

## No Justice in Climate Policy?

by Alyssa R. Bernstein

### (A) Introduction

The urgent importance of dealing with the climate crisis has led some influential theorists, including at least one philosopher, to argue that at least some demands for justice must give way to pragmatic and strategic considerations. These theorists contend that the failures of international negotiations and other efforts to change economic policies and practices have shown that moral exhortations are worse than ineffective. Cass Sunstein, Eric Posner, and David Weisbach (all academic lawyers) have argued that a climate treaty should reflect neither principles of distributive justice nor principles of corrective justice, and that climate negotiators should not try to solve problems of unfair distribution of wealth.<sup>1</sup> John Broome (an academic philosopher) argues that the aim of reducing emission of greenhouse gas ("GHG") should be separated from the aim of improving distribution of resources, and that we should not aim to mitigate climate change by appealing to the moral duties of individuals and states, because such efforts fail.<sup>2</sup>

Although Broome's position is similar in these respects to that of Sunstein, Posner and Weisbach, it differs in other respects, including his understanding of the idea of justice, his disagreement with the policy approach (which he calls "*efficiency with sacrifice*") favored by the economists Nicholas Stern<sup>3</sup> and William Nordhaus,<sup>4</sup> and his proposal for establishing a new international financial institution, a World Climate Bank

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<sup>1</sup> Posner & Weisbach (2010, 5).

<sup>2</sup> Broome (2012, 47), Broome (forthcoming, 1-3, 10).

<sup>3</sup> Stern (2007).

<sup>4</sup> Nordhaus (2008).

("WCB"), in addition to putting a price on carbon. Elsewhere<sup>5</sup> I offer a critical analysis of the position taken by Posner and Weisbach ("P&W") in their book, *Climate Change Justice* ("CCJ"). Their arguments against allowing principles of distributive justice (narrowly understood) to constrain treaty negotiations fail to rule out the principles of John Rawls' Law of Peoples (which is a conception of the moral basis of a just international order, including states' obligations to secure basic human rights for all).<sup>6</sup> Therefore their arguments against shaping climate treaties to reflect any principles of justice do not succeed in supporting their position. Here I offer a critical analysis of Broome's position, highlighting its differences from that of P&W. I also raise and discuss objections to Broome's proposal for a WCB. I argue that the continued relevance of these objections is contingent on how the proposal for a WCB may get developed. A suitably developed proposal might satisfy the requirements of Rawlsian justice as well as the principles of equity and common but differentiated responsibilities ("CBDR") that figure prominently in the United Nations Framework Convention on Climate Change ("UNFCCC").<sup>7</sup>

### **(B) Sunstein, Posner, Weisbach**

In their book, CCJ, Posner and Weisbach further develop arguments previously presented in articles co-authored with Sunstein.<sup>8</sup> P&W argue against shaping climate

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<sup>5</sup> Bernstein (2015).

<sup>6</sup> Rawls (1999). For explanation of Rawls' Law of Peoples and its relation to cosmopolitan conceptions of justice including climate justice, see Bernstein (2012a-f).

<sup>7</sup> The UNFCCC declares in Article 3, paragraph 1: "The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities."  
[http://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](http://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf) (accessed June 2, 2016).

For valuable discussions of these ideas, see Caney (2005), Moellendorf (2014, 163-164, 173-178), and Light (2016).

<sup>8</sup> Posner, Eric A. and Sunstein, Cass R. (2008), Posner, Eric A. and Sunstein, Cass R. (2009), Sunstein, Cass R. and Weisbach, David (2010). Posner and Weisbach say that Sunstein was extensively involved in

treaty proposals according to requirements of either distributive or corrective justice,<sup>9</sup> and argue in favor of "a forward-looking, welfarist<sup>10</sup> approach to the problem of climate change" that "takes the state system seriously" and "satisfies pragmatic constraints."<sup>11</sup>

What they advocate is comparing proposed mitigation measures with regard to aggregate global costs and benefits, and creating incentives sufficient to motivate all countries to make the necessary policy commitments.

P&W's central contention is that it would be "a cruel irony if the consequence of justice-related arguments were to doom the prospects for an international agreement — and thus to create exceedingly serious risks to human welfare, above all in poor nations."<sup>12</sup> They argue that if distributive justice is the goal, it is necessary to recognize that pursuing this goal through a climate treaty may not be the best way of redistributing wealth from rich countries to poor ones; but if climate harm mitigation is the goal, the best way to pursue it is by agreeing to a treaty that stipulates the "globally optimal" abatement plan (as determined by aggregation of benefits and costs across countries), "even though that is not what is optimal for poor states," if the signers will ratify the treaty and resist

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the early stages of the preparation of the book manuscript, but was unable to participate in later revisions due to his position in the Obama administration (CCJ, vii).

<sup>9</sup> As they use the term "distributive justice," it expresses the idea that poverty should be reduced and material conditions should be equalized, whether for the sake of increasing aggregate welfare or for other reasons (CCJ, 96–98). As they use the term "corrective justice," it expresses the idea that "if one person harms another person, the first person should provide a remedy, such as cash, to the victim" (CCJ, 100).

<sup>10</sup> Posner and Weisbach's welfarism is a conception of the fundamental ethical considerations that should guide policy-making, according to which policy-makers should aim to maximize welfare or well-being: "Welfarists seek policies that maximize people's well-being, defined variously as their subjective sense of well-being, satisfaction of desires or preferences, or satisfaction of certain objective parameters." (CCJ, 171). Posner and Weisbach neither specify a particular interpretation of welfare nor exclude non-humans: "The welfarist approach approves of acts that increase the welfare of relevant people (and possibly animals)." (CCJ, 8). Posner and Weisbach say that utilitarianism is a form of welfarism (CCJ, 217, note 7); however, as these terms are normally used, welfarism is a form of utilitarianism.

<sup>11</sup> CCJ, 191.

<sup>12</sup> CCJ, 192.

pressures to violate it.<sup>13</sup> They also think it likely that states believing they will be harmed relatively less by climate change will either agree only to limited abatement requirements, or else agree to more demanding requirements only on condition that they receive "side payments;" and that these payments "may go from poor to rich, at least in part."<sup>14</sup> Despite objections from perspectives of corrective and distributive justice, P&W would favor such side payments if they were necessary in order to induce the richer countries to agree to a treaty stipulating the globally optimal abatement plan.<sup>15</sup>

If one uses the term "distributive justice" as do P&W (to express the idea that poverty should be reduced and material conditions should be equalized), and if one's arguments assume that this is the only meaning of "distributive justice," then one either ignores or fails to understand the difference between the broader and narrower senses of the term that Rawls distinguishes.<sup>16</sup> In the narrower sense, only questions of distribution of wealth and income are questions of distributive justice. In the broader sense, questions of distributive justice include these as well as both (a) the question of which principles should guide creation and reform of the basic institutions (legal and political as well as economic) of a single society, and (b) the question of which principles should guide creation and reform of international laws and institutions. If one thinks that all questions of justice that concern laws and political, social, and economic institutions must be either questions of distributive justice in the narrow sense or else questions of corrective justice (concerning rectification of past wrongs or crimes), then one is missing a large and

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<sup>13</sup> CCJ, 97–98.

<sup>14</sup> CCJ, 84–85.

<sup>15</sup> As regards the (in)justice of such "side payments," it is not clear why P&W take the position they do. Perhaps P&W think that a crisis can justify disregarding requirements of justice, and/or that rationality requires following a general principle requiring choice of the lesser evil over the greater evil. For discussion of a general principle prescribing that the lesser evil be chosen over the greater evil, see Gardiner (2011, 339-396).

<sup>16</sup> Rawls (2001, 42, 122).

multifarious category of questions about justice. These include many fundamentally important questions about the rule of law and basic rights.

Elsewhere I have argued against P&W's welfarist approach to climate treaty negotiation and in favor of a conception of climate justice based on Rawls' Law of Peoples.<sup>17</sup> Broome's view differs significantly from that of P&W, and has merits such that it may (if further developed in suitable ways) be endorsable from the perspective of a Rawlsian conception of climate justice. Next I explain Broome's position. I first present his case for the policy approach he calls "efficiency without sacrifice," then analyze the abstract arguments about morality, justice, and economic inequality that he offers in support of his proposal for a WCB together with a price on carbon. I then address objections to Broome's position, rebut some of them, and contrast his position to that of P&W.

### **(C) Broome**

Like P&W, Broome takes as his starting point the fact that the climate treaty negotiation participants who have the most power are unwilling to accept any requirement involving sacrifice of their own countries' economic well-being, and he attempts to devise a solution that would nevertheless be feasible. The solution he favors is *efficiency without sacrifice*. First he argues that it is technically possible according to economic theory; then he proposes specific policies and institutions, in order to show that it is achievable in practice. He contends that we need a WCB in order to make the option of *efficiency without sacrifice* achievable in a capitalist economy. Such an institution

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<sup>17</sup> Bernstein (2015). For other critical discussions of the positions taken by Sunstein, Posner and/or Weisbach, see Moellendorf (2014, 236-239) and Gardiner and Weisbach (2016).

could help solve the commons problem<sup>18</sup> by shifting resources from conventional to green investment. Together with a carbon price,<sup>19</sup> a WCB could bring about the required shift of investment by changing economic incentives.<sup>20</sup> And once *efficiency without sacrifice* is available as a solution to the commons problem, nations can then focus on negotiating about how to distribute the benefit that would result from reducing GHG emission, instead of how to distribute burdens or sacrifices, since none would be required for mitigating climate change, according to Broome. Therefore, creating a "well-founded" WCB should be, he contends, "a central aim of international negotiations about climate change."<sup>21</sup> Next I present more fully Broome's case for *efficiency without sacrifice*, after which I examine his arguments about morality and justice.

### **(C.1) Broome's case for *efficiency without sacrifice***

Burning fossil fuels involves emitting GHG, which causes climate change and thus harms people. This harm, the cost of which is not taken into account by those who produce and burn fossil fuels, is an economic externality. A situation involving an externality of this kind is inefficient in the technical sense that a Pareto improvement is possible: the situation can be changed so as to make someone better off while making none worse off. Thus the inefficiency caused by emission can (in principle) be eliminated without requiring anyone in the present generation to sacrifice economic well-

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<sup>18</sup> "[R]educing emissions of greenhouse gas can be in everyone's interest. But it is not in any nation's individual interest to reduce its own emissions. Each nation can benefit from activities that cause emissions, and it does not itself bear all the costs of the emissions it causes. The costs are borne by all the people who suffer the effects of climate change. So each nation has an incentive to emit more, even though it would be good for every nation if every nation emitted less. The atmosphere is a sort of common resource, into which nations can freely dump their greenhouse gas. Because it costs them nothing to do so, they have an incentive to overuse the common." (Broome, forthcoming, p. 8 of 10-page pre-publication version).

<sup>19</sup> "To achieve efficiency, a price has to be set on carbon equal to the external cost of emissions. In practice this can be done through a carbon tax or by capping emissions, with or without the option of emissions trading." (Broome and Foley, forthcoming, p. 7 of 12-page pre-publication version).

<sup>20</sup> Broome (forthcoming, 8-9).

<sup>21</sup> Broome (forthcoming, 10). I discuss the idea of a well-founded WCB below.

being. Indeed, this inefficiency can (in principle) be eliminated without requiring anyone in any generation to sacrifice economic well-being, because dealing with climate change can bring the world a great economic benefit, which can be distributed to everyone<sup>22</sup> as compensation for the economic costs of dealing with climate change.

This efficiency can be eliminated by setting a price on carbon, whether by means of a carbon tax or a cap and trade system, or in some other way.<sup>23</sup> Achieving efficiency requires internalizing the externality, that is, making people pay the full cost of their GHG emission, "including the external cost they impose on other people."<sup>24</sup> The carbon price will give people incentives to find ways to use less carbon, and this will make green investments more profitable.<sup>25</sup>

Although setting a price on carbon would eliminate the inefficiency, this would be costly for owners of fossil fuel assets, consumers, and producers. In order to achieve the Pareto improvement, it would be necessary to pay people compensation for these costs. However, according to Broome, revenue from the carbon-price scheme would not be sufficient for this purpose, so governments would need to borrow money.<sup>26</sup>

Social borrowing must be part of climate policy in a capitalist economic order, in which government cannot directly allocate resources but must instead influence private investment and production decisions.<sup>27</sup> Social borrowing can be accomplished by means of bonds issued either by governments or by international organizations. A WCB would

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<sup>22</sup> This distribution would not necessarily be a redistribution. For discussion of this point, see Moellendorf (2014), 238-239.

<sup>23</sup> Broome (2012, 38), Broome (forthcoming, 9).

<sup>24</sup> Broome (forthcoming, 9).

<sup>25</sup> Broome (forthcoming, 9).

<sup>26</sup> Broome (forthcoming, 9).

<sup>27</sup> Broome and Foley (forthcoming, 9).

issue bonds in order to get funds to be used to pay for green investments,<sup>28</sup> part of the cost of which would be compensating current consumers and producers for the increased cost of energy.<sup>29</sup> Notice that this would include compensating owners of coal, oil, and gas.<sup>30</sup> Below I consider whether such compensation would be required by, or instead inconsistent with, justice.

### **(C.2) Broome on morality and justice**

Broome argues that (a) it is morally wrong for individuals to emit GHG, since doing so is causing non-trivial harm to others,<sup>31</sup> and that (b) the duty not to emit GHG is a duty of justice, as are all duties not to harm other people. Contrastingly, duties of beneficence are "duties to make the world better and not to make it worse, so far as [one] can."<sup>32</sup> Duties of justice, unlike duties of beneficence, are owed to others "as individuals," each of whom has a corresponding right.<sup>33</sup> Moreover, "justice can pull against beneficence," in the sense that one can have a duty not to harm someone even if causing harm would allow one to "do more good on balance."<sup>34</sup> According to

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<sup>28</sup> According to Broome and Foley, a World Climate Bank could be owned by its depositors, like a mutual savings bank. They consider two possible sources of its capital: (1) the WCB could claim a share of national government revenues, or (2) it could claim a share of global, national, or regional carbon taxes or a share of emissions permits generating royalties. (Broome and Foley, forthcoming, 10-11)

<sup>29</sup> "Paying compensation may be thought of as a part of green investment." (Broome and Foley, forthcoming, 8). "[W]e must assume that not all the compensation required by the current generation can be paid from revenue raised from the current generation itself. Some compensation will have to be financed by borrowing. Governments or international organizations will have to borrow on a large scale." (Broome and Foley, forthcoming, 8-9).

<sup>30</sup> Immense quantities of coal, oil, and gas are listed as assets by corporations such as Coal India, China Shenhua, and Peabody Energy, as well as Gazprom, Petrobras, and ExxonMobil. See <http://gofossilfree.org/top-200/> (accessed June 2, 2016).

<sup>31</sup> Broome acknowledges exceptions to this general prohibition such as emission necessary for heating homes in winter in cold climates (Broome, forthcoming, 2). He seems to agree with Henry Shue (1993) that subsistence (as distinct from luxury) emission is morally permissible.

<sup>32</sup> Broome (forthcoming, 1).

<sup>33</sup> Broome (forthcoming, 1).

<sup>34</sup> Broome (forthcoming, 1).



"commonsense morality" or "how most people think," when a duty of justice conflicts with a duty of goodness, "justice most often wins."<sup>35</sup>

According to Broome, emitting GHG violates both a duty of justice and a duty of beneficence. If everyone were to refrain from it, "the problem of climate change would be solved," so it is worth considering whether we ("the generic 'we': the community") should try to control climate change by "promoting people's morality, making people virtuous."<sup>36</sup> His answer is no: we should not, because we would fail.<sup>37</sup>

It is important to notice that Broome's argument shows only that we would fail to control climate change if we used no means other than efforts to make people virtuous: such means are not sufficient. He is surely right about this,<sup>38</sup> but his argument does not show that there is no good reason for including such efforts together with other means of controlling climate change; and in fact, doing so may be necessary.<sup>39</sup> Also it is important to notice that Broome's argument does not show that it is morally permissible to disregard considerations of justice when making climate policy or when designing institutions such as the one he proposes, a WCB; and that his own proposal takes into account considerations of justice as he understands them.<sup>40</sup>

Broome argues that solving the problem of climate change requires the use of state power to compel people to reduce their emission, not only because moral

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<sup>35</sup> Broome (2012, 51, 53).

<sup>36</sup> Broome (forthcoming, 1).

<sup>37</sup> Broome (forthcoming, 1).

<sup>38</sup> "We cannot possibly persuade nearly all of the world's population to be virtuous. We cannot even get the message to very many people, and few of them would be persuaded anyway" (Broome, forthcoming, 2). Furthermore, as Ryan Powers points out, there are systemic and sociological reasons: no matter how virtuous people might be, their social order can still restrict their energy-use options and they can have limited ability to change it.

<sup>39</sup> Such efforts may be necessary, in addition to cost-benefit arguments, especially in order to convince the general public to accept a price on carbon (even with the promise of compensation) as well as to support large-scale green investment and founding a WCB. (I thank Ryan O'Loughlin for this thought.)

<sup>40</sup> I further explain this below.

considerations are not sufficient to motivate people to change their own behavior in the necessary ways, but also because without state action people will find it too difficult to reduce their own emission as much as necessary.<sup>41</sup> Noting that "[m]orality applies to nations as much as to individuals," and "nations, like individuals, can be motivated by moral reasons," he asks how it may be possible to motivate states to take the necessary actions.<sup>42</sup> Since there are moral reasons why nations should not emit GHG, it is worth considering whether we should try to control climate change by exhorting them to do their moral duty. Again, Broome's answer is no: solving the problem of climate change by this means is not "a realistic prospect."<sup>43</sup> As twenty-five years of climate negotiations have shown, states are not willing to ask their people to make large enough sacrifices.<sup>44</sup> Therefore, Broome concludes, "we need a different approach from the moral one."<sup>45</sup>

Notice that this argument, too, shows only that what Broome terms "a moral approach" or "a moral solution" is not sufficient.<sup>46</sup> Notice also that the idea of a moral approach or moral solution is ambiguous between: (a) trying to make agents act on moral motives, and (b) choosing only morally permissible policies as means to mitigating climate change. Even if one agrees with Broome (as I do) that trying to make other agents act on moral motives would not be sufficient, one need not and should not reject (a) or (b).

Broome himself seems not to deny that one should choose only morally permissible means to one's ends. As I will argue, the solution he recommends (*efficiency*

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<sup>41</sup> Broome (forthcoming, 2).

<sup>42</sup> Broome (forthcoming, 2).

<sup>43</sup> Broome (forthcoming, 3).

<sup>44</sup> "The promises made at the Paris UNFCCC meeting were far too small." Broome (forthcoming, 3).

<sup>45</sup> Broome (forthcoming, 3).

<sup>46</sup> Broome (forthcoming, 3).

*without sacrifice*), if implemented by means of the policies and institutions he suggests, can (if these are properly designed) constitute morally permissible means to the end of minimizing harms to people due to anthropogenic climate change. If this is correct, then Broome can be interpreted as advocating adoption of policies and institutions that would lead people to act in accord with their moral duties despite not acting from duty, that is, despite not being morally motivated. This distinction (between acting from duty and acting merely in accord with duty) plays an important role both in the moral philosophy of Immanuel Kant and in the political philosophy of John Rawls. Apparently it plays an important role in Broome's argument as well, despite his not explicitly stating it.

Actions can be over-determined in the sense that agents can have both sufficient self-interested reasons and sufficient moral reasons to take those actions. As regards the actions necessary for solving the problem of climate change, it seems highly unlikely that in practice all of the relevant agents could be motivated to carry them out, if they did not have self-interested reasons to do so. This is partly because the consequences of their own actions could not be confidently predicted, due to doubt about whether others would act from moral reasons. Contrastingly, in circumstances giving everyone self-interested reasons to take the morally requisite actions, everyone could act with reasonable confidence that others would do their part. Although all agents should always be motivated by morality at least in the sense of being ready to refrain from acting contrary to their moral duty, if they act merely in accord with their moral duty (from self-interest) then their action is not wrong but morally permissible.

Whenever anyone's actions may affect another person's vital or fundamental interests, the requirements of morality apply.<sup>47</sup> This is true whether the person is or is not employing any kind of political authority or power. In addition, whenever anyone employs political authority or power, requirements of political morality apply; these include the requirements of justice that apply to legal, economic, and social institutions and practices.<sup>48</sup> Policies and institutions should be designed so as to lead people to act in accord with relevant moral duties despite not being morally motivated but instead self-interested. This appears to be Broome's aim; in any case, Broome's policy approach should be of interest to anyone who has this aim.

#### **(D) Distributive Injustice or Maldistribution?**

Like P&W, Broome argues that in order to achieve the goal of mitigating climate change we must distinguish it from other goals and pursue it separately from them when pursuit of this goal conflicts with pursuit of a different goal. However, unlike P&W, he disagrees with the policy approach favored by the economists Nicholas Stern and William Nordhaus because they advocate *efficiency with sacrifice*. P&W disagree with Nordhaus because they think that the discount rate he uses is too high; they favor a lower discount rate such as the one used by Stern.<sup>49</sup> Unlike Broome, P&W do not argue against

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<sup>47</sup> I am not denying that the requirements of morality apply to any and all actions. I think they do. Here my argument requires only the less comprehensive and less controversial premise.

<sup>48</sup> Although modern moral philosophers disagree about how the requirements of morality can best be understood and theoretically formulated, they tend to agree that these requirements always apply to all practical deliberation, judgment, and action, and that specific additional requirements apply whenever anyone employs any political or legal authority or power. Rawls argues for a particular set of moral principles to constrain and guide uses of, and judgments about, political and legal authority and power.

<sup>49</sup> CCJ, 153. P&W explain the idea of a discount rate as follows: "If the world cuts emissions immediately, the beneficiaries of its action will be people living decades from now, not people living today. [*This is an odd statement, given expected lifespans.*] By contrast, the costs of emissions reductions will be paid mostly by current generations. How should policymakers and analysts deal with future benefits and present costs? Among economists, the standard answer is that future effects should be 'discounted.' A dollar today is worth more than a dollar in a year. Economists ask: Shouldn't the future benefits of reduced climate change also be discounted?" (CCJ, 144).

*efficiency with sacrifice*. When discussing distributive justice, P&W explain their disagreement with (what they take to be) Rawls' position,<sup>50</sup> but Broome is mainly concerned to argue against *efficiency with sacrifice*.

Broome explains that other goals with which the goal of mitigating climate change is associated in current debates include: (1) rectifying or compensating for past injustices not caused by climate change, (2) improving the *intragenerational* distribution of wealth, and (3) improving the *intergenerational* distribution of wealth. He argues that attainment of the goal of mitigating climate change can be impeded by pursuit of these other goals, and that mitigating climate change should be the top priority of international negotiators.

Broome emphasizes that climate change harms the world's poor much more than the rich,<sup>51</sup> and thus "contributes to the global maldistribution of well-being," which is often called "distributive injustice."<sup>52</sup> He regards this matter of distribution as a moral matter,<sup>53</sup> but argues that since this maldistribution is due primarily to the history of the global economic system (including centuries of colonial exploitation and very unequal economic development), it is not primarily due to climate change, which has merely exacerbated it: "The effects of climate change are too recent to have added greatly to

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<sup>50</sup> Bernstein (2015, 127, 136-137).

<sup>51</sup> "Other things being equal, it would be a bad idea to benefit the rich at the expense of the poor. ... Cost-benefit... calculations show it is better to have more resources in the hands of the poor and of future generations rather than in the hands of the current rich." (Broome 2012, 46). "When a richer person gives money to a poorer one, the benefit the recipient receives is greater than the sacrifice the donor makes, because the recipient has more important uses for the money." (Broome 2012, 51). In this last quoted sentence, Broome should be understood to mean, as previously, "other things being equal" or "usually".

<sup>52</sup> Broome (2012, 33), Broome (forthcoming, 5-6).

<sup>53</sup> According to Broome, it is a matter of beneficence; see below for further discussion. Broome and Foley (forthcoming, 4) seem to avoid denying that maldistribution can also be a form of injustice, but they say that it "is not the same as the injustice of harming another person."

maldistribution among contemporaries."<sup>54</sup> Therefore, according to Broome, when analyzing the morally significant consequences of climate change, one should distinguish between the impermissible harm to people that it causes (including harm that exacerbates maldistribution), and the pre-existing maldistribution.

Broome says that *efficiency without sacrifice* is not best from the point of view of the duty of beneficence toward future people. As he understands it, beneficence requires caring both about equality of well-being and about the total amount.<sup>55</sup> Inequality can be diminished either by raising the economic level of the worse off or by lowering the economic level of the better off. Economists standardly assume that future people will probably be better off on average than present people. Since people's present economic activity diminishes the quality of life of future people by creating climate change, it diminishes intergenerational inequality.<sup>56</sup> Nevertheless, beneficence (understood as favoring not only equality but also a larger total of well-being) requires restricting present economic activity by consuming less, in order to allow future generations to consume more than earlier ones, because delaying consumption adds to the total of goods that are eventually consumed, and this is better on balance. From this perspective, the best policy response to climate change would involve sacrifice by the present generation.<sup>57</sup>

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<sup>54</sup> Broome (forthcoming, 6). The causes of global economic inequality are, of course, diverse and complex. It is worth noting that industrialization, which involved increasing reliance on fossil fuels, was not the same as colonialism. Also it is important to note that there is economic inequality within as well as between countries, and that currently the economic inequality within countries cannot be attributed mainly to climate change.

<sup>55</sup> Economists use marketed commodities as proxies for well-being in cost-benefit analysis. Broome criticizes this practice, but accepts it for purposes of his argument against *efficiency with sacrifice*. (Broome, 2012, 135-137).

<sup>56</sup> Broome (forthcoming, 6).

<sup>57</sup> Broome (forthcoming, 7).

The influential economic studies of climate change conducted by Stern and by Nordhaus, which reach quantitatively different conclusions and (according to Broome)<sup>58</sup> are based on different moral principles, agree in favoring *efficiency with sacrifice*.<sup>59</sup> "The agreement between these authors is perhaps one of the reasons why the pressure in international negotiations is toward sacrifice by the present generation."<sup>60</sup> However, Broome argues, solving the problem of climate change does not require such sacrifice, and solving this very urgent problem should be the top priority of international negotiators.

The economists who advocate *efficiency with sacrifice* as the best option are advocating what may seem to be the best means of fulfilling the duty of beneficence, but advocating this option under current circumstances (taking as given the self-interested conduct of states) impedes agreement on a treaty, thus impeding achievement of the aim of ceasing to cause the harm of GHG emission, that is, the aim of ceasing to violate the duty of justice. Indeed, since continuing to advocate *efficiency with sacrifice* would impede agreement on a treaty, it would result in failure to fulfill not only the duty of justice but also the duty of beneficence. Thus it would be self-undermining.

Broome says that *efficiency without sacrifice* is unjust in the sense that it perpetuates the injustice of business as usual, in which emitters benefit from emitting greenhouse gas at the expense of receivers.<sup>61</sup> It perpetuates this injustice in the sense that aiming for a Pareto improvement of this kind would not correct the harm done by past

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<sup>58</sup> P&W discuss the debate about the proper discount rate as a debate between two major positions, that of "the ethicists" and that of "the positivists." They classify Nordhaus as a positivist, and seem to classify Stern as an ethicist (which is puzzling, since he, like Nordhaus, is an economist) (CCJ, 149-150, 161, 17-168). According to Broome, both Stern's and Nordhaus' economic studies of climate change are based on moral principles (Broome, 2012, 140-155).

<sup>59</sup> Broome (2012, 10, 154), Broome (forthcoming, 7).

<sup>60</sup> Broome (forthcoming, 7).

<sup>61</sup> Broome (2012, 46).

and present emissions, despite bringing a halt to emission and thus to future harm. "The Pareto improvement involves a transfer from those who are harmed to those who do the harm. It makes both better off, but it does not correct the injustice."<sup>62</sup> Since "the big emitting nations already owe compensation to other nations for the harm they have already done them" by means of GHG emission, justice requires them to pay compensation instead of receiving payment to reduce emission.<sup>63</sup> However, this injustice can be corrected or mitigated if the externality of GHG is eliminated, because this will result in a very large economic benefit, which can be shared among contemporary people; this means, in effect, that "future generations within the emitting nations are able to compensate those who have suffered from past injustice."<sup>64</sup>

In his book (2012) Broome says that *efficiency without sacrifice* has the "serious demerit" that it is unjust, because it involves present emitters in effect getting paid to reduce emission by others including future people: "Receivers in effect bribe emitters not to harm them."<sup>65</sup> Stephen Gardiner criticizes this description as misleading. He says it "sugarcoats what is morally at stake" by implying that future generations initiate the bribery, when in fact they are not in a position to offer bribes but are subjected to theft or extortion: "[C]urrent people borrow against the future *in the name of* future people. .... It is theft if future generations would not endorse the deal. It is extortion if they would do so only under duress (e.g., due to the severe climate threat we illegitimately impose on them)."<sup>66</sup>

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<sup>62</sup> Broome (forthcoming, 5).

<sup>63</sup> Broome (forthcoming, 5).

<sup>64</sup> Broome (forthcoming, 6).

<sup>65</sup> Broome (2012, 46).

<sup>66</sup> Gardiner and Weisbach (2016, 97). It is not clear what Gardiner's line of reasoning is, since it is not clear what he thinks is the correct principle of just saving. Theft presupposes property or similar rights, but these must be understood in relation to relevant principles of justice. The same is true about extortion.



In forthcoming articles Broome clarifies that what he has in mind is a "switch of investment," which will require government borrowing: "Since future people will benefit from green investment, we get them to pay for it."<sup>67</sup> He and his co-author characterize this matter somewhat differently when explaining that a capitalist economy could manage the necessary switch from conventional to green investment by means of governmental or international bonds. Since the issuers of the bonds could use the buyers' funds for green investment, present governments would thus borrow money from present people "in order to pay for improvements made for the sake of future generations," and future governments that inherited the debts would repay future people who inherited the credits. In this way, members of the present generation could get funding for their green investments, and current consumers and producers could get compensated for higher energy costs due to the price set on carbon.<sup>68</sup> It would be as if some resources had been moved from the future back to the present, or as if future generations had paid the present generation. Although this kind of transaction is sometimes called "borrowing from the future," it would not be literally that; moreover, the debt would not burden future generations as a whole.<sup>69</sup>

### **(E) Broome versus Sunstein, Posner & Weisbach**

Since Broome advocates a policy option that involves separating the aim of reducing GHG emission from the aims of addressing maldistribution of wealth and of correcting or compensating for past harm, and since the policy option he favors involves

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Furthermore, whether a significant climate threat is legitimately imposed also depends partly on the correct principle of just saving. (For helpful discussion of Gardiner's objections I thank Ryan O'Loughlin.)

<sup>67</sup> Broome (forthcoming, 9).

<sup>68</sup> As Broome notes (Broome, forthcoming, 4), members of the present generation could compensate themselves for cutting GHG emission and making green investments, by consuming more natural resources (presumably other than carbon sinks). This seems problematic, unless these natural resources would be renewable and the environmental damage would not be too great.

<sup>69</sup> Broome and Foley (forthcoming, 9).

paying emitters to stop emitting, his position may seem to converge with that of P&W. Nevertheless, Broome's proposal regarding the content of a climate treaty differs from that of P&W in certain morally important ways. Broome's proposal is shaped by his concerns about justice, as he construes this idea; contrastingly, P&W argue against allowing concerns about justice to shape the content of a climate treaty. Also unlike P&W, Broome argues that ceasing to emit GHG is a requirement of justice, not only a necessary means of securing or increasing well-being (whether as an aim of beneficence or merely an aim of self-interest). Broome sketches moral principles to structure any scheme for compensating people for harm they have suffered due to emission of GHG, and considers how funding might be made available for any such scheme;<sup>70</sup> contrastingly, P&W develop arguments against the idea that such compensation is owed.<sup>71</sup> P&W argue that "side payments" to high-emitting countries by lower-emitting countries would be one means of satisfying the conditions they think a climate treaty should meet; contrastingly, Broome says that paying emitters in order to make them cease emitting and thereby impermissibly causing harm to people is perpetuating the injustice of the morally impermissible harm.

Broome's acknowledgement of the injustice of payments to emitters may seem to make little practical difference, since his proposal, like that of P&W, requires payments

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<sup>70</sup> "Those who have emitted a lot of greenhouse gas should not expect a big share" of the benefit of removing the externality of GHG emission; it should go mainly to those who suffered the most due to others' GHG emission (Broome, forthcoming, 6.) "Eliminating the externality of climate change can bring a huge benefit to the current generation. The lion's share of it should go to the poor and to those who have emitted little; the rich and the big emitters should receive only a small share. If the gains are appropriately distributed, a Pareto improvement can mitigate injustice and maldistribution." (Broome and Foley, forthcoming, 6).

<sup>71</sup> "[W]e question whether principles of corrective justice are relevant at all to the problem of climate change." (CCJ, 117). "[T]he consequence of tort-like thinking would be to force many people who have not acted wrongfully to provide a remedy to many people who have not been victimized. Some of the problems we identify could be reduced if it were possible to trace complex causal chains with great precision; unfortunately, this will not be possible." (CCJ, 103).

to emitters. Similarly, Broome's sketching of principles to structure a scheme to compensate for harm due to GHG emission may not amount to much in practice, if his proposal provides no way to ensure that compensation would be paid. And characterizing the need to cease emitting GHG as a requirement of justice might make little practical difference if the relevant agents are motivated by self-interest.

In fact the differences between the approaches taken by Broome and P&W have both practical and moral significance, for only if all negotiating parties acknowledge the injustices involved in past, present, and future GHG emission will they be motivated and able to cooperate in developing institutions that both bring an end to GHG emission and compensate for the injustices to the extent possible. It is morally significant that Broome argues that (a) ceasing to emit GHG is required by the duty of justice, which prohibits impermissible harm, and that (b) cessation of GHG emission would yield a great economic benefit, which would be available (in principle) to use as compensation for harm caused by GHG emission, and that (c) the economic benefit resulting from cessation of GHG emission should go mainly to those who have suffered the most from the climate change caused by it.<sup>72</sup> This last idea can (in principle) be written into a treaty and operationalized in the structure of relevant financial institutions, for example, a WCB. Furthermore, acknowledging the injustice of victims having to pay those causing them harm in order to get them to stop is a necessary aspect of sincere commitment to the idea of free cooperation for the common good.<sup>73</sup>

P&W deny that political power must always be constrained by requirements of

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<sup>72</sup> Broome (forthcoming, 6).

<sup>73</sup> For discussion of free cooperation for the common good, see Bernstein (2015). Acknowledging responsibility for the harm of GHG emission is also a necessary aspect of sincere commitment to the UNFCCC's principles of equity and CBDR.

justice: they argue that the climate crisis licenses unjust use of political power in the form of hard bargaining in international climate negotiation by powerful states without regard for justice. While this might yield signatures on treaty documents, it would not motivate cooperation that would be stable and lasting despite temptations to cheat;<sup>74</sup> instead it would motivate cheating by several if not all parties, whether due to festering resentment on the part of those treated unfairly in the negotiations or due to contempt on the part of those treating others unfairly.<sup>75</sup> Broome advocates *efficiency without sacrifice* partly for the reason that current political realities require it (unlike P&W, who support *efficiency with sacrifice*); but his proposal would involve international cooperation to create a WCB.<sup>76</sup>

True, there would be payments to emitters, but these would not be payments from economically and politically weaker countries to stronger ones, merely because they are stronger and can bargain harder, but instead payments by the WCB to compensate everyone suffering losses due to cutting back GHG emission (a heterogeneous group that includes the poor as well as the owners of fossil fuels).<sup>77</sup> True, the owners of fossil fuels

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<sup>74</sup> P&W emphasize that a successful treaty is one that can not only get ratified but also "survive pressures to cheat as time passes" (CCJ, 98).

<sup>75</sup> The more powerful countries would show contempt for the rights of other states and their peoples by not restraining (as required by the principles of Rawls' Law of Peoples) their own motivations to expand their power and/or use it unjustly.

<sup>76</sup> P&W use a term of art, "International Paretianism," to express the following idea: "all states must believe themselves better off by their lights as a result of the climate treaty" (CCJ, 6). As Gardiner correctly points out, this has little to do with the economist's idea of Pareto optimality; he suggests that a more accurate name might be "International Mutual Benefitism" (Gardiner and Weisbach, 2016, 56). Gardiner incorrectly says that Broome's view, like P&W's, is structured by International Paretianism or International Mutual Benefitism (Gardiner and Weisbach, 2016, 96-97). In fact it is structured by the economic ideas of Pareto optimality and Pareto improvement.

<sup>77</sup> Broome emphasizes that owners of fossil fuels would not have a right to compensation for leaving them in the ground, i.e., for having made bad investments. "We do not mean to suggest that members of the current generation have a right to be compensated for reducing their emissions of greenhouse gas. They do not. We are simply accepting the disappointing fact that the representatives of the current generations [*sic!*] who have power in the negotiations will not accept a sacrifice." (Broome and Foley, forthcoming, 6). "Current owners of fossil fuel reserves will be losers if climate change policy succeeds in limiting the

would get compensated, but at their assets' true value, not current market value.<sup>78</sup> True, the WCB's revenues<sup>79</sup> would come either directly from carbon taxes or cap and trade systems, or else from taxes on governments, but the revenue scheme could be structured fairly.<sup>80</sup> True, the bank would get established by means of an international agreement, and powerful states might try to dominate it, but principles of fair representation of states, transparency, and accountability seem to have become entrenched in international law. Whether these principles are well enough entrenched is an open question.

### **(F) Conclusion**

By advocating *efficiency without sacrifice*, Broome is not advocating an unjust policy approach (as he understands the idea of justice), but instead what he regards as perhaps the only one with a reasonable chance to avert catastrophic climate change, given that it is highly unlikely that states will (soon enough, if ever) either cease prioritizing their own interests or reconceive their own interests in the requisite ways. Broome's proposal to establish a WCB suggests new ways to interpret and operationalize the UNFCCC's principles of equity and CBDR. Moreover, it seems that such a bank could (in principle) also conform to the requirements of the Rawlsian conception of climate justice,<sup>81</sup> depending how the bank could get established, structured, and operated. If a WCB were established by fair global democratic means and structured so as to meet high standards of public accountability and transparency, and if its revenue scheme were fair

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burning of carbon-based fossil fuels. From a political point of view, buying off the opposition of this wealthy and powerful group with appropriate compensation is a critical aspect of a compensation-based policy aimed at a Pareto improvement." (Broome and Foley, forthcoming, 8).

<sup>78</sup> Broome and Foley say that compensation paid to current owners of fossil fuel reserves should not equal their current market value, which they regard as exaggerated, but instead their "true value;" and that owners of stocks "cannot be compensated for making a bad investment." (Broome and Foley, forthcoming, 8-9).

<sup>79</sup> "In order to pay the interest on the bonds, the WCB would have to command regular revenues." (Broome and Foley, forthcoming, 10).

<sup>80</sup> For example, it could operationalize the principles of equity and CBDR.

<sup>81</sup> This conception is sketched in Bernstein (2015).

(e.g., a steeply progressive tax on national budgets), and if everyone's emission cutbacks were compensated according to claims grounded in basic human rights as well as fossil-fuel-ownership claims (assessed according to the true value, as distinct from the market value, of the carbon assets), then it might fulfill the UNFCCC's principles of equity and CBDR and the requirements of Rawlsian justice. Whether these are more than merely theoretical possibilities remains to be seen, but if so, and if *efficiency without sacrifice* is a realistic option, then it seems it may be one that nobody can (rationally and reasonably)<sup>82</sup> refuse to support.

Further development of Broome's proposal should be guided by the principles and values of international justice as understood by Rawls, as well as by the UNFCCC's principles of equity and CBDR. A suitably developed proposal for a WCB together with a price on carbon might then become a central aim of negotiations leading to a successful international climate treaty, that is, a treaty such that no state would have good reasons of self-interest or justice to decline to join the agreement and all states could be motivated by self-interest as well as justice to join it and uphold it. If so, then *efficiency without sacrifice* would prove to be feasible as well as just.

Broome calls for a "well-founded" WCB.<sup>83</sup> I am not sure what he means by this. My view is that a WCB cannot be well-founded, nor operate properly, unless the relevant political leaders and public officials acknowledge and respect requirements of justice. Broome appears to deny this in some of his arguments, but I contend that he does not deny it. It may also appear that Broome endorses the position of P&W, but in fact he does not, as I have argued above.

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<sup>82</sup> See Rawls (1999, 28-30, 35), Rawls (2001, 6-7, 81-82).

<sup>83</sup> Broome (forthcoming, 10).

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