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Chapter 2

Climate duties, human rights and historic emissions

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The Fifteenth Conference of the Parties (COP15) to the United Nations Framework Convention on Climate Change (UNFCCC) did not produce the hoped for successor to the Kyoto Protocol. Instead, ‘Decision 2’ of COP15 ‘takes note of the Copenhagen Accord of 18 December 2009’ (UNFCCC 2009, p. 4). The Copenhagen Accord is an agreement among ‘Heads of State, Heads of Government, Ministers, and other heads of … delegations’ present at COP15, but it is not a Protocol to the UNFCCC (UNFCCC 2009, p. 5). Instead, it is a voluntary agreement that sets no emissions targets for states but rather asks them to submit to the UNFCCC secretariat details of their own planned voluntary emissions reductions or mitigation actions. So, while the signatories recognise that ‘climate change is one of the greatest challenges of our time’, they have not signed up to mandatory emissions reductions (UNFCCC 2009, p. 5).

China’s submission to the secretariat states that:

China will endeavor to lower its carbon dioxide emissions per unit of GDP by 40-45% by 2020 compared to the 2005 level, increase the share of non-fossil fuels in primary energy consumption to around 15% by 2020 and increase forest coverage by 40 million hectares and forest stock by 1.3 billion cubic meters by 2020 from the 2005 levels. (National Development and Reform Commission of China 2010)

These commitments impose no absolute limits on China’s greenhouse gas emissions.

Moreover, the Chinese submission emphasises that:

¹ I would like to thank the UK Arts and Humanities Research Council for funding a research project, ‘Global Justice and the Environment’, and subsequently a period of research leave for me to work on ‘Global Justice and Climate Change’, during which many of the ideas presented here were developed. I would also like to thank my colleagues on the research project, especially Simon Caney, Pia Halme and Clare Heyward, for many helpful discussions of these issues.
The above-mentioned autonomous domestic mitigation actions are voluntary in nature and will be implemented in accordance with the principles and provisions of the UNFCCC, in particular Article 4, paragraph 7. (National Development and Reform Commission of China 2010).

The voluntary character of the Chinese mitigation actions is important, but the reference to Article 4, paragraph 7 of the UNFCCC may be even more important. This paragraph states that:

The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties. (UNFCCC 1992, Article 4, paragraph 7)

The reference to this paragraph suggests that China’s voluntary commitments are contingent in two respects. First, they are contingent on funding and technology transfer from developed states. If developed states do not provide finance and technology, China should not be expected to undertake its voluntary mitigation actions. Second, they are contingent on their compatibility with China’s ‘first and overriding priorities’ of ‘economic and social development and poverty eradication’. If China must compromise either its economic and social development or poverty eradication to undertake successfully its voluntary mitigation actions, it should not be expected to undertake those actions.

China’s submission to the UNFCCC secretariat reflects the government’s more general position on the allocation of the costs of mitigation and adaptation – or, more generally, the allocation of ‘climate duties’. China recognises the significance of the threats posed by climate change but it insists that the costs associated with climate change should be borne primarily by the developed states. The Chinese position, like the position of many states in the global South, affirms two important principles. First, the principle of historic responsibility – or the polluter pays principle – affirms that the costs associated with climate change should be met by the developed states (or the global North) because they are historically responsible for most of the greenhouse gas emissions that have causally contributed to anthropogenic climate change. The current and future allocation of the costs
associated with anthropogenic climate change should be based on each state’s cumulative historic emissions. Second, the developing states have a right to development. They should not be required to sacrifice development to address the problems associated with climate change. Therefore, the costs associated with climate change should be borne only by those who can afford to bear those costs – namely, the developed states.

In this chapter, I will outline an account of ‘climate justice’ that addresses the problem of fairly allocating the costs associated with climate change. In the first section, I begin from a particular interpretation of the notion of a right to development. The proposed interpretation is based on the ‘Greenhouse Development Rights’ approach suggested by Paul Baer and his collaborators. I suggest that Baer’s individualistic interpretation of the right to development leads us to a human rights-based approach to climate justice. I outline two further rights that follow from the human right to development. In the following sections, I consider how an account of climate duties might be developed from these rights-based commitments. In section two, I consider Onora O’Neill’s well-known objection to rights-based theories of justice, namely, that they do not tell us how to allocate the correlative duties. I consider a response to this objection and I propose an account of climate duties, which distinguishes three kinds of duty that should be included in a full theory of climate duties.\(^2\)

In the remaining sections of the chapter, I consider these three kinds of duty in more detail and in relation to historic emissions. In section three, I consider what I call the ‘general climate duty’, namely, the duty to promote effective institutions for the fair specification and allocation of particular climate duties. More specifically, I consider when this duty might have been first acquired by citizens and states in the global North. In section four, I consider principles for specifying and allocating climate duties under just (fair and effective) institutions. In particular, I consider the claim that the global North should be held responsible for historic emissions because its citizens have exceeded their equal per capita share of emission rights. I argue that the principle of equal per capita emissions should be rejected. In section five, I outline an account of the duties of rectification that anyone who fails (or has failed) to comply with the general climate duty should incur and I suggest that this has important implications for how we think about arguments from historic responsibility. Section six summarises the arguments of the chapter.

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\(^2\) I have developed a related but different account of climate duties in Bell (2010). The account developed in this chapter is intended as an exploration of the implications of starting from a human right to development.
The right to development and basic human rights

The right to development is a controversial idea, which may be interpreted in various ways. Paul Baer et al. have suggested a way ‘to make the abstract notion of a right to development a reality’ in the context of climate change (Baer et al. 2007, p. 16). They argue that:

In our climate-constrained world, the right to development is not a right to growth, as such, in the quest for indefinitely expanding wealth. It is, rather, a right to a particular level of development, a modest but dignified level of well-being. We define this level by way of a development threshold. Below this threshold, individuals must be allowed to prioritize development (Baer et al. 2007, p. 16).

Baer et al. make clear that they understand the right to development as ‘a right of individuals, not countries’ (Baer et al. 2009, p. 269; see also Baer et al. 2007, p. 18). In other words, the right to development is an individual human right to a ‘modest but dignified level of well-being’. Baer et al. recognise that any particular claims about the level at which the ‘development threshold’ should be set, or about what constitutes ‘a modest but dignified level of well-being’, are likely to be ‘somewhat arbitrary’ (Baer et al. 2007, p. 17). However, they suggest that individuals with an income of less than $7500 (purchasing power parity adjusted) have the right to prioritise their own development over other issues (Baer et al. 2009, p. 269). In other words, they suggest that a ‘modest but dignified level of well-being’ may not be available to individuals with an income below this level but will normally be available to individuals with an income above this level.

Baer’s individualistic understanding of the right to development may not be in keeping with more common statist conceptions of the right to development. However, it seems difficult to resist the claim that we care about development because we care that individuals are able to achieve a ‘modest but dignified level of well-being’. If it is plausible to understand the right to development as an individual human right to a ‘modest but dignified level of well-being’, we might usefully consider the implications of this right for a theory of climate justice.

I want to suggest that there are two important climate-related rights that follow from this understanding of the right to development. First, the right to a ‘modest but dignified level of well-being’ implies a right to the necessary means to achieve that level of well-being. For
example, if burning fossil fuels is the only available means for a person to keep warm or to meet other important ‘needs’ (which are constitutive of a ‘modest but dignified level of well-being’), the right to development implies that they have a right to burn fossil fuels. In other words, the right to development implies that individuals below the development threshold should not be required to limit their greenhouse gas emissions unless they have alternative means readily available to them that would allow them to achieve a ‘modest but dignified level of well-being’ without burning fossil fuels. As Baer et al. suggest, the right to development implies that those below the development threshold ‘should be exempt from any requirement to pay for climate policy’ (Baer et al. 2009, p. 269).

Second, the right to a ‘modest but dignified level of well-being’ implies a right not to be reduced below a ‘modest but dignified level of well-being’ by the adverse effects of anthropogenic climate change. The fourth IPCC report states that:

The health status of millions of people is projected to be affected through, for example, increases in malnutrition; increased deaths, diseases and injury due to extreme weather events; increased burden of diarrhoeal diseases; … and the altered spatial distribution of some infectious diseases. (IPCC 2007, p. 48)

We can expect that climate change will cause many people to die from malnutrition, extreme weather events (including flooding, heat waves, wildfires and hurricanes), diarrhoeal diseases, infectious diseases and lack of water. We can expect that the well-being of billions of other people will be affected very adversely by climate change. Human emissions of greenhouse gases will make (and already have made) a significant causal contribution to many people remaining or being brought below the development threshold throughout the world (IPCC 2007, p. 33), and particularly in some areas of the global South. In short, anthropogenic climate change might now be considered to be a ‘standard threat’, against which individuals should be protected, to the right to a ‘modest but dignified level of well-being’ (Shue 1980, p. 13).³

So far, I have outlined a human rights interpretation of one of the two key principles advocated by China and other developing states, namely, the right to development. Building on the work of Paul Baer and his colleagues, I have suggested that the human right to a

³ For a more detailed defence see Bell (2011a). For related but different discussions of a human right not to suffer the ill-effects of climate change see, for example, Caney (2006, p. 263); Caney (2008, p. 539); Caney (2009); Shue (1999, p. 39); Vanderheiden (2008, p. 252). The threat posed by climate change to human rights has also been identified by the UN Office of the High Commissioner for Human Rights (United Nations 2007).
‘modest but dignified level of well-being’ implies two further climate-related rights. First, the right of those below the development threshold to be ‘exempt from any requirement to pay for climate policy’. Second, the right not be held or forced below the development threshold as a consequence of the adverse effects of anthropogenic climate change. In the remainder of this chapter, I propose to explore the implications of this rights-based approach for a theory of climate justice. In particular, I will consider how we might develop an account of climate duties that are correlative to the second derivative right that we have identified (i.e., the right not to be held or forced below the development threshold as a consequence of the adverse effects of anthropogenic climate change) while also respecting the first derivative right (i.e., the right of those below the development threshold to be ‘exempt from any requirement to pay for climate policy’). In other words, my aim is to develop an account of climate duties that begins to tell us who is required to do what to prevent the harms associated with climate change. This account will help us to judge China’s responsibility, or lack of it, for climate change. I will pay particular attention to the place of the principle of historic responsibility – the other key principle advocated by China and other developing states – in a theory of climate duties. Does a theory of climate justice grounded in the right to development support the Chinese claim that the costs associated with climate change should be borne primarily by the global North because the global North is historically responsible for climate change?

The general duty and particular duties
Onora O’Neill has argued that the problem with rights-based theories is that they do not tell us who has the duty to protect rights (see, for example, O’Neill 1986, pp. 101-3; 1996, pp. 129-35). O’Neill’s particular target is positive rights, such as rights to welfare or education, because she assumes that we can specify the duties that are correlative to negative rights, such as the right not to be killed or injured. However, O’Neill’s concern about unspecified duties extends to negative rights when those rights can be violated by the cumulative actions and collective practices – working through complex causal chains – of many millions of people. In the context of anthropogenic climate change, a human rights-based theory does not seem to tell us what we most need to know: Who has a duty to do what? When do a

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4 Hayward has argued that the problem of unspecified duties extends to all negative rights, including, for example, the right not to be tortured: ‘the circumstances under which a right not to be tortured is violated are not brought about simply by numbers of individuals failing to recognize their negative duty, but rather are a result of a systematic organization of power within which specific responsibilities are murkyly dispersed’ (Hayward 2005, p. 53).
person’s greenhouse gas emissions, or other actions, violate the human right to development of victims of anthropogenic climate change?

In reply to O’Neill’s concerns, Elizabeth Ashford has suggested that we can identify a duty that is correlative to human rights – namely, the duty to promote and maintain effective institutions that will fairly ‘specify and allocate’ the particular duties needed to ensure the protection of human rights (Ashford 2007, p. 217). If we take human rights seriously and we do not have clear and widely acknowledged criteria for specifying and allocating correlative duties, then we should recognise a duty to promote and maintain effective institutions that will fairly specify and allocate the duties needed to ensure the protection of human rights. Let us call this the ‘general duty’. In the context of climate change, we might recognise a ‘general climate duty’ – namely, the duty to promote and maintain effective institutions that will fairly specify and allocate the particular duties needed to ensure the protection of the human right to development from the threat posed by anthropogenic climate change. The general climate duty is implicit in the broader general duty once we recognise climate change as a ‘standard threat’ to the human right to development (Shue 1980, p. 13).\(^5\)

The main problem with both the general duty and the general climate duty is that they still do not specify or allocate particular duties to individuals. Instead, they attempt to defer the problem by requiring us to promote institutions that will solve the problem for us by fairly specifying and allocating particular duties to individuals. However, the problem cannot be so easily deferred for two reasons. First, the duty to promote institutions that will fairly specify and allocate particular duties to individuals might plausibly be re-described as a duty to promote just institutions. However, I can only fulfil my duty to promote just institutions by promoting a particular substantive conception of justice. However, a particular substantive conception of justice will be (or will entail) an account of how particular rights and duties should be specified and allocated to individuals. In other words, we can only fulfil our duty to promote substantively just institutions if we already have an account of how particular duties should be specified and allocated to individuals. The general climate duty cannot be fulfilled unless we have a prior account of (or principles for) the fair specification and allocation of particular duties.

The second problem with the general climate duty is that it produces an additional problem of specification and allocation – namely, the problem of specifying and allocating the general climate duty itself. If the promotion of fair and effective (or just) institutions is a

\(^{5}\) For a fuller discussion of the role of ‘standard threats’ in an account of human rights and correlative duties, see Bell (2011a).
collective endeavour, we will need to work out what the duty to promote just institutions requires from particular individuals at particular times and places. It is, for example, plausible that the general duty requires different actions from President Obama than it does from the average US citizen. Similarly, it might require different actions from the average UK citizen than it does from a person living on less than $1 per day in a developing nation. In other words, a full account of the general climate duty will include an account of the fair specification and allocation of the duty to promote just institutions.

These important concerns about the general climate duty might lead us to the conclusion that we should look for an alternative response to O’Neill’s criticism of rights-based theories. However, I think that would be premature. We have seen that the general climate duty cannot offer a complete solution to the problem of identifying the duties that are correlative to basic human rights. However, it does offer us a useful way of approaching the problem. The general climate duty suggests a particular structure for an account of each person’s particular duties. It points us toward two sets of particular duties that a theory of human rights-based duties will need to specify and allocate. First, we need principles for the allocation of the duty to promote just institutions. These principles will tell us how to determine who should do what to promote just institutions. Second, we need principles for the specification and allocation of particular duties (to protect the human right to development from the threat posed by anthropogenic climate change) under fair and effective institutions. These principles will tell us who should do what when we have just institutions to protect the human right to development.

In addition, a theory of human rights-based duties may need to specify duties of rectification if our duty to promote just institutions is not fulfilled. So, the third part of an account of human rights-based duties should include principles for the specification and allocation of duties that arise from the failure of some people to comply with their particular duties to promote just institutions. For example, if the failure of some of us to comply with our duty to promote just institutions prevents or delays the development and implementation of just institutions, we need to work out how (if at all) this affects the future duties of both the compliers and the non-compliers.

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6 We might also need principles to specify and allocate duties when some people do not comply with just (or fair and effective) institutions. However, for institutions to qualify as ‘effective’, and therefore as ‘just’, they must prevent large-scale non-compliance. I will not address the problem of non-compliance under just institutions in this chapter. Instead, I make the simplifying assumption that we can make fair institutions effective by designing appropriate penalties and punishments for non-compliance.
In the next three sections, I will consider how we might begin to develop these three parts of an account of human rights-based duties in the particular context of climate change. More specifically, I will consider the role and relevance of historic emissions in the proposed account of climate duties. In section 3, I consider when we might first have acquired the general climate duty. I relate this discussion to the claim that the global North should pay the costs of anthropogenic climate change because it is morally culpable for its historic emissions, as argued by Chinese diplomats. In section 4, I consider one account of how climate duties should be allocated under just institutions. I argue that we should reject the idea of a universal right to equal emissions (or ‘equal emissions over time’) and, therefore, I suggest that all historic emissions should not be counted equally. In section 5, I consider duties of rectification. I outline some important duties of rectification and I suggest that it is the recent historic emissions of the global North that are likely to generate the most significant duties.

**The duty to promote fair and effective institutions**

The general duty to promote fair and effective institutions for the protection of human rights is a duty that has existed for as long as human rights have existed. However, the general climate duty to promote fair and effective institutions for the protection of the human right to development from the threat posed by climate change may be better understood as a newer duty. The human right to development, which is threatened by climate change, is not a new human right that has only come into existence with this environmental problem. It is a human right that can be violated in many different ways. Anthropogenic climate change is a new threat to – or a new way of violating – that right. Therefore, the original formulation of human rights, or the human right to development, could not plausibly have identified climate-related duties. This is a case where changes in ‘circumstances which were not predicted … give rise to a new duty which was not predicted in advance’ (Raz 1986, p. 185). The duties that are correlative to human rights, including the right to development, will change over time because the ‘typical major threats’ will change over time (Shue 1980, p. 33). Anthropogenic climate change is a new way of violating human rights, which gives rise to new duties, including a new general climate duty to promote fair and effective institutions for the protection of the human right to development from the new threat posed by anthropogenic climate change. This is a normal result of the ‘dynamic character’ of human rights (Raz 1986, p. 185).
The general climate duty is a relatively new duty, but when did it come into existence? I want to suggest that two conditions are relevant to determining when the general climate duty came into existence. I want to suggest that two factors are important here. First, we have seen that the general climate duty is a response to the new ‘standard threat’ posed by climate change to the human right to development. Therefore, the general climate duty cannot have come into existence before climate change posed a ‘standard threat’ to that right. Two points of clarification are in order here. First, we should distinguish between the time at which climate change became a ‘standard threat’ to the human right to development and the time at which humans could reasonably have recognised climate change as a ‘standard threat’ to the human right to development. It is, at least, possible that climate change posed a serious threat to human rights before humans knew or could reasonably have been expected to know about it. Second, any judgement about when climate change became a ‘standard threat’ to human rights is likely to be contestable. It is clear from the evidence that climate change should now be recognised as a ‘standard threat’ to the human right to development. We know that the effects of climate change have already violated the human rights of some people and are likely to violate the human rights of many millions of people in the near (and far) future. It is less clear when anthropogenic climate change first posed a ‘standard threat’ to the human right to development.

When did climate change first pose a ‘standard threat’? Was it at the very beginning of the Industrial Revolution when humans developed the capacity to emit large quantities of greenhouse gases? Was it early in the twentieth century when the mass production of motor vehicles began? Was it shortly after the Second World War when the global population exceeded 2.5 billion? Perhaps, the most plausible way of approaching this question is to consider when the probability of climate change causing widespread violations of the human right to development (and, thereby, posing a ‘standard threat’) exceeded some threshold. So, for example, we might imagine that the probability in the 1750s that humanity would take the route that it has taken since the Industrial Revolution (e.g., the technological change, the population increases, and the social and economic changes) may have been quite low so that the likelihood of anthropogenic climate change violating human rights might also have been quite low. We might, therefore, conclude that climate change did not pose a ‘standard threat’ to human rights until more recently. A more detailed empirical argument would be required to make a plausible case for any particular date. However, we might reasonably conclude that some of the more ambitious claims about the historic responsibility of the global North might
not be consistent with this understanding of when an agent’s greenhouse gas emissions can legitimately be understood as rights-violating.

I have suggested that the first condition on the existence of the general climate duty is that it cannot have come into existence until anthropogenic climate change posed a ‘standard threat’ to human rights. The second condition is that the general climate duty – like all duties – should not be unreasonably demanding. We might distinguish two ways in which the general climate duty might be too demanding. First, the general climate duty might be too demanding because it might ask people to sacrifice too much. The general climate duty asks us to make two kinds of sacrifice. First, it asks us to pay the opportunity costs of devoting time to promoting just institutions. In some circumstances, this might be too much to ask of an agent. For example, a person living below the development threshold is likely to have more urgent demands on their time, energy and resources; therefore they should not be required to devote their limited time, energy and resources to promoting institutions that secure climate justice. Second, the general climate duty asks us to pay the opportunity costs of living under and complying with just institutions (after they have been successfully promoted and implemented). If institutions are genuinely just, they should not ask too much of individuals. On our account, just institutions will exempt those below the development threshold from paying the costs of climate policy. I think we might reasonably argue that neither the duty to promote just institutions nor the duty to comply with just institutions, properly interpreted, should demand too much from most citizens in the global North. Moreover, neither duty should demand anything from any person – in the global South or the global North – who is living below the development threshold.

The second way in which the general climate duty might be too demanding is that it might require us to promote fair and effective institutions for tackling climate change before we could reasonably be expected to know about the problem and its effects. If at time $t$ we are excusably ignorant of the effects of our use of fossil fuels, it seems unreasonable either: at $t$, to claim that we have the general climate duty; or at $t+1$, to claim that we should be held morally responsible for our ‘non-compliance’ at $t$ with the general climate duty. So, the general climate duty can only be imputed to an agent that is either knowledgeable or inexusably ignorant about the link between fossil fuel use and the rights-violating effects of anthropogenic climate change. Judgements about excusable ignorance will, of course, be contestable. However, I think we might reasonably argue that most ordinary citizens in the global North were excusably ignorant of the effects of fossil fuel use until (at least) the mid-1980s.
In this section, I have discussed the general climate duty.\(^7\) I have considered how we might determine when the general climate duty should be understood to have come into existence. I have argued that the general climate duty could not have come into existence until the probability of anthropogenic climate change violating the human right to development became significant. I have also suggested that the general climate duty should only be imputed to an agent when (a) that agent has knowledge of, or is \textit{inexcusably} ignorant of, the link between fossil fuel use and rights-violating anthropogenic climate change, and (b) complying with the general climate duty (and complying with the proposed just institutions) does not make unreasonable demands on the agent.

This understanding of the ‘birth’ of the general climate duty is significant because it poses an important obstacle to historic responsibility arguments, including those made by Chinese officials. On one understanding of the historic responsibility argument, Northern states and their citizens should pay the costs of tackling anthropogenic climate change because they are morally responsible for the problem. However, my proposed theory of human rights and duties suggests that only the current generation of ordinary citizens in Northern states might be considered guilty of any climate-related moral failure. The general climate duty cannot reasonably be imputed to ordinary citizens before the mid-1980s. Therefore, the most ambitious arguments by Chinese officials and others for historic responsibility – grounded in moral responsibility or moral failure and extending back to the beginning of the Industrial Revolution – should be rejected.\(^8\)

\section*{The specification and allocation of particular duties under fair and effective institutions}

How should fair and effective institutions specify and allocate particular duties to protect the human right to development from the threat posed by climate change? What principles for the specification and allocation of climate duties should people who comply with the general climate duty be trying to promote? In particular, I want to consider the possibility that fair principles will allocate climate duties based on historic emissions. We have already seen that there are good reasons for thinking that the North’s moral failure with respect to climate change is relatively recent. Therefore, if we want to allocate climate duties based on historic emissions, we should consider whether this is a reasonable approach.

\footnotesize{\footnotespace{7} Jonathan Symons argument in Chapter 5 offers one way of interpreting the implications of the general climate duty for states, including China.\footnotespace{8} Shue has argued that the excusable ignorance objection ‘rests upon a confusion between punishment and responsibility’ (Shue 1999, p. 535). Shue’s point is that developed states might be liable for the costs associated with their historic emissions without being morally culpable for those emissions. I have discussed Shue’s argument and the problem of excusable ignorance in more detail in Bell (2011b). See also Chapter 4 in this volume.}
emissions over a longer period of history, we will need a different kind of argument to support that claim. In this section, I will consider one important argument that has been offered to support the claim that the allocation of particular climate duties should be proportionate to historic emissions.

The central claim of this argument is that there is a universal right to equal greenhouse gas emissions irrespective of the time and place that a person lives. We might call this ‘equal emissions’. Let us assume that we are seeking to promote fair and effective institutions for the specification and allocation of climate duties from time \( t \) onwards. If we accept equal emissions, we will take into account the historic emissions of each person before time \( t \) in allocating their current and future emissions to ensure that over their lifetime they do not exceed their ‘equal emissions’ allowance. Moreover, if we find that some persons have already emitted more than their ‘equal emissions’ allowance, we may reasonably require them to compensate others (assuming that there is some commensurability between emissions permits and other ‘goods’) by, for example, paying for adaptation.

There are several problems with ‘equal emissions’.\(^9\) I want to highlight two important problems. First, it is not at all clear why there should be a universal right to equal emissions. We do not normally distribute particular resources – even newly discovered resources – in an egalitarian manner (Beckerman and Pasek 1995). Indeed, there are very few resources that are distributed equally in the contemporary world. Of course, we need not endorse the distributive principles that appear to operate in, or between, contemporary societies (even so-called ‘liberal democratic’ societies). Instead, we might, and probably should, adopt a more egalitarian theory of global justice.

However, the second problem with equal emissions is that there are good reasons for advocates of egalitarian theories of global justice to support an unequal distribution of emissions. I will suggest two reasons. First, different persons may need different resources to achieve the same levels of development or well-being. Emission permits are a resource just like the fossil fuels that produce emissions. Some persons may need to use more energy (and emit more greenhouse gases) than other persons to achieve the same level of development. If we are concerned about everyone achieving a ‘modest but dignified level of well-being’, we may reasonably reject equal emissions. Second, circumstances may vary between different times and places such that the marginal opportunity costs of not emitting greenhouse gases vary considerably. This variation may be due to a range of factors, including, the availability

\(^9\) I have discussed some of these problems in Bell (2008).
and cost of non-fossil fuel energy and the energy required to achieve a ‘modest but dignified level of well-being’ given the social, economic and technological structure of one’s society. For example, it may be reasonable to suggest that current generations in the global North should not be entitled to emit such large quantities of greenhouse gases as previous generations because we have non-fossil fuel energy technology available to us, which would enable us to maintain a ‘modest but dignified level of well-being’ without burning such large quantities of fossil fuels. Therefore, we might reasonably reject ‘equal emissions’ between contemporary citizens in the global North and both previous generations in the global North and current generations in the global South.

If we reject ‘equal emissions’, we cannot treat all emissions at all times and places equally. Therefore, we will need to be rather more careful about how we take historic emissions into account in determining current and future responsibilities. In particular, one unit of emissions from the global North at the beginning of the twenty-first century should not count equally with one unit of emissions from the global South at the same time or with one unit of emissions from the global North at the beginning of the twentieth century. The marginal opportunity cost – measured in an appropriate metric, such as impact on well-being – of reducing greenhouse gas emissions should be considered when we try to determine a fair allocation of climate duties. In other words, historic emissions may be relevant in determining the fair allocation of climate duties under just institutions but historic ‘subsistence emissions’, which could only have been limited at a high opportunity cost, should not be treated in the same way as historic ‘luxury emissions’, which might have been limited at a low opportunity cost (Shue 1993).

**Duties of rectification**

So far, I have discussed the general climate duty to promote just institutions and the specification and allocation of climate duties under just institutions. In this section, I will briefly discuss duties of rectification. The general climate duty assumes that the specification and allocation of more specific duties must be done by effective institutions that aim to protect human rights from the effects of anthropogenic climate change. This suggests that we have no specific duties – for example, to limit our individual greenhouse gas emissions – until there is ‘an actual [and “authoritative”] allocative scheme, operative and in force’ (Feinberg 1984, p. 30). This is morally problematic because it suggests that we can continue with ‘business-as-usual’ greenhouse gas emissions until there are fair and effective institutional regulations in place that specify the level at which we are required to limit our
emissions. This creates a perverse incentive for continuing non-compliance with the general climate duty: if we don’t comply with the general climate duty and just institutions are not created, we do not violate any human rights-based duties by continuing to emit high levels of greenhouse gases.\textsuperscript{10} If we want to avoid this problem, we need to go beyond the general climate duty.

I want to suggest two further duties, which follow from the general climate duty. First, we have a duty to rectify the wrong that we have done if we fail to comply with the general climate duty. On our account, if a person does not comply with the general climate duty, he violates the correlative human rights. We generally recognise that if a person violates another person’s human rights, they have a duty to rectify the wrong that they have done.\textsuperscript{11} What does rectification require in the context of the general climate duty? Let us assume that rectification cannot take place until just institutions are in place and duties are specified and allocated. I would suggest that rectification requires that those who have not complied with the general climate duty should be allocated more burdensome duties, including, for example, lower limits on their future greenhouse gas emissions and a greater share of the monetary costs of adaptation measures. The minimum requirement should be that they are not advantaged over the course of their lifetime by their failure to comply with the general climate duty. Moreover, non-compliers might legitimately be required to accept a worse outcome if rectification (or compensation) of the situation of the victims of climate-related human rights violations requires it. In sum, the general climate duty implies a duty of rectification: under effective institutions, previous non-compliers must accept more burdensome duties that may make them worse off than they would have been if they had always complied with the general climate duty.

The second duty that follows from the general climate duty is the duty not to accept benefits that result from actions that violate someone’s human rights. If there were full compliance with the general climate duty, we might plausibly assume that effective institutions, for specifying and allocating duties to protect the human right to development from the threat posed by anthropogenic climate change would quickly be implemented. Let us assume that some people comply with the general climate duty but others do not and as a result just institutions are not implemented. Some of the compliers may benefit from the delayed implementation of just institutions if, for example, they have been enjoying a

\textsuperscript{10} We are, of course, violating human rights by not complying with the general duty to promote just institutions. However, the argument so far does not imply that we would be violating human rights by continuing to emit high levels of greenhouse gases.

\textsuperscript{11} There may also be reason to punish them for the wrong that they have done.
lifestyle dependent upon a higher level of emissions than they would have been permitted under just institutions. We might reasonably say that they are benefiting from the actions of the non-compliers. In other words, they are benefiting from actions that violate human rights. It is, however, surely wrong for someone who takes human rights seriously to accept benefits that result from human rights violations. Therefore, I would suggest that the general climate duty also implies a duty not to accept benefits that result from the failure of other people to comply with the general duty.

What does this additional duty require? I would suggest that it requires each person (1) to reduce their greenhouse gas emissions to a level that they can reasonably believe would be consistent with the specification and allocation of duties by just institutions, and (2) to accept that just institutions can legitimately take into account the historic emissions (and other relevant actions) of those who have complied with the general climate duty (as well as those who have not complied) during the period that just institutions were delayed by non-compliance. In other words, the duty not to accept benefits requires both individual action now, even in advance of just institutions and compliance with institutions that (fairly and effectively) specify and allocate duties ‘retrospectively’.

If this account of duties of rectification is plausible, the failure of Northern states and Northern citizens to comply with the general climate duty over (at least) the last twenty or thirty years has significant implications for their duties now and in the future. The North is guilty of a moral failure in recent times and should seek to rectify that failure. Northern citizens are not only required to comply with the general climate duty (i.e., ‘do their bit’ to promote just institutions) but are also required to limit their own current and future emissions to a level that they can reasonably believe would be consistent with the specification and allocation of duties by just institutions. Moreover, Northern citizens should be seeking to promote just institutions that will demand a lot from them, including, compensation for the excessive (unjust) emissions that they have emitted since they acquired the duty to promote just climate institutions in the late twentieth century.

**Conclusion**

We began with two key principles that underpin the Chinese position on the allocation of the costs of climate change. In section 1, I offered an individualistic interpretation of the right to development as a human right. In the remainder of the chapter, I considered the implications of this starting point for an account of climate duties and, in particular, the principle of historic responsibility. I have outlined three kinds of climate duty. First, we have a general
climate duty to promote just institutions that will protect the human right to development from the threat posed by anthropogenic climate change. I have suggested that a reasonable account of this duty undermines one important argument – the argument from ‘moral failure’ – for taking all historic emissions into account when we allocate climate duties. We cannot justifiably claim, as the Chinese government has done, that Northern citizens or Northern states should be held morally responsible for their historic emissions prior to the time when they can reasonably be said to have acquired the general climate duty. However, they can be held morally responsible for their failure to comply with that duty since they acquired it. If we assume that Northern citizens only acquired the general climate duty sometime in the last two decades of the twentieth century, we should regard their pre-1980s emissions very differently from their emissions since that time.

Second, we have a duty to comply with effective institutions that fairly specify and allocate duties to protect the human right to development from the threat posed by climate change. I suggested that one common argument for taking historic emissions into account when allocating climate duties was based on the idea of a universal right to equal emissions. I offered two criticisms of this argument. First, it is unclear why we should be egalitarians about greenhouse gas emissions permits when we are not generally egalitarians about other resources. Second, I suggested that egalitarianism about emissions ignores the difference between luxury and subsistence emissions and, more generally, does not take into account the variation between the marginal costs of emissions reductions for different people in different places and at different times. Therefore, I have suggested that a fair allocation of emissions (or emission permits) is not likely to be an equal allocation. Instead, I have suggested that current citizens of the global North might be entitled to emit less than their predecessors. As a result, it may be that previous generations in the North have not exceeded their fair share of emissions by as much as some have suggested. However, current generations in the global North may be exceeding their fair share of emissions by even more than the principle of equal emissions suggests.

The third kind of climate duty that we have identified is duties of rectification. I have suggested that most Northern citizens do have duties to rectify their failure to comply with the general climate duty (since they acquired it in the late twentieth century). These duties include a duty to reduce their own emissions immediately to a level that they can reasonably believe is consistent with the allocation of climate duties under just institutions. In addition, Northern citizens should – to comply with the general climate duty and the duties of rectification – be seeking to promote a global climate regime and effective institutions that
will make severe demands on them. In particular, most Northern citizens should expect to be required under just institutions to pay compensation for their unjust post-1980s emissions.

Climate change poses a very serious threat to human rights, including the human right to development, in the twenty-first century and beyond. We have a duty to protect the human right to development from the threat posed by anthropogenic climate change. In this chapter, I have offered the outline of a distinctive account of how we should understand our climate duties. In particular, I have explored the relevance and the role of historic emissions in the allocation of climate duties. The Chinese Government, like many in the global South, has argued consistently that the global North should be held responsible for the costs of climate change because it is their historic emissions that have caused the problem. I have suggested that this claim should not be accepted without further consideration and refinement. Specifically, I have suggested that the citizens of the global North do have a duty to pay compensation for their excessive (unjust) emissions during the last twenty or thirty years.\footnote{Chapters 9 and 10 argue that affluent people in China may have similar obligations.} However, I have also suggested that earlier emissions should not be treated in the same way. Earlier emissions may be relevant for the allocation of climate duties under just institutions, but they are not relevant in the straightforward way that often seems to be assumed by Chinese officials or in general debates about climate justice.
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