

ENVIRONMENTAL JUSTICE

Exam Strategies: Focus on one particular principle if the question asks for it and don't write a survey essay. **Choose depth over breadth.** Know the scholarly literature AND the contemporary political context (which is now more relevant than ever!)

Questions to think about:

- Who should bear the burdens of addressing global environmental degradation?
- What would be a fair share of the world's natural resources?

My own position: *Philosophically, there may be a "right principle" of environmental justice. But I think the much more urgent question is which one is politically feasible – the urgency and importance of drastic climate action calls for a principle (or combination of principles) that works. Here I think a combination of PPP, ATP and BPP would be appropriate. They aren't competing principles, but each designed to convince certain entities to take on a larger burden. We should move beyond statist approaches and consider corporations, individuals etc. as well, since there are large intrastate variations.*

DEFINITIONS AND CLARIFICATIONS

- › What is environmental justice (EJ)?
 - > **Butt (2017)** defines: "a context as being environmentally just when:
 - (a) there is an **appropriate degree of protection for the environment**, and
 - (b) where **environmental burdens and benefits are distributed fairly**, both within and across state boundaries and within and between different generational cohorts. Such a definition does not simply require that the costs of environmental bads be allocated in a just manner, it also requires that the production of environmental bads is itself limited to those which are deemed acceptable by one's background account of sustainable development."
 - > This definition indicates that we need to think about environmental justice in light of **intergenerational and international justice**.
 - > "Climate Justice requires sharing the burdens and benefits of climate change and its resolution equitably and fairly. It brings together justice between generations and justice within generations." – **Kanban and Shue (2018)**
- › What are (some) **empirical facts** about climate change?
 - > If we want to have a 50% chance of avoiding a 2°C increase in global temperatures, we've already used up over half of the total level of greenhouse gases that we can.
 - > The distribution of emissions is highly unequally spread: Average US American emits 16.5 tons of CO₂, UK 6.5, India 1.7
 - > Vast majority of greenhouse gas emissions have occurred since the mid-20th century. Roughly half of all the CO₂ released into the atmosphere from human activity since 1750 was emitted between 1980 and 2009 (**Boden et al. 2011**), during that same period global world GDP rose from \$12 trillion to \$72 trillion.
 - > The poorest who are potentially most affected by climatic impacts are least involved in creating the problem.
- › What types of climate responsibilities exist?
 - > **Mitigation** – duties to reduce GHG emissions, e.g. maintain and enhance GHG sinks, transfer to clean technology etc.
 - > **Adaptation** – duties to prevent climate change from causing harm, enabling the adaptation to a changing environment, e.g. building dikes against floods

- [Shue 2017](#): Mitigation more preferable to adaptation because it is treating the cause of the problem, not its consequences.
 - > **Compensation** – can be seen as a secondary duty when the other two fail
- > What is the **Principle of Common, but Differentiated Responsibility** about?
 - > **Principle 7 of the Rio Declaration**, adopted in 1992:

*“In view of the different contributions to global environmental degradation, States have **common but differentiated responsibilities**. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”*

 - Principle is grounded in some shared notion of fairness: Developed countries are disproportionately responsible for historical GHG emissions and have the greatest capacity to act.
 - > Principles of EJ essentially seek to answer the question of what the morally best justified interpretation of this Article is.
- > What are two opposing approaches to environmental justice?
 - > **Isolationist** approach sees environmental justice as distinct from other normative considerations. This is based on a pluralistic theory of justice, i.e. That different distributive principles apply to different goods ([Walzer 1983](#))
 - Obj.: The burdens involved in climate action cross over into various of the distinct spheres of justice ([Caney 2018](#)).
 - > **Integrationist** approach treats environmental justice in the context of wide issues of justice.
 - Adopting this approach gives due concern to those affected without making unjust demands on others who might be burdened by climate policy. **EJ needs to be regarded in the wider context of historical, racial and intergenerational justice.**
 - *“Climate change requires us to consider how to balance our duties to future generations with our duties of global justice to the poor.”* ([Heyward and Roser 2016](#))
 - Because alleviating poverty through economic development typically involves consumption of fossil fuels, there is a **trade-off between reducing global poverty and reducing global emissions.**
 - An integrationist approach seems right as a matter of principle. However, there are people who reject global distributive justice since general distributive concerns only arise within states (relational non-cosmopolitanism, nationalism). To this I would respond that the ongoing relations we have with people from other countries, e.g. through economic partnerships, also impose responsibilities and duties upon us

This is very much something I can simply assume, for the sake of argument.

 - See Young’s Social Connection Model of Responsibility
- > Which role does **historical ignorance** play in the environmental justice debate?
 - > Need to ask: When was it reasonable to conclude that carbon emissions were morally problematic on account of the risk which they posed to the environment?
 - Opinions vary: first Intergovernmental Panel on Climate Change (**IPCC**) **report in 1990?** Svante [Arrhenius’s 1896](#) paper “On the Influence of Carbonic Acid in the Air upon the Temperature of the Ground”? [Axel Gossieries](#) canvasses a range of different possibilities spanning more than 150 years, including 1840, 1896, 1967, 1990 and 1995.
 - > See Objections to the PPP on this.
- > What are **four (competing) principles of environmental justice?**
 Different answers given to the question of “**Who should bear the costs of fulfilling climate obligations?**” or “**How should the total amount of GHG be distributed among parties?**”

Polluter Pays Principle (PPP)

Ability to Pay Principle (ATP)

Beneficiary Pays Principle (BPP)

Equal per Capita emissions (EPC)

PRINCIPLES OF CLIMATE JUSTICE

Important to see the different principles in **relation with each other!**

Any normatively defensible and policy relevant account of climate burden-sharing must provide convincing responses to three key questions (Page 2012).

- i. What are the burdens associated with climate change and policies for its management? (**Burden identification**)
- ii. Which type(s) of agents should bear these burdens? (**Level of agency**)
- iii. How should the burdens identified in i) be shared among tokens of the agent type identified in ii) (**Burden Sharing**)

PPP

- › Arg.: Agents should be responsible for their choices and their consequences. If a state through its environmental impacts causes climatic disadvantage to befall to another state, then remedial action is owed by the former to the latter up to the point where no injustice persists between them. This is a **backward-looking consideration** of distributive justice.
 - > Over 60% of the total amount of CO₂ released into the atmosphere between 1750 and 2008 originated from human activities in 31 high-income developed states (World Bank 2011, Boden et al. 2011)
 - > Consequence: Those who have emitted most in the past should pick up the bill.
- › Obj. (Historical Emissions): Some of the **past GHG emitters are no longer alive**, and it would be unfair to make contemporary generations pay for actions of their ancestors as they had no choice in how much carbon emissions were produced by earlier generations.
 - > Resp. (Empirical): Half of all carbon emissions put into the atmosphere have been **emitted in the past 30 years**, so well within the lifetime of present generations. Hence, even if we accept that this objection against the PPP is correct, it would only knock out those beyond the last 70-80 years. But the rest covers most emissions anyway. This leaves a remainder, however, which could be picked up by other principles of climate justice.
 - > Resp. (Collective Institutions): The most important causal agents for both past and present emissions are states and corporations, which are collective institutions which persist through time and have not significantly changed their behaviour. Duties on polluters continue to exist for them. This brings up the question whether collective responsibility can be passed down through generations in this way → *See Historical Injustice Topic.*
 - > Resp. (Benefits): Current generation continues to benefit from the emissions of past generations. *Note that this is not appealing to the PPP anymore, but rather just making the intuition behind the PPP coincide with what another principle would imply.*
- › Obj. (Historical Ignorance): Emissions were caused by people who were excusably ignorant of the effects of their actions and it is wrong to hold people responsible for the costs of something they could not have known better.
 - > Resp. (Empirical): The dangerous effects of emissions on the earth's climate have been known since the 1990s – at the very **latest**. The first IPCC report was 1990, before that there was already scientific evidence (Arrhenius 1896).

- [Zellentin \(2014\)](#) challenges the idea that GHG emissions associated with the Industrial Revolution really were innocent: the relevant agents could have been expected to know that the path of action they were about to embark on was a) not fully under their control and b) the impact was not directly foreseeable.
 - > Resp. (Normative): Agents can be liable to bear costs if they act in the knowledge that they do not know what the consequences of their actions *might* be. This does not necessarily make us blameworthy, but they are still liable for the costs ([Zellentin 2014](#)). Thus “*responsibility and blameworthiness can come apart.*”
 - > Resp. (Relevant Counterfactual): Agents **can be liable when they are ignorant of the consequences of their actions, if they would have acted in the same way anyway** ([Butt 2017](#)). Thus, Butt claims that it is still appropriate to hold present day parties liable for the costs of their actions because even if they had known the likely consequences of their actions, they would have carried on regardless.
- Example (Pesticides): A firm sells a pesticide, which uses either substance X or Y. After finding out that X causes health problems, they still continue to use X and Y in their products. It then transpires that substance also causes health problems.
- [Butt’s](#) claim is that the firm is obligated to pay compensation to the people who got ill due to both X and Y, *because they would have kept using Y even if they’d known about its effects*. This is importantly different from the case where the firm had excluded X from its production and only used Y – in this case, the firm would be innocent of wrongdoing.
 - Plausible to think that this **relevant counterfactual holds because emissions from industrial states** have not decreased significantly even since it became impossible to plead ignorance.
 - Worry by Caney: This is a **violation of procedural justice** – one cannot make agents liable about things that they did not do.
 - Response: But we can at least hold them accountable for what states and corporations are doing *right now*: continuing to pollute.

ATP

- > Arg.: Those who have the greatest ability to pay for climate change mitigation and adaptation should pay for it – i.e. the richest countries pay the most. This is a **forward-looking** consideration of distributive justice. The ATP principle is an application of a deeper normative principle justified by [Shue \(1999\)](#) who writes that “*among a number of parties, all of whom are bound to contribute to some endeavour, the parties who have the most resources should contribute the most to the endeavour.*”
 - > **Real-world policy relevance**: Only 31 high-income states accounted for 65% (or roughly \$41 trillion) of global GDP in 2010 ([World Bank](#)). The ATP is also articulated through the “respective capabilities” element of the UNFCCC’s commitment to climate action ([UNFCCC 1992](#))
- > Obj.: Unfair to hold present generations responsible for historic emissions, one should not be obliged to pay for something that is not one's own fault.
 - > Resp. 1 (Duties carry across generations): Even if it is not fair to hold someone responsible for what has been done by someone else, this is irrelevant for the case of environmental justice, because one generation of a rich industrial society is related to other generations, past and future – they are all participants in enduring economic structures and benefits and costs, as well as rights and responsibilities carry across generations ([Shue 1999](#)) → *See BPP*
 - > Resp. 2 (History-Sensitive ATP): The wealth of the advantaged has come about in climate-endangering ways. Or even in unjust ways more generally, and hence they need to pay more. ([Caney 2014](#))
 - This seems to combine the ATP with the PPP.
 - > Resp. 3 (Someone has to pay): Always someone has to pay that isn’t their fault completely: Either the advantaged who are able to pay but might not have caused the entirety of the problem, or some of the poor which have contributed to pollution, or, in a business as usual scenario, climate victims (including future generations) who did not cause the problem either. And the burden imposed on climate victims

would, comparatively, be the biggest one. It is thus most fair if those who are most able to do so (Caney 2014). This coincides with the general principle mentioned above by Sher.

- > The ATP may be seen as picking up the Remainder left by the PPP, i.e. the amount of GHG emissions which are not attributable to present-day parties, but rather result from historical emissions or non-anthropogenic climate change.

BPP

- > **Arg.:** It would be wrong to profit from activities that have harmed others and leave these harms unrectified. Thus, **those who have benefited from the activities should pay for the arising costs** – in this case, states should pay relative to how much they have benefitted from emitting.
 - > **Consequence:** States should shoulder burdens associated with responding to climate change according to the extent that they have derived economic benefits from activities like fossil fuel energy usage (Caney 2006, Page 2008); the disgorged benefits should remediate the suffering with climate change accruing in other states.
 - > **More precisely:** If a state benefits from activities within or beyond its borders that impose climatic disadvantage on another state, then the former must remediate the latter's disadvantage by surrendering benefits up to the point where the benefits that provide the basis of the remedial duty are exhausted (Page 2012).
 - This arises from a more general principle which requires that duties of remedial justice be assigned to agents who have profited from activities which impose undeserved disadvantages on other agents (Anwander 2005, Butt 2007)
 - BPP holds present-day states remedially responsible for tackling climate change *even if* these states are not themselves plausibly held responsible (fault-based or non-fault-based) for the way in which GHG emissions gave rise to climate change.
 - > Necessary to give a **more refined account of the BPP**, because it is not plausible that *all* benefits implicated in some way to the creation of climate change be surrendered by states. One proposal (Page 2012) would be:
 - *Those states unjustly, but not wrongfully, enriched by activities that cause climate change should pay.* Captures the deep intuition that agents should not profit from injustice.
- > **Objection (Chronological Unfairness):** It is unfair to later generations to require them to surrender benefits in order to discharge their BPP duties when earlier generations have enjoyed similar benefits and did not surrender them. The BPP seems to require that present states need to pay the debts of all previous generations as well as their own, since many beneficiaries are now dead (Caney 2006)
 - > **Response:** BPP is naturally interpreted to embrace a “no debilitating cost” proviso: States can only be asked to surrender benefits which they actually possess and can give up without significant harm to their citizens or to the survival of just institutions (Gosseries 2004)
- > **“Objection” (Non-Identity Problem):** The activities which contributed to climate change also played a necessary role in the coming into existence of the current citizens of all states, such that none of these citizens would have been born in the absence of industrialization. This seems to undermine the BPP as it calls the relevant “enrichments/benefits” and “disadvantages” into question (Page 2008). As Caney says: *“We cannot say to people, “You ought to bear the burdens of climate change because without industrialization you would be much worse off than you currently are.” – this is precisely because the “you” in the previous sentence would not exist*
 - > **Response 1:** Distribution of climate burdens among *states* does not give rise to the NI problem, their existence and identities would not be reshuffled (argument from collective institutions).
 - > **Response 2:** Many of the current benefits associated with CO2 have accrued in the lifetimes in existing individuals and at least some of the associated damages will impact on persons who already exist (Gosseries 2004, Page 2008)

- › **Objection (Indirect benefits):** There are benefits from emitting which are provided even to those states that have polluted very little, e.g. cheaper imports due to increased production in polluting state.
 - › Maybe a structural injustice (Young) argument appropriate here? Even though the state did not pollute itself, it contributed to pollution executed in another state – not just territory counts but also what effect your actions have!

BPP IN PRACTICE

- › In order to properly operationalise the BPP, one needs to distinguish between what Butt (2009) calls “**automatic benefits and costs**” (outcomes uniquely created by fossil fuel driven industrialization) and “**non-automatic benefits and costs**” (outcomes which would have occurred anyway, or from sources unrelated to climate change producing activities)
 - › Without this distinction, we cannot differentiate between benefits that states should sacrifice, and those which they should be allowed to retain. **The PPP and ATP do not face problems of benefit identification and isolation.**
- › Page (2012) suggests a method of operationalizing the BPP based on *national wealth*, which is blind to the categorization of this wealth, as wealth, rather than income, is a more suitable indicator for the purposes of the BPP: It is connected more closely to the determinants of climate change (like the total stock or atmospheric GHG rather than the annual flow)
- › The BPP seems to be quite hard to implement in practice. Thus, unless a convincing and practicable account of BPP is provided, the BPP is only normatively relevant if prior obligations defined by the PPP and ATP have been exhausted and climate disadvantages remains.

EPC

- › **Arg.:** States should pay equally (in proportion to their population), because the problem is global and because every human has an equal right to use the atmospheric resource.
 - › **Objection (Historical emissions):** Neglects historical emissions (the appeal of the PPP). But note that there is also a history-sensitive version of this.
 - › **Objection (Different needs):** Insensitive to different agents’ needs, the satisfaction of which might require different emission levels (Caney 2011). Instead, we should favour an integrationist approach to climate justice. He argues that we cannot treat the question of how to distribute GHG emissions in isolation but must **locate them in a more general theory of justice**, which includes principles of global, intergenerational and historic injustice.
 - › **Obj.:** (Misunderstanding of the global commons) Blomfield (2013) criticizes that a number of arguments in favour of equal shares are based on a misleading analysis of climate change as global commons problem. GHG assimilation systems includes other elements (e.g. forests, soils...) which fall within state territories and are maintained by them. Factoring this in would push us away from an equal distribution (and more to something like what states are able to do, taking into account what they already have done).

HYBRID VERSION (CANEY)

- › Caney (2010) argues that the PPP is limited, because i) it cannot cope with the effects on the climate which result from earlier generations no longer alive, ii) climate change is not only limited to anthropogenic one and iii) there is no perfect correlation between high emissions and wealth, which means that in some instances making people pay would perpetuate poverty.
- › Thus, he proposes a **hybrid model** which has two main principles:
 - › **Poverty-sensitive PPP:** Persons should bear the burdens of climate change that they have caused so long as doing so does not push them beneath a decent standard of living.
 - › **History-sensitive ATP:** Climate burdens should be borne by the wealthy, but we should distinguish between those whose wealth came about in unjust ways and those whose wealth came about in ways not

unjust - and we should apportion greater responsibility to the former. Note here that, using an **integrationist approach**, the focus is not just on climate justice but also on other morally relevant historical injustices.

- › Implications of this hybrid model:
 - > Due to an integrationist approach, focus is not only on climate injustices but also on other morally relevant historic injustices
 - > The ATP resolves the “remainder” left by the PPP.
 - > The **policy implications** of this view are that it can be applied to all kinds of different policy measures such as carbon quotas, trading schemes, carbon taxes etc.
 - > It is not the global poor who should pay, but because they are disadvantaged they would be exempted by the ATP component. Rather, there would be some global adaptation fund which is funded primarily by those who have emitted excessive amounts of GHGs
 - > BUT this hybrid model does not ascribe particular responsibilities to individuals
 - Rather than about

Note: *The hybrid model has become a bit mainstream now and some elements perhaps even trivial – e.g. the fact that the PPP is poverty sensitive is not a major point (according to Dan). Try and think about how to scrutinize it.*

RELATIONS BETWEEN THE PRINCIPLES OF CLIMATE JUSTICE

The PPP, ATP and BPP **need not be seen as competing principles**. Rather, they can be approached from the perspective of how any principle can convince certain entities to take on a greater burden. Though it is philosophical practice to argue for one particular principle and to try and rebut others, the urgency and importance of climate action may mean that in practice, it is **better to have multiple mutually reinforcing arguments in play** for why there might be a certain obligation.

- › **Shue (1999)** aims to show that **three different principles of fairness all converge toward the same practical conclusion**, namely that the costs of mitigation, adaptation and compensation need to be initially borne by the wealthy, industrialized states.
 - > The first principle, that those who in the past have taken an unfair advantage of others by imposing costs upon them without their consent, says that those who have contributed most to climate change at the cost of others should pay – these are those countries which industrialized.
 - > The second principle, that those with the greatest ability should pay, says that wealthy industrialized states should bear the burdens of climate change.
 - > The third principle, that in situations of radical inequality fairness demands that those with less than enough for a decent human life should be provided with enough, says that initially, the cost of climate change must be borne by affluent states.

The principles coincide: Second and third principle have the same reason, namely to avoid making those who are already worst-off yet worse off. First principle and third principle rest on the same assumption, namely that an existing inequality is already unjustified.

- › **Boran (2019)** also points out that **most of the literature supports the conclusion that developed countries should carry a heavier burden**
- › **BPP and PPP may diverge:** Whilst for the PPP the key issue is the amount of damage inflicted on the climate system, for the BPP it is the benefit that states incurred, independent of how much they have caused themselves. The PPP is a purely backward-looking principle, but the BPP captures both forward- and backward-looking elements ([Page 2012](#)).
 - > **Example** (from Historical injustice): Portugal is a country which has done much historic injustice in terms of colonial actions, but did not benefit as much in the present from it

- › **BPP and ATP differ:** For ATP the source of differential ability to respond to climate change does not matter. The only thing that counts is that states are able in the present and future. But the BPP pays much more attention to the explanation of *why* wealthy states should be prepared to bear a greater burden.
 - › This is because the BPP is about corrective justice, rather than just distributive justice.
- › **PPP and ATP may coincide:**
 - › Those who polluted much in the past due to industrializing have accumulated wealth through it, which they could now use to pay for the resulting costs on the climate.
- › **Ideal principle vs. practicality (see below: *Philosophical vs. Political problem*)**
 - › BPP requires disaggregation of benefits into those which should be disgorged and those which may be retained by states
 - ATP and PPP do not face this problem: PPP enjoys practical advantage in that well-established protocols exist on estimates of cumulative GHG of UNFCCC parties; ATP can be operationalised based on data on per capita or aggregate national income.
 - › But there exist no protocols on how UNFCCC states have been unjustly enriched in financial terms from the activities that cause climate change (Page 2012)

BEYOND STATIST APPROACHES

- › Most theories and principles of environmental justice focus on state-centric accounts. There are multiple reasons for this:
 - › States are the **ontological units at the heart of existing domestic and international law** on climate change, they are the signatories and ratifiers of treaties and conventions (Page 2012)
 - › States are currently the only entities operating internationally which possess sufficient longevity, financial resources and capacity to bear required burdens – individuals are not capable of this.
- › However, being statist cannot mean that we hold states to account for all the pollution that has occurred in their territory.
 - › Example: It wouldn't be fair to say that it is all "China's fault" just because it has all the factors on its territory.
- › Why should we **move beyond statist approaches**?
 - › There are large intrastate variations – i.e. a stark disparity between how much poor and rich regions within a state emit. Adopting a non-statist approach highlights the capabilities of each individual (Harris, Chow, Karlsson 2012)
 - We can **apply the principles of climate justice to affluent individuals, or corporations even in developing countries**, holding that they are under certain responsibilities given their track record of high emissions and benefitting them from, as well as their ATP!
 - Could be achieved via progressive taxation systems with revenues being used for climate mitigation and adaptation measures.
 - › **Case Study China:** The world cannot address climate change effectively without much more action from China. Yet, there is a growing misfit between historical responsibility and current emissions of China, which means it cannot rely much longer on its "developing country" argument. We should go beyond a 'statist' view on climate diplomacy and see the dichotomy less between developed and developing states but rather between affluent and poor *people*.
 - This would make progress towards climate progress and break the "you go first" mentality that otherwise deadlocks international collaboration.
 - China's stance in international climate change dialogue thus far has been that it **identifies itself as a developing country** and argues that the responsibility for climate change mitigation should reside primarily with developed countries - hence rejects mandatory emission reduction targets.

- Using a statist approach allows countries like China, which have a comparatively low per capita emission rate, to reject climate responsibilities by emphasising its sovereign right to economic development and the state's low historical emissions.
- › Furthermore, **climate change causes and effects are gendered** (Perkins 2018)
 - > On average, women are less educated, poorer, less mobile but long-lived than men, which are all risk factors for vulnerability to climate change
 - > Partly because of relative poverty compared to men, women's lower consumption levels make them less responsible for fossil fuel consumption (Cohen 2017)
- › Butt (2016) argues that "*the state is not able to directly legislate its way to environmental justice*" – instead, it **needs the non-coerced cooperation of a wide range of non-state actors** (individuals, NGOs, corporations, etc.). It needs to be a movement of the entire society!
 - > Though the state can legislate and encourage environmentally friendly choices of individuals, e.g. via taxes and subsidies, its powers are limited by the possibility to scrutinize how individuals live their lives (it might not be that desirable either)
 - The pursuit of environmental justice requires that domestically and internationally, an **ecological ethos** is shared (Butt 2016). It requires that **groups and individuals are motivated in their daily lives to act with non-self-interested concern for the environment.**
 - > This is reflected in the **success or failure of intergovernmental climate negotiations**: Failed negotiations in Copenhagen 2009 wanted to achieve top-down distribution of burdens, while successful Paris Agreement 2015 is significantly more bottom-up. What is more, much of climate action is driven by actors in the NGO sphere, not necessarily by government actors.
- › Role of non-state actors: individuals, NGOs, corporations, social protest movements
 - > Evans (2009) writes that **stressing the role of such non-state actors in accounts of environmental governance** "*provides a third way between the two poles of market (laissez-faire, individuals act according to self-interest) and state (command and control system), incorporating both into a broader process of steering in order to achieve common goals.*"

All of this goes to show that there are significant intra-state variations and that focusing purely on states is not enough.

- › What are **objections** to moving beyond statist approaches?
 - > State sovereignty promises to make natural resources work for the citizens of each country, even if doing so will do nothing to rectify inequalities between countries (Armstrong 2017). Practically, it may be much more feasible to put resources to work for the poor or a country than to achieve the global egalitarian goal.
 - > States are the relevant entities in international law and politics.

NON-IDEAL THEORY

- › In its broadest sense, **non-ideal theory asks how to respond to an imperfect world** (Heyward and Roser 2016). It relaxes the two assumptions which Rawls outlined in his conception of distributive justice, a task of ideal theory:
 - > **Full compliance** – that all individuals and institutions act according to the principles of justice & **Favourable circumstances** – things like citizens having suitable education and skills, socio-economic conditions that sustain a constitutional democracy etc.
 - > Thus, Non-ideal theory can be understood as a form of political theorizing that compares different responses to (i) **failures of agents to comply with the demands of justice** and (ii) **unfavourable circumstances.**

- › The state of international law rests primarily on a patchwork of multilateral treaty agreements, which means that states can evade their obligations with relative ease (Gardiner 2010). Though it would be exaggerated to say that there is *no* compliance with international law, one can safely say that there is **uneven and patchy compliance** in a range of different case (Weiss and Jacobson 2000).
- › **What to do about non-compliance?**
 - › Caney (2016) offers a range of possible responses:
 - i. Modifying the target by lowering the goal of climate policy
 - ii. Assigning **additional duties** to agents that are complying with their duties, i.e. those agents should go beyond performing the responsibilities that were assigned to them, but also fulfil duties of those who have failed to fully comply with theirs
 - a. Since climate change is about cumulative emissions (and not about who emits them necessarily), this might help to mitigate.
 - iii. Try to induce duty-bearers to act on their climate duties by **relaxing the ethical demands** that would normally constrain how they discharge these duties
 - a. Example: Allowing participation in carbon-offsetting schemes which have some negative side-effects
 - iv. **Design the social, economic and political context such as to induce greater compliance**
 - a. Example: creating sanctions for non-compliance, lowering the costs of clean energy and increasing the costs of fossil fuel, civil disobedience etc.
- › Cripps (2013) argues individuals in collectives that fail to cooperate to fulfil their duties still have promotional duties to work toward the **fulfilment of the collective duties**
 - › This is because **coordinated action is more efficient than individual action** (such as cutting down on meat consumption, cycling instead of using car etc.)
- › **Philosophical vs. Political** problem
 - › Philosophically, we want to find out what the “right” principle, as a matter of justice, is.
 - › But **politically, we want to find one that works** – i.e. trying to persuade countries that they do have responsibilities. We are trying to give them any reason we have, which can be a combination of different principles. Thus, the principles should be seen as complementary.
 - “*You are benefitting from past emissions, you are also rich and able to pay, ...*”
 - The job of the philosopher then is to find *any* argument that they can, because there really is no time left anymore. **When the stakes are high, we might need to deviate from ideal principles.**
 - › Perhaps we **adopt different principles for the type of job which we have to employ in a certain political context.**
 - Political leaders may be more susceptible to an argument from backward-looking accounts (PPP) than they are to forward-looking accounts like ATP, because it appeals to the intuition that those who made a mess should also clean it up. ATP however does not make reference to such reasoning.
 - But then the ATP could be better suited for agents like wealthy individuals, philanthropes, corporations which seek to improve their image/branding...

LEGAL CASES

- › *Urgenda vs. Dutch Government*
 - › Urgenda Foundation, an environmental NGO, sued the Dutch government for its ongoing contribution to climate change at the end of 2013. They argued that the government was not doing enough to regulate and curb Dutch GHG emissions, and so it was negligent toward its citizens
 - › District Court of The Hague issued its decision in June 2015, favouring Urgenda and rejecting the state’s defences. Its decision established that there was a “**legal duty to protect citizens** from impacts of climate

change”, and this duty was enforceable by Court. It cited several components of international law, like the no-harm rule, principle of fairness, doctrine of hazardous negligence...

- > This case shows that states not only have duties arising from the principles of PPP, ATP, BPP, but also because they have a **legal duty to protect their own citizens from harm.**

MAIN AUTHORS

ARMSTRONG, JUSTICE AND NATURAL RESOURCES: AN EGALITARIAN THEORY (2017) – [LINK](#)

CANEY, CLIMATE CHANGE AND THE DUTIES OF THE ADVANTAGED (2010)

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