equity, I will suggest, help shed light on the best way to frame climate change loss and damage mechanisms. In what follows I will argue that focusing on past harms as a matter of equity has a number of comparative disadvantages. The forward looking approach is more practicable, better able to address problems that have not yet arisen but will certainly arise, and better able to integrate certain intuitive strengths of the backward-looking view. Preparing to address the unknowns of the future, the Charybdis of our time, provides a better way of dealing with climate change equitably.

This conclusion in favor of an approach that is more forward directed suggests a way to frame hitherto underspecified loss and damage mechanisms in climate policy debates, specifically the “Warsaw International Mechanism for loss and damage associated with climate change impacts” (UNFCCC 2013; hereafter “the Warsaw Mechanism”). I will conclude that a sensible way to structure that mechanism lies in an insurance framework wherein parties pool resources for the sake of future harms, as a balance against the predictable future loss of well-being and opportunity. The resources to be pooled may well be assessed in accordance with historical emissions or other metrics. This allows some form of accountability to be built into the framework, capturing much of what was appealing about the backward-looking accountability approach without endorsing some of the more problematic and impractical features of that approach. The paper begins with a short discussion of the process that led to the development of the Warsaw Mechanism as a response to the loss and damage expected to result from climate change. Then I will briefly consider equity and the relation of equity to forward- and backward-looking accounts. I will then argue that the notion of responsibility at issue in the loss and damage associated with climate change points us toward a forward-looking account. I will conclude by considering a promising form such a forward-looking version of the Warsaw mechanism might take: insurance for opportunity.
Three important caveats are worth mentioning. The details associated with an international insurance scheme are complex and nuanced. There is no space to develop such an account in these pages. Here I provide only a framework in support of such a scheme, and a set of considerations in favor of that framework. Second, and similarly, there is not the space necessary to do justice to the many ways issues of equity arise in the climate change literature (but see Gardiner 2004, 2011; Jamieson 2014; and the essays collected in Shue 2014). Third, this essay’s focus is not on the particular policy machinations, or the political consequences of the development of the Warsaw mechanism, but rather on the role equity plays in that mechanism. Rather, this essay will endeavor to use the troublingly contested notion of equity as a way of looking at the moral significance of loss and damage language in any successor treaty to the Kyoto Protocol. I will argue that there is good reason to think of loss and damage in terms of the opportunities and prospects that may accompany a changing climate. Capabilities and opportunities provide the appropriate conceptual apparatus for integrating equity into Loss and Damage mechanisms.

Warsaw and the Warsaw Mechanism

While for years the climate policy process was limited to balancing efforts to mitigate emissions with efforts to adapt to the changes generated by those emissions, more recently “loss and damage” has played an increasingly significant role (Baer, et. al., 2009; Light 2013). Even before the recent IPCC AR5 report and the US National Climate Assessment painted in stark relief the dire consequences of unchecked climate change, it was clear that even with substantial mitigation and robust adaptation strategies, there would be losses associated with climate change, losses for which there is no substantial policy mechanism (IPCC 2012; US National Climate Plan). At the 18th meeting of the conference to the parties (COP 18) in Doha, Qatar, in November of 2012, a decision was made to generate a mechanism to deal with loss and damage (UNFCCC 2012). Acknowledging the need for such a mechanism constituted a substantial step forward in the policy process, but more was needed.

At the COP 19 meetings in Warsaw, Poland, in November of 2013, in response to the demand for some instrument to address loss and damage, parties agreed to the Warsaw Mechanism. This decision, arrived at late in the meetings after a good deal of contention, was another substantial step forward. Yet it remains unclear what form the mandated institutional arrangements will take. There are, however, two reasonably clear alternatives. The arrangements might take the form of a liability or accountability scheme based on compensation for past damage. Or they might take the form of a distributive scheme focused on addressing the now inevitable losses and damages attached to a changing climate.

There is good reason to think of loss and damage in terms of the opportunities and prospects that may accompany a changing climate.

While not explicitly addressed in the sparse text of the mechanism, two ways of understanding loss and damage seem to pervade the talks. On the one hand negotiators might base a mechanism on the historical contribution to loss and damage associated with climate change. On the other hand, negotiators might develop a mechanism that seeks to establish policy instruments responsive to the current and future loss and damage associated with climate change – that which is not covered under existing mitigation or adaptation frameworks. Below I will outline how these options map on to two different forms of equity.

When loss and damage is viewed through the lens of accountability for historical pollution, it is understandable that some parties are keen to advance a retrospective approach, according to which any mechanism for addressing loss and damage would be focused on accountability for past emissions. However, for reasons outlined below, such an approach is not productive in the context of developing policy solutions for dealing with loss and damage. While we cannot ignore historical emissions, dealing with loss and damage as they occur should be our primary motivation, and that is often best addressed through developing resilience and other forward-looking efforts that seem more suited to our changing circumstances.
This shifts policy mechanisms away from causal liability and historical accountability metrics, but it still allows a moral imperative directed at the consequences of climate change, consequences that disproportionately affect the most vulnerable. Concerns over the capacity of more vulnerable populations to address the challenges of a changing climate have provided the basis for traditional appeals to equity in the climate process (Shue 1999). While these concerns cannot be ignored, for matters of practical politics as much as morality, they also cannot be allowed to prevent the international community from developing a reasonable policy to address one of the greatest moral challenges of our age (Light 2013). Addressing this challenge will require finding a way forward that is responsive both to past harms and to future needs.

Equity in the Climate Process

Equity, in some form, constitutes a crucial moral dimension of ongoing efforts to address climate change (Jamieson 2012, 2014; Caney 2014; Light 2013; Gardiner 2010; Shue 1996, 1999). Different conceptualizations of equity can serve to frame an important moral dimension of climate change, one with substantial practical ramifications. Examining options through the lens of equity provides a means of making salient the moral dimensions of climate change, and the various policy options available. It also makes apparent the difficult political tradeoffs, and the political realities associated with the development of a viable and just climate policy. Beyond the practical tradeoffs that lie at the surface of the negotiations, important conceptual tradeoffs take place as a consequence of the way we frame the moral dimensions of climate change.

Should we approach equity with a backward-directed accountability approach, or a forward-directed development approach?

Most discussions of equity in climate change focus on the “common but differentiated responsibilities” mandated in the Kyoto Protocol (UNFCCC 1998, article 10). The form these responsibilities take was not clarified in the original documents, and so the notion of fairness or equity underpinning such responsibilities has remained unclear (Light 2013). Whether we differentiate our responsibilities by, for example, providing financial compensation for the current and projected effects of our historical emissions or by respecting different development needs will make a substantial difference in the nature of those responsibilities (Caney 2014; Baer 2008, 2009; Vanderheiden 2008). Should we think of our responsibilities in terms of rectifying past wrongs, as a matter of accountability? Or should we think of them in terms of a country’s capacity to pay? I suggest we rephrase the central contrast in the following terms: should we approach equity with a backward-directed accountability approach, or a forward-directed development approach?

The form that the Warsaw Mechanism eventually takes will almost assuredly come with certain presuppositions about what equity amounts to, whether forward-looking, backward-looking, or some hybrid. Given the nature of negotiations, if there is to be any explicitly moral foundation to a future framework, we should expect the underlying notion of equity to be a hybrid. As a matter of political reality we should expect any future framework to avoid the language of blame or guilt that might be interpreted as an admission of legal liability. Yet such a framework will have to recognize past emissions and the harm generated by those emissions. It will be a delicate balancing act. But there is some hope this will occur.

A natural way to think about equity in the context of harm done, something we should expect to be common in the tumultuousness of a changing climate, is in terms of responsibility (Broome 2012; Hiller 2011; Nolt 2011). Traditional notions of responsibility focus on a historically salient connection between an agent in a culpable state of mind and a harm done (Hart and Honore 1985; Goodin 1986; but see Jamieson 2012, 2014; Thompson 2012).

The complexities associated with responsibility on the temporal and geographical scales appropriate to climate change require in the least that we not be wedded to traditional accounts of blame-based responsibility (Gardiner 2010; Jamieson 2012). Simon Caney, in a recent discussion of climate justice, urges us to think of responsibility not, primarily, in terms of culpability and intent, but rather in terms of the
probable consequences of climate change, and then see what might be done to avoid those consequences.

Climate change poses serious existential threats to many people’s lives and to the very existence of some communities. Its effects will be extremely harmful, possibly catastrophic, for millions of people. Given this, I think we have reason to focus on what would most effectively prevent the onset of dangerous climate change, and then consider what responsibilities would follow from that (Caney 2014, p. 127).

Doing what we can to avoid the most tragic consequences of climate change, the sort of dire predictions anticipated in the IPCC report (AR5) and related material (IPCC 2012; US National Climate Plan), should not only move us to act, but also serve as the foundation for our discussion of our responsibilities to address climate change. Of course this is not to say that history should be irrelevant to discussions of the moral responsibilities associated with the harms attendant to climate change, but that the focus should be on the harms, not the intent. Because many of the problems associated with traditional accounts of responsibility for climate change arise from a causal sequence linking culpable individuals to the harm they caused, avoiding this focus on individualistic causal sequence provides a more promising way to address climate change.

Such a shift in focus also supports a more promising way of thinking about equity. While an emphasis on an historically salient causal sequence leads to a backward-directed approach, equity-as-accountability, an emphasis on preventing harms done, requires a prospective, forward-directed approach, distributional equity. In short, what we should worry most about is harm, harm occurring and harm portended, not historical liability. The imminent nature of that harm is clear. With harm prevention and mitigation in mind, I turn to the two forms of equity at issue here.

Looking Backward and Looking Forward

I suggest that one helpful way to think about equity is in terms of whether our concern should lie in making amends historically, equity through the rectification of past wrongs, or in promoting fair burden sharing, i.e. equity through fair distribution of future costs and benefits. When we ask if we are being equitable in addressing the loss and damage of climate change, we can look forward at the prospects for the distribution of harms and benefits on the basis of one or another proposal, or we can look backward, and consider whether we, or someone else, has suitably accounted for past behavior. In other words, one way to think about equity involves what we have done, making sure our failures are equitably redressed, and that we do not take undue advantage of our position in the past. This form of equity is closely aligned with corrective justice. Another way involves ensuring that there is an appropriate distribution of some good. This requires looking forward, and, for reasons that will become clear below, is more closely aligned with distributive justice. These two approaches to equity are in tension, and the choice between them is not obvious. There are reasons that support each.

There is a clear value in the middle ground, which accepts the reality of past emissions but focuses on dealing with our now inevitable future.

In support of backward-looking frameworks, one may note there is a real sense that the historical activities of the developed world, especially when coupled with its recent inaction to address the problem, makes it culpable for the harms done by climate change. A backward-looking framework better reflects an intuition that attributes responsibility to those who used up the climate commons, the amount of greenhouse gas that we might use before sending our climate spinning out of control. This notion of equity is tied to equal access to a shared resource (Shockley 2012). It is not fair, we might think, for someone to gain the benefits of a shared resource to the point that others are unable to use that same resource, a resource in increasingly scarce supply and the use of which leads to progressively more dire consequences. Those who gain, on this view, should provide compensation (whether financial or otherwise) to those thus denied access to the resource. This entails an appeal to corrective justice.
From the point of view of those who take themselves to be suffering the burdens of overused resources, those who are suffering the effects of climate change but who have, unfairly they would say, been deprived of the benefits of those resources, the current balance of benefits and burdens is strikingly inequitable. It is generally assumed that equity demands some form of compensation for past harms done. We can see this, for one example, in the proposal for integrating equity into loss and damage protocols advanced by India (United Nations 2011; Light 2013).

It may be less important to resolve historical injustices in the framing of climate policy, however, than it is to prepare for an uncertain and potentially troubled future. There are compelling reasons to support a forward-looking framework. For one, in a forward-looking way of addressing climate change, we have the prospect of equal effort. This equity of effort has great intuitive appeal. It seems just that as we, as a species, collectively face climate change, everyone puts in an equal share (whether determined by population, or by some other measure) in our effort to mitigate the causes of climate change, and adapt to those changes to which we are already committed. We can see this approach in a wide range of positions advocated by the US, and, to a lesser extent, by the EU (Light 2013).

Yet if we adopt this account of equity, history appears to be whitewashed. By focusing entirely on our present situation and our capacity to address future problems, we minimize or ignore entirely the transgressions of the past, many of which took place well after the time when one could reasonably claim non-culpable ignorance (Jamieson 2014; Gardiner 2011a, 2011b). Our behavior in the past has surely led us to where we are now, facing one of humanity’s greatest moral challenges. Ignoring how we got here seems to miss much of the moral significance of the problem. And, indeed, much of what motivates many parties to argue for the inclusion of a moral dimension in the climate talks comes from a claim that the developed world needs to provide some compensation for the damages and losses it has, in some sense, caused.

**Focusing on the Future**

At the end of the day, the final Warsaw Mechanism document (UNFCCC 2013) was predictably and notably vague, indicating only that a mechanism was to be developed as part of any future agreement. The proposal that came out of Warsaw and formed the Warsaw mechanism did not have unambiguously forward- or backward-directed language. It appealed to the harm of loss and damage and the need, even the responsibility, to address it. But the moral mandate did not contain a clear answer to whether the final framework would focus on historical accountability, the cause of those losses and damages, or on a forward-directed distributive approach, those now inevitable losses and damages themselves. So, while the Warsaw mechanism constituted a notable step forward in the UNFCCC process, it also left unanswered many of the troubling questions about the form that mechanism was to take.

There are, though, at least three compelling points in favor of a forward-directed approach. First, practically, the possibility of liability for harms done will make a loss and damage framework based on corrective justice extremely unpalatable for historical high emitters. Integrating those historical high emissions in a more constructive, and less oppositional fashion would provide a better option. Of course, whitewashing the history of emissions is not a practical or even reasonable approach. Any forward-directed approach must integrate the need for those who have polluted in the past to satisfy their “common but differentiated responsibilities.”

But there is a clear value in the middle ground, one that accepts the realities of the past patterns of emissions that led us to be where we are, but focuses on dealing with our now inevitable future. We need to generate a framework that encourages parties not to get bogged down setting blame for past iniquities, and, while still acknowledging historical emissions, focuses on taking responsibility for our common future, to borrow a phrase (Brundtland 1987).

Second, in terms of implementing a forward-directed policy, an emphasis on harms done makes it problematic to plan for inevitable future harms. Moreover, there are productive means of integrating responsibility for past harm into such a a forward-directed account that do not rely on the litigation intensive, punitive approaches that we can predict will be associated with backward-directed accounts.5

Third, there is a clear value in setting our policy for dealing with the costs of climate change in terms of our efforts at adapting to the unknown future, rather than our iniquities of the past. This is not
merely an academic matter. As we shift into an era of increasingly intense extreme weather events (IPCC 2012), it seems clear that we will need to adapt to an uncertain future. Relying on our historical practices in our response to unprecedented climatic disturbances seems ill advised and imprudent in the face of a challenging future.

While the benefits of a forward-directed approach are substantial, the costs of a backward-directed approach are also worth emphasizing: accountability for past actions leading to present and future harms will lead to extensive burdens. While these financial and social burdens may be deserved in light of past actions, the real burden, the real price paid to Scylla, comes from the certainty that a backward-directed approach will not help us address future, predictable harms. And it effectively pits one part of the world against the other. This is not a recipe for a viable solution to a global problem. Of course, the forward-directed approach comes with its own set of problems, not the least of which stems from our inability to determine the precise nature of the harms brought about by climate change. By taking a future-oriented view we operate under uncertainty, and, under the substantial risks and potential catastrophic harms forced on us by climate change, particular policy choices may fail. We do not know just how the harms of Charybdis might affect us. However, we will face these harms, whatever they might be, regardless of the approach taken. A focus on minimization of risk by promoting opportunities and reducing vulnerability seems the better strategy.

A Way Forward: Insuring for Opportunity

The future challenges of a changing climate should lead us to accept a future-directed treatment of loss and damage. Let us think of loss and damage in terms of insuring for future harm rather than punishing polluters for past damage done. However, structuring that insurance around financial or economic measurements is dangerously misguided in a time of unprecedented change and environmental instability. I suggest that the insurance model of responsibility needs to be coupled not with a model of value based on financial compensation, but with one based on capabilities and opportunities.

Any insurance framework to address the loss and damage caused by climate change should take account of harms beyond typical financial loss and damage. Given the uncertain circumstances and comparative novelty of a future conditioned by climate change, we need to shift to a scheme for recognizing loss and damage in terms of the possibilities and opportunities individuals might face under such uncertain conditions. Focusing on vulnerabilities and capabilities allows us to think about the harms associated with restricting opportunities and limiting possibilities, rather than just the harms done to individuals as passive entities.

Vulnerabilities do not always track with models of loss tied to economic valuation. Consider cases of individuals moving from locations which have lower economic value (say a local farm) to an urban center where their financial standing is increased, but where they are more vulnerable to price shocks, political instability, and other features of a life in an urban center. Attention to vulnerabilities and opportunities provides a better framework for considering the wide range of “loss and damage” populations might face. A capabilities approach is more appropriate, and better captures the variances of our contemporary world.

The insurance model of responsibility needs to be coupled not with a financial compensation model of value, but with one based on capabilities and opportunities.

The model for dealing with the unknown future should be built not on recent financial costs of climate change but rather assure the background conditions necessary for the provision of opportunities. A capabilities approach to the background conditions that enable the development of opportunities allows us to reflect on what future prospects are enabled by conditions of the present, conditioned by past actions. Considering how those conditions have been compromised in the past allows a way of integrating historical culpability in the current circumstances, while keeping the focus squarely on the harms resulting from climate change.

We should think like insurers, insurers who recognize patterns of past behavior that may lead to variations in their payment scheme. One possible way of doing this is to rethink loss and damage in terms of an insurance pool where one’s premium depends in
part on one’s contribution to the risk for which one is being insured, and an acceptance that all must pay into the pool as best they are able. I cannot develop the details of this proposal here, but rethinking responsibility in light of the different forms of equity salient to these contexts provides a helpful way of moving ahead that captures a forward-directed, distributive approach to equity. And it focuses on those most likely to be affected by the worst effects of climate change.

A forward-directed approach allows policy to attend to those most vulnerable to the ravages of a changing climate (Goodin 1984; Broome 2012; Gardiner 2012; Jamieson 2014). By integrating the influence of past actions on the opportunities available today, the capabilities approach also provides a middle ground between the historically focused liability approach and an approach to the future that whitewashes the past. It may not be the only way to integrate historical responsibility into a prudent forward-directed strategy, but it does so in a manner that allows for the inclusion of the concerns of the most vulnerable into the process (Sen 2000, 2009; Pettit 2001; Shockley 2014).

While much could be said in support of the ethical dimensions of this approach, this programmatic defense of forward-directed approach captures the moral imperative of directing efforts to help those who are most vulnerable, and reducing our common vulnerability to a changing world. The forward-directed approach represents a form of equity based on the fair distribution of effort and resources in light of such considerations.

In this paper I have argued that while responsibility for loss and damage associated with climate change might be assigned either on the basis of those historical emissions that contributed to climate change, or on the basis of one’s ability to combat the effects of climate change, there are clear reasons to support a forward-directed view of our responsibilities. The two forms of equity correspond to these two ways of characterizing responsibility for loss and damage: equity as a corrective for past wrong doing, and equity as fair distribution of effort and resources. While the argument presented here was largely programmatic, there are good reasons to prefer the fair distribution model. The forward-directed approach to loss and damage that this form of equity indicates is not only more suitable for the uncertainties faced in a changing climate, but also provides for a means of integrating the responsibility for past emissions in a politically feasible manner. While I have here argued we should approach the issue of equity from a forward-looking, distributional approach, we would do well to find a means of balancing the benefits of corrective and distributive approaches. I hope here to have provided the beginnings of such a framework.

If the Warsaw mechanism is developed suitably, it might well provide a means of getting past one of the more deeply divisive features of climate change negotiations: the way in which we are to understand equity in light of the “common but differentiated responsibilities” language in the Kyoto Protocol. As we move forward to a post-2015 treaty, resolving this issue will be essential for US involvement in any successor climate treaty (Light 2013), and essential for the success of any treaty. Perhaps integrating equity into loss and damage language in the way characterized here will provide such an opportunity. While more work needs to be done, it would seem that insuring for equity of capabilities with differentiated cost schemes is the right framework and provides hope for a successful post-2015 arrangement. It is a form of equity appropriate for the uncertainties we face.

Odysseus chose the monster rather than the whirlpool. Rather lose a few good sailors, he thought, than risk his whole ship. One good thing you can say about Odysseus, though, is that he appeared to understand what he was doing. He had to compare the costs of two different ways of getting home. If only the current negotiations in Warsaw took equity and the moral considerations on which equity is based — in either form — to be the basis of their decisions. That would be progress indeed. Here we are not trying to get back home, as much as avoiding impending disaster. Making a hard choice, even if the choice is tragic, is often better than talking past one another as the world heats up. Inaction is a morally worse option than either facing the Sylfa of our past or the Charybdis of our future. Of course, practically, a middle ground is best. A different Greek, Aristotle, taught us that.

Kenneth Shockley
University at Buffalo
kes25@buffalo.edu
Acknowledgements:

The author would like to thank Idil Boran, Allen Thompson, and Ben Hale for helpful comments on earlier drafts.

Notes:

1 “Loss and damage” is generally taken to include a wide range of economic and human considerations, costs not covered under existing mitigation and adaptation tracks (Taraska 2013).

2 Simon Caney (2014) refers to a presentation of Robert Goodin’s at the conference, “Political Thought and the Environment,” held at the University of Cambridge (25 May 2012), wherein he points to taking this retrospective perspective. See also Shockley, forthcoming.

3 Appeals to equity have provided one dominant way of inserting ethical concerns into the climate policy debate, and the hoped for climate policy solutions. Appeals to equity in these contexts are closely related to appeals to justice (Shue 1999). In those terms, we can distinguish our two forms of equity in terms of the difference between corrective and distributional justice (Goodin 1995; Feinberg 1970).

4 Vanderheiden (2009) refers to mitigation as largely a forward-looking judgment. He says in accordance with a mitigation based approach we would “ask what proportion of the planet’s finite emissions absorptive capacity each of us is entitled to claim for ourselves”, whereas adaptation is largely a backward-looking judgment, “some party has been exposed to some risk or made to suffer some harm for which they are not at fault, and justice requires that the party that is responsible for that risk or harm either pay to insulate them from harm or else compensate them for the harm that occurs” (p. 284).

5 This might be done by simply prorating payments into an international insurance scheme on the basis of one’s historical emissions (see below). One promising attempt to operationalize this kind of approach can be seen in the work of Ecoequity (Baer et al 2009; Baer 2008; but see Shockley, 2012). There may well be other means of integrating historical emissions that better capture other moral principles (see Sachs 2014).


7 There has been some work on developing an insurance model for dealing with climate change. See in particular the Munich Climate Insurance Initiative (MCII 2014). Ecoequity has provided a range of helpful models designed to integrate historical responsibility with a range of features (Baer, et al., 2008).

Sources:


UNFCCC. 2012. *Approaches to Address Loss and Damage Associated with Climate Change Impacts in Developing Countries that Are Particularly Vulnerable to the Adverse Effects of Climate Change to Enhance Adaptive Capacity. Draft Conclusions Proposed by the Chair*.

UNFCCC. 2013. *Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts*.


The Institute for Philosophy and Public Policy, now chartered at George Mason University, publishes *Philosophy and Public Policy Quarterly*. The journal seeks the submission of manuscripts that address the normative and conceptual dimensions of issues of importance and timeliness in public policy.

The Institute for Philosophy and Public Policy has published its journal since 1981. For the archive of back issues, please see [http://journals.gmu.edu/PPPQ](http://journals.gmu.edu/PPPQ).

The editors favor articles that are fewer than 5,000 words and are written in a style that is accessible to a broadly informed public. Previous issues exemplify the length, style, and philosophical and policy relevance of the articles the journal seeks to publish. Short opinion pieces are welcome, as are longer essays that might serve as target articles for solicited responses. Articles will be reviewed by the editors and by outside referees and, if accepted, edited for publication.

Please submit manuscripts through the journal’s website, [http://journals.gmu.edu/PPPQ](http://journals.gmu.edu/PPPQ).
The Institute for Philosophy and Public Policy, now chartered at George Mason University, conducts research into the conceptual and normative questions underlying public policy. This research is undertaken cooperatively by philosophers, public officials, policy analysts, and other experts both within and outside of government.

The Institute for Philosophy and Public Policy publishes the journal Philosophy and Public Policy Quarterly. Articles are intended to advance philosophically-informed debate on current policy choices. The views presented are not necessarily those of the Institute or its sponsors.

Editorial policy: Philosophy & Public Policy Quarterly considers for publication essays that apply normative and conceptual analysis to important and timely issues in public policy and that are written in a style accessible to a broadly informed public. Essays typically are fewer than 5000 words. Please see back issues of the journal for examples. The Quarterly has a double-anonymous peer review process. Interested individuals should submit their manuscripts through the journal’s website, http://journals.gmu.edu/PPPQ.

Correspondence with contributors: Readers may direct their correspondence to authors, whose e-mail addresses follow their articles, or in care of the editor.

Open access: Current and past issues of Philosophy & Public Policy Quarterly are available through the journal’s website, http://journals.gmu.edu/PPPQ. Copies of articles may be downloaded for personal use free of charge. Please direct to the editor requests for permission to download articles for classroom or other use.

Permission: All materials are copyrighted by the Institute for Philosophy and Public Policy, unless otherwise acknowledged. Please direct to the editor all requests for permission to reprint articles appearing in this publication or to purchase paper copies.

http://journals.gmu.edu/PPPQ

Philosophy & Public Policy Quarterly
Editors
Gwynne Taraska, Guest Editor
Kenneth Shockley, Guest Editor

Editorial Board
Peter Brown, McGill University
C.A.J. Coady, University of Melbourne
David Crocker, University of Maryland
William Galston, Brookings Institution
Peter Levine, Tufts University
Judith Lichtenberg, Georgetown University
David Luban, Georgetown University
Douglas MacLean, University of North Carolina, Chapel Hill
Claudia Mills, University of Colorado at Boulder
Christopher Morris, University of Maryland
Thomas Pogge, Yale University
Henry Shue, Oxford University

Institute for Philosophy & Public Policy
George Mason University
Andrew Light, Director
Gwynne Taraska, Research Director
Erik Angner, Fellow
Lisa Eckenwiler, Senior Fellow
Roger Paden, Senior Fellow
Mark Sagoff, Senior Fellow