JPE

Past Emissions and Distributive Climate Duties: A Reply to My Critics[1]

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Past Climate Wrongs, Current Beneficiaries

A central issue for anyone interested in generations and climate justice is whether and how greenhouse gas emissions from the past should affect current climate duties. There are various approaches. Some belong to the domain of corrective justice. Applying the polluter pays principle is difficult in an intergenerational setting in which some polluters are gone. One proposed alternative is the beneficiary pays principle (BPP). Goran Duus-Otterström's excellent paper forces me to question and clarify both the core intuition behind my rejection of the BPP in my book, as well as the scope of this rejection.

Let me begin by stressing a few of Duus-Otterström's important points. First, he claims that relying on *excusable ignorance* to reject the existence of wrongdoing through past emissions and, as a result, considering the BPP off scope, will not work anymore once we will be looking in the future at past emissions that took place after 1990. As a result, excusable ignorance cannot be the central reason to reject the use of BPP for past emissions of greenhouse gases if we want this rejection to have a wide enough scope (Duus-Otterström 2024: 8). Excusable ignorance was not my main reason to reject the BPP. Yet, Duus-Otterström's point makes perfect sense. I will focus hereinafter on *post*-1990 wrongful historical

1. I wish to thank my three discussants as well as F. Corvino and T. Douglas for insightful suggestions on an earlier draft.

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emissions. We will test whether in such a more favorable context, the case for the BPP principle gets any stronger.[2]

A second point worth emphasizing is that endorsing the BPP as a pro tanto (i.e., defeasible) source of duties does not prevent us from taking on board distributive concerns as part of an all-things-considered exercise (Duus-Otterström 2024: 11–12). The latter may end up dwarfing BPP-related concerns or even inverting the direction of transfers. Consider the case in which the descendants of past victims happen to be much richer than those of past wrongdoers. BPP defenders may claim that such examples are no challenge to the BPP as long as the latter is used in a pro tanto manner.

There is a third point that Duus-Otterström reminds us of: if we want to use the BPP to address historical emissions of greenhouse gases, the BPP 'doesn't attach any intrinsic significance to whether someone is a descendant of a wrongdoer in a biological or political sense. . . . BPP only looks at where the benefits go' (Duus-Otterström 2024: 7). This means that translating the BPP into duties between countries may not be straightforward.

These are three lucid points. Note however that if we assume that the BPP is applied to cases where there is *no* excusable ignorance, that it is 'merely' a pro tanto principle, and that current beneficiaries may turn out not to belong to the same territorial/national groups as past emitters, these are three concessions that also potentially reduce the significance of the BPP. The focus on intentions hereafter will further restrict it. Or course, claiming that the scope of a principle is limited does not necessarily mean that this principle should be rejected.

Intentions and the New Customers Case

Let me now zoom to the heart of Duus-Otterström's challenge. He refers to my critique of the idea of treating current benefits resulting from wrongful acts in the past *separately* from current benefits resulting from other sources. He perspicaciously identifies three possible motives behind this critique, respectively labelled 'directedness', 'wrongdoing sensitivity', and 'ability to pay' (Duus-Otterström 2024: 9). Duus-Otterström begins by constructing a hypothetical example to challenge the second of these three motives.

The 'New Customers' hypothetical case involves three café owners in the same town (Betty, Clare, and Dave). One ends up losing customers (Betty) and the two others gain new customers (Clare and Dave). Betty loses customers due

2. I don't discuss Page's distinction between "wrongful" and merely "unjust" enrichment (Page 2012). I assume here that emissions need to be wrongful to generate current duties under the BPP.

to a false rumor spread by a third party (Andrew). It happens that Andrew's intention was to benefit Clare. Clare gains customers 'by picking up Betty's former customers' (Duus-Otterström 2024). Dave experiences a comparable gain in clientele as Clare. But this gain results exclusively from a natural event that renders his café's surroundings more beautiful. Hence, while both Clare and Dave gain customers to the same extent, the cause of their gain differs. We could say that while the latter's gain is lucky, the former's is dirty or 'tainted'.

What is this example meant to reveal? Duus-Otterström asks: 'Is it so strange that this might mean that [Clare's] duties differ, at least pro tanto, from Dave's? Suppose Clare and Dave sat down and discussed whether they should help Betty financially. It is hard to imagine that they would conclude that both simply had good brute luck and that they should therefore split the burden or flip a coin' (Duus-Otterström 2024).

There is no question that Andrew's behavior is objectionable. I also suspect that Duus-Otterström would agree that the primary duty-holder here is Andrew and that Betty has a stronger complaint toward Andrew than toward Clare or Dave. We can leave open the difficult issue of whether Clare would have a duty regardless of what Andrew does (i.e., even if he were to compensate the victim while Clare would keep enjoying the benefits from Andrew's act). What we need to establish in priority is whether Betty has a stronger complaint (be it *pro tanto*) against Clare than against Dave, be they both secondary duty-holders. Duus-Otterström thinks that she does. What we know from Duus-Otterström's story is that Andrew's wrongful act clearly caused benefits for Clare, not for Dave. But we also know that Clare did not know about this wrongful act, and we can assume that she would not have approved of it had she known about it in due time. We could even imagine a case in which Clare hated Andrew.

According to Duus-Otterström, the best way of accounting for the view that Clare has a pro tanto stronger duty than Dave toward Betty needs to refer to Andrew's *intentions*. For Andrew's false rumor not only benefitted Clare. Andrew did it because he wanted 'to impress Clare'—meaning to benefit her. Hence, two elements potentially play a role: benefit and intention. The BPP label suggests that it is the mere existence of a benefit that is supposed to matter. But intention also seems to play a crucial role in what Duus-Otterström regards as its best interpretation. Duus-Otterström writes: 'Since Andrew tried to benefit Clare, Clare's keeping the benefits would ensure that Andrew's immoral plan succeeds' (Duus-Otterström 2024: 11). Intentions matter, and the goal pursued by the BPP seems to be to make sure that unfair plans fail. This suggests that the BPP principle should instead be read as a narrower 'intended beneficiary pays principle' (IBPP) (i.e., a principle claiming that the beneficiary should pay *only if* she is the intended beneficiary, not if she is an accidental beneficiary). We could formulate the principle as follows:

> **IBPP:** Beneficiaries of problematic acts have a pro tanto reason to transfer something to victims of these acts provided that these acts were *wrongful*, that they were *intended* to benefit these beneficiaries, and *up to the level* of the net benefits obtained.

Since intentions and benefits don't necessarily match, it is worth testing this principle on two revised versions of the 'New Customers' case:

> **Unmet benevolent intentions:** While all the benefits of Betty's business collapse went to Clare, Andrew's initial intention was in fact to benefit Dave rather than Clare.
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> **Strictly malevolent intentions:** While all the benefits of Betty's business collapse went to Clare, Andrew's initial intention was in fact merely to hurt Betty. He didn't know about the very existence of Clare or Dave.

If what really drives our intuition is the concern of making sure that immoral plans fail, we can say that in the *unmet benevolent intentions* case, Clare would *not* owe more than Dave to Betty. The initial wrong would remain as wrongful, but the *specific* duty that it generates for nonvictims would simply vanish because none of them is an intended beneficiary of the wrongful act. This also extends to cases—such as the strictly malevolent intention one—in which the main concern for Andrew would have been merely to harm Betty, rather than to benefit anyone. In this case as well, the IBPP principle would not put any extra burden on Clare compared with Dave.

Now, there are two issues. One is whether I would be willing to endorse the IBPP version of BPP, the one that Duus-Otterström finds the most plausible. I guess that our disagreement would probably end up being about the weight of such a pro tanto consideration in our all-things-considered evaluations. If this were a consideration among others but, in the end, distributive concerns dominate, I would probably not object taking this consideration on board. Even if I were to take it on board, the distributive picture would remain more central. Even so, I would remain reluctant to add such corrective considerations, to which the IBPP in fact belongs. This is so, not only because I think that it is an unnecessary addition or that its weight would remain very limited, but also because giving credit to corrective principles in this specific context tends to reinforce the corrective bias present in the general public, losing sight of the distributive core of climate justice.[3] Hence, part of our disagreement is about whether it is appropriate to emphasize a principle that is both pro tanto and of restricted scope. We run the risk that the public would give it a central role, as it

3. See, e.g., Mitchell and Tetlock (2006).

generally does for corrective principles, to the detriment of distributive concerns that ought to remain central.

The other issue is whether the IBPP bites in the historical emissions context. It would be limited to cases not involving excusable ignorance—a significant concession. In addition, we would also have to match beneficiaries with intentions. Whenever wrongful past emissions were not intended to benefit future people, the IBPP would not command special duties. Duus-Otterström suggests in conclusion that there is a significant range of cases in which people do emit to benefit later generations. We would need to show that our current emissions are effectively intended to benefit not only future generations but also specific future groups (e.g., our descendants only). And we would have to show that it is these very same groups that effectively gained net benefits from such emissions.

I have doubts about whether our current emissions are intended mainly to benefit our own kids. I would rather assume that they are often the mere result of our carelessness or of our selfishness as a generation or both. Even if future-oriented intentions were the main driver, I doubt that the intended beneficiaries behind our emissions would exclusively be our own kids as opposed to future humankind as a whole. The less we manage to circumscribe the intended beneficiaries, the smaller the scope of the IBPP.

To sum up, I can see very good incentive reasons to make sure that malevolent intentions don't reach their target. Yet, three concerns remain. First, I would resist putting a special burden on Clare because of the deeds of an uninvited random wrongdoer who decides, out of the blue, to benefit her at the expense of someone else. Perhaps we can say that Dave got manna from heaven and Clare got it from hell. Still, for both, the source of their gains was arbitrary and beyond their control. My concern here is that claiming that Clare 'is specially placed to rectify' just because there is a causal connection between having new customers and Andrew's undeniable wrong only bears weight if we can somehow 'blame' Clare for something. Second, IBPP's scope is quite limited. It will not be able to capture many cases of malevolent intentions. Third, and more importantly, given its pro tanto nature, I am reluctant to put it to the fore and on a par with other principles. While there is a philosophical case for distributive concerns to dominate IBPP concerns, public discourse tends to be biased toward a corrective logic, to which the IBPP belongs.

Collective Duties of Rectification for the Past?

Simon Caney's insightful discussion also focuses on historical emissions. Like both Duus-Otterström's and Charlotte Franziska Unruh's papers, it touches on the articulation between distributive and corrective motives. Simon Caney

formulates four challenges. The first one invites me to clarify the relationship between coexistence and duties inherited from the dead. The stylized assumption is often that we take dead people to be those with whom we did not coexist. In the absence of coexistence, we could not possibly have prevented the dead from acting the way they did. Caney presents a case in which past emitters who are now dead *coexisted for some time* with us in the past. This forces us to not too hastily equate the fact that a past emitter is dead with the idea that we never coexisted with that group or person. Point taken. Noncoexistence prevents us from exercising some forms of power. And this is crucial from a normative perspective. The intuition is that we should not impose corrective duties on members of a generation for actions of their ancestors against which there is nothing they could have done.

Dead people may have coexisted with us. Yet, even in cases in which coexistence obtained, it does not follow that corrective duties in case of wrongful action by the dead are straightforward to defend. When overlap is associated with age differences, the degree to which we can expect some generations to pressure other ones is limited (due to unequal levels of knowledge, strength, independence, etc.). Hence, neither should we too quickly associate past people with noncoexistence, nor should we too automatically link coexistence with power on those with whom we coexist. While necessary to exercise power, coexistence may not suffice. Hence, the challenge to the corrective account is perhaps deeper than expected. And this potentially reinforces the importance of a primarily distributive approach to climate justice.

Caney's second challenge is that focusing on emissions is too narrow. What matters is the set of actions and omissions that contribute directly or indirectly to the problem. We should shift from a polluter pays to a contributor to the problem pays principle. I am happy to bite this bullet. Does it follow that policymakers should not focus on emissions? A policy framing should meet a set of requirements. Will a shift from emitters to contributors help people understand the nature of the problem? Will it motivate them to act? Will it provide a unifying language to compare policy alternatives? Will it help assessing people's ability to act in a more climate-friendly manner? Which framing best meets such requirements is an open question, and a partly empirical one.

Caney formulates two further challenges. They focus respectively on corporations and on states. Let me take oil companies first. Consider a moral duty of care on the part of corporations and their decision-makers. We can certainly blame current decision-makers of oil companies for the extent to which they are investing in exploring new fossil fuel extraction sites rather than fully shifting to renewables. And we can also blame past decision-makers within such companies for not having acted differently as soon as they knew about the adverse effects of emissions. The issue is whether, in addition, we should hold current

members of such companies liable for past abstentions/actions that took place before they joined.

Imagine that we wish to allow legal action to be taken against oil corporations for both current acts/omissions and past ones. There are various ways to ground this legal option. We could probably defend the possibility of suing corporations in court for past actions/abstentions *without* considering current decision-makers within such companies as *morally* blamable for such past acts. An incentive-based justification meets this requirement: companies should be held legally responsible for the past because they will anticipate the future application of this rule and change their behavior today.

My core assumption here remains one of taking individual human beings as core moral units of concern and trying to explore how far we can go within such constraints. It is essential—and difficult—for political philosophers to offer an account of the social responsibility of non-state agents, including firms. And it is crucial as well to be explicit about the degree to which not fulfilling the demands of such social responsibility entails the violation of moral duties by individuals. This matters because my understanding of duties of justice is such that we should not completely sever claims that belong to normative political philosophy from our views in moral philosophy about what we owe each other.

To sum up, I think that firms should be held legally liable for their current actions/abstentions whenever they violate their legal duties. It can also make sense to extend this legal liability to past actions, including in some cases those dating back beyond 1990. What I probably disagree about is whether we can understand the latter legal option—in the specific case of decisions by past decision-makers—as matching straightforward moral intuitions *about current people*. I doubt that we can *morally* blame current decision-makers for decisions by their predecessors. And I tend to think that holding current decision-makers morally *liable* requires some degree of moral *blame*.

Now, the last challenge is related. It focuses on states and their citizens rather than on firms and their decision-makers. I think that we can be blamed for wrongful emissions of our own and for not fulfilling our duties concerning the emissions of others, which includes duties that we may have as citizens. Problematic state decisions can be traced back to problematic decisions by citizens under certain conditions. This is how I would bridge individual and collective responsibility. However, Caney insists that this is only plausible if citizens operate in a type of regime in which they are well informed, have real (and equal) power, etc. So, again, we may have good reasons to hold states *legally* responsible for their past decisions, even if they are dictatorships. Yet, such a responsibility does not translate to the moral level in a straightforward manner, especially if citizens don't enjoy a minimally democratic ecosystem. And this is significant given the large number of undemocratic countries.

I guess that what Caney presses me on is threefold. First, I am *not* opposed to the idea of collective responsibility. I am merely opposed here to holding people liable, with some underlying sense of moral blame, for decisions of a collective to which they belong but in which they could not take part. Second, a theory of justice can have a corrective component. Yet, the corrective part should be seen as a complement of the distributive one, not the reverse. Corrective duties among contemporaries make sense. What I challenge is the view that having a *legal* duty to rectify for the past acts of now dead people necessarily reflects some form of *moral* blame on current people. Third, what Caney forces me to consider carefully is the relationship between moral intuitions and political design. First, we should be able to *distinguish* claims at the political and at the moral level. We tolerate (politically) behaviors that we find morally problematic. Liberals also ask us, through concepts such as public reason, to take seriously our divergences in basic moral views. Yet, our political views should not be completely *disconnected* from some of our deepest moral intuitions. Consider the possibly widespread feeling that current victims of past emissions are owed compensations as a matter of rectification by the descendants or beneficiaries of such emissions. We should be able to uncover the possibly problematic moral assumptions that drive such views to which people are often strongly committed, especially if alternative and more robust moral accounts are available, here of a distributive nature.

I anticipate one frustration on Caney's part. I did not provide any argument against views endorsing collective responsibility in general. This is because I don't have anything especially original to say about it. I merely assumed that 'natural' individuals should be our moral starting points. And I did so because I also personally endorse this view. But a full defense would of course require a positive argument for this view, or at the very least a negative one against the most plausible 'collectivist' views.

The (Limited) Significance of Harm

Discussing corrective intuitions was at the heart of Duus-Otterström's and Caney's papers. Central to such intuitions is the notion of harm. The relationship between distributive justice and harm is central to the book. Charlotte Franziska Unruh raises three interesting challenges in this respect.

Consider first a case in which we don't do enough for future people. One account consists in claiming that we are harming future people. If we use the standard concept of harm, it faces the nonidentity problem, as Unruh explains and as I discuss at length in the book. A proposed solution consists in claiming that we are harming future people in the sense of forcing them into a worse

situation. Yet, not worse than how it would otherwise have been. Rather worse than a normatively set threshold. This is a threshold-based approach of harm. Unruh's suggestion consists in adding a further step. She keeps the threshold-based aspect. And she shifts from a focus on harm to a focus on benefit.

The problem of our emissions would then be that we ought to *benefit* future people and our emissions clash with this goal. If benefitting future people is making sure that they are better off than they would otherwise be, we face the nonidentity problem again. But if we can say that people are benefitted if they find themselves above a normatively set *threshold*, then we could safeguard the 'benefit' intuition in the same way as we may want to save the 'harm' idea. In other words, the idea is to rely on a normative threshold instead of a comparison between two states of a person, and the additional idea is to shift from harms to benefits. Hence, future people would not tell us: 'You harmed us!' Rather, they would utter: 'You didn't benefit us!'

Note two things. First, this notion of benefit would be grafted on to a threshold defined primarily on grounds of a harm-related (as opposed to benefit-related) concern, having to do with the identification of some basic minimum. Second, the benefit-based strategy would only make a significant difference if current people could not simply respond, 'Yes, we did benefit you! You are one unit above threshold!' Hence, a more plausible version of the complaint should be something like, 'You didn't benefit us *as much as you should*!' Yet, if this were the complaint, is there any added value to this benefit-based framing? Unruh claims that 'the threshold concept can capture the injustice of unequal distribution of benefits by conceptualizing this case as an unjust distribution of benefits' (Unruh 2024). If the next generation enjoys fewer benefits than we do, why can't we simply describe our respective situations in the terms of any metrics of justice deemed relevant, without relying on the concept of 'benefit'?

Consider then Unruh's second challenge. Our thinking about climate justice tends to focus on human-induced climate change. And we are right to stress the massive scientific evidence for this human induced nature. It clearly has normative implications. But these normative implications are not straightforward. We need to assess when harmful emissions end up being wrongful. And we need to ask ourselves whether climate disparities occurring even in the absence of human impact fall outside the realm of justice. I think that natural circumstances, even in the latter case, should be part of the scope of justice, in the same way as, for example, adverse genetic circumstances should.

One suggestion is that one way to address historical emissions consists in treating them like any past natural facts affecting the present climate. This suggestion may also hold in the scenario in which people in the past *knew* about the adverse effects of such emissions—in line with our earlier discussion with Duuz-Otterstrom. For what is key is that such emissions originated from people

on which we had absolutely no control. Of course, we may *decide*—voluntarily—to take responsibility for some acts in the past. But the issue is whether we *should*—or to use Unruh's words, whether it is 'appropriate' to do so—and what is lost if we don't. My answer is that we should not take these past emissions as a source of specific *moral* duties falling on us.

Unruh formulates a third challenge. How do we articulate harm and justice? I share Unruh's view that it is key to explain 'how harm and justice interact within a broader system of ethics' (Unruh 2024). And I take it that this is precisely one of the goals of the book, as illustrated not only in the chapter on nonidentity but also in the chapter on historical emissions. I think that there is *some* role to be played by the concept of harm. Yet, I don't think that this role should be seen as a primary one. What sets the stage is a distributive account of justice as well as the defense of a set of fundamental freedoms. And the concept of harm only enters the picture when we disturb specific distributive patterns. If we accept that there is no general duty not to harm, the concept of harm will only be used as a 'trigger'. It indicates the setback of some interests and forces us to ask whether this departure from a prior/alternative situation is a wrongful departure. For instance, moving toward better distribution will entail losers and winners. There is a sense in which losers can be said to be harmed. As such this will not suffice to object to shifting to this new distribution from the point of view of justice. Of course, providing losers enough room to adjust to change or even compensating them monetarily in some cases may be justified. But the mere fact of being harmed is not enough to arrive at a claim of justice.

So, dropping the standard concept of harm in nonidentity contexts *does not* require that we drop it in all contexts. And the same holds for harms that result from the acts by dead persons before our birth. I would say that the core claims in this respect are the two following ones. First, we need to acknowledge that some contexts prevent us from using the concept of harm or from concluding that we should take responsibility for harms produced by others. Yet, there is still plenty of room for using the concept of harm outside such contexts, including for climate harms. Our *current* emissions are clearly harmful (and wrongful to a massive extent).

Second, how to approach the domain in which we think that harms can still trigger duties? One of the book's core ideas is the following: understanding why harm is *insufficient* for the existence of a wrong helps us to become open to the possibility that, in some cases, harm may be also *unnecessary* for the existence of a wrong. So, yes, as Unruh puts it, 'harm has moral relevance' (Unruh 2024). But we should not forget that, beyond the fact that its scope is not as wide as expected, whenever it applies, it plays at best the role of a 'trigger', given that it is not only insufficient but even arguably unnecessary to establish the existence of a duty. What fundamentally drives the existence of a wrong is the prior

entitlement that it has departed from, not merely the existence of a harm. As a result, whenever we cannot establish the existence of a harm, it does not follow that the duties are weaker. What this confirms, I think, is that we need to pursue the conversation on the concept of harm and its relationship with distributive justice. It is a very widely used concept. But we too often overestimate what it is capable of achieving alone.

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