

JUSTICE, GOVERNANCE AND CLIMATE CHANGE:
DESIGNING FAIR AND EFFECTIVE CLIMATE CHANGE INSTITUTIONS

Luke Tomlinson
Worcester College
Department of Politics and International Relations
The University of Oxford

Thesis submitted in partial fulfillment of the requirements for the Degree of Doctor of
Philosophy in Politics, the Department of Politics and International Relations,
the University of Oxford.

Words: 99638

Justice, Governance and Climate Change

Abstract

Multilateral efforts are yet to produce meaningful action on climate change. Part of the problem with these approaches is a perceived lack of fairness among state actors. Whilst academic discussion has traditionally focused on the issue of distributive fairness, very little has been said about procedural fairness in this respect. To this end, this thesis analyses principles of procedural justice in order to develop practical policy measures for institutional design. It does so in four steps. First, it argues that procedural justice is important for reaching a mutually acceptable agreement when there is reasonable disagreement about the substantive ends that collective action should achieve. Second, it develops several principles of procedural justice that should govern the decision-making processes of climate institutions. This includes principles that govern who should participate in decisions, how these decisions should take place, and how transparent they should be. Third, it considers the relative value that procedural justice should be given against other important ends. In doing so, it proposes that procedural justice is a fundamental feature of fair and effective climate institutions. Finally, it considers what this means for climate institutions in practice by determining a set of pragmatic policy prescriptions that can guide the design of climate governance institutions.

Justice, Governance and Climate Change

Contents

Acknowledgements.....	vii
List of Acronyms.....	viii
Chapter 1. Introduction.....	1
Section 1. Introduction.....	1
1.1 Climate change.....	1
1.2 Climate governance institutions.....	2
Section 2. The normative design of governance institutions.....	9
2.1 Criteria for institutional design.....	10
2.2 Substantive criteria.....	11
2.3 Procedural criteria.....	12
Section 3. Literature review.....	15
3.1 Justice and climate change.....	16
3.2 Procedural justice and multilateral governance.....	16
3.3 Global governance and the democratic deficit.....	17
3.4 Procedural values and climate governance.....	18
3.5 The procedural deficit.....	20
Section 4. Methodology.....	21
4.1 Wide Reflective Equilibrium.....	21
4.2 Ideal and Non-ideal theory.....	22
Section 5. Chapter outline.....	26
Chapter 2. Reasonable disagreement.....	30
Section 1.1 Introduction.....	30
1.2 The importance of procedural values.....	31
Section 2. Reasonable disagreement.....	34
2.1 Disagreement.....	35
2.2 Reasonableness.....	37
2.3 Reasonable disagreement.....	39
2.4 The Burdens of Judgement.....	41
2.5 Summary.....	43
Section 3. The fair distribution of emission rights.....	44
3.1 Allocation rules for the distribution of emissions.....	44
3.2 Basic Emissions Rights.....	45
3.3 Equal Rights.....	48
3.4 Historical Responsibility.....	51
3.5 Multi-criteria approaches.....	56
3.6 Reasonable disagreement and the distribution of emissions.....	57

Justice, Governance and Climate Change

3.7	Reasonable disagreement in theory and practice.....	58
3.8	Summary.....	60
Section 4.	A procedural approach to fairness.....	61
4.1	Resolving reasonable disagreement.....	61
4.2	Procedural fairness.....	64
4.3	Objection 1: procedural values appeal to substantive ends.....	66
4.4	Objection 2: disagreement about procedural values.....	67
4.5	Objection 3: why accept the outcome of a procedure?.....	69
Section 5.	Conclusion.....	70
Chapter 3. Participation.....		71
Section 1.	Introduction.....	71
Section 2.	Fair participation.....	74
2.1	The Democratic Authorisation Principle.....	74
2.2	The All Affected Principle.....	76
2.3	The All Subjected Principle.....	80
2.4	The All Coerced Principle.....	82
2.5	Affected Interests.....	88
Section 3.	The outcomes of climate institutions.....	91
3.1	The physical effects of a changing climate.....	92
3.2	Mitigation policies.....	93
3.3	Adaptation measures.....	94
3.4	In whose name?	95
Section 4.	Fair participation in climate institutions.....	95
4.1	The right to vote.....	96
4.2	The right to speak.....	99
4.3	The democratic legitimacy of representative actors.....	103
Section 5.	Conclusion.....	104
Chapter 4. Political Equality.....		105
Section 1.	Introduction.....	105
Section 2.	Procedural justice	106
2.1	Democracy and procedural justice.....	107
2.2	The normative grounds of democracy.....	108
2.3	The grounds of procedural justice	110
2.4	Instrumental grounds for democracy.....	112
Section 3.	Political equality and climate change.....	113
3.1	Equal status.....	115
3.2	The decision-making authority.....	117
3.3	Other decision-makers.....	118

Justice, Governance and Climate Change

Section 4.	Political equality and equal opportunity.....	121
4.1	Resources and capabilities.....	121
4.2	Capabilities and functionings.....	124
4.3	Sufficient resources.....	125
4.4	A level playing field.....	131
Section 5.	Conclusion.....	133
Chapter 5. Transparency.....		134
Section 1.	Introduction.....	134
Section 2.	Fairness and the public right to know.....	136
2.1	Autonomy.....	137
2.2	Accountability.....	138
2.3	Participation.....	140
2.4	Publicity and justification.....	142
2.5	Trust.....	143
2.6	The value of information.....	144
Section 3.	Transparency and deliberation.....	145
3.1	The civilising force of hypocrisy.....	146
3.2	Plebiscitory reasoning.....	148
3.3	Responding to plebiscitory reasoning.....	150
3.4	Finding public reasons in private debates.....	152
Section 4.	Privacy, secrecy and desirable outcomes.....	153
4.1	Privacy.....	154
4.2	Secrecy.....	157
4.3	Privacy, secrecy and climate change.....	158
Section 5.	The transparency of climate institutions.....	159
5.1	The public right to know in climate institutions.....	160
5.2	Engaging with NSAs.....	161
5.3	Strengthening domestic capacity.....	162
5.4	Providing global information.....	163
5.5	Accommodating private debate.....	163
Section 6.	Conclusion.....	164
Chapter 6. Bargaining.....		165
Section 1.	Introduction.....	165
Section 2.	Voluntariness.....	166
2.1	Rational and informed choice.....	167
2.2	Manipulation.....	168
2.3	Coercion.....	170

Justice, Governance and Climate Change

Section 3.	Reciprocity and exploitation.....	176
3.1	Consent and mutual advantage.....	176
3.2	Alternative notions of exploitation.....	178
3.3	Asymmetric bargaining power.....	179
3.4	Unfair advantage.....	182
3.5	Reciprocity.....	183
Section 4.	Issue linkage.....	185
4.1	Positive and negative linkage.....	186
4.2	Related and unrelated issue linkage.....	187
4.3	Issue linkage and procedural efficiency.....	187
Section 5.	Issue linkage in climate change institutions.....	189
5.1	Promoting positive issue linkage.....	189
5.2	Prohibiting negative issue linkage.....	191
5.3	Third party approval.....	191
5.4	Side-payments.....	193
5.5	Information and influence.....	194
Section 6.	Conclusion.....	195
Chapter 7. Voting.....		196
Section 1.	Introduction.....	196
Section 2.	Voting rules.....	197
2.1	Unanimity.....	198
2.2	Consensus.....	200
2.3	Majority rule.....	201
Section 3.	Vote weighting.....	204
3.1	Proportionality.....	204
3.2	Proportional representation.....	209
3.3	Democratic legitimacy.....	211
3.4	Contribution.....	213
3.5	Moral and technical competence.....	215
Section 4.	Voting in climate change institutions.....	217
4.1	Majority rule in climate institutions.....	217
4.2	Supermajority voting.....	218
4.3	Equal time to views in debates.....	219
4.4	Veto rights.....	220
4.5	Population weighting.....	220
4.6	Excluding states.....	222
Section 5.	Conclusion.....	223
Chapter 8. Procedural Justice and Institutional Design.....		225
Section 1.	Introduction.....	225

Justice, Governance and Climate Change

Section 2.	The substantive goals of climate institutions.....	226
2.1	Effectiveness.....	227
2.2	Stringency.....	228
2.3	Urgency.....	229
2.4	Long-term action.....	234
2.5	Comprehensiveness.....	236
Section 3.	Procedural trade-offs.....	239
3.1	Procedural justice and urgency.....	240
3.2	Procedural justice and stringency.....	242
3.3	Alternatives to procedural justice.....	244
Section 4.	The necessity of procedural justice.....	245
4.1	Compliance and enforcement.....	245
4.2	Procedural justice and voluntary cooperation.....	247
4.3	Combining urgency and the long-term view.....	248
4.4	Leadership.....	251
Section 5.	Conclusion.....	254
Chapter 9.	Conclusion.....	255
Section 1.	Introduction.....	255
Section 2.	Policy proposals.....	260
2.1	Rules of procedure.....	261
2.2	Non-state actors.....	262
2.3	Coalitions.....	264
2.4	Improving capacity.....	265
2.5	Exclusion.....	266
Section 3.	Climate governance.....	268
3.1	Top down governance.....	269
3.2	Alternative forms of governance.....	270
3.3	Procedural justice and effective climate governance.....	271
3.4	A complementary approach to governance.....	272
Section 4.	The feasibility of procedural justice.....	273
4.1	Feasibility.....	273
4.2	Feasible climate policies.....	274
4.3	The feasibility of procedural justice.....	275
Section 5.	Conclusion.....	276
Bibliography.....		278

Justice, Governance and Climate Change

Acknowledgements

This thesis was completed with the help of my supervisor, Simon Caney. I owe him a great deal of thanks for his guidance and supervision.

I am very grateful for the feedback that Jeremy Waldron and David Miller provided on an earlier version of this thesis.

I am heavily indebted to several people who generously dedicated their time and thought to reading and discussing my research. I owe special thanks to Clare Heyward, Dominic Roser, Jim Cust and Sarah Hull for their invaluable help.

Lindsay and Sarah Tomlinson supported my decisions unconditionally and wholeheartedly throughout my studies. Jim Fouracre and Laith Tapper (amongst many others) suffered much in pastoral roles.

This thesis is part of the project 'Equity and Climate Change', funded by the Economic and Social Research Council.

Justice, Governance and Climate Change

Acronyms

APP	Asia-Pacific Partnership
AOSIS	Alliance of Small Island States
CDM	Clean Development Mechanism
COP	Conference of the Parties
COP15	UNFCCC Conference of the Parties Copenhagen 2009
COP16	UNFCCC Conference of the Parties Cancun 2010
COP17	UNFCCC Conference of the Parties Durban 2011
COP18	UNFCCC Conference of the Parties Doha 2012
G-77	Group of 77 and China
G8	Group of Eight
G20	Group of Twenty
GCCA	Global Climate Change Alliance
IEA	International Energy Agency
IMF	International Monetary Fund
IPCC	Intergovernmental Panel on Climate Change
MEF	Major Economies Forum on Energy and Climate
NGO	Non-governmental Organisation
NSA	Non-state Actor
OECD	Organisation for Economic Cooperation and Development
REDD	Reducing Emissions from Deforestation and Forest Degradation
ROP	Rules of Procedure
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
WTO	The World Trade Organization

Chapter 1. Introduction

1. Introduction

The aim of this thesis is to show how international governance institutions should be structured in order to address climate change in a just way. In particular, I identify a set of principles of procedural justice, which determine how decisions should be made within these institutions. Having done this, I then show how these principles can be achieved in practice by proposing a set of practical policy reforms for existing governance institutions.

This chapter provides an introduction to this research. Section one defines the problem at hand and outlines the motivation for the research. Section two describes the normative criteria that are typically proposed for the design and evaluation of climate governance institutions. Section three provides a review of the existing literature on procedural justice and climate change and argues that further analysis is needed on this issue. Section four defines the research methodology of this research. Section five provides a chapter summary.

1.1 Climate change

The earth's climate is undergoing fundamental changes due to human activity.¹ The Assessment Reports of the Intergovernmental Panel on Climate Change (IPCC) are the most comprehensive studies to date on climate change and the impacts that it has on human interests.² The most recent of these, the IPCC Fourth Assessment Report (2007), states that climate change is occurring, that this is very likely due to human activity, and that unabated action will result in further climate change.³ The potential implications of climate change include severe and irreversible changes to the climate system, which are expected to have extreme consequences for fundamental human interests on a global scale.⁴ Some argue that this threatens basic human rights to food, water, health and shelter.⁵

¹ UNFCCC 1992; IPCC 2007, 2012; Stern, N. 2007; Garnaut, R. 2009

² The remainder of this thesis draws from the Assessment Reports of the IPCC, in particular: Banuri *et al.* 1995; Bashmakov *et al.* 2001; Toth *et al.* 2001; Gupta *et al.* 2007; Halsnæs *et al.* 2007

³ IPCC 2007 Synthesis Report, p.45

⁴ For further discussion, see: IPCC 2007; Caney, S. 2009a, 2009c; OECD 2012

⁵ Caney, S. 2009b; OHCHR 2009; OHCHR and UNEP 2012

Chapter 1. Introduction

The IPCC also states that climate change mitigation is a global public good, for which collective action to reduce emissions of greenhouse gases will provide greater aggregate gains than continued unrestricted emissions.⁶ As such, the potential benefits of avoiding severe climate change are expected to outweigh the anticipated costs of achieving this objective.⁷ Given that climate change is a global problem and that no single actor is responsible for a significant proportion of total emissions, achieving climate mitigation requires an international, if not fully global response.⁸

The United Nations Framework Convention for Climate Change (UNFCCC) is the existing international agreement for international cooperation on climate change.⁹ The ultimate objective of the Convention, which has been signed and ratified by 194 states, is to ‘stabilise greenhouse gas concentrations in the atmosphere at a level that prevents dangerous interference with the climate system’.¹⁰ But little action is taking place to mitigate the activities that cause climate change and the international community has struggled to come up with a collective response to this problem. In response to this regulatory deficit, many new modes of governance now operate in this policy area.

1.2 Climate governance institutions

Whilst governance concerns the making of rules and the exercise of power,¹¹ climate governance specifically relates to the processes and institutions that coordinate collective action on climate change. This includes: mitigation, adaptation, and (potentially) geoengineering. Climate governance takes place between many different actors and across a multiplicity of scales. This thesis, however, is concerned with climate governance at the international level, among nation-states.¹² This involves

⁶ Toth *et al.* 2001, p.653

⁷ IPCC 2007; Stern, N. 2007; Garnaut, R. 2009. There is not complete consensus on this matter. Some argue that it would be better to pursue other policy options aside from mitigation. See, for example: Schelling, T. 1997; Lomborg, B. 2001; Nordhaus, W. 2009

⁸ IPCC 2001; 2007

⁹ UNFCCC 1992. For discussion: Bodansky, D. 1993; 2001; Yamin and Depledge 2004; Depledge, J. 2005b

¹⁰ UNFCCC 1992, Article 2

¹¹ Keohane, R.O. 2003, p.132. For similar definitions, see: Keohane and Nye 2000, p.12; Held, D. 2004, p.89; Held *et al.* 2011

¹² For more on ‘carbon’ or ‘climate’ governance, see: Biermann *et al.* 2009b, p.15; Biermann, F. 2010

Chapter 1. Introduction

multilateral institutions, which are organisations that determine roles, functions, procedures and processes of authority for cooperation on climate change.¹³

Academic studies use the term ‘governance’ as both an analytical concept to define existing power relationships, and as a normative term for evaluating institutional design. In this respect, the term is used interchangeably and simultaneously to describe existing power relationships and to define what power relationships should be in place.¹⁴ In this thesis, I start by assuming that normative institutional design requires understanding how institutions exist in the world today. Normative considerations may ultimately require a complete revision of the existing institutional framework, or the creation of new institutions altogether; but such radical proposals can only be made in light of the institutional architecture that currently exists. With this in mind, this section describes how climate governance takes place in the world today before discussing the normative criteria associated with multilateral institutions.

The UNFCCC is the existing global multilateral agreement for facilitating international cooperation on climate change,¹⁵ and the Conference of the Parties to the UNFCCC (COP) is the official negotiating forum for collective decision-making in the Convention. The legal instrument of the UNFCCC is the Kyoto Protocol (1997), which puts legally binding commitments on states to reduce their greenhouse gases.¹⁶ The Marrakech Accords (2001), the Bali Action Plan (2007), and the Durban Platform (2011) are subsequent agreements that have been adopted to continue action through the UNFCCC. Whilst the recent COP15 negotiations in Copenhagen highlighted the limits of the UNFCCC process, the outcome of COP16 in Cancun and COP17 in Durban renewed optimism in its ability to deliver collective action on climate change.¹⁷ In particular, COP17 established a second commitment period under the Kyoto Protocol, as well as the Ad-hoc Working Group on the Durban Platform: an agreement to negotiate an agreed outcome with legal force by 2015, which will

¹³ Buchanan, A. 2004

¹⁴ Biermann *et al.* 2009a, 2010a; Biermann, F. 2010; Corbera and Schroeder 2011

¹⁵ UNFCCC 1992

¹⁶ UNFCCC 1997

¹⁷ For criticism of COP15, see: Dubash, N. 2009, p.8; IISD 2010; Winkler and Beaumont 2010, p.640. For discussion of COP16, see: King *et al.* 2011. For commentary on the Durban Platform, see: Fu-Bertaux and Ochs 2012. For the outcomes of COP17, see: UNFCCC 2011

Chapter 1. Introduction

become operational in 2020. The recent COP18 in Doha committed to build on the framework put in place at Durban.¹⁸

In addition to the comprehensive approach of the UNFCCC, there are many other multilateral arrangements that coordinate cooperative action on climate change.¹⁹ These are agreements amongst limited numbers of states to address climate change. These arrangements include traditional international institutions that are now incorporating climate change into their mandates, such as: the Group of Eight Industrialised Countries (G8), the Group of Twenty (G20) and the UN Security Council. Given that the G8 and G20 members contribute to a large proportion of global emissions, many decisions within these institutions have direct, and indirect implications for climate governance. In contrast, other agreements, such as the Major Economies Forum on Climate Change and Energy (MEF), are created for the sole purpose of addressing climate change.²⁰ Some of these multilateral arrangements, such as the Cartagena Dialogue for Progressive Action on Climate Change, and the World Mayors and Local Governments Climate Protection Agreement, operate on a broad scale, encompassing many actors and issue areas.²¹ Whilst others, such as the Asia-Pacific Partnership on Clean Development and Climate (APP), Asia-Pacific Economic Cooperation (APEC) Forum, the Global Climate Change Alliance (GCCA), and the US Major Emitters Initiative, operate on a regional scale.²² There are also many bilateral laws and arrangements that coordinate climate governance between two countries.²³ Whilst many climate institutions cover many policy areas, some have limited mandates and address isolated policy issues. For example, the Climate and Clean Air Coalition is a global movement to reduce emissions of specific greenhouse gases known as ‘short lived climate pollutants’ and doesn’t address other issues of climate change.²⁴

¹⁸ UNFCCC 2012

¹⁹ For more on climate change initiatives outside of the UNFCCC, see: Jagers and Stripple 2003; Pattberg and Stripple 2008; Biermann, F. 2010; Bulkeley and Newell 2010

²⁰ The MEF facilitates dialogue among 17 countries (The Major Economies Forum on Energy and Climate 2013).

²¹ For more on the Cartagena Dialogue, see: Bowering, E. 2011; also see: the World Mayors and Local Governments Climate Protection Agreement 2012

²² For more on regional partnerships, see: Höhne *et al.* 2008; Kulovesi and Guitierrez 2009. For more on the Global Climate Change Alliance, see: GCCA 2012. For more on the Asia-Pacific Partnership, see: APP 2012

²³ Levi and Michonski 2010

²⁴ See: UNEP 2012

Chapter 1. Introduction

A common feature of these institutions is that they involve mutually agreed rules among nation-states. But state-based multilateralism is just one mode of governance. Public climate institutions also operate at the sub-state level.²⁵ Public-private governance arrangements regulate action between state and non-state actors.²⁶ Examples include the Netherlands Voluntary Agreement on Energy Efficiency and the Australia Greenhouse Challenge Plus Program.²⁷ National laws and policies are also critical areas of climate governance.²⁸ For this reason, some authors argue that power over collective action for climate change is increasingly located beyond the intergovernmental system.²⁹ Others argue that climate governance is decentralised, or ‘fragmented’, reflecting the multiplicity of actors and power relations that exist beyond the traditional interstate system.³⁰

Those who advocate these forms of governance fall into two groups. On the one hand, there are those who argue that the failure of centralised approaches means that action on climate change should be pursued through informal, or decentralised governance mechanisms.³¹ On the other hand, some argue that there is an increased interdependence between private and public sectors in world politics and that governance problems can only be solved through collaboration and cooperative action among both state and non-state actors.³² Both groups argue that a major reassessment is needed of the current focus on implementing climate governance through the UNFCCC.

Whilst these alternative forms of governance are important, this thesis focuses on multilateral climate institutions within the traditional state-based governance system. These are collective institutions made up of states for the purpose of cooperating on mitigation, adaptation, and (potentially) geoengineering. This includes comprehensive

²⁵ The World Mayors and Local Governments Climate Protection Agreement 2012

²⁶ For a description of public-private agreements, see: Gupta *et al.* 2007, p.761. For discussion, see: Bulkeley and Newell 2010; Bäckstrand, K. 2008

²⁷ Gupta *et al.* 2007, p.761

²⁸ Levi and Michonski 2010

²⁹ Kingsbury *et al.* 2005; Pattberg and Stripple 2008; Biermann *et al.* 2009b; Biermann, F. 2010; Corbera and Schroeder 2011

³⁰ Biermann *et al.* 2010b

³¹ Dryzek and Stevenson 2011

³² Prins and Rayner 2007a; Biermann, F. 2010b, p.287; Rayner, S. 2010; Biermann *et al.* 2012

Chapter 1. Introduction

treaties and agreements, as well as smaller multilateral institutions that coordinate action among exclusive groups of states. But it doesn't include fragmented, or decentralised systems of governance. The fact that climate change is inherent in all aspects of world politics means that the actions of institutions that don't have a specific mandate to address climate change still have significant implications for greenhouse gas emissions. This thesis focuses on institutions that actively address climate change. This includes institutions whose primary focus is to coordinate action on climate change, such as the UNFCCC, as well as institutions that do so together with other aims, such as the G20 and the WTO.

Furthermore, this thesis considers the normative design of multilateral institutions *that currently exist*. This is in contrast to specifying what types of institutions *should* exist to address climate change. There are several reasons for limiting the research in this way.

First, the state-based framework for addressing climate change is an established system of climate governance that has been around for over two decades. Whilst the recent COP15 negotiations led many to doubt the future of the UNFCCC process, the signing of the Durban Platform in 2011 has renewed optimism that a global agreement is still achievable.³³ At the very least, the outcomes of COP17 and COP18 mean that multilateral negotiations will continue in the UNFCCC for the foreseeable future and it would be premature to wholly dismiss the possibility that a comprehensive agreement will arise through this process. Further, even if the UNFCCC fails to achieve climate stabilisation on its own, this doesn't mean that it should be abandoned altogether. A comprehensive approach to climate governance is just one part of an overall governance framework for climate change. Whilst individual institutions may fail to fully address climate change in isolation, it doesn't mean that they won't play an important part of the overall effort to achieve this goal.³⁴ Even if continued delay makes it worth pursuing climate governance through institutions outside the UNFCCC, this is not to say that the actions taken by the UNFCCC are no longer crucial for addressing climate change.

³³ UNFCCC 2011; Stavins, R. 2012. Many authors remain sceptical about the effectiveness of the UNFCCC process: Prins *et al.* 2010; Victor, D. 2010; Atkinson *et al.* 2011

³⁴ Falkner *et al.* 2010; Keohane and Victor 2010

Chapter 1. Introduction

A second, related point is that path dependency plays an important role here. Given that multilateral negotiations have taken place over the past two decades, any proposal for institutional reform must take the existing institutional framework into account, because many political constraints arise due to the historical contingency associated with the previous negotiations. Many of the defining features of the UNFCCC negotiation process came about through historical precedent, rather than normative prescription. This includes issues such as the North-South divide between developed and developing countries, the legal form of the UNFCCC, and burden-sharing rules such as the Common but Differentiated Responsibility principle.³⁵ This means that even if climate governance should move away from the multilateral process, it should start by considering what institutions currently exist, because the way these institutions are set up at the moment has important implications for the sort of governance that can ultimately be achieved.

Third, state-based systems of governance are the only ways of creating legally binding treaties. This is because states are the only actors capable of constructing and enforcing international law, which serves as the principle framework for international cooperation and collaboration. This means that states are the only actors capable of enforcing the necessary regulation to achieve effective action on climate change at this point in time. State-based arrangements therefore provide unique benefits in comparison to other modes of governance.³⁶ Whilst there are other forms of governance, multilateralism may be the only way of implementing sufficient action on climate change.

Fourth, it is possible to control and design state-based multilateral institutions in a way that isn't possible with informal governance arrangements. Multilateral institutions are agreements between nation-states and are designed with a specific purpose in mind. It is therefore possible to make specific policy prescriptions about a single, centralised political entity.³⁷ Fragmented governance structures, on the other hand, are typically spontaneous, or at least informal arrangements. Whilst it's possible

³⁵ Rajamani, L. 2006; Yamin and Depledge 2004

³⁶ Keohane and Grant 2005

³⁷ This follows the discussion given by Terry Macdonald (Macdonald, T. 2008, p.52-3).

Chapter 1. Introduction

to comment on the normative desirability of different informal governance structures, it is difficult to control these structures in the same way. This means that it's difficult to make prescriptive statements about how fragmented arrangements should be designed. Some claim that this also makes informal governance arrangements more susceptible to gridlock and manipulation.³⁸ Focusing on multilateralism therefore allows us to make stronger claims about the structure of an institution and helps to avoid some undesirable features of governance.

Together, these arguments give us good reasons for analysing climate governance in multilateral institutions, rather than fragmented forms of governance in a broader sense. This is not to say that these alternative forms of governance are unimportant, nor is it to prioritise multilateralism in any way. However, this does suggest that, in the immediate future, successful climate governance is most likely to arise through multilateral approaches.

Before proceeding, it is worth addressing an objection to the argument so far. Given that there is a need to achieve action on climate change immediately, one might ask why we should bother considering how people should design institutions at all. If states, or other actors, can coordinate action on their own, then surely it would be better to let them do so, rather than imposing interfering constraints.

There are three responses to this question. First, regardless of the spontaneous nature through which institutions arise, there are still certain values that these institutions should achieve. These values are intrinsically important, and to say that these institutions should coordinate action without taking them into account goes against our usual approach to governance.

In response to this argument, one might object that if an institution can achieve effective action on an issue as important as climate change, then this institution shouldn't be burdened with requirements of institutional design. The risk of severe and irreversible damage to the atmosphere means that effective action should supersede other concerns. This objection requires a second response.

³⁸ Keohane and Victor 2013, p.107

Chapter 1. Introduction

Whilst it might ultimately be the case that other values of institutional design should be relegated for the sake of climate stability, we don't know what the current trade-offs between these values will be. This is only possible once the criteria that should be used to design climate institutions have been determined. This is what this thesis sets out to do. A further point is that there is no guarantee that a collection of states that come together on a spontaneous basis can bring about the necessary action for climate stabilisation. It is not certain that a sufficient number of states would come together in order to achieve action on climate change, or that a spontaneous collection of states would commit to the necessary emissions reductions to avoid dangerous climate change. Given this uncertainty, it is necessary to think about how institutions can be designed to sufficiently address climate change. As I show in the next section, many principles of institutional design are instrumentally valuable to achieving action on climate change. This suggests that a thorough consideration of how climate institutions should be designed remains important.

2. The normative design of governance institutions

In light of the different institutional arrangements that exist in climate governance, a number of studies attempt to evaluate these arrangements and propose options for their reform.³⁹ Many of these proposals are based on implicit assumptions about the normative desirability of different governance architectures and the role that these architectures should play. Typically, the desirability of an institution relates to its performance, or 'effectiveness' in reaching an overall objective (for example, achieving climate stabilisation). But many refer to other normative criteria when making proposals about climate institutions, including justice, legitimacy, and economic efficiency. These values are often poorly defined, or inadequately explained, which leads to confusion about how governance institutions should be structured. This section introduces the normative criteria that are often given in the literature for the institutional design of climate governance, and highlights where further study is needed.

³⁹ This section draws on the discussions from: Höhne *et al.* 2002, p.34; Aldy *et al.* 2003; Bodansky and Chou 2004; Aldy and Stavins 2007, 2010; Winkler and Beaumont 2010

Chapter 1. Introduction

2.1 Criteria for institutional design

The literature on climate change typically divides normative criteria into two categories: substantive criteria, which relate to the outcomes of an institution, and procedural criteria, which relate to the processes that generate these outcomes.

It is important to note three things about these criteria. First, they are interlinked, in the sense that they can either complement and conflict with one another in different situations. For example, Philibert and Pershing make the argument that an institution that achieves economic efficiency may not yield the best environmental outcome.⁴⁰ On other occasions they are mutually supportive. For example, Lavanya Rajamani argues that an institution that is neither equitable, nor politically feasible, is unlikely to achieve its goals.⁴¹

Second, substantive criteria can also relate to the procedural design of an institution, just as procedural criteria can be matters of substantive concern. For instance, it might be desirable to design an institution that achieves a substantive end, such as economic efficiency. This involves ensuring that the outcomes of the agreement are those that minimise the economic cost of the agreement. But it also involves designing the procedural aspects of the institution so that these minimise the economic cost of the agreement as well. This might involve designing procedures that minimise transaction costs, or that do not place high information costs on participating actors. In this instance, a substantive normative criterion has implications for the procedural design of the institution. Consequently, whilst a distinction can be made between procedural and substantive criteria of institutional design, this does not limit the aspects of institutional design that each type of criterion applies to.

Third, some of the criteria proposed here have *both* procedural *and* substantive elements. For instance, the criterion of legitimacy, which is defined and discussed in the following section, has elements that govern both of these criteria. Separating these elements is common in the literature on institutional design. For example, Fritz Scharpf has labeled these ‘input legitimacy’ and ‘output legitimacy’, which

⁴⁰ Philibert and Pershing 2001

⁴¹ Rajamani, L. 2000

Chapter 1. Introduction

respectively relate to procedural and substantive elements.⁴² Both Thomas Franck, and Buchanan and Keohane also make a distinction between these two features of legitimacy.⁴³ The reason for separating such criteria into their substantive and procedural components, even when some of these criteria concern both of these dimensions, is to show that, in certain cases, they matter to both process *and* outcome. This is something that is sometimes overlooked in the literature. I separate these two features to demonstrate that one can focus on the procedural aspect of legitimacy irrespective of the substantive ends that it brings about.

2.2 Substantive criteria

Substantive criteria relate to the outcomes that are brought about by the institution. These criteria are important regardless of the process through which they arise. For instance, one might argue that achieving important ends such as avoiding dangerous climate change is the most pressing concern at the moment and that it doesn't matter how this end is actually achieved, so long as this goal is reached. The literature on climate institutions often refers to five substantive criteria for institutional design: effectiveness; justice, or equity; efficiency, or cost-effectiveness; legitimacy; and political feasibility.⁴⁴ These criteria are valuable in themselves, but they are also interdependent and interlinked.

Effectiveness relates to the extent to which an institution meets its intended objective.⁴⁵ In the case of climate change, this is typically defined in terms of meeting an emissions target or achieving certain adaptation goals. For example, the primary objective of the UNFCCC is to stabilise greenhouse gas concentrations in the atmosphere at a level that prevents dangerous interference with the climate system.⁴⁶ This is often proposed as the primary objective of any international agreement, and many authors advocate secondary principles that are instrumental to achieving this end. For instance, some argue that a high level of participation is a fundamental

⁴² Scharpf, F. 1999

⁴³ Franck, T. 1995; Buchanan and Keohane 2006

⁴⁴ Gupta *et al.* refer to these as 'desirable' criteria (Gupta *et al.* 2007, p.750). These are also referenced in other IPCC Assessment Reports (see: Bashmakov *et al.* 2001, p.407). Other authors who refer to these criteria include: Aldy *et al.* 2003, p.374; Aldy and Stavins 2010, p.2-3; Winkler and Beaumont 2010, p.642

⁴⁵ Höhne *et al.* 2002, p.33

⁴⁶ UNFCCC 1992, Article 2

Chapter 1. Introduction

criterion of institutional design for climate change policy.⁴⁷ Others claim that compliance and enforcement are essential elements of climate institutions.⁴⁸ However, to a large extent, participation and enforceability are only desirable insofar as they are instrumental towards achieving emissions reductions or some other end.

In addition to effectiveness, there are three further substantive principles that are often given as desirable criteria for policy design: efficiency, distributive equity and legitimacy. Efficiency dictates that the economic costs of addressing climate change are minimised.⁴⁹ Equity relates to justice, or fairness, and it has both substantive and procedural dimensions.⁵⁰ The substantive dimension is often referred to as distributive equity, which concerns how the relative costs of climate change should be distributed among participating countries. Whilst justice, fairness and equity have different meanings in some contexts, this thesis uses these terms interchangeably. This follows the convention in much of the literature on the subject.⁵¹ Further, whilst this thesis focuses on intragenerational equity, there are other elements of equity that are important in this context, including intergenerational equity, or intranational equity. Broadly speaking, a legitimate institution is one that has both the right to govern as well as a level of support amongst those on whom it imposes power.⁵²

2.3 Procedural criteria

The design of climate governance institutions is not simply a matter of promoting certain substantive outcomes: procedural values also have a role to play here. Procedural values are those that relate to how people reach an outcome, regardless of what that outcome actually is. When thinking about climate change institutions, this concerns the design of decision-making processes, which are the institutional procedures for making collective choices.⁵³

⁴⁷ OHCHR 2009, p.23; Hare *et al.* 2010; Bosetti and Frankel 2012

⁴⁸ Barrett, S. 2003; Barrett and Stavins 2003; Victor, D. 2006

⁴⁹ Gupta *et al.* 2007, p.750

⁵⁰ This definition is adopted throughout the literature. See: Banuri *et al.* 1995, p.85-6; Toth *et al.* 2001; Gupta *et al.* 2007, p.751

⁵¹ Toth *et al.* 2001, p.668 footnote 40

⁵² Franck, T. 1995; Dingwerth, K. 2005; Bodansky, D. 2007

⁵³ Krasner, S. 1982, p.186

Chapter 1. Introduction

There are two normative criteria that are of particular concern for climate institutions: procedural efficiency and procedural justice. Procedural efficiency relates to the ability to reach agreement. That is, it concerns how easy it is to reach agreement on something. There are various proposals for facilitating decision-making in climate institutions, including:

- (i) Simplifying decisions and limiting separate discussions.⁵⁴
- (ii) Ensuring that decisions are compatible with prior convention.⁵⁵
- (iii) Splitting up problems into smaller negotiation packages.⁵⁶
- (iv) Designing negotiations to focus on the problem at hand.⁵⁷

Procedural justice, on the other hand, concerns whether the means by which an outcome is reached is fair regardless of what the outcome actually is.⁵⁸ It relates to who participates in a decision-making process, as well as the fairness of that process. The basis of procedural justice is grounded in different ways according to different theories of justice. Some argue that procedural justice is based on a fundamental duty of equal respect for the opinions of others,⁵⁹ whilst others argue that procedural justice is important because it enables affected parties to maintain their dignity.⁶⁰ Some claim that it carries important instrumental value.⁶¹

Whilst many authors acknowledge the importance of procedural equity, this issue is often overlooked in relation to climate change, and formal mechanisms to facilitate procedural justice are missing from most policy proposals.⁶² Therefore, it is important to examine how these decision-making processes can be designed so that they are procedurally fair.

⁵⁴ Torvanger and Ringius 2002, p.224; Höhne *et al.* 2003, p.34; Ghosh, A. 2010, p.3.

⁵⁵ Depledge and Yamin 2009

⁵⁶ Biermann *et al.* 2011

⁵⁷ Gupta *et al.* 2007; Harstad, B. 2009a. Arunabha Ghosh also discusses some features that may improve multilateral negotiation dynamics (Ghosh, A. 2010, p.4).

⁵⁸ Banuri *et al.* 1995, p.83-5, 117; Rayner and Thompson 1998, p.319; Albin, C. 2001; Grasso, M. 2007; 2010, p.4

⁵⁹ For example: Waldron, J. 1999

⁶⁰ Schlosberg, D. 1999, p.12–13, 90; Paavola, J. 2005, p.313-4

⁶¹ Toth, F.L. 1999, p.2

⁶² Exceptions include: Adger *et al.* 2006; Grasso, M. 2010

Chapter 1. Introduction

There is one immediate objection to this interpretation of procedural justice and it is worth addressing this challenge at the outset. Some authors argue that, contrary to the argument so far, there is no intrinsic merit to procedural design and that decision-making processes should be designed with the sole intention of promoting certain desirable outcomes. For instance, Richard Arneson argues democracy should be regarded as ‘a tool or instrument that is to be valued not for its own sake but entirely for what results from having it’.⁶³ According to these arguments, decision-making processes should be designed to achieve desired outcomes, rather than to promote values that are independent of these ends. This claim poses a potential problem for the argument thus far, which stresses the importance of procedural values independent of the outcomes that procedures achieve.

In response to this objection, there are at least four further reasons for considering procedural values in this context. First, several authors do in fact argue that there is something intrinsically just about the process by which outcomes are reached.⁶⁴ This view is supported by empirical studies of human behaviour, as well as the claims that arise in the negotiations of the UNFCCC.⁶⁵ The climate negotiations at COP15 highlighted that the COP is seen as an illegitimate venue for negotiations due to the exclusive nature of its decisions. At these negotiations, Venezuela, Cuba, Nicaragua and Bolivia all renounced the Copenhagen Agreement on procedural grounds.⁶⁶ Others have questioned the legitimacy of the G8 and MEF on procedural grounds, arguing that they exclude key actors and are insufficiently transparent.⁶⁷ It seems reasonable, therefore, to assume that there may be some cases in which the process is valued independently of the outcome achieved.

Second, existing climate institutions have so far failed to address procedural justice, contributing to political deadlock in the negotiation process. Despite several unsuccessful attempts to adopt rules for voting and broader decision-making, the Parties of the COP have failed to come to agreement on procedural rules, meaning that the COP continues to rely on the draft rules of procedure, which do not specify a

⁶³ Arneson, R. 2004

⁶⁴ Those who argue that there is an intrinsic value to democracy include: Beitz, C. 1989; Cohen, J. 1997; Waldron, J. 1999

⁶⁵ HSD 2010; Grasso, M. 2010, p.99; Winkler and Beaumont 2010, p.640

⁶⁶ Dubash, N. 2009, p.8; Bäckstrand, K. 2010a, p.1

⁶⁷ Karlsson-Vinkhuyzen and McGee 2013, p.67

Chapter 1. Introduction

voting procedure.⁶⁸ Consequently, decisions are made by consensus, leading to ‘lowest common denominator’ outcomes, and blocking tactics within negotiations.⁶⁹ An analysis of procedural justice will help to refine discussion of these issues and to bring about a set of procedural rules that parties can accept in multilateral negotiations.

Third, as I show in chapter two, climate change is an issue that is characterised by reasonable disagreement over substantive values. This means that no single answer is likely to gain the support of actors, even if they are arguing about the common good, and in good faith. I show that procedural justice is instrumentally important because it allows us to reach a mutually acceptable outcome when there is reasonable disagreement about substantive ends. In chapter eight, I go on to argue that procedural justice is still important even if people give up on a comprehensive agreement for climate change.

Fourth, climate change is characterised by extreme uncertainty, and this makes it difficult for actors to reach agreement on the substantive outcomes of climate institutions. Some authors argue that, when outcomes are uncertain, actors put an emphasis on the quality of the procedure, over substantive outcomes.⁷⁰ For this reason, procedural justice is an important precondition to creating and operating climate institutions.

Following these points, procedural values are important here, and the objection does not invalidate the analysis at hand. This thesis therefore defends procedural justice on both intrinsic, and instrumental grounds.

3. Literature review

Having examined the meaning and moral importance of procedural values in climate institutions, I now review some of the existing literature on climate change and show that procedural justice requires further attention here.

⁶⁸ UNFCCC 1996, Rule 42

⁶⁹ Prins and Rayner 2007b

⁷⁰ Toth, F.L. 1999, p.2; Foti *et al.* 2008

Chapter 1. Introduction

3.1 Justice and climate change

Whilst there is a great deal of research on the role of justice and morality in climate change, these studies almost completely overlook procedural justice. Theorists and philosophers have examined issues of fairness and justice extensively since climate change became a matter of political concern.⁷¹ Debate focuses on: which principles should guide the distribution of the benefits and burdens of climate change, the fair distribution of emission rights, what rights and duties people have regarding climate change and, to a limited extent, fair adaptation to climate change. Yet, political theorists have not addressed the issue of procedural justice in the context of climate change. Whilst many authors acknowledge that procedural justice is an important issue in this area, the subject has not yet been studied. At an early stage in the discussions of justice and climate change, Henry Shue identified procedural equity as one of the four questions that frames justice in this context.⁷² But, to date, few authors have taken up this question.

3.2 Procedural justice and multilateral governance

Recently, however, there has been a ‘procedural turn’ in the literature on multilateral governance, as authors have turned their attention to issues of inclusiveness and transparency.⁷³ There is growing consensus in both the academic and policy literature that principles of ‘good’ governance should apply to decisions in international organisations. Core elements of good governance include: transparency, participation, accountability, and the review and refinement of policy choices over time. Other studies specifically consider the fairness of international negotiation processes,⁷⁴ often suggesting that the effective representation of all stakeholders and the impartial consideration of all claims are necessary conditions for fair negotiations, or that parties should have more equal starting positions in terms of negotiating capacity.

This procedural turn in multilateral governance is also demonstrated by the gradual accommodation of procedural matters in the treaty texts and constitutions of several multilateral institutions. Institutions that have adopted procedural measures include,

⁷¹ Shue, H. 1992; Caney, S. 2006b; Miller, D. 2008

⁷² Shue, H. 1993

⁷³ Bäckstrand, K. 2006, p.467; Bäckstrand, K. 2010b; Dryzek and Stevenson, 2011; 2012b; Stevenson, H. 2011

⁷⁴ Albin, C. 2003b, p.13; Chasek and Rajamani 2003

Chapter 1. Introduction

for example, the Vienna Convention on the Law of Treaties (1969) and the more recent Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998), which assign rights to information, participation and accountability in environmental decision-making.⁷⁵ Authors increasingly recognise that democratic values, such as representation, deliberation and inclusion are becoming common elements of the rhetoric of many other multilateral institutions.⁷⁶

These values are typically underpinned by a substantive right to live in an environment adequate for health and well-being. Alternatively, they are advocated as instrumental values for the achievement of other ends. For instance, Karen Bäckstrand argues that the institutional effectiveness of environmental governance mechanisms is tied to procedural values such as representation, participation, accountability and transparency.⁷⁷ As such, the promotion of these democratic values is instrumental towards achieving substantive ends, rather than intrinsically valuable. These studies often consider multilateral institutions more generally, rather than climate change institutions in specific. Whilst climate change institutions are a part of multilateral institutions more generally, there are also many important differences between climate change institutions, and other environmental agreements. Therefore, despite this procedural turn in environmental governance, more attention is needed on the procedural design of climate institutions.

3.3 Global governance and the democratic deficit

Whilst specific references to procedural justice are often absent from the literature, some studies consider values that share many of the features of procedural justice in relation to global governance more generally. An example of this is the broad literature on the ‘democratic deficit’ that exists in global governance institutions.⁷⁸ Following the increased interdependence of the new global order, there has been a reevaluation of several notions of legitimacy and democracy in international governance structures. This reflects the idea that there is now a high level of interdependence between individuals in different countries, and that a democratic

⁷⁵ UN 1969; 1998

⁷⁶ Bäckstrand, K. 2010a, p.670

⁷⁷ Bäckstrand, K. 2006, p.468

⁷⁸ Chimini, B. 2004; Kingsbury *et al.* 2005; Habegger, B. 2010

Chapter 1. Introduction

deficit has arisen due to the ‘transfer of decision-making authority away from nation states towards a variety of unelected or unaccountable international bodies’.⁷⁹ As a result, many argue that greater levels of inclusion should take place in the decision-making processes of international institutions,⁸⁰ or that there should be greater means through which accountability can be exercised in international institutions.⁸¹ The areas of transnational democracy, cosmopolitan democracy, discursive democracy and stakeholder democracy are all advocated as institutional innovations that reduce the democratic deficit of multilateral institutions in this way.⁸²

But there are several reasons why it’s still necessary to analyse procedural justice in climate change institutions. First, it is not clear whether such arguments are appropriate in the context of climate change. Climate change is a unique phenomenon, which is separate and distinct from global governance more generally. The fact that climate change is global, potentially catastrophic, and highly complex necessitates a new inquiry on the subject of democracy and global governance.⁸³ Second, arguments based on concerns about ‘democratic’, or ‘accountability’ deficits are not confined to the fairness of the decision-making processes of multilateral organisations. Rather, these arguments are based on notions of legitimacy, or the need for democratic processes. Whilst recognising the importance of these studies, this thesis attempts to address procedural design in climate change institutions from the point of view of procedural justice. Third, whilst there is significant debate regarding procedural, or democratic, principles in the context of global governance, this often operates at a high level of abstraction and does not focus on concrete principles of procedural justice.

3.4 Procedural values and climate governance

In the context of climate governance, there are some studies that specifically address procedural values and institutional design. The recent collections of studies by Aldy and Stavins, go some way to providing a comprehensive analysis of both procedural, and substantive normative criteria for the institutional design of a successor to the

⁷⁹ Bodansky, D. 2007

⁸⁰ Keohane, R.O. 2003, p.132; Held, D. 2004, p.66; Besson, S. 2009, p.64

⁸¹ Zürn, M. 2000; Nye, J.S. 2001; Keohane, R.O. 2006

⁸² Bäckstrand, K. 2008, p.79

⁸³ For an argument that climate change is a unique problem, see: Toth *et al.* 2001, p.603

Chapter 1. Introduction

Kyoto Protocol.⁸⁴ These studies examine the merits of different institutional architectures and make policy proposals for the design of new multilateral agreements. For example, Bard Harstad proposes seven bargaining rules that would facilitate agreement in climate negotiations, including rules regarding minimum levels of participation in bargaining processes, and unanimity requirements for acceptable bargains.⁸⁵ Other authors have also started to consider the importance of procedural values for the design of climate institutions. For instance, Jing Huang argues that the decision-making processes of a climate regime should be transparent and operate in accordance with established international norms, principles, and laws.⁸⁶ More recently, the Nordic Council of Ministers released a paper that criticised the procedural design of the UNFCCC.⁸⁷ Some of the reports of the IPCC also provide recommendations for the design of decision-making procedures in the UNFCCC.⁸⁸

However, to a large extent, these studies provide an inadequate analysis of procedural justice. The rules proposed by Harstad, the IPCC and the UNFCCC are designed to facilitate agreement among parties, rather than to promote procedural justice. As such, these studies represent proposals for procedural effectiveness, and do not recognise the importance of procedural justice.

The proposed research therefore represents a new inquiry in this area, as it seeks to develop principles of procedural justice in the context of climate change as an important value in itself. This becomes even more important given that the lack of formal, agreed rules of procedure in the UNFCCC.

There are two important exceptions to the absence of procedural justice in the literature on climate change. First, Marco Grasso has recently applied principles of procedural justice to the context of the funding of adaptation to climate change impact.⁸⁹ Grasso develops a theory of procedural justice that is characterised by moral

⁸⁴ Aldy and Stavins 2007; 2010

⁸⁵ Harstad, B. 2010

⁸⁶ Huang, J. 2009

⁸⁷ Vihma and Kulovesi 2012

⁸⁸ IPCC 1990; Banuri *et al.* 1995, p.57-8; the reason for not using the most recent IPCC reports for citation is that many of the arguments referenced here are covered in earlier IPCC Reports and the authors of more recent reports cite these older publications.

⁸⁹ Grasso, M. 2010, p.38

Chapter 1. Introduction

reciprocity and gives a critical review of the current institutional arrangements for international adaptation funding. Second, Huq and Khan provide a similar analysis, examining the National Adaptation Programmes of Action (NAPA) process in Bangladesh and the role of equity and justice in the decision-making procedures of this policy.⁹⁰ Further to these two exceptions, several authors argue that it is necessary to consider procedural justice in the context of climate change, whilst not exploring the issue in any depth.⁹¹ For example, Adger *et al.* argue that issues of participation and representation are key concerns regarding adaptation and climate change, yet fail to show why such issues should be taken into account or to demonstrate how they compare to other criteria such as substantive justice.⁹² Whilst these studies represent the most thorough analyses of procedural justice in climate change governance to date, they are limited to specific issue areas of climate change policy and they do not address the procedural justice issues within the overall policy architecture.

3.5 The procedural deficit

Whilst there is some discussion of procedural justice and climate change in the literature, these studies are either insufficiently normative or provide inadequate focus on procedural justice. As such, it is still worthwhile to consider what procedural justice requires in multilateral climate change institutions.

Before proceeding, it's worth briefly reflecting on why procedural justice hasn't been discussed more extensively in this context. Since climate change has only recently become a concern in a policy context, it might be that normative theorists have not been able to address procedural justice at this time. Yet the recent nature of the climate problem has not prevented the growth of a vast literature on distributive justice and climate change. Furthermore, the topical nature of the issue has encouraged a great deal of research on the institutional design of climate governance institutions. Given the existing literature on distributive justice and the distribution of greenhouse gas emissions, it could be that the unresolved nature of this debate has prevented progress on procedural justice, as theorists have focused on substantive concerns. Further, some suggest that the lack of attention to procedural justice may be

⁹⁰ Huq and Khan 2006, p.189

⁹¹ Banuri *et al.* 1995, p.117; Paavola, J. 2005

⁹² Adger *et al.* 2003

Chapter 1. Introduction

due to the fact that the UNFCCC sufficiently addresses the issue already.⁹³ However, given the problems outlined so far, this is clearly not the case.

4. Methodology

It's time to think about the methodology of the thesis. To this end, this section provides an overview of Wide Reflective Equilibrium as well as two pertinent objections to this method. It also gives an account of Ideal and Non-Ideal theory before defining some preliminary assumptions.

4.1 Wide Reflective Equilibrium

The goal of this thesis is to determine a set of principles for the design of decision-making processes in climate negotiations. I derive these principles by using the method of Wide Reflective Equilibrium, a method for determining moral judgements.⁹⁴

A Reflective Equilibrium is a method that can be used to derive moral or non-moral judgements. It takes two forms. A Narrow Reflective Equilibrium involves working back and forth between moral judgements about particular situations in order to identify principles that link those moral judgements to others that are similar. However, in order to provide adequate reasons for accepting principles that include these moral judgements, it is necessary to use a second type of Reflective Equilibrium, that is: a Wide Reflective Equilibrium. This involves working back and forth among judgements about moral principles and other theoretical considerations in an attempt to produce coherence between three sets of beliefs: moral judgements, moral principles and relevant background theories. The exact process of this method is as follows: first, a person's moral judgements are considered. Alternative sets of moral principles that fit with the moral judgements are then considered and arguments are advanced to compare the relative merit of alternative principles and competing moral conceptions. These arguments are taken as inferences from the set of relevant background theories. People then make adjustments and revisions between these moral judgements, moral principles and background theories until they reach an

⁹³ Klinsky and Dowlatabati 2009, p.96

⁹⁴ The following account is based on the discussions in: Rawls, J. 1971; Daniels, N. 1996; McDermott, D. 2008

Chapter 1. Introduction

equilibrium point. People reach this equilibrium point, or ‘reflective equilibrium’, when they have an acceptable coherence among these beliefs.

One crucial objection to this approach is that it gives undue prominence to moral intuitions. Such moral intuitions may be tainted by historical accident or prejudice and, in this sense, are not foundational. Judgements about justice may be ‘local’ and specific to certain societies and contexts.⁹⁵ Given this, we shouldn’t rely on such an unreliable method that merely reflects a set of determinate moral judgements.

There are two responses to this objection. First, rather than simply systematising some determinate set of judgements, the method of Wide Reflective Equilibrium permits extensive revision of these judgements. Wide Reflective Equilibrium therefore allows for the fact that some principles may be relative, whilst remaining an important undertaking. Second, one way to support the initial credibility of moral intuitions is to draw an analogy between considered judgements or intuitions, and those observations that are made in science or everyday life. Both Norman Daniels and Daniel McDermott draw an analogy between the use of considered moral judgements and observations that are made in scientific reasoning.⁹⁶ This analogy provides a powerful argument for accepting our considered moral judgements in ethical theory. Consequently, the objection raised above does not present a valid argument for rejecting the method of Wide Reflective Equilibrium.

4.2 Ideal and Non-ideal theory

Studies to determine theories of justice typically distinguish two types of analysis: ‘Ideal’ and ‘Non-ideal’ theory.⁹⁷ Ideal Theory defines principles at a fundamental level, making assumptions for the sake of developing a theory of justice. Non-ideal Theory, on the other hand, takes into account the real world considerations that are excluded from ideal theorising. Whilst Ideal Theory gives us aspirational goals, Non-ideal Theory emphasises the importance of specifying achievable ends.

⁹⁵ Daniels, N. 1996, p.103

⁹⁶ Daniels, N. 1996, p.4; McDermott, D. 2008

⁹⁷ Buchanan, A. 2004, p.55; Mason, A. 2004, p.265; Ypi, L. 2010, p.538

Chapter 1. Introduction

There is an on going debate between those who invoke ideal hypotheticals when deriving principles of justice and those who stress the importance of non-ideal considerations.⁹⁸ The concern amongst some is that ideal theories of justice leave us with principles that do not take into account important features of the world, and that the principles prescribe unattainable ends. The counterclaim is that focusing on non-ideal theory leads to a theory of justice that merely reflects what is palatable, or generally acceptable, given people's political motivation for justice. This presents a dilemma for anyone considering normative principles of justice. On the one hand, it is necessary to take into account the existing state of affairs to suggest reforms that are realisable in practice. On the other hand, it is important not to lose sight of the more radical reforms that people should ultimately achieve.

This dilemma is less problematic than it first appears. It is possible to make policy proposals that are achievable whilst maintaining a focus on an ultimate ideal. What is important, however, is that the sort of analysis that is being undertaken is clearly defined. In this thesis, I recognise the merit of ideal principles whilst realising that such principles may have to be adapted in order to gain traction in a policy context. For this reason, it's necessary to spell out the key assumptions that I make in this thesis.

First, I assume that states will broadly comply with the principles and commitments of a multilateral regime. This is a contentious assumption to make, especially in light of the absence of a global sovereign power and the subsequent lack of effective compliance mechanisms for enforcing regulations for climate change institutions.⁹⁹ This represents a serious challenge to an approach that assumes full compliance with international treaties.

In response to this challenge, it's important to note that states do participate in and comply with international agreements for reasons aside from self-interest. Abram Chayes and Antonia Chayes argue that states comply with the commitments of international agreements because they have been persuaded to do so in the negotiation

⁹⁸ For more on this discussion, see: Mason, A. 2004, p.265; Swift, A. 2008, p.365; Hamlin and Stemplowska 2012, p.51

⁹⁹ See Stephen Gardiner's commentary on institutional inadequacy (Gardiner, S. 2011, p.28).

Chapter 1. Introduction

process, rather than out of a concern for self-interest.¹⁰⁰ Similarly, Thomas Franck argues that fairness is the key determinant of compliance in an international regime.¹⁰¹ Whatever the primary motive for state action may be, it is clear that climate change negotiations are part of an ongoing cooperative process that take place against the backdrop of many other multilateral arrangements. For this reason, it seems reasonable to assume that states have incentives to join and comply with the provisions of a multilateral agreement, even in the absence of a coercive authority.

But there is a second response to this challenge, which is to say that we're developing principles of justice in an ideal sense. Ideal Theory involves making certain assumptions about the state of the world. One such assumption is that actors will comply with principles of justice. Whilst there may be problems of non-compliance in a non-ideal context, we can leave these issues aside for the moment and address them when we consider how we should revise our principles of justice to address non-ideal scenarios. What matters is to specify what justice requires first, before considering how to deal with non-ideal matters.

Still, making practical suggestions for policy reform ultimately requires taking these issues into account. An international climate agreement is of no value without sufficient participation and compliance by a large number of signatories.¹⁰² Therefore, it's necessary to consider the minimum criteria that any principle of justice must meet in order to be feasible.¹⁰³ To this end, I consider the relative feasibility, or acceptability, of proposals for institutional reform in chapter nine, before making some practical policy suggestions for climate institutions.

Second, this research involves thinking about 'partial' justice, in the sense that I focus on one domain of justice, rather than considering justice in a broader context. A partial approach to justice is necessary if it isn't possible to immediately achieve justice in a wider context. Ingrid Robeyns argues that, if this is the case, it might be desirable to consider what justice requires in some areas, whilst remaining silent on

¹⁰⁰ Chayes and Chayes 1995

¹⁰¹ Franck, T. 1995

¹⁰² Aldy and Stavins 2010, p.18

¹⁰³ Gupta *et al.* 2007, p.752

Chapter 1. Introduction

other issues.¹⁰⁴ This is particularly important for justice and climate change, given that climate change has the potential to bring about outcomes that are extremely unjust. It is therefore worthwhile pursuing justice in relation to climate change in the first instance, rather than attempting to incorporate broader concerns of global justice more generally.

As a result, I adopt an ‘isolationist’ approach to justice, by analysing questions of climate justice in isolation from other pressing issues of justice.¹⁰⁵ This focuses on what’s achievable here and now, rather than pursuing a more ideal outcome of global justice, which may ultimately be less easily attainable. This doesn’t mean that there aren’t many other pressing issues of justice. But pursuing a comprehensive approach would risk jeopardising what can be achieved by attempting to address issues that are out of reach.

Third, I take an ‘institutionalist’ approach to climate policy, which involves taking institutions as they are and attempting to implement reform on the basis of the current state of the world.¹⁰⁶ Some authors think of this as a ‘bottom-up’ approach, which attempts institutional reform given the existing state of the world. A non-institutionalist approach, on the other hand, asks what sort of institutions should be created regardless of those that are currently in existence. This is referred to as a ‘top-down’ approach, which starts from a principle, or ideal, without taking into account the existing institutional forms. The advantage of pursuing an institutionalist approach is that there are certain features of the world today that are unlikely to change. For instance, the fact that the world is divided into nation-states may not be something that people would aim for in a non-institutional approach, but it is something that people have to accept when determining principles of institutional design. But there are also downsides to this approach. People might fail to achieve the maximum attainable ideals, or they might accept practices or institutions that should be outlawed. These problems can be avoided by keeping in mind that we’re only taking an institutionalist approach to policy. More radical proposals for reform should also play a role in shaping our thoughts about the ultimate ends that people should pursue.

¹⁰⁴ Robeyns, I. 2008

¹⁰⁵ I take this term from Simon Caney (Caney, S. 2005b).

¹⁰⁶ See: Blake, M. 2001; Griffin, J.W. 2008

Chapter 1. Introduction

5. Chapter outline

The thesis consists of four steps: first, I argue that procedural justice is a fundamental part of institutional design. Second, I identify several principles of procedural justice and evaluate these principles alongside other criteria to determine a set of rules for decision-making in climate institutions. Third, I compare the desirability of procedural rules against other criteria for climate change institutions and determine the relative priority that should be accorded to each of these. Fourth, I use these findings to specify some pragmatic policy proposals for the design of climate governance institutions. The thesis consists of the following chapters.

Chapter 2. Reasonable Disagreement

The purpose of this chapter is twofold. First, I demonstrate that there is reasonable disagreement over the substantive ends that climate changes institution should pursue. Second, I show that procedural justice is important for reaching agreement when there is reasonable disagreement over substantive values. I show that there is reasonable disagreement over substantive values by looking at several proposals for the fair distribution of greenhouse gas emission rights. The chapter emphasises the importance of procedural justice by showing that procedural values may provide a way of reaching a mutually acceptable outcome even when there is reasonable disagreement over what that outcome should be.

Chapter 3. Participation

This chapter identifies who should participate in the decision-making processes of climate institutions. Procedural justice is often understood as requiring that all those who are affected by the outcome of a decision should have some say in the decision making process (the All Affected Principle). Yet, there are many objections to this approach, and it is not immediately apparent that this principle should be applied in climate institutions. Furthermore, increasing the number of participants in a decision is detrimental to making decisions quickly. In this chapter, I discuss the merit of the All Affected Principle and consider how fair participation can be achieved in efficient decision-making processes. I propose that decisions should include those who are coerced by a decision, and those in whose name a decision is made. I also argue that

Chapter 1. Introduction

those whose interests are affected by our decisions have a right to express their interests in a debate.

Chapter 4. Political Equality

The purpose of this chapter is twofold. First, I explore the intrinsic value of procedural justice. I argue that there is a deep connection between procedural justice and democracy and that the same normative ideals form the basis of these two concepts. Following this, I claim that fair procedures are those that respect autonomy, equality and justification. My second aim in this chapter is to discuss what this means for equality in the decision-making processes of climate institutions. Asymmetries in financial resources, technical expertise and scientific information affect the ability of actors to represent themselves in decisions, highlighting that formal rights to participation in negotiations are insufficient for fairness. In this chapter, I argue that political equality requires an equal opportunity to participate, as well as an equal playing field for making decisions.

Chapter 5. Transparency

There are also questions regarding the transparency of climate institutions. There are concerns that key decisions at COP negotiations take place ‘behind closed doors’, away from public scrutiny. At the same time, others argue that successful negotiations require confidential discussions among actors in which parties are able to freely express their views and make difficult compromises that they would not be able to make in public. In this chapter, I identify what sort of information about climate institutions should be public knowledge. I argue that whilst most information about climate institutions should be publicly available, there should also be room for confidential discussions within climate negotiations.

Chapter 6. Bargaining

There are concerns that power inequalities within the decision-making processes of climate institutions may prohibit the ‘fair terms of co-operation’ between actors.¹⁰⁷ This is because the outcomes of negotiated agreements are partly determined by the relative bargaining power between parties. Outcomes negotiated in this way are

¹⁰⁷ Shue, H. 1992; Miller, D. 2005, p.75

Chapter 1. Introduction

criticised as morally unacceptable, and many call for ‘responsible’ or ‘principled’ negotiations to address this problem.¹⁰⁸ In this chapter, I identify the necessary conditions for fair bargaining in the decision-making processes of climate institutions. I argue that bargaining processes are fair provided that they meet some requirements of voluntariness and reciprocity.

Chapter 7. Voting

The purpose of this chapter is twofold. First, I identify which voting mechanism should be used in climate governance institutions. Second, I specify how votes should be weighted in the decision-making processes of these institutions. Traditionally, decisions in the UNFCCC are made by consensus, which is criticised as promoting lowest common denominator outcomes and encouraging uncooperative behaviour by parties.¹⁰⁹ Given the deadlock within this institution, some propose switching to voting by majority rule.¹¹⁰ Adopting majority rule would introduce the possibility of giving more votes to those that represent larger groups or to those with a greater stake in a decision. I argue that decisions in climate institutions should be made by majority rule. I then argue that votes should be weighted according to the number of actors that each voter represents.

Chapter 8. Procedural justice and institutional design

We don’t just care about procedural justice; other values are also important for institutional design. If we know that we want to avoid dangerous climate change, then we might prioritise this end at the expense of procedural justice. In this chapter, I consider how people should weigh concerns for procedural fairness against other important criteria for institutional design. I argue that avoiding dangerous climate change requires action that is: stringent, urgent, long-term, and comprehensive. I then argue that procedural justice is a fundamental part of institutions that meet these requirements. As a result, people should not give up procedural justice for the sake of other important criteria.

¹⁰⁸ Grasso, M. 2010, p.61; Müller, B. 2010; Winkler and Beaumont 2010, p.646

¹⁰⁹ Yamin and Depledge 2004, p.443

¹¹⁰ Dimitrov, R. 2010b; Biermann *et al.* 2011

Chapter 1. Introduction

Chapter 9. Conclusion

The ultimate aim of this research is practically oriented. As such, the principles proposed in the thesis are not abstract, but relate to existing systems of climate governance that operate in the world today. To this end, I use the findings of the research to evaluate current climate institutions and to make formal proposals for the normative design of these institutions. I argue that procedural justice is best achieved through top-down, comprehensive governance, although other forms of governance are also important for effectively addressing climate change.

Chapter 2. Reasonable Disagreement

1.1 Introduction

Political institutions that make collective decisions can be designed to achieve values that are procedural (process oriented), substantive (ends driven), or a combination of the two. The purpose of this chapter is to make a case for considering procedural values in the design of international climate change institutions. This is not to say that procedural values are the only relevant values here, but rather that procedural values should play a role alongside some minimal substantive values. I show this in two steps. First, I argue that there is reasonable disagreement over some of the substantive ends that a climate change institution should pursue. Second, I argue that, given the existence of reasonable disagreement, it is important that climate change institutions are procedurally fair.

To substantiate the first claim, I review several proposals for the fair distribution of greenhouse gas emission rights. I argue that, not only is there disagreement about the correct moral criteria for the fair distribution of emission rights, but also that this disagreement is *reasonable*. It is *reasonable* because it reflects an inability on the part of actors to reach agreement despite acting in good faith and seeking to arrive at a just outcome. Reasonable actors cannot reject proposals advocated under these conditions as reasonable interpretations of what a fair distribution is, even if they disagree with the correctness of the proposal itself. The implication of reasonable disagreement is that consensual agreement on the fair terms of cooperation is unlikely to come about even if actors are actively seeking this end.

To substantiate the second claim, I maintain that, whilst there is disagreement about what distributive justice requires in climate change, the fact that this disagreement is *reasonable* presents an opportunity for achieving a mutually acceptable outcome despite initial disagreement about which substantive ends to pursue. The fact of reasonable disagreement combined with other properties of climate change makes the case for taking a partially procedural approach to the design of climate institutions. This approach is partial because it admits that any procedural approach should be complemented by some minimal substantive conditions.

Chapter 2. Reasonable Disagreement

1.2 The importance of procedural values

This reason for taking this approach is to show the importance of procedural values for climate change institutions. Decision-making procedures, understood as collective decision-making processes that coordinate action, are fundamental features of any institution. But this raises the question: why should we consider procedural values for the design of decision-making processes, rather than other values such as substantive, or end state values?

In response to this point, there are three reasons for designing decision-making processes in ways that honour procedural values. Whilst the first of these appeals to the intrinsic nature of procedural values, the second two appeal to their instrumental value.

First, procedural values are important in themselves, regardless of the outcomes that the procedure brings about.¹ Whilst one might consider the outcome of a certain decision-making process to be fair, people often have serious reservations if the outcome comes about in an unfair way. Empirical studies show that this is true for human behaviour generally, as well as climate change negotiations more specifically. In two often cited sources, Thibaut and Walker, and Walker *et al.*, use comparative empirical analysis to show that disputants in legal proceedings are often as concerned about the fairness of the process by which an outcome is reached as they are about the fairness of the outcome itself.² In climate change negotiations state delegates often make demands for procedural fairness and democratic participation.³ At the COP16 negotiations, representatives of Yemen, acting on behalf of the Group of 77 and China, demanded greater transparency.⁴ There are also concerns about the inequality of resources between delegations in climate negotiations, including financial resources, technical expertise and scientific information.⁵ Some suggest that an absence of procedural values played a part in the decision of several states to reject the Copenhagen Accord in 2009.⁶ It is clear that actors are not content to accept

¹ Several theorists hold that procedures are intrinsically important: Beitz, C. 1989; Christiano, T. 1996; Waldron, J. 1999

² Thibaut and Walker 1975; Walker *et al.* 1979

³ See: Bäckstrand, K. 2010a, p.1; Eckersley, R. 2012

⁴ IISD 2010, p.3

⁵ Agarwal and Narain 1991; Bruce *et al.* 1995, p.84; Gupta, J. 2000; Chasek and Rajamani 2003

⁶ Eckersley, R. 2012, p.33; Bodansky and Rajamani 2013, p.12

Chapter 2. Reasonable Disagreement

outcomes based on processes that are unfair, and that procedural values are important here.

Against this view, one might argue that the relative importance of procedural values remains disputable. Even if one accepts that procedural values are important, it might be the case that they should be trumped by other, more pressing concerns. Procedural values often conflict with substantive ones, so why should people concern themselves with procedural values if there are pressing substantive ends that they should pursue? Whilst the intrinsic nature of procedural values provides some justification for considering these values, further explanation is needed as to why people shouldn't prioritise important substantive ends. I show this by appealing to two further reasons for pursuing procedural values, which are based on their instrumental value towards achieving other ends.

The second reason that procedural values are important rests on two points: i) there is an urgent need to implement collective action on climate change, ii) cooperative action on climate change is dependent on consensual agreement among actors. Points i) and ii) rest on empirical assumptions that I discuss fully in chapter eight. For the moment, I take it for granted that climate change is an important issue that requires immediate action. It is well documented that the earth's atmosphere is undergoing extreme changes and that the possibility of limiting these changes diminishes as the starting point for action is pushed further into the future.⁷ Recalling the discussion in chapter one, effective action on climate change requires voluntary participation in collective institutions on an international, if not wholly global, level partly because, under international law, states cannot be forced to enter international agreements.⁸ It might be the case that climate change becomes so severe that it will become necessary to force states to participate in a multilateral treaty. Whilst I do not rule out this approach, I simply suggest that sanctions and other means of enforcing compliance are not available at this point in time. This means that a necessary condition for cooperative action on climate change is that actors comply with international

⁷ Gardiner, S. 2011; Stocker, T.F. 2013

⁸ Hurd, I. 1999. For discussions relating this point to the UNFCCC, see: Wiener, J.B. 1999, p.769; Höhne *et al.* 2002, p.10

Chapter 2. Reasonable Disagreement

institutions on a voluntary basis.⁹ Given that states are unlikely to consent to an agreement that they regard as unfair, a further condition for collective action is that the institution is fair.¹⁰ If procedures are fundamental elements of climate institutions, and if effective action depends on fairness, then these institutions should have fair procedures. Taken together, points i) and ii) suggest that fair procedures are important parts of effective climate change institutions.

But there is a third reason to think that procedural values are important. Consider someone who asks why these processes should be designed to meet procedural values, rather than to achieve fair substantive ends. If we know what a fair outcome is then we can specify that the procedure should achieve this end, rather than concern ourselves with procedural values that may conflict with other important matters. Our third reason supplies an answer to this point. Procedural values are important for the design of climate institutions because it is not possible to specify what substantive values a procedure should adopt when there is reasonable disagreement about these substantive values. In addition to points i) and ii), this third reason requires: iii) that there is reasonable disagreement over the substantive ends that the institution should achieve and, iv) that it isn't possible to reach consensus among actors who reasonably disagree by focussing on substantive ends. Taken together, these points suggest that procedural values are important. If people can't specify the outcomes that an institution should achieve, then they may be able to achieve an outcome that all can agree is fair by using a fair procedure. This is just a preliminary account of procedural justice, designed to show why I'm undertaking this analysis and to give a sense of the argument to come. Defending points iii) and iv) is the subject matter of sections three and four, respectively.

Points i) to iv) suggest that there is good reason for using a procedure to gain agreement on the fair terms of cooperation of a climate change institution. But this is true regardless of whether or not we're faced with disagreement that is reasonable. If it's necessary to reach agreement, but parties disagree simply because they hold different self-interested positions, then one solution would be to design a procedure

⁹ Risse, M.A. 2004; Halsnæs *et al.* 2007, p.127

¹⁰ Barrett and Stavins 2003, p.360

Chapter 2. Reasonable Disagreement

that each party would be willing to accept. So why is *reasonable* disagreement important here?

The fact that disagreement is *reasonable* is important for two reasons. The first reason is that this makes it more likely that actors will be unable to reach agreement through continued deliberation; even if actors act cooperatively and engage with each other fairly, they are unlikely to come to an agreement about which substantive ends an institution should pursue. This is because reasonable disagreement is not disagreement that arises out of mistake or self-interest, but rather reflects the different worldviews and experiences that actors have – an issue that I expand and clarify in the next section. The second reason is that if we're merely faced with a situation of disagreement among actors, then it should still be possible to specify some substantive outcome that a procedure should aim to achieve. Whilst different actors may disagree because they hold different views that are based on mistaken reasoning or incorrect evidence, this doesn't mean that it isn't possible to state what the correct outcome actually is and then try to convince the disagreeing parties that they should adopt this outcome.

To summarise the argument thus far, collective action on climate change is something that people need to reach agreement on urgently. It is also necessary to create institutions that enjoy voluntary support. At the same time, reasonable people disagree about the substantive ends that a climate change institution should take. Given these facts, people might be able to reach mutually agreeable terms of cooperation through a fair procedure. Therefore, one way of showing that procedural values are important for the design of climate institutions is to show that there is reasonable disagreement over the substantive ends that these institutions should achieve when voluntary collective action is urgently needed and when there is a potential for agreement on the procedure. In this chapter, I show this with specific reference to greenhouse gas emission rights.

2. Reasonable disagreement

One area of climate policy in which there has been significant disagreement about substantive ends in both theory and practice is the fair distribution of emission rights.

Chapter 2. Reasonable Disagreement

Before analysing whether this represents a case of *reasonable* disagreement, it is worth saying something about what I mean by reasonable disagreement here.

2.1 Disagreement

Of course, before showing what I mean by *reasonable* disagreement, it is helpful to say something about disagreement first. The notion of disagreement suggests that actors hold different opinions, ideas, or claims about an issue at hand.¹¹ It is distinct from the idea of difference, which merely implies that actors do not have the same characteristics. Rather, disagreement implies that there is an absence of consensus on an issue and that each party thinks that the other's position is wrong. Because this chapter is ultimately concerned with climate change institutions, I want to focus on a specific area of disagreement, namely: disagreement on the fair terms of cooperative action. That is, there is a need for cooperation on matters of common concern, and there is a common understanding that the terms of this cooperation should be fair. At the same time, there is disagreement about what these terms should be.

There are different types of disagreement over this issue, and the likelihood of moving towards agreement depends on what type people are faced with. For this reason it is worth distinguishing between these different types of disagreement here.

(1) Epistemic disagreement:

Actors disagree about whether or not something is correct.

Epistemic disagreement can be disaggregated into two types:

- i) **Empirical disagreement**
People disagree about empirical facts.
- ii) **Normative disagreement**
People disagree about normative values.

¹¹ For a comprehensive account of disagreement, see: Besson, S. 2005.

Chapter 2. Reasonable Disagreement

(2) Interpretative disagreement

Actors agree that something is true, but they disagree on how best to interpret its meaning.

(3) Weighting disagreement

Actors agree that something is true, and how best to interpret it, but they disagree on the relative weight or importance that it should be given.

(4) Methodological disagreement

Actors disagree on the methodology that they should use to make a judgement on an issue.

This typology is not exhaustive; there are many other kinds of disagreement about collective action. The reason for highlighting these specific types of disagreement is that they are the most relevant forms of disagreement that arise over the fair distribution of emission rights.

The important point to draw from this typology is that some types of disagreement are likely to be more intractable than others. For instance, some epistemic disagreement is just a matter of fact; disagreement can be resolved by providing the correct information about empirical facts, or by ensuring that actors cooperate in good faith. Other types of disagreement are much more intractable.¹² Matters of interpretative or weighting disagreement are likely to rest on differences that cannot be resolved by providing correct information, or by cooperating in a fair way. The full implications of this point are to follow. For the moment, it is only necessary to point out that different forms of disagreement are easier, or harder to resolve.

What this typology does not explain is how disagreement can arise. There are many reasons why people disagree about collective decisions. As Amy Gutmann and Dennis Thompson point out, people might disagree simply because they adopt their own self-interested positions in an argument, which is likely to be different for

¹² Samantha Besson draws on empirical work to show how people tend to agree on some concepts more than others (Besson, S. 2005, p.156).

Chapter 2. Reasonable Disagreement

different actors.¹³ But here we're primarily concerned with the notion of *reasonable* disagreement, rather than disagreement itself. For this reason, I discuss the concept of reasonableness in the following section, before moving to a discussion of how reasonable disagreement can arise.

2.2 Reasonableness

Reasonableness is a property that governs how actors behave, and subsequently the types of claims that they are willing to make and accept in a fair procedure.¹⁴ A reasonable proposal is not simply a matter of self-interest, nor is it wholly altruistic. A reasonable actor is one that conforms to certain requirements, which fall into two categories: sound reasoning, and reciprocity.

First, reasonable actors are those who act under certain conditions of reasoning. That is, reasonable actors act in accordance with principles that concern the competency of the actor's reasoning and judgement. These conditions require, for example: that an actor reason in a consistent way, using methodologies that are commonly understood. This is the first requirement of reasonableness.

Requirement 1. Reasonable actors act in accordance with certain intellectual conditions governing sound and competent reasoning

The first requirement of reasonableness implies that actors act with sound reasoning, in the sense that they do not employ unsound, or incapable reasoning, and there are no obvious logical errors or flaws. But reasonableness concerns more than just sound reasoning. As Thomas Scanlon argues, one can reason competently, whilst also behaving very unreasonably.¹⁵ In a bargaining situation, a rational actor may adopt hard bargaining tactics, mislead other actors, or exploit those who are in weaker positions. Whilst such behaviour may meet the first requirement of reasonableness, it

¹³ Gutmann and Thompson 1996, p.18

¹⁴ This section draws from the discussions of reasonableness given by John Rawls, Samantha Besson, and Christopher McMahon (see: Rawls, J. 1993, p.49; Besson, S. 2005, p.91; McMahon, C. 2009).

¹⁵ Scanlon, T. 1998, p.192-3. Scanlon contrasts 'rationality' with 'reasonableness'. Rationality is a term that has many different interpretations in the literature. I therefore avoid using it here.

Chapter 2. Reasonable Disagreement

is clearly not reasonable in the sense that I am aiming for here. Rather, reasonableness requires some normative constraints on the behaviour of an actor.

In his discussion of reasonableness, John Rawls provides a useful starting point for thinking about this additional requirement. In *Political Liberalism*, Rawls provides two conditions for reasonableness that incorporate this normative concern. The second of Rawls' conditions relates to the 'burdens of judgement', which I discuss in the following section. For the moment, I am concerned with the first of Rawls' conditions, which states that:

'Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so'.¹⁶

Reasonableness not only implies that people act under certain conditions of competent reasoning. It also implies that people constrain the types of claims that they make according to some normative requirement. Rawls provides this necessary requirement by providing a normative commitment in his first condition of reasonableness. Rawls' first condition therefore provides the basis for our own second requirement of reasonableness:

Requirement 2. Reasonable actors are those that propose claims that represent fair terms of cooperation, under conditions of truth and good-faith reasoning

Reasonable actors do not pursue merely self-interested ends. Reasonable actors make claims that appeal to a sense of fair cooperation.¹⁷ Now, the important upshot of these points is that other reasonable actors cannot dismiss claims that are made under these conditions as unreasonable. That is, if a reasonable actor puts forward a claim then

¹⁶ Rawls, J. 1993, p.49

¹⁷ McMahan argues that this second requirement concerns the concessions that an actor is willing to make for the sake of fair cooperation. As such, in McMahan's terms, reasonableness is confined to cooperative contexts. But whilst reasonableness does govern the types of concession one is willing to make in a cooperative context, it also concerns the types of claim that one makes prior to any notion of compromise or concession. Here I focus on the latter claim, although I develop the fairness of compromises later in chapter six (McMahan, C. 2009, p.19).

Chapter 2. Reasonable Disagreement

other actors cannot reject this claim *as a reasonable proposal* for the fair terms of cooperation. To be sure, other reasonable actors *can* reject this claim as incorrect in their own opinion. But the fact that the claim is made under the conditions of reasonableness means that it should be respected as a reasonable proposal for the fair terms of cooperation. This is because reasonable actors are willing to engage with each other in a fair way for the purposes of identifying fair terms of cooperation. They are therefore willing to recognise the reasonableness of another actor's claims and to treat them appropriately. The requirements of reasonableness put the necessary constraints on the types of claims that one can make so that these claims are justifiable to other actors who are also seeking fair terms of cooperation. Reasonableness implies a willingness to accept the views of others as well as to temper one's own claims.

These two requirements form the basis of our understanding of reasonableness. This represents a starting point for considering what a reasonable claim is, and what people should expect from reasonable actors.

2.3 Reasonable disagreement

Having specified a typology of disagreement and outlined some properties of reasonableness I now turn my attention to the concept of reasonable disagreement. Put simply, reasonable disagreement is disagreement that exists among reasonable actors. It represents a failure to agree on an issue despite the fact that they are acting under the conditions of reasonableness outlined above. Following the discussion so far, reasonable disagreement means two things: i) reasonable people will not converge on any one answer, and ii) reasonable people should accept that other reasonable people hold different views and that those views should not be dismissed as unreasonable.¹⁸ The important point to note here is that, because each view can be reasonably upheld, such views cannot be dismissed as unreasonable. Whilst each actor can reasonably deny that the answers that others endorse are correct, these actors cannot dismiss these claims as unreasonable. Therefore, someone can reasonably reject a particular proposal as the right answer, whilst also accepting that it is not an unreasonable

¹⁸ As Samantha Besson suggests, one might realise that another actor's views are reasonable when understood against their own background of existing beliefs, whilst still holding them incorrect from one's own viewpoint (Besson, S. 2005, p.114).

Chapter 2. Reasonable Disagreement

position to adopt. This means that no single view is likely to enjoy the full support of reasonable people.

The fact that disagreement is *reasonable* is important for two reasons. The first reason is that this makes it more likely that actors will be unable to reach agreement through continued deliberation. Even if actors act cooperatively and engage with each other fairly, they are unlikely to come to an agreement about which substantive ends an institution should have. This is because reasonable disagreement is not disagreement that arises out of mistake or self-interest, but rather reflects the fact that actors have different worldviews and experiences, which is an issue that I expand and clarify in the next section.

The second reason is that if we are merely faced with a situation of disagreement among actors, then it should still be possible to specify some substantive outcome that a given procedure should aim to achieve. Whilst different actors may disagree because they hold different views that are based on mistaken reasoning, or incorrect evidence, this doesn't mean that we can't state what the correct outcome actually is and then try to convince the disagreeing parties that they should adopt this outcome. Of course, if it's necessary to gain people's voluntary cooperation then it is still necessary to persuade the disagreeing parties to accept this procedure, and if people's interests persistently clash then there might be persistent disagreement here. But whilst achieving agreement may be difficult in such cases, it is not a wholly impossible thing to hope for. What is more problematic is the fact that it isn't possible to specify a correct outcome in cases of reasonable disagreement. This is because reasonable disagreement reflects difference that should be respected, rather than dismissed as erroneous.

The upshot of this is that, if there is reasonable disagreement, then agents are unlikely to reach agreement on the substantive merits of particular proposals for the fair terms of cooperation. The fact that disagreement is reasonable means that actors are unlikely to reach an agreement even when they argue in good faith and for the public good.

Of course, there are other important implications of reasonable disagreement that relate to how people should think about fair procedures. There are also unresolved

Chapter 2. Reasonable Disagreement

questions here concerning why people should act reasonably and what should be done about people who behave unreasonably. But this is to get ahead of the current argument. The full implications of reasonable disagreement are discussed in the latter parts of this section. Here, the most pressing question is why people should treat reasonable claims with respect. I answer this question by considering how reasonable actors come to hold different views in the first place.

2.4 The burdens of judgement

If reasonableness requires that certain conditions of reasoning are met, then how can reasonable actors come to disagree in the first place? After all, reasonable actors employ sound reasoning and engage in cooperative behaviour, but reasonable disagreement presumes that reasonable actors will disagree regardless. So how can reasonable actors fail to reach agreement on an issue?

As I pointed out earlier, people can disagree for many reasons. But I'm concerned with why *reasonable* people disagree. Here I draw on John Rawls' discussion of the 'burdens of judgement', which he uses to explain how reasonable people can come to have different opinions on a matter.¹⁹ Rawls argues that these are 'the hazards involved in the correct (and conscientious) exercise of our powers of reason and judgement in the ordinary course of political life'.²⁰ Whilst Rawls uses the burdens of judgement to explain disagreement about the comprehensive philosophical doctrines, these can also be used to explain disagreement about political ends.²¹ The burdens of judgement are:

- a) Evidence can be conflicting and complex, and thus hard to assess and evaluate
- b) People can disagree about the weighting that they should give issues
- c) Concepts are vague and subject to hard cases, which means that people often have to rely on judgement and interpretation

¹⁹ Rawls, J. 1993, p.54-8

²⁰ Rawls, J. 1993, p.55-6

²¹ Waldron, J. 1999, p.112

Chapter 2. Reasonable Disagreement

- d) People's moral and political values are shaped by their different experiences
- e) Different normative considerations can produce difficulties in making an overall assessment
- f) Because no system of social institutions can incorporate the full range of moral and political values, people are forced to prioritise and restrict these

According to Rawls, this means that actors are likely to disagree even when they act in a reasonable way.²² The fact that different positions can be reasonably held means that, if there is a large number of heterogeneous parties, there is unlikely to be a single option that all parties immediately agree is correct. Whilst unreasonable disagreement can be resolved by exposing self-interested or erroneous views, reasonable disagreement can persist despite continued deliberation. This suggests that reasonable disagreement is more intractable than other forms of disagreement, which would be more easily resolvable under deliberative discussion.

But this is not the main issue here. The important point to take from Rawls' discussion is that some issues require a judgement or interpretation on the part of the actor. Other issues require judgements about the values that people hold and how to prioritise them. The way that each actor judges, or interprets an issue depends on his or her previous experiences and worldviews. Given that each actor's experiences and worldviews are different, each actor judges, or interprets issues differently. This means that reasonable actors can come to hold different opinions of the same thing. But this difference is not just a question of mistake, or error on the part of an actor. Nor is it a case of differential self-interest. Rather, it is the fact that actors are different that leads them to disagree, even if they are acting cooperatively. This brings us to Rawls' second requirement of reasonableness, which notes that not only do the burdens of judgement explain how reasonable disagreement can arise, but also that, under his account of reasonableness, reasonable people will recognise the burdens of judgement as reasons for accepting the reasonableness of other's views.²³ The burdens of judgement therefore play a secondary role, not only explaining how reasonable

²² Rawls, J. 1993, p.58

²³ Rawls, J. 1993, p.54

Chapter 2. Reasonable Disagreement

disagreement can arise, but also providing reasons why people should respect and acknowledge the reasonableness of other people's views, even if they disagree.

2.5 Summary

Drawing on what has been argued above, it is worth clarifying the various points made so far. Here, I define reasonableness and its associated concepts as follows:

- i) *Reasonableness*: is a quality that relates to the way that actors behave. It concerns the types of claim that an actor is willing to accept as well as the claims that an actor should make.
- ii) *Reasonable actors*: are those who act in accordance with the requirements of reasonableness. These requirements concern reasoning under conditions of good faith and competency.
- iii) *Reasonable claims*: are claims that are made by reasonable actors. Reasonable actors cannot reject reasonable claims as unreasonable interpretations of the fair terms of cooperation.
- iv) *Reasonable disagreement*: exists when reasonable actors hold different views or opinions about a matter. It suggests that consensus is unlikely to provide a solution to reaching agreement.

The result of this is that if a claim is reasonable, then another reasonable actor cannot reject it as unreasonable. This is not to say that a reasonable actor cannot reject a reasonable claim as wrong, or incorrect. A reasonable actor may hold his or her own views about what is right in a certain context, and reject other reasonable proposals as incorrect. But reasonable actors recognise the status of reasonable claims and treat them with due respect accordingly. This means accepting that other reasonable people hold different views and not dismissing these views as unreasonable. Following this, the next section shows that there is reasonable disagreement over the distribution of emission rights by showing that there are different reasonable proposals for the fair distribution of this good. Because each of these proposals is reasonable, reasonable actors cannot dismiss any of them as unreasonable.

Chapter 2. Reasonable Disagreement

3. The fair distribution of emission rights

Having defined reasonableness I now examine some of the proposals for how people should share greenhouse gas emission rights and show that there is reasonable disagreement concerning the allocation of this good. To this end, this section first introduces the concept of allocation rules before considering the reasonableness of the prominent arguments for the fair distribution of this good.

3.1 Allocation rules for the distribution of emission rights

There are many proposals of allocation rules for the fair distribution of emission rights in climate change institutions, both from academic circles as well as from state delegations.²⁴ The Fourth Assessment Report of the IPCC defines 14 allocation rules that are frequently proposed in the literature.²⁵ In this section I analyse some of the allocation rules that are proposed for the fair distribution of greenhouse gas emission rights, rather than for any other end. The most prominent of these rules are:

1. **Basic Emission Rights**
2. **Equal Rights**
3. **Historical Responsibility**
4. **Multi-criteria Proposals**

This is just a limited sample of all the proposals that are made. But these allocation rules represent the most prominent allocation rules that are advocated in both theory and practice. Whilst similar issues would arise with other allocation rules, this chapter illustrates the existence of reasonable disagreement using just these four rules.

The remainder of this section considers each of these in turn. In doing so, it is possible to show four things. First, each allocation rule is a reasonable proposal for the fair

²⁴ For discussions regarding the range of allocation criteria proposed in the literature, see, for example: Grubb *et al.* 1992, p.312-4; Banuri *et al.* 1995; den Elzen, M. 2002; Höhne *et al.* 2002; Bodansky and Chou 2004. For a normative discussion of this issue, see: Gardiner, S. 2004, p.583-589

²⁵ These are: 'Equal per Capita Allocation', 'Contraction and Convergence', 'Basic Needs', 'Adjusted per Capita Allocation', 'Equal per Capita Emissions over Time', 'Common but Differentiated Convergence', 'Grandfathering', 'Global Preference Score Compromise', 'Historical Responsibility', 'Ability to Pay', 'Equal Mitigation Costs', 'Triptych', 'Multi-sector Convergence', and 'Multi-criteria' (Gupta *et al.* 2007, p.770). Note that not all of these are based on equity considerations.

Chapter 2. Reasonable Disagreement

distribution of emission rights. Following the argument in section two, the fact that each allocation rule is a reasonable proposal means that none of these proposals can be dismissed as an unreasonable interpretation of what fairness requires. Second, even if there is a consensus that one particular allocation rule is appropriate for the fair distribution of emission rights, the application of each rule involves choosing between variables that are unspecified by the allocation rule itself, and there are different reasonable interpretations of what these variables are. Third, even if there is agreement on these first two matters, there are different reasonable weights for the relative importance of each allocation rule in question. Fourth, I show that this is a matter of disagreement in both theory and practice, by highlighting where different principles are actually proposed in climate change negotiations. Taken together, these points show that the fair allocation of emission rights is subject to reasonable disagreement in a number of distinct ways and that there is no reason to expect that there will be agreement between reasonable persons on this matter. The fact that there are a number of different proposals that cannot be reasonably rejected means that there is unlikely to be one solution that will command the reasonable assent of all actors. Given this, I go on to argue that it is essential to have a fair way of dealing with disagreement that can help generate a consensus. With this in mind, I now consider the main allocation principles that are suggested.

3.2 Basic Emissions Rights

The Basic Emissions Rights proposal stipulates that there is a threshold level of well-being below which individuals are not obligated to limit their emissions.²⁶ This proposal is based on the premise that everyone should be allowed to achieve a basic minimum level of well-being. Given that achieving this basic level of well-being requires undertaking activities that generate greenhouse gas emissions, so the argument goes, there should be no limitations on the emissions that are brought about by these activities. According to Henry Shue, this means that each ought to be allowed at least the minimum amount of emissions necessary for a decent life.²⁷

The Basic Emission Rights proposal receives strong support in the literature, and almost every proposal for the fair distribution of emission rights assumes that

²⁶ Pan, J. 2003, p.8; Baer and Athanasiou 2007, p.8; Hayward, M. 2007, p.523

²⁷ Shue, H. 1995, p.252

Chapter 2. Reasonable Disagreement

mitigation policies should only apply to those who already enjoy a threshold level of welfare. There is a moral threshold here and people shouldn't enact policies that prevent people from meeting that threshold.

Despite the appeal of this proposal, there is at least one way in which its suitability as a principle of fairness might be reasonably disputed. The Basic Emission Rights proposal is premised on the assumption that there is a sufficient emissions budget to provide everyone with the necessary emissions to meet his or her basic needs. But because climate change is already occurring, one might reasonably argue that there is insufficient atmospheric space to exempt those emissions that are necessary for people to meet these needs. Whilst people frequently argue that the climate can tolerate a 2°C rise in preindustrial temperatures without causing dangerous climate change, some hold that climate institutions should aim for a much more stringent target even if this means preventing some from meeting their basic needs.²⁸ A great deal of harm is already being caused to the planet and there are many uncertainties about the potential positive feedback loops, threshold limits, and tipping points in the climate system that may bring about severe and catastrophic changes to the environment. It is reasonable to propose that there is an insufficient carbon budget to implement the Basic Emission Rights proposal.²⁹ At the same time, it is also reasonable to propose that the atmosphere can tolerate at least some limited amount of further emissions before people risk causing dangerous climate change, and that there is sufficient atmospheric space for providing emissions for those that need them to meet their basic needs. The full effects of our emissions are unknown, and there may be a sufficient carbon budget to implement the proposal.

Both of these positions represent different but reasonable positions about whether the Basic Emissions Rights proposal is suitable as a fair allocation rule. Since these claims are both reasonable, neither can be reasonably rejected as interpretations of what constitutes dangerous interference with the atmosphere. People can disagree here for two separate reasons. On the one hand, people may disagree about what atmospheric concentration of greenhouse gases constitutes dangerous climate change,

²⁸ Allen, M. 2009

²⁹ Of course, this also applies to other allocation rules. For more on the carbon budget see: Meinshausen *et al.* 2009; Allen *et al.* 2009a; 2009b

Chapter 2. Reasonable Disagreement

which is a form of empirical disagreement (following the typology in section 2). On the other hand, people may agree that it is desirable both to achieve a minimum level of well-being, as well as to avoid dangerous climate change, whilst disagreeing what should take priority here. Different reasonable positions cannot be rejected on this issue. Because this reflects the relative importance that an actor places on an issue, this represents a form of weighting disagreement.³⁰

Even if there is agreement that there is sufficient atmospheric space for the Basic Emissions Rights proposal, it is not clear what the threshold level of welfare for exemption should be. The proposal for Basic Emission Rights stipulates that people should be exempt from those emissions that are necessary for achieving a basic minimum level of well-being for an individual. But determining what this level actually is involves a judgement about the minimum level of welfare that an individual should achieve. This is a matter of ongoing philosophical debate,³¹ and there are different reasonable positions about what this should be. One might reasonably contend that a basic level of welfare involves having access to a wide range of life opportunities, including the right to cultural practices. Alternatively one might reasonably argue that a basic level of welfare should be as minimal as possible, incorporating only the most absolute and basic needs of an individual. The point is that each of these positions is a reasonable interpretation of what a basic level of welfare should be. Because each of these positions is reasonable, neither of them can be reasonably rejected. This means that there is reasonable disagreement about how to apply the Basic Emission Rights proposal, because there is reasonable disagreement about what level of welfare it should apply to. Since this represents a disagreement about how to interpret this allocation rule, this is a form of interpretative disagreement.

There is one further point to make regarding this proposal. Thus far I have suggested that there are different reasonable positions regarding the interpretation of this

³⁰ There are different reasonable positions about what to do if the atmospheric budget is insufficient for everyone to meet their basic needs. Stephen Gardiner suggests that if emissions are morally essential then they may have to be guaranteed even if this means exceeding the scientific optimum of total emissions (Gardiner, S. 2004, p.585). But one might reasonably claim that the stakes are too high to implement this policy.

³¹ For different accounts of basic rights, including human rights, see: Shue, H. 1996; Pogge, T. 2005; Griffin, J.W. 2008

Chapter 2. Reasonable Disagreement

principle, owing to disagreement over what a basic level of well-being should be. But in addition to any notion of reasonable disagreement, the Basic Emission Rights proposal is an incomplete account of what a fair distribution of emission rights is because it does not state how emissions should be distributed above the minimum level needed to achieve a basic level of well-being (if indeed there is any remainder to distribute). Whilst this point does not represent an area of reasonable disagreement itself, it does indicate that this allocation rule is insufficient in determining what a fair distribution of emission rights is and that it needs to be supplemented by a further principle. There may, of course, be reasonable disagreement about what supplementary principle, or principles these should be, which is something I explore when I discuss Multi-criteria rules.³²

3.3 Equal Rights

The existence of reasonable disagreement over the fair distribution of emissions rights can also be seen if by considering a second proposal – the Equal Rights proposal. This proposes that each is entitled to an equal share of some resource.³³ It is typically advocated on the premise that the absorptive capacity of the atmosphere is a common pool resource that each should be allowed to use to the same degree as everyone else.³⁴ Following this, emission rights should be distributed so that each actor receives an equal share of this resource. This is intuitively appealing. If a resource is being distributed, and no one is more deserving of the resource than anyone else, then it seems wholly appropriate to distribute the resource equally. But the Equal Rights proposal is not as straightforward as it first seems. Many reasonable people may not be egalitarians, and even if one agrees that rights to use the atmosphere should be distributed equally, it is not clear what should actually be equalised here. As I now show, there are various reasonable interpretations of what this should be.

The most common form of the Equal Rights proposal is the Equal per Capita Rights allocation rule. This distributes emission rights among states in proportion to the population of each state, thereby giving each person an equal quantity of emission

³² This is assuming that the basic rights are met and that there are remaining emission rights that can be distributed.

³³ For discussion of the Equal Rights proposal, see: Agarwal and Narain 1991; Banuri *et al.* 1995, p.106; Grubb, M. 1995, p.485; Singer, P. 2002, p.14

³⁴ Singer, P. 2002, p.35; Traxler, M. 2002; Gardiner, S. 2004, p.584

Chapter 2. Reasonable Disagreement

rights.³⁵ An alternative form of the Equal Rights proposal is to distribute emission rights so that the welfare gains that can be drawn from using the overall emissions budget is shared equally between individuals. This is known as the Equal Welfare proposal. The distinction between the Equal per Capita Rights proposal and the Equal Welfare proposal reflects a distinction between the relative ‘good’ that is being distributed. In the former case, the good is an emissions right, whereas in the latter, it is the welfare that is attainable from the total emissions budget. There are different reasons for advocating each of these interpretations of the Equal Rights proposal, and both the Equal per Capita proposal and the Equal Welfare approach are reasonable proposals here.

One might reasonably advocate the Equal per Capita Rights proposal on the basis that if there is a scarce resource, climate institutions should allocate this resource strictly on the basis of equality. Distributing emissions rights on a per capita basis allows people to make judgements about how to use that resource according to their own preferences. It doesn’t seem wholly unreasonable to claim that, if one is a strict egalitarian, and if emission rights are considered in isolation from other goods,³⁶ then climate institutions should distribute this good equally on a global level. Of course, there may be other reasonable people who are not egalitarians at all. But without getting into this debate, it is possible to show that there is reasonable disagreement about the relative *good* that should be subject to distribution here.

This is because the Equal per Capita Rights proposal overlooks several factors that might be considered important by reasonable actors who are considering how emission rights can be distributed fairly. For instance, the Equal per Capita Rights proposal distributes emission rights regardless of: the economic wealth of a country, the availability of alternative energy sources, and the relative energy needs that a country might have.³⁷ All of these properties significantly alter the benefits that an

³⁵ Hayward, M. 2007, p.521. This assumes that emission rights are distributed equally within the country to which they are allocated. Not all actors advocate this approach. For instance, David Miller argues that states should be able to distribute emission rights among their citizens as they wish (Miller, D. 2008, p.121).

³⁶ This is debatable in itself. Some hold that the question of emission rights should be addressed in isolation from other issues of distributive justice, whilst others claim that it should be part of a more complete theory of distributive justice. For discussion of this point, see: Caney, S. 2012

³⁷ Risse, M. 2008, p.28; see also: Soloman and Ahuja 1991, p.346; Caney, S. 2009c

Chapter 2. Reasonable Disagreement

actor can get from a given amount of emission rights, and one might reasonably contend that climate institutions should equalise the benefits that accrue from these rights, rather than the right to emit itself. For this reason, some advocate the Equal Welfare approach. Because the Equal Welfare proposal takes into account the relative differences between actors, it is also a reasonable interpretation of the fair distribution of emission rights here.

But the Equal Welfare proposal raises difficult questions about how much an actor's current situation is a matter of choice or circumstance. The Equal Welfare approach allocates more emission rights to those who require more of these rights to attain the same level of welfare as everyone else. However, as Ronald Dworkin has argued in his discussion of expensive tastes, it does not seem fair to allocate more resources to those who require them to achieve the same level of welfare as everyone else due to circumstances that are brought about through their own choice.³⁸ If an individual lives in a particularly cold climate, then he or she may require additional emission rights to enjoy a similar level of welfare to someone who lives in a tropical climate. If this person has no choice but to live in a cold climate then it seems fair that this individual should have the necessary emissions to achieve the same level of welfare as the person in the tropical climate. But the argument is very different if this person has chosen to live in an area where more emissions are required to achieve a given level of well-being. This shows that climate institutions should only provide emissions rights to an agent if they require more of these rights through no fault of their own. Whilst it is fair that an actor should receive more emissions if they need them because of expensive tastes that are not of their choosing, this requirement does not hold if the actor's circumstance is a result of their own choice.

The Equal Welfare proposal therefore requires a judgement about whether an agent's situation has arisen through circumstance or choice, which is a matter on which different positions can be reasonably held. For example, if an actor chooses to live far away from her relatives, then she may need a lot of emissions to maintain close relationships with her family members. In this situation, one might reasonably argue that the agent's situation is her own making, and that if she lives far away from her

³⁸ Dworkin, R. 1981, p.228

Chapter 2. Reasonable Disagreement

family then it is her choice to do so. At the same time, others might reasonably hold that an individual's life choices are the product of many factors, and that it is naïve to suggest that people have full control over these matters. In this case, it is reasonable to argue that the agent may not be fully responsible for the fact that she lives far away from her family. Given the lack of certainty regarding the extent to which a situation is the result of choice or of circumstance, it is possible to hold different reasonable interpretations here. One might argue that this suggests that all reasonable people should adopt the Equal per Capita Rights proposal instead. But adopting the Equality of Resources proposal means that some important issues are overlooked, as I outlined in the discussion above. Whilst climate institutions should implement Equal per Capita Rights in situations when agents are responsible for their choices, Equal Welfare is appealing when agents are not responsible for these choices, and there is reasonable disagreement about when this is the case.

The Equal Rights proposal is thus subject to reasonable disagreement on several levels. First, different reasonable positions can be held about whether equality is the correct value to apply here (normative disagreement). Second, even if there is agreement that equality is important, both the Equal per Capita Rights proposal, and the Equal Welfare proposal are reasonable interpretations of what climate institutions should equalise (interpretative disagreement about how the principle should be applied, respectively: emissions or welfare). Third, even if there is agreement about the Equal Welfare proposal, there are different reasonable ideas about how much something is a matter of choice and circumstance (empirical disagreement) and how people should think about welfare (normative disagreement) in specific cases. There is a variety of reasonable views on these issues, none of which command universal support among reasonable people and none of which can be dismissed as unreasonable. Whilst reasonable people can reject particular proposals as incorrect, they cannot dismiss these claims as unreasonable interpretations of what is fair. This means that there are a number of reasonable claims, each of which cannot be dismissed as unreasonable by reasonable actors.

3.4 Historical Responsibility

Of course, the Equal Rights proposal is based the idea that climate change is a resource issue, which is disputable itself. Instead, one might reasonably hold that the

Chapter 2. Reasonable Disagreement

problem of emission rights is one of liability. If so, one might choose to distribute emission rights according to responsibility. This is the approach of the Historical Responsibility proposal, which distributes emission rights based on an actor's previous, or historical emissions, allocating fewer emission rights to those who have emitted more in the past.³⁹ Historical Responsibility receives strong support in the literature,⁴⁰ and it is an intuitively appealing principle. After all, if an actor commits an act, then surely that actor should be held responsible for the consequences of that act (in some way). By allocating fewer emission rights to those who have used more of a resource in the past, the Historical Responsibility principle recognises that some have already used more of this resource than others, and thereby incorporates this notion of responsibility into the distribution of emission rights. But even if one adopts the Historical Responsibility principle as a fair allocation rule, there are different reasonable interpretations of how this principle can be achieved in practice.

One area in which this is the case concerns the identity of the agents to whom responsibility for past emissions should be attributed. Responsibility for historical emissions can be reasonably attributed to many different types of actors including: international institutions, nation-states, private companies and individuals.⁴¹ Different positions can be reasonably held on the type of actor that is responsible for emissions according to the Historical Responsibility proposal. One reasonable position is that responsibility for creating emissions ultimately rests with the individual. But it is also reasonable to claim that many of the actions that bring about emissions are beyond of the control of individuals and that emissions should be accountable to collective actors such as states or multinational corporations. The Historical Responsibility principle requires determining who should bear responsibility here, yet there are different reasonable positions about who this should be. This is a normative disagreement about the plausibility of different notions of collective responsibility.

A further issue relates to the criteria that people should use for holding actors responsible for emissions. Even if there is agreement about the type of agent that is

³⁹ For discussion of the relevance of historical emissions and the possible obligations emerging from them see: Rayner *et al.* 1999, p.28; Shue, H. 1999; Neumayer, E. 2000; Gosseries, A. 2003; Caney, S. 2005a, 2006c

⁴⁰ For example: Fujii, Y. 1990; Berk and den Elzen 1998; Neumayer, E. 2000; La Rovere *et al.* 2002

⁴¹ Simon Caney discusses this issue (Caney, S. 2005a; 2009c).

Chapter 2. Reasonable Disagreement

responsible for causing emissions, there are different reasonable positions regarding how responsibility for these emissions should be attributed to a certain actor. For example, it is reasonable to propose that an actor is at least partly responsible for bringing about emissions if that actor plays a causal role in a process that generates those emissions. But this raises questions about what constitutes a causal role in such a process. If a traveller enjoys taking long-haul flights to exotic countries, then it is reasonable to propose that the traveller is in some sense causally responsible for the emissions generated by the flight. Assuming that the flight would not take place if there were not enough passengers to fill the aircraft (this is a hypothetical example), the traveller plays a causal role in the production of emissions and should be held responsible. But the issue becomes much less clear if one considers a less direct causal role in the processes that cause emissions. If the traveller decides to travel to an exotic country because of a celebrity endorsement, then the celebrity also plays a causal role in bringing about the emissions generated by the flight. It is reasonable to argue that the celebrity undertook an endorsement that led to an increase in emissions. In this sense, the celebrity plays a causal role in bringing about those emissions and should also be held partly responsible for them. But there are different reasonable positions regarding the extent to which the celebrity should be held responsible for the emissions generated by their endorsement. To be sure, the celebrity plays a causal role in the sense that the actor would not have taken the flight had the celebrity not made the endorsement. But it also seems reasonable to hold this role is too indirect for us to think that the celebrity is responsible for the holidaymaker's choices.

There are many other cases where there is reasonable disagreement about causation here (i.e. epistemic disagreement). Contrary to above, if a holidaymaker doesn't buy a ticket then another passenger might fill his place on the plane. In this scenario the flight takes place regardless of the holidaymaker's actions, and the emissions caused by this flight are still put into the atmosphere. As such, one might think that the holidaymaker is not responsible for these emissions, because they are brought about regardless of his actions. But there is some sense in which the flight is at least partially dependent on the holidaymaker taking the flight, given that he is part of a collective group whose actions bring about the flight, even if the flight would take place anyway. At the same time the fact that other passengers are involved is important. For each person it is true that her or his action is not necessary for the

Chapter 2. Reasonable Disagreement

event to occur (that is, the plane will fly anyway), even though some aggregation of individual action is necessary for the plane to fly. That said, it is also reasonable to claim that actors shouldn't be held responsible for such indirect contributions to the processes that bring about emissions. Both of these positions are reasonable, and represent epistemic disagreement about how to attribute responsibility appropriately. This is a common problem with causation.⁴² There are different positions on this issue that cannot be dismissed as unreasonable. It is difficult to know what metric should be used to determine whether an agent is responsible, and there are different reasonable notions of what this should be.

The Historical Responsibility proposal also requires a judgement about the extent to which an actor should be held responsible for emissions that were generated before climate change became common knowledge. It is sometimes argued that an actor should not be held morally responsible for the harmful consequences of an act if the full consequences of that act were unknown at the time.⁴³ In relation to climate change, actors who produced emissions at a time when the negative effects of these emissions were not fully known are often said to be 'excusably ignorant' and should not be held responsible for these emissions. Consequently, advocates of the Historical Responsibility proposal often specify a date after which emitters are reasonably expected to have known about the harmful effects of their emissions and can be reasonably held responsible for them. But this raises a question about the date for excusing actors for their emissions, and there are different reasonable positions about what this should be. For instance, 1990 is frequently referred to as the latest sensible date that people could be considered excusably ignorant of the effects of producing greenhouse gas emissions.⁴⁴ It is reasonable to contend that before this time there was enough uncertainty about the full effects of climate change to excuse any actor of responsibility for emissions that they produced. At the same time, the possibility that greenhouse gas emissions would cause climate change was known well before 1990.⁴⁵ It is also reasonable to claim that a much more stringent date should be set for excusing people on the ground of ignorance, because the possibility that emissions

⁴² Mackie, J.L. 1980; Hart and Honoré 1985

⁴³ For example: Gosseries, A. 2005, p.6

⁴⁴ The following authors make this point: Neumayer, E. 2000; Singer, P. 2002; Caney, S. 2005a; Risse, M. 2008, p.35

⁴⁵ The first studies suggesting that emissions might cause global warming emerged in the 19th Century (see: Arrhenius, S. 1896).

Chapter 2. Reasonable Disagreement

could have harmful effects were known well before this time, and past emitters should have taken this into account. Both of these proposals are reasonable claims about the extent to which actors can be reasonably expected to know about the harmful effects of climate change, representing a form of epistemic disagreement about excusable ignorance. Therefore, when applying the Historical Responsibility proposal, there are different reasonable positions about the date at which actors are excusably ignorant of the harm caused by their past emissions.

Implementing the Historical Responsibility proposal also requires a judgement about how to attribute responsibility for those emissions caused by people who are no longer alive.⁴⁶ Activities that generate emissions have been taking place since the industrial revolution. As a result, a large proportion of the total emissions already in the atmosphere were caused by those who are no longer alive. If one advocates the Historical Responsibility proposal then it is necessary to state how to appropriately attribute responsibility for these emissions. Advocates of the Historical Responsibility proposal sometimes resolve this problem by arguing that responsibility for past emissions should be attributed to those who have benefited from these emissions (the Beneficiary Pays Principle).⁴⁷ Whilst a person cannot be held responsible for the harmful consequences of someone else's act, they still may be liable to pay compensation for something if they enjoy the corresponding benefits.⁴⁸ This suggests that those who benefit from historical emissions caused by those who are no longer alive should have fewer emission rights than those who have not.

Now, there is normative disagreement about whether benefitting from an act can bring about associated responsibilities to pay for the consequences of that act.⁴⁹ Whilst the Beneficiary Pays Principle is disputable in itself, if one does endorse this principle then there are different reasonable positions about how it is interpreted. This is because the benefits that arise from producing emissions spill over to different actors.⁵⁰ It is reasonable to claim that many of the benefits of the emissions that were

⁴⁶ For further discussion, see: Caney, S. 2006c

⁴⁷ Pan, J. 2003, p.5; Caney, S. 2006c; Hayward, M. 2007, p.523

⁴⁸ Gosseries, A. 2005, p.10

⁴⁹ For discussion, see: Nozick, R. 1974, p.93-4

⁵⁰ Risse, M. 2008, p.30; Matthias Risse argues that there is also a diffusion of the benefits generated from historical emissions as developing countries benefit from technology created by previous generations of wealthy people.

Chapter 2. Reasonable Disagreement

created by industrialised countries have accrued to nations on a global scale. The problem is that, at this point in time, there is no way of empirically determining the extent to which different countries have benefitted from these emissions (if at all) and different reasonable claims can be made about this issue. It is reasonable to claim that the current standard of living in developing countries is much greater than it would have been without the industrialisation of developed countries. It is also reasonable to claim that the benefits of this process have largely accrued to those countries that undertook this process. This represents an empirical disagreement about how much different actors have benefitted from historical emissions. At some future time, it might be possible to determine exactly how each actor has benefited from historical emissions (for example through improved empirical analysis). But this information is not currently available and it is necessary to make a judgement about how much the benefits of emissions accrue to different agents. At the same time, there are different reasonable interpretations of this fact. Whilst there might be agreement about the fairness of Historical Responsibility principle, as well as the suitability of attributing responsibility to those who benefit from emissions, there are different reasonable positions regarding the extent to which actors benefit from spillover effects.

3.5 Multi-criteria approaches

Thus far, this chapter has discussed the relative fairness of different allocation rules in isolation from one another. But often these allocation rules are combined with one another in order to create Multi-criteria rules that distribute emissions using a combination of different allocation rules.⁵¹ For example, the Greenhouse Development Rights Framework (GDR) distributes emissions rights according to an index, which is defined by a combination of the Historical Responsibility principle and a sufficientarian conception of justice (i.e. emissions should be allocated to enable the poor to develop).⁵² Other Multi-criteria proposals include the Contraction and Convergence proposal,⁵³ which combines the proposals for Grandfathering and Equal per Capita Rights, and the Common but Differentiated Convergence proposal, which incorporates elements of the Equal Rights and Historical Responsibility proposals.⁵⁴

⁵¹ For a discussion of Multi-criteria approaches, see: Metz *et al.* 2002

⁵² Baer *et al.* 2009; Kanie *et al.* 2010, p.306

⁵³ See: Meyer, A. 2007

⁵⁴ See: Baer *et al.* 2009. Grandfathering is an allocation rule that distributes more emissions to those who have emitted more in the past. For discussion, see: Bovens, L. 2011

Chapter 2. Reasonable Disagreement

As a result, this chapter has drawn attention to reasonable disagreement about: the core principle that should be adopted for the fair distribution of emission rights, how this principle is interpreted, and the background facts that are important to the application of a certain allocation rule. But there is also reasonable disagreement about the relative importance that people should give to different allocation rules. Given that allocation rules are not typically considered in isolation, but rather as Multi-criteria rules, it is necessary to make a judgement about the importance that each rule should receive. There are different reasonable positions about the weighting each allocation rule should be given. It is clear that it is unreasonable to prioritise some rules above others. For instance, it is unacceptable to argue that Historical Responsibility should take precedent over the Basic Emission Rights proposal, because allowing people to meet their basic human needs is far more pressing than correctly attributing responsibility. But in other cases the choice is much less clear-cut. For instance, it is reasonable to propose that people should put a high importance on the Historical Responsibility principle. Yet there is no reason why someone can't reasonably contend that people should give equal importance to the Equal Rights proposal. There are different reasonable positions about the significance that each allocation rule should receive, none of which can be reasonably rejected. As a result, specifying a Multi-criteria approach does not escape the problem of reasonable disagreement.

3.6 Reasonable disagreement and the fair distribution of emissions

Following the typology of disagreement given in section two, the findings of this section are as follows. Foremost, there are different reasonable claims about which allocation rule should be used for the fair distribution of emission rights. This is normative disagreement about the core principle that should be used to distribute emission rights fairly. Second, even if there is agreement on which core principle should be applied, there are different reasonable claims about the way that each principle is applied. This is so for two reasons. On the one hand, applying or interpreting each allocation rule requires some judgement about how this allocation rule should be applied (interpretative disagreement). On the other hand, certain elements of each allocation rule depend on facts that are not specified by the allocation rule itself (normative disagreement and epistemic disagreement). Third,

Chapter 2. Reasonable Disagreement

there are different reasonable claims about the relative weight that each principle should be given (weighting disagreement).⁵⁵ This account is not exhaustive, and there may be other types of disagreement here. Most notably, I've not discussed methodological disagreement, which may lead to greater problems when trying to reach consensus. But the account here shows that there are different reasonable claims regarding the fair distribution of emission rights, even when there is agreement about other issues, including the correct methodology to apply. Following the discussion in section two, this means that it is not possible to dismiss these views as unreasonable, even if we deny that these views are correct. The upshot of this is that the fair distribution of greenhouse gas emission rights is subject to considerable reasonable disagreement.

3.7 Reasonable disagreement in theory and practice

I've shown that there are different reasonable claims about the fair distribution of greenhouse gas emissions. I've not stated what the relevance of this disagreement is, nor have I shown that there is reasonable disagreement in practice. In the following section, I consider how people should respond to reasonable disagreement. Before doing this it is necessary to state how pervasive reasonable disagreement actually is.

Following the discussion in section two, the fact that different proposals for the fair distribution of emission rights are reasonable means that none of these can be dismissed as unreasonable interpretations of what a fair distribution is. Whilst someone can reject a proposal as an incorrect account of what a fair distribution is, he or she cannot reject a reasonable proposal as something that doesn't deserve our respect. I might acknowledge that your claim is reasonable, whilst disagreeing that it is a correct answer to the problem at hand. But by accepting that your claim is reasonable, I recognise that it should be treated with adequate respect, even if I disagree with it. Because people can reject different reasonable proposals as correct accounts of what is fair, it isn't possible to say with any certainty whether any of these proposals will gain the support of all reasonable persons. In theory, this means that deliberation is unlikely to bring about agreement if there are many heterogeneous

⁵⁵ One issue that I've not considered here is methodological disagreement. Whilst methodological disagreement is very relevant, this section has shown that is that reasonable disagreement can exist even if there is agreement over the methodology that is employed.

Chapter 2. Reasonable Disagreement

actors. Different actors can support different reasonable positions, and it isn't possible to reject these as unreasonable interpretations of what is correct. This implies that no single proposal will gain the support of reasonable persons.

This is important because determining a fair distribution of emission rights is necessary for implementing many mitigation policies. Policies to reduce emissions need to support of a large number of actors. But these policies also bring about large redistributions of welfare. Generally speaking, people will only endorse a policy if they think that it distributes burdens fairly. Further, the fair distribution of emission rights reflects concerns about fair burden sharing in climate change more generally. What this means is that reasonable disagreement about the fair distribution of emission rights precludes us from adopting mitigation policies, even when there is agreement on other issues, such as the need to limit global temperature rises to no more than 2°C above pre-industrial levels, or on the best mitigation policy for achieving this end.

Whilst this means that there is reasonable disagreement in theory, it is also necessary to give an account of whether this disagreement exists in practice. The first thing to say is that many of the principles and claims mentioned in this section are proposed (and rejected) in climate change negotiations for the fair distribution of emission rights. For instance, the following is a brief account of the state delegations that have proposed specific allocation rules in the history of the UNFCCC negotiations:

1. Equal per capita: France, Switzerland, India⁵⁶
2. Equal costs: Poland, Australia⁵⁷
3. Historical Responsibility: Brazil⁵⁸
4. Multi-criteria: UK, Germany⁵⁹

This is just a limited account of how some of these allocation rules are advocated in practice. The important point is that this is not just a matter of philosophical

⁵⁶ Agarwal and Narain 1991; AGBM 1996

⁵⁷ Müller, B. 1999, p.6 (note that Benito Müller refers to these as per capita GDP and per capita economic welfare).

⁵⁸ AGBM 1996; Brazilian Party 1997

⁵⁹ Garnaut Report 2009, p.203; Ross Garnaut notes that both the UK and Germany advocate the Contraction and Convergence rule, which is a Multi-criteria rule.

Chapter 2. Reasonable Disagreement

discussion, but also a problem in practice. One might take a cynical view of state behaviour in international negotiations and argue that these actors adopt positions that best represent their own self-interest. Given that it isn't possible to know why a state delegation makes a proposal, it is not possible to refute this claim. However, people from academic and policy circles have been thinking about and discussing this issue for over two decades. Unlike state delegates, many of these authors have an impartial view about which countries should benefit from a system of emission permits, yet there is still significant and persistent disagreement about which principle to adopt.

Before concluding this section, it is worth briefly saying something about why people disagree about the fair distribution of emission rights. Following the earlier discussion in this chapter, there is disagreement over the fair distribution of emission rights because different world views lead us to form different judgements about which allocation rule should be adopted. These different experiences and world views also lead to disagreement about how these principles should be applied, how people should judge empirical evidence relevant to the allocation rule, and the relative weight that people should give these principles. Each of these issues requires a judgement on the part of the decision-maker. Given that the ability to judge and interpret is different for each actor, different positions are likely to arise even if each actor is acting reasonably. It is the fact that disagreement arises out of different interpretations of what is fair, rather than from mistake or self-interest, which requires us to respect each reasonable view.

3.8 Summary

I've shown that there are different reasonable positions regarding the fair distribution of emission rights, and that there is disagreement on this issue in practice. This is not to say that no independent criterion that commands the support of all reasonable persons for the fair distribution of emission rights exists. I've only argued that no such criterion is immediately identifiable for specifying what a fair distribution of emission rights is. It might be the case that sufficient discussion and debate about substantive justice may eventually lead parties to reach agreement on these issues. But it seems unlikely that actors in climate change institutions will reach agreement on the fair distribution of emission rights at any point in the near future. Given the need to achieve action on climate change quickly, it seems reasonable to assume that either no

Chapter 2. Reasonable Disagreement

independent criterion for substantive justice exists or, if it does exist, that it is (for all purposes) unknown and indeterminate.

4. A procedural approach to fairness

Emphasising the importance of procedural justice in climate change requires i) showing that there is reasonable disagreement over substantive ends, and ii) showing that this means that climate institutions should take a procedural approach to fairness instead. Thus far, this chapter has addressed the first of these issues. Whilst I gave some explanation for pursuing procedural values at the start of this chapter, I now develop this argument further.

4.1 Resolving reasonable disagreement

Given that there is reasonable disagreement in climate change, as well as a pressing need to implement action quickly, what can be done to resolve reasonable disagreement? This section considers this question, before advocating fair procedures as an element of one approach to achieving urgent action despite reasonable disagreement.

When faced with reasonable disagreement, one option is to continue to deliberate. After all, reasonable people who disagree might come to change their minds. Deliberative democrats argue that conditions of cooperative deliberation in good faith can be expected to eliminate mistakes in reasoning to bring about consensus on an issue. For example, Gutmann and Thompson argue that deliberation can clarify a moral conflict by helping actors to see that it might be based on misunderstanding.⁶⁰ The discussion of disagreement given above did not suggest that agreement was impossible, but rather that it was not forthcoming. By continuing to strive for agreement on a cooperative outcome, parties may achieve consensus on an issue in the end.

But the downside of this approach is that it might take a very long time and may not yield an answer at all. The problem is that reasonable disagreement is likely to persist despite continued deliberation in good faith. Deliberative democracy works to bring

⁶⁰ Gutmann and Thompson 1996

Chapter 2. Reasonable Disagreement

about consensus by eliminating *unreasonable* claims, but here our concern is *reasonable* disagreement. Christopher McMahon goes as far as to argue that reasonable disagreement will persist no matter how long shared deliberation continues.⁶¹ Furthermore, the evidence from climate negotiations so far gives us no reason for thinking that states will come to agree on this issue anytime soon. The fair distribution of emission rights is a highly contested issue that states have been unwilling to compromise on. Whilst I don't suggest that agreement will never arise, reasonable disagreement is likely to lead to protracted decision-making. It is therefore necessary to find a way of resolving disputes when deliberation doesn't bring about an outcome, or if time is a pressing matter.

If it isn't possible to achieve agreement through sustained deliberation, then a second option is to give up on the cooperative arrangement. One could either undertake action on one's own accord, forsaking the cooperative arrangement altogether. This is increasingly taking place as many states are taking up unilateral action on climate change.⁶² Alternatively, states could enter agreements with those who share common interests, achieving some of the benefits of cooperation whilst avoiding persistent disagreement.⁶³ Again, this is evident in practice, and now many 'minilateral' climate institutions have been created in response to the deadlock associated with the UNFCCC. By avoiding the problems associated with persistent reasonable disagreement these approaches might achieve effective action quicker. After all, most emissions come from a small set of countries, so if an institution can coordinate action amongst those who hold similar existing views then it might be possible to achieve significant action on climate change without worrying about comprehensive agreement.

Whilst I give a complete account of why this approach is inadequate in chapter eight, it is worth saying something about this point here. The problem with these sorts of approaches is that they might fail to implement sufficient action to avoid the very worst consequences of climate change partly because there may still be reasonable disagreement within these smaller groups of actors. Several studies show that

⁶¹ McMahon, C. 2009, p.2

⁶² Bottom-up processes involve voluntary mitigation pledges that are defined unilaterally (Bodansky 2012, p.1).

⁶³ Christoff, P. 2006; King *et al.* 2011, p.19

Chapter 2. Reasonable Disagreement

unilateral measures are inadequate to prevent dangerous climate change,⁶⁴ and there is no promise that there will be effective agreement among a small subgroup of nations.⁶⁵ Moreover, even if there is agreement amongst a select group of key states, there is no guarantee that minilateralism can bring about the necessary changes to address climate change.⁶⁶ This isn't to say that minilateral approaches aren't important features of the overall effort on climate change. But the point is that implementing effective agreement on climate change requires engaging with actors on a far reaching scale. I provide a full justification for this argument when I discuss procedural trade-offs in chapter eight.

A third approach is to force actors into accepting a proposal even if they disagree with it. One could impose threats, bribes or sanctions that enforce compliance with a certain agreement. After all, an actor may disagree with a particular proposal, but nevertheless consent to an agreement on the basis that not doing so would be prohibitively damaging. Coercive measures can provide a way of getting everyone to accept the terms of an agreement quickly, even in the face of reasonable disagreement.

A fourth option is to come up with a procedure to resolve disagreement. This could involve some kind of pragmatic procedures about how to choose between different positions, although not necessarily in a fair way. Here, I have in mind similar procedures to those described by Jeremy Waldron during his discussion of decision-making by majority rule. These include, for example, picking an option at random or deciding on an outcome through third party arbitration.⁶⁷ Such procedures are not necessarily fair (I discuss fair procedures in the following section), and they only need to be sufficiently appealing so that they are acceptable to each actor involved. This would provide one way of achieving cooperative action when there is reasonable disagreement about substantive ends.

⁶⁴ IEA 2011; Rogelj *et al.* 2011; UNEP 2011

⁶⁵ Robyn Eckersley argues that much of the disagreement that exists between states on a comprehensive scale also exists between the major emitting states (Eckersley, R. 2012, p.33).

⁶⁶ For accounts of why it is necessary to incorporate all states, see: Hahn, R.W. 2009, p.569; van Vliet *et al.* 2012

⁶⁷ Waldron suggests that two pragmatic procedures for decision-making might be tossing a coin or nominating one person to act as a leader (Waldron, J. 1999, p.113).

Chapter 2. Reasonable Disagreement

Whilst enforced compliance and pragmatic procedures seem like possible solutions to the problem of reasonable disagreement, the problem, as Waldron notes, is that they fail to adequately respect actors.⁶⁸ As such, these methods of achieving consensus are unfair. This is problematic for three reasons, the first of which relates to coercive enforcement, whilst the latter two relate to pragmatic procedures. The first problem is that coercive agreements are not sufficiently legitimate to create long-term and sustained cooperation. Successful action on climate change requires long-term action, and given the dynamic nature of global politics, it is unlikely that an institution will be able to adequately enforce coerced consensus in the very long-term. Second, it is unlikely that actors will comprehensively accept a procedure that is not fair. As I've already said, there is empirical evidence that shows that actors are less likely to accept an agreement that is unfair, whether the agreement is unfair for them, or if it is unfair for other actors.⁶⁹ A third problem is that agents must have reasons for accepting the outcome of a procedure when they disagree with the outcome itself. As it is, pragmatic procedures do not provide reasons for suspending one's own judgement for the sake of the outcome of a procedure. If actors are expected to support the outcome of a decision-making procedure, even if they disagree with the outcome, then there must be an additional reason for supporting it. Following Waldron, I take fairness to be a possible solution to this problem, and I now outline the argument why this is the case.

4.2 Procedural fairness

In light of reasonable disagreement over urgent matters there is a strong case for a procedural approach to determining the outcomes that an institution should pursue. But it is not merely sufficient that we take a procedural approach; the procedure must also be perceived as fair. As I argued in section one, there are intrinsic reasons for doing this. But, as I argued above, there are also instrumental reasons for fair procedures. This is because fair procedures take into account the moral worth of those with whom we disagree. In doing so, fair procedures provide a way of responding to reasonable disagreement that recognises and respects difference rather than simply

⁶⁸ Waldron, J. 1999, p.113. Note that continued deliberation and unilateralism may also fall short on this point.

⁶⁹ Thibaut and Walker 1975; Walker *et al.* 1979

Chapter 2. Reasonable Disagreement

finding a pragmatic response to the problem of conflict. When arguing the case for majority rule, Waldron suggests that there are two ways in which this is the case.⁷⁰

First, majority rule respects individuals because it does not rule out any single actor's point of view. No one's position is played down or ignored, and everyone's view is taken into account. Second, majority rule respects individuals by giving equal weight to each person's view in the decision-making process. The fact that majority rule respects individuals in these two ways gives each actor a reason for accepting the outcome of a procedure even if they disagree with the outcome itself. Whilst Waldron is arguing the case for majority rule, this argument can be expanded to other forms of decision-making more generally.⁷¹ Here, I supplement Waldron's argument with the claim that respecting actors in this way is also likely to bring about the necessary legitimacy and support for long-term and sustained cooperation. The upshot of this is that it is not necessary to achieve consensus on what a just outcome on climate change is, provided that it is possible to identify a process that is sufficiently fair to bring about mutual acceptability.

Fair procedures, as I've set out here, capture some of the advantages of the various different approaches to resolving disagreement whilst avoiding some of their pitfalls. By bringing about agreement on a comprehensive scale fair procedures avoid the problems of ineffectiveness faced by unilateral and unilateral approaches. They also provide an alternative to sustained deliberation over intractable issues, meaning that lengthy and deadlocked negotiations can be sidestepped. By appealing to fairness rather than pragmatism or force, this approach gains the long-term support necessary for sustained effective action on climate change.

This does not mean that procedural values should be prioritised over substantive ones, nor that there shouldn't be minimal substantive constraints on the outcomes of fair procedures. Whilst this chapter has shown that there is reasonable disagreement over some substantive values, this does not mean that there is reasonable disagreement about all substantive values in the design of climate change institutions. Actors might

⁷⁰ Waldron, J. 1999, p.111-4

⁷¹ Waldron notes that majority rule is not the only way of awarding sufficient respect in a decision-making process (Waldron, J. 1999, p.111).

Chapter 2. Reasonable Disagreement

agree on the minimal substantive values that should constrain the outcomes of procedures, whilst disagreeing about other important matters. But this chapter has emphasised the importance of considering procedural values in this context.

By providing an instrumental justification for pursuing procedural values, this account achieves the aims that were set out in section one. Achieving procedural fairness means operating in accordance with agreed rules of procedure. Determining exactly what the necessary requirements of procedural justice are for multilateral climate change institutions is the subject matter of the remainder of this thesis. Before addressing this issue, it is worth addressing three objections to the arguments presented so far.

4.3 Objection 1: procedural values appeal to substantive ends

First, one might claim that it is not possible to adopt a purely procedural approach to the fair distribution of emission rights because, although people recognise the importance of procedures, ultimately they are always concerned with some substantive end. This objection rests on two separate claims. First, procedural fairness is not valuable in itself and fair procedures are important because they bring about some desired end.⁷² This claim is supported by the fact that people often think that it is necessary to put limits on the types of outcomes that can arise from democratic procedures.⁷³ The second claim is that reasonableness involves a substantive judgement about the normative merit of various claims. If people are making substantive judgements about what claims are permissible, so the argument goes, then what they really care about is substantive ends.

To respond to the first claim, it is not the case that procedural values always collapse into substantive ones. As I argued in section one, procedural values are intrinsically important regardless of the outcomes they achieve. Further, just because people place some necessary substantive constraints on the outcomes that arise from decision-making procedures, it does not mean that they are rejecting the importance of procedural values. Fair decision-making processes are important partly because they

⁷² Arneson, R. 2004

⁷³ Several authors suggest that there are certain constraints on the outcomes that multilateral institutions should bring about (Buchanan and Keohane 2006; Caney, S. 2009e).

Chapter 2. Reasonable Disagreement

bring about mutual agreement, but this doesn't mean that people should agree to accept any outcome that arises from a procedure, nor does it mean that substantive values should be ignored altogether. The fact that there is reasonable disagreement over some substantive values does not mean that there is reasonable disagreement over all substantive values. Actors may reach consensus on certain minimal constraints that a procedure should achieve. Whilst disagreement over substantive ends necessitates fair decision-making processes, it does not negate the existence of substantive constraints on the outcomes of these processes.

Turning to the second claim, it is not the case that judging the reasonableness of a claim necessarily involves a judgement about its substantive merit. I've suggested that reasonable actors should respect the reasonable claims of others. But I've defined reasonable actors as those who come together to cooperate fairly and in good faith. Procedural fairness requires that actors engage with one another under conditions of tolerance and mutual accommodation.⁷⁴ This suggests that people should respect the claims of others, on the basis of their reasonable behaviour, rather than on the substantive merit of their claims.

4.4 Objection 2: disagreement about procedural values

A second objection is that there may be significant reasonable disagreement about what a fair decision-making process is.⁷⁵ Given the extent of disagreement over the substantive ends of climate change it seems reasonable to assume that there is going to be just as much disagreement over procedural values. There are many areas in which disagreement can arise in the design of procedures and these issues might be highly contested. Therefore, some might claim that the procedural method defined here is unsuitable for achieving a fair agreement because it is subject to the same disagreement that gave it merit in the first place.⁷⁶

There are at least three responses to this objection. First, one might hold that there is, in fact, a greater degree of agreement on procedural issues than there is about

⁷⁴ Here I have in mind something along the lines of Gutmann and Thompson's account of reciprocity (Gutmann and Thompson 1996).

⁷⁵ For instance, Ronald Dworkin argues that reasonable citizens may disagree about what democracy requires (Dworkin, R. 1996, p.34).

⁷⁶ For discussions of disagreement over procedural values see: Waldron, J. 1999; Karlsson, J. 2008; Mansbridge *et al.* 2010

Chapter 2. Reasonable Disagreement

substantive ones. For example, Gutmann and Thompson argue that procedural values are often invoked as higher order principles that transcend disagreement on substantive issues.⁷⁷ In relation to climate change, substantive issues often involve distributing costs and benefits, which is a matter that is highly politicised with intractable positions. Procedural values, on the other hand, often invoke more abstract concepts that do not relate to such contentious and politically charged issues. The hope is that, whilst there may be some disagreement on procedural values in climate change, this is not as intractable as that concerning substantive issues.

A second response is that parties may be more amenable to agreement on a procedural issues precisely because there is so much disagreement over the substantive ends in climate change institutions. Climate change negotiations take place among state delegates who are accountable to the domestic governments that they represent. Many positions in climate change negotiations have become non-negotiable, or intractable, because any form of concession or compromise is seen as a sign of failure or defeat. These positions have become so entrenched that it is simply not possible to reach agreement in practice, even if it is possible to specify a fair agreement in theory. In this case, a procedural approach might provide an alternative way around entrenched views that negotiators cannot back down from. By respecting difference, rather than proposing a substantive answer, a procedural approach can resolve the problem of entrenched disagreement, rather than creating further disagreement about fair process. This is an empirical matter about the acceptability of different types of claims. However, given that I'm concerned with the way that actors negotiate in climate change, this remains an important point.

Third, regardless of what one might think about the plausibility of reaching agreement on procedural issues, it remains the case that this area is so far unaddressed in the literature on climate change. There may be as much inherent disagreement about procedural values as there is about substantive values in climate change, but there is (to date) no analysis of procedural values in this context. The purpose of this thesis is to explore these issues further and to consider their feasibility and acceptability as principles of justice. If, on further investigation, it is evident that there is fundamental

⁷⁷ Gutmann and Thompson 1990, p.64

Chapter 2. Reasonable Disagreement

and prohibitive disagreement in issues of process, then it may be necessary to undertake an alternative approach to achieving justice in climate change. But, as it stands, the fact that there may be disagreement in procedural justice does not in itself rule out the analysis at hand.

4.5 Objection 3: why should people accept the outcome of a procedure?

A third objection to a procedural approach questions why people should accept the result of a procedure if they disagree with the outcome. As Jeremy Waldron points out, some people might object to a procedural approach on the basis that it asks them to prioritise procedure above substance.⁷⁸ Given the significance of forsaking one's own view for the outcome of a procedure, so the argument goes, it's necessary to have a justification for prioritising procedure above substance. If justice is the most important virtue of institutions, then surely procedures shouldn't take precedence.

Waldron argues that this objection rests on a misunderstanding of what he calls 'the dimensions of political importance'. Just because people accept the outcome of a procedure above their own view on an issue does not mean that they place procedural considerations above substantive ideas of justice. Rather, by adopting the outcome of a procedure they accept that there is a need to reach common agreement in the face of reasonable disagreement. By taking a procedural approach people do not prioritise this above justice, but accept the need to find agreement given their disagreement.

It's also worth recognising that there are limits to what procedures can achieve. Fair procedures produce a result that everyone might be prepared to accept, even if they do not agree with the outcome wholeheartedly. I'm proposing that if there is initial disagreement about something then a fair process might lead us to a result that all can accept. But this might be impossible if the initial disagreement is severe and deep. People may be unwilling to accept the outcome of a procedure, even if it comes about in a fair way. Whilst this is something that should be kept in mind, it doesn't preclude taking a procedural approach. It is important to consider the design of fair procedures whilst accepting that this might not always lead to a result that every actor is prepared to accept.

⁷⁸ Waldron, J. 1999, p.160-1

Chapter 2. Reasonable Disagreement

5. Conclusion

This chapter makes two central claims. First, there is reasonable disagreement concerning the fair distribution of emission rights. This is because there are different reasonable positions on this issue and no single allocation rule dominates any other. Second, procedural justice is both intrinsically, and instrumentally valuable. It is intrinsically valuable because people value the fact that processes are, in fact, fair. It is instrumentally valuable because it allows parties to reach agreement on issues on which there is reasonable disagreement. Given that effective action on climate change is dependent on reaching a cooperative arrangement that each regards as sufficiently fair so that it is acceptable, this gives procedural values significant importance in the design of climate change institutions. The remainder of this thesis considers what a fair procedure is, and what we can expect from reasonable actors.

Chapter 3. Participation

1. Introduction

Climate change requires the creation and support of climate governance institutions that coordinate action on an international scale. In chapter one, I described the various multilateral institutions that fulfil this function in world politics. In chapter two, I then argued that there is reasonable disagreement about some of the substantive ends that these institutions should pursue, and that fair procedures have both intrinsic value *and* may be conducive towards achieving cooperation within them. In this chapter, I ask who should participate in the decision-making procedures of climate change institutions *that currently exist*. In specific, I ask who should participate on the basis of fairness. Given that participation should ultimately be determined by a number of factors and values aside from fairness alone, this is just one of a number of considerations that should determine who actually participates in a decision-making process in practice.

It is important to note at the outset that the question of who should participate in a decision-making process is distinct from that of who is actually subject to the rules and commitments of an institution.¹ To avoid confusion, I refer to participation in this latter sense as ‘institutional membership’, which concerns which actors agree to comply with the regulations and commitments of the institution. In contrast, in this chapter I am concerned with who should participate *in its decision-making processes*.

There are many ways that actors can participate in the decisions of climate institutions. They can participate directly, by having a vote in the final decision or a right to speak in the negotiation forum. Actors can also participate indirectly, by influencing those who do vote, or by stimulating public debate. In this chapter I’m concerned with who should have a vote in the decisions of a climate institution, and who should have a voice in its deliberative discussions.

There are also different types of actors that participate in these decisions. Whilst voting rights are typically the privileges of states, many non-state actors (NSAs)

¹ Several authors note this distinction. For example: Dingwerth, K. 2007, p.39; Duxbury, A. 2011, p.21

Chapter 3. Participation

participate in a number of other ways,² and there are many accounts of the epistemic role that these actors play in multilateral negotiations.³ Alternatively, actors may simply participate as observers in a decision-making process, monitoring the actions of the institution without having any direct power or influence over an outcome.

The number of actors that participate in multilateral decisions has important implications for making decisions and reaching agreement. The more actors that there are in a decision-making process, the harder it is to aggregate interests and come to an agreement. So far, open-ended institutional membership combined with decision-making by consensus has led to stalemate within the UNFCCC. In response, decision-makers are increasingly turning to exclusive group settings for important decisions. This is something that has led to problems within the COP. During the closing stages of COP15 in Copenhagen, delegates from four countries met in private to negotiate an agreement outside the main negotiation forum.⁴ This group later declared that a global deal had been achieved, sparking outrage from the broader COP delegation who hadn't been informed of the agreement and were unaware of the discussions that had taken place.⁵ Subsequently, Venezuela, Cuba, Nicaragua and Bolivia later renounced the agreement on the grounds that they had been excluded from important meetings.⁶

An alternative response to the procedural problems of making decisions among large numbers of actors is to take a 'minilateral' approach to climate governance.⁷ But the decisions made within these institutions have considerable implications, not just for those formally bound by the institution, but also for those who are not part of the institution but are nonetheless affected by it. This raises questions about the nature and scope of procedural justice, and many criticise these minilateral approaches on the basis that they exclude the most vulnerable from decisions that significantly affect their vital interests.⁸

² For discussion of the various roles that NSAs play in climate institutions see: Jagers and Strippel 2003; Bulkeley and Newell 2010; Kravchenko, S. 2010

³ For example: Betsill and Corell 2001

⁴ Dimitrov, R.S. 2010a; Rapp *et al.* 2010

⁵ Rapp *et al.* 2010

⁶ Bodansky and Rajamani 2013, p.12

⁷ See: Naím, M. 2009; Eckersley, R. 2012

⁸ Adger *et al.* 2003, p.1095; Grasso, M. 2010, p.53; Hare *et al.* 2010, p.605

Chapter 3. Participation

As a result, much of the literature on governance advocates greater participation of those who are externally affected by the outcomes of institutions, through increased accountability, representation, or transparency in the processes that bring these outcomes about.⁹ These concerns are reflected in the treaty text of the UNFCCC,¹⁰ as well as the formal rules of other multilateral environmental agreements.¹¹

Those who advocate democratic inclusion in this way typically make two important assumptions. First, fairness demands that those who are affected by the outcomes of an institution are included in its decision-making processes (the so-called ‘All Affected Principle’). Second, deciding who should participate is a matter of what’s feasible in practice. Whilst some suggest that the demands of democratic inclusion require ideal responses to global governance such as electoral accountability on a global scale,¹² others suggest that such approaches are unachievable in the current system of world politics, and that greater inclusion should be achieved through democratic processes that are neither accountable nor directly representative.¹³

In this chapter, I question the former of these assumptions. I argue that those who are affected by the outcomes of governance processes do not, in virtue of the fact that they are affected, have a right to participate in a decision-making process. I claim instead that a more accurate understanding of procedural fairness is that those who are coerced by the outcomes of a decision, as well as those in whose name a decision is made, should be included in its decision-making processes. I go on to argue that those whose interests are affected by a decision should have a right to be heard in a decision-making process, although this does not entail a right to participate in the sense of having a vote.

Regarding the latter of these assumptions, it is clear that any account of democratic inclusion in global governance needs think about what can be achieved in practice, which is something I consider in section four.

⁹ Archibugi *et al.* 1998; Palerm, J.R. 1999; Bäckstrand, K. 2006; 2010a; 2010b

¹⁰ See: UNFCCC 1992, Articles 4.1, 6 and 7. For discussion on the role of NSAs in COP negotiations, see: Gupta *et al.* 2007

¹¹ UNCED 1992, Principle 10; UNECE 1998, Article 6; UNDRIP 2007, Article 19

¹² Falk and Strauss 2000

¹³ Dryzek and Stevenson 2011; 2012a

Chapter 3. Participation

2. Fair participation

Having provided the necessary empirical context for thinking about fair participation and climate governance, I now identify an appropriate principle of fairness for determining participation in a decision-making process.¹⁴ I do so by considering some of the prominent principles that are used to determine democratic constituencies. I argue that the most promising principles for fair participation are: i) the Democratic Authorisation Principle and ii) the All Coerced Principle. I also argue that, procedural justice requires iii) the Affected Interests Principle. Following this, in section four I go on to consider what this means in terms of participation in the decision-making processes of climate institutions.

2.1 The Democratic Authorisation Principle (in one's name)

One common way of determining the demos is to say that participation is required if a decision is made *in an actor's name*.¹⁵ If a decision is made on an actor's behalf, then that actor should have some say in the decision-making process. I call this the Democratic Authorisation Principle (DAP).

The Democratic Authorisation Principle:

If a decision is made in an actor's name then that actor should have a say in the way that the decision is made

This principle is intuitively appealing. People typically think that they can only attribute a decision to an actor if that person has had some say in the decision-making process. In a domestic context you have a right to participate in a decision-making process if a law is made in your name, regardless of whether you are actually affected by it in any real sense. If I am a citizen of a state whose government decides to increase the amount of time that children should spend in education, then I feel that I should have a say in that decision, regardless of whether I have any children, or if I intend to have any in the future. Likewise, if I am a member of a community group that decides to protest against a government policy on my behalf, then I feel that I should have some say in the group's decision to protest against that policy.

¹⁴ In what follows, I draw from the discussions in Miller, D. (2009) and Goodin, R.E. (2007)

¹⁵ For example: Beerbohm, E. 2012

Chapter 3. Participation

I might claim to act on behalf of an individual, in the sense that I take their interests into account and make the best decision for them, without actually giving that actor a say in the way that the decision is made. But it is wrong to say that it's fair to make a decision on someone's behalf whilst excluding that person from the decision-making process. The fact that a decision is made in someone's name means that, in some sense, the actor should authorise and accept that decision. Carrying out a decision in someone's name without giving him or her a say in how it is made contradicts this requirement.

It is difficult to think of cases where the DAP is not an appropriate principle of fairness. If a decision is made in someone's name, then it often seems unfair if that actor is not included in the decision-making process. It might be fair to make a decision on an actor's behalf without their participation, if that actor has elected someone to make a decision for them. Alternatively, it might be possible to make a decision in someone's name if he or she is incapable of making decisions that represent his or her best interests. But these are exceptional circumstances. In the first case, the fact that an actor endorses a representative agent is an act of participation itself, and doesn't contradict the DAP. In the second case people can act on someone else's behalf if that person's decision-making ability is extremely poor. Provided that everyone meets some minimum standard of rationality, this isn't a reason for excluding people from decision-making processes. Assuming that the majority of the actors in a multilateral context are capable of making good decisions that represent their best interests, this second point is not problematic for our argument.

So the DAP appears to be a plausible principle of justice for democratic inclusion, and it should govern at least some of our thoughts about who should participate in a decision. But this is not the only principle that's important here. As I show in the rest of this section, people sometimes think that if a decision affects an actor in a particular way then that actor should be included in the decision-making process, regardless of whether the decision is made in the actor's name. For this reason, I now explore several alternative principles of procedural justice before returning to the DAP in section four, where I discuss what procedural justice implies for decision-making in climate institutions.

Chapter 3. Participation

2.2 The All Affected Principle

The most prominent claim for fair participation is that all those who are affected by the outcome of a decision should have some form of participation in the decision-making process.¹⁶ This is known as the All Affected Principle (AAP).¹⁷

At first glance, the AAP appears an appealing candidate for determining who should participate in a decision-making process. Assuming that interests are important, and that people are generally the best representatives of their own interests, then it seems reasonable that agents should have some say in the decisions that affect them. The AAP also fits with many of our intuitions about who should participate in a decision. If a government is deciding whether or not to build infrastructure that results in the forced relocation of an indigenous group, then it's important that this group has a say in the decision-making process. Likewise, people feel that a local community should have some say in whether or not a large supermarket is built in a local town, or whether a polluting power plant is built nearby, or whether the Government licenses shale gas extraction.

But it is clear that the AAP is not appropriate in every situation and there are many who argue against this principle.¹⁸ Before considering these cases, it's worth pointing out some of the problems that arise with implementing this principle in practice. Foremost, whilst the AAP implies that all those who are affected by a decision should have some form of participation in the decision-making process, it says nothing about what it means for an actor to be affected, nor does it specify how actors should participate in a decision-making process. There are many conflicting accounts of what it means to be affected in a way that warrants participation and what form this participation should take. I might claim that a decision to destroy an area of natural beauty in another part of the world affects me in some way, even though I'm not actually affected by the decision in any physical sense. I might argue that I should have some formal say in the way that the decision is made, or I might only claim that my views about this matter should be represented in the decision-making process. Whatever one thinks about the AAP, a more refined account of what affectedness

¹⁶ Banuri *et al.* 1995, p.86; Held, D. 2004; Shelton, D. 2007, p.660;

¹⁷ For support of the AAP, see: Dahl, R. 1975; Lijphart, A. 1984; Goodin, R.E. 2007. For discussion of the AAP, see: Whelan, F. 1983; Arrhenius, G. 2005, p.6; Agné, H. 2006.

¹⁸ For criticism of the AAP see: Karlsson, J. 2006; Miller, D. 2009; Schaffer, J.K. 2012

Chapter 3. Participation

means is needed here.

Assuming that people can reach some understanding about what it means to be affected in a way that's relevant for participation, in certain situations a second problem arises. For some decisions, the decision-making process itself determines which actors are actually affected by the outcome of a decision.¹⁹ If we're making a decision about where to site a noisy wind turbine, then the outcome of our decision determines who is actually affected by the noise of this turbine. But the identification of those who are actually affected by this decision can't be determined until the decision is made. Adopting an actually affected interpretation of the AAP appears incoherent here, because our decision determines who is affected. In addition to this, the actually affected view takes the status quo as the baseline from which to judge whether an actor is affected by a decision. But, as Robert Goodin rightly argues, if a decision-making body chooses one option from a set of many, then an actor can be affected in the sense that he or she would have been in a different situation, had that option not been chosen.²⁰ If an employer is deciding whom to employ from a group of several potential candidates, then each candidate is affected by her decision, even though the situation of those who are not chosen will not actually change.

As such, Goodin argues that the AAP should apply to all those who are potentially affected by the outcome of a decision. But the problem is that, for some decisions, adopting a potentially affected stance means incorporating vast numbers of actors into the decision, many of whom are unlikely to actually be affected by the outcome of the decision. In the example of the wind turbine, this would mean that, out of all the possible option sets for its location, all those who are potentially affected by the noise of the turbine should participate in the decision about where to site the turbine. However, this seems an overly demanding condition for participation, especially in light of the practical issues that are likely to arise in meeting this requirement. In response, David Miller argues that a group only has a justifiable claim for inclusion if their interests would be significantly affected by its decisions whichever way those decisions go.²¹ Yet this only resolves the problem in some situations. There are still

¹⁹ Toth *et al.* 2001, p.669; Goodin, R.E. 2007, p.53

²⁰ Goodin, R.E. 2007, p.53

²¹ Miller, D. 2009

Chapter 3. Participation

some decisions that potentially affect very large numbers of actors, each of whom are potentially affected in a significant way.

This leaves us in a tricky bind. It is necessary to decide whether the AAP implies that all those who are *actually* affected, or all those who are *potentially* affected should participate in a decision, or if the AAP should be abandoned altogether when potentiality arises. The problem is that the AAP is silent on these issues. Whilst these matters may not be irresolvable, they do involve some difficult decisions about how this principle can be achieved in practice, which the AAP, at this stage, fails to address.

A third problem with the AAP is much more of a concern for its overall plausibility as a principle of justice. This is that the AAP is counterintuitive in many everyday cases. For example, in the course of everyday life, many of our decisions have implications for other actors, yet people do not think that those who are affected by these decisions have any claim to inclusion in the way that they are made.²² One might argue that, whilst merely being affected is not sufficient for inclusion, if you are significantly affected by a decision then you should have a say in how it is made. Yet on further inspection this doesn't seem a suitable approach either. Taking Robert Nozick's famous example, several suitors are significantly affected by the outcome of a bride's decision, yet people do not think that they should have a claim to participate in that decision.²³ In response to these examples, one might argue that the AAP is an appropriate principle in situations of public decision-making, rather than in private affairs. People often feel that some decisions should remain in the hands of certain actors, regardless of how these decisions affect people. If a bride is choosing whom to marry, or if a university is deciding whom to offer a place to, then people feel that these actors should have a prerogative to make their own decision.

But there are also examples where agents are significantly affected by public decisions yet those actors do not have a right to participate in the decisions. Government decisions about immigration policy, the taxation of imported goods, or

²² Note that some authors argue against this view: Goodin, R.E. 2007; Dryzek and Stevenson 2012a

²³ Nozick, R. 1974, p.269

Chapter 3. Participation

domestic environmental policies are all cases in which outside actors are significantly affected whilst lacking a legitimate claim to inclusion.

One reason that the AAP diverges from our everyday intuitions is that in many cases people can avoid being affected by the outcomes of a decision. Our intuitions about who should be included in a decision-making process often seem to depend on whether an actor can take action to avoid being affected by the outcome of a decision.²⁴ If a baker buys flour from a particular miller, then he is affected by the miller's decision to raise the price of flour. But we don't think that the baker should participate in the miller's decision as a matter of fairness. Likewise, the miller is affected if the baker decides to stop buying flour, but we don't think that this is a matter of procedural justice. Regardless of what can be said about the practicality of implementing the AAP, it seems that it only appears to fit with our everyday intuitions in cases of unavoidability. This suggests that it's necessary to consider a different criterion for inclusion that takes this feature into account, rather than rely on affectedness itself.

These problems present the AAP with different challenges. The first two problems are not irresolvable in themselves. Whilst it's necessary to have a more nuanced understanding of what it means to be affected and what it means to participate in a decision-making process, this is not to say that the AAP is inappropriate for procedural justice. Likewise, the issue of potentiality can be resolved through further refinement of what the AAP actually requires. In many cases there's likely to be some initial idea about who's affected by a decision, and those who are likely to be affected could be included in a decision, without having to include absolutely everyone for every single decision.

But the third problem is much more troublesome. It's necessary to find a more accurate account of what it means to be affected in a way that provides a legitimate claim to inclusion in a decision-making process, as well as a more thorough explanation of why affectedness might warrant inclusion in the first place. In what follows, I present two potential interpretations of affectedness that might fulfil this

²⁴ David Miller convincingly argues that the plausibility of the AAP as a principle of justice diminishes in such cases (Miller, D. 2009, p.218).

Chapter 3. Participation

requirement: being subject to the law, and coercion. After considering each of these interpretations, I argue that the notion of coercion fits much more accurately with our everyday intuitions about who should participate in a decision-making process.

2.3 The All Subjected Principle

One form of affectedness that might fit better with our everyday intuitions is being subject to an authority or power. The All Subjected Principle (ASP) is a revised version of the AAP, which specifies that those who are subject to an authority should have some form of participation in the way that its decisions are made.²⁵ There are different interpretations of what ‘being subject to an authority’ implies here. This can mean, for example, being subject to a law, or rule (what I call, the ‘direct version of the ASP’).²⁶ But those who advocate the ASP do not always refer to it in terms of subjection to the law. Nancy Fraser takes the view that an actor is subject to a governance arrangement if it subjects them to socioeconomic forces that are beyond their control (what I call, the ‘indirect version of the ASP’), rather than to the law per se.²⁷ This takes into account those who are effectively subject to the rules of an authority, whether or not they are actually subject to those rules in a formal sense.

In respect to the direct version, the ASP seems quite intuitive here. There are many situations in which people feel that those who are subject to the law should have a say in the way that it is made. Within a domestic constituency, people typically feel that those who are subject to a law should participate in its making. There might be a good case for adopting the ASP as a principle of procedural justice because participation legitimises the law to those who are subject to it. By participating in a decision, those who are subject to the law provide some form of consent (albeit tacit) to the law itself, giving the law legitimate authority, as well as providing those who are subject to the law a reason for complying with it.²⁸ The ASP also fits with our intuitions about accountability. People typically feel that those who govern should be held to account

²⁵ Fraser, N. 2008, p.96; Karlsson, J. 2008, p.17, p.80; see also: Goodin, R.E. 2007, p.42; Näsström, S. 2011, p.119. David Miller discusses the ASP as an extension of the All Coerced Principle, which I discuss in the next section (Miller, D. 2009, p.222).

²⁶ For example: Karlsson, J. 2008, p.17

²⁷ Fraser, N. 2008, p.96

²⁸ For accounts of legitimacy in international law, see: Bodansky, D. 1999; Buchanan and Keohane 2006

Chapter 3. Participation

by those who are governed. The direct version of the ASP meets this requirement, by providing those who are governed by the law some control over those who make it.

But on further reflection, there are two problems with the direct version of the ASP. First, being subject to the law requires a common set of rules, or a common authority that agents are subject to. That is, agents are only subject to the law when there is an established framework that subjects a unified community of actors to binding rules. Within a domestic state, there is a group of citizens with a common identity and a sovereign authority that can impose legal measures. But in many cases there is no such common community or sovereign power. It is well documented that there is no global sovereign power capable of coordinating state action and enforcing compliance at the state level, nor is there any common community of citizens on whom the law can be placed.²⁹ At the same time, it's often necessary to implement policies that govern behaviour at the global level, even if there is no common community on whom a legal framework can be imposed. This point does not mean that the direct version of the ASP should be rejected, but rather that it should be supplemented in certain circumstances. That is to say, even if the ASP is a sufficient principle of inclusion, it is not a necessary condition for inclusion here.

Second, there are at least some decisions that affect actors in significant ways without necessarily subjecting them to a law or rule. People often think that these actors have an entitlement to participate in some of the decisions that affect them, regardless of whether they are subject to the law. Multilateral institutions implement rules that have significant implications for many actors, few of whom are actually subject to these rules. If a state imposes a law on domestic manufacturers, then this might have significant implications for foreign suppliers. If these suppliers are sufficiently affected by this law, then they might feel that they are entitled to a say in the way that it is made, or at that our interpretation of the ASP is insufficiently narrow here. It seems that direct version of the ASP fails to capture all of our intuitions regarding who should participate in a decision-making process.

²⁹ Miller, D. 2010a

Chapter 3. Participation

In response to these problems, one might adopt a broader notion of subjection along the lines that Fraser advocates. At the same time, adopting Fraser's indirect version of the ASP is not without its problems. It opens the door to including a lot of actors who may only be subject to a governance structure in spurious, or tenuous ways. One might claim that foreign suppliers are owed some form of participation if they are sufficiently subject to a domestic policy. Yet this claim seems much less plausible for those who supply raw materials, transport needs, and accountancy services to these foreign suppliers also fall under this umbrella.

Adopting this notion of subjection also raises questions about why being 'subject' to an authority is important in the first place. If we care about the impacts of a decision or authority, then why are we concerned with who is subject to that authority, rather than who is actually affected by that decision, or burdened by its implications? Unless subjection means 'acting in our name and issuing laws in that capacity' (the direct version of the ASP) then the ASP is an inaccurate way of capturing what's really important. There are other notions of affectedness that are more appropriate for our intuitions about who should participate in a decision-making process.

On closer inspection then, the ASP appears less convincing as an appropriate principle of procedural justice. It is too ambiguous and it is not clear what it is about being subject to a rule that warrants participation in a decision-making process. Whilst the ASP does fit with our intuitions in certain situations, procedural justice needs a more refined notion of affectedness.

2.4 The All Coerced Principle

If procedural justice requires a clearer definition of what it means to be affected in a way that requires participation in a decision, then coercion is a potential candidate. As David Miller points out, the affected interests principle is most plausible where people are unavoidably affected by certain decisions.³⁰ Taking this into account, the All Coerced Principle (ACP) states that all those who are coerced by the outcome of a decision should participate in the way that it's made.³¹

³⁰ Miller, D. 2009, p.217

³¹ Arrhenius, G. 2004, p.214; Abizadeh, A. 2008; Miller, D. 2009, p.218

Chapter 3. Participation

Before considering the relative merit of this approach, it's necessary to clarify what coercion means. Following Miller (who uses Grant Lamond's account of coercion as a starting point) a coercive act is one that meets three conditions: i) it forces an actor to do something against their will, ii) it subjects an actor to the will of another, and iii) the coerced actor is unable to do otherwise.³² Miller argues that what is normatively distinct about coercion is that it undermines the autonomy of the person who is coerced.³³ People feel that agents should be included in decision-making processes because autonomy and independence are valuable.

Following Joseph Raz, a person is autonomous if they i) have an adequate mental faculty, ii) have an adequate range of options to choose from, and iii) are not subject to the will of another.³⁴ Autonomy is valuable here because it represents the ability to live an independent life, of one's own choosing. Coercive decisions undermine autonomy by preventing an actor from meeting either or both of the second and third requirements of autonomy. If a decision is coercive, then it undermines an agent's autonomy and it's necessary to rectify the situation in some way.

Typically, people suggest that there are three ways that this can be done. People could avoid taking the decision in the first place. Alternatively, people could provide some form of compensation to the coerced actor.³⁵ But these options aren't always available. It isn't always possible to avoid making coercive decisions, and it isn't always possible to compensate someone for a decision. A third option is to justify our decision in some way. The ACP is based on this third approach. If a decision impacts an agent's autonomy, then that agent is owed some special justification for the decision.³⁶ This is not to say that people shouldn't take either of the other responses to coercion that I have also suggested here (avoiding the outcome or providing compensation). Infringing an agent's independence or autonomy is only permissible in specific circumstances, and people should either avoid coercive acts altogether or

³² Lamond, G. 2000, p.43

³³ Terry Macdonald also argues that actors are entitled to participate in decisions that have an impact on their autonomous capacities (Macdonald, T. 2008, p.40).

³⁴ Raz, J. 1988, p.154

³⁵ Robert Goodin suggests that people should provide compensation for any harm that they inflict upon those who are not part of a decision-making body (Goodin, R.E. 2007, p.68). Goodin's argument concerns harms rather than coercion, but the same principle applies here.

³⁶ Miller, D. 2009, p.219

Chapter 3. Participation

do their best to rectify them where this isn't possible. But sometimes it isn't possible to avoid making decisions that coerce people, nor is there a suitable way of providing compensation. In such cases, people owe the coerced actor some form of justification for their decision. As I now show, this means giving the agent a say in the way that the decision is made.

If our concerns about coercion are grounded in autonomy, then the form of justification that's required should reflect this fact. One way of respecting someone's autonomy is to gain his or her assent. Following the discussion from chapter two, it's possible to gain someone's assent to a decision by including him or her in a fair decision-making process. That is, an actor can come to accept the outcome of a decision if they are given a say in the way that the decision is made. This suggests that justification requires participation in a fair decision-making process. The upshot of this is that if the outcome of a decision coerces an actor, procedural justice requires that people give that actor a say in how that decision is made. In addition to the DAP defined earlier, this gives us the All Coerced Principle.

The All Coerced Principle:

If a decision coerces an actor then that actor should have a say in the way that the decision is made

It is clear that this interpretation of affectedness (that is, the ACP) fits more closely with our everyday intuitions about who should participate in a decision-making process. Imagine a situation in which a farmer uses a particular path to get to a town to sell his produce. A landowner owns the land that the path crosses and is entitled to use the land as she pleases. If the landowner stops the farmer from using that particular footpath, whilst leaving him with several alternative paths to get to the town, then the farmer shouldn't have a say in the landowner's decision to close the path. The farmer is left with other means of getting to town. Given that the landowner's decision doesn't violate our second, or third conditions of autonomy, the decision hasn't affected anyone's independence.

But the situation is very different if the landowner closes the only way of getting to the town, and the farmer has no way of selling his produce. In this second scenario,

Chapter 3. Participation

the decision violates the second and third conditions of autonomy, because it leaves the farmer without a suitable range of options to remain autonomous. The decision prevents the farmer from doing something that he would have otherwise done (selling his produce in town), in a way that he is unable to avoid. In such situations, it seems that the farmer should have some say in the landowner's decision to close the footpath.

This example highlights the important distinction between coercion and prevention.³⁷ Prevention limits certain options whilst leaving a suitable range of alternative options open to an actor. Prevention is insufficient to warrant participation because, according to our earlier account, it does not infringe our autonomy. To be sure, prevention may require some other form of justification (as I go on to argue) but it doesn't require participation because it doesn't affect our autonomy in the way that coercion does. Coercion, on the other hand, limits the options available to an actor to the extent that they are forced to take an action that they would not have otherwise taken.

But the distinction between prevention and coercion rests on how 'a suitable range of alternative options' is defined. In some cases, it is easy to see that decisions are either coercive or preventative. In the example above, if the landowner's decision leaves the farmer with other, equally good means of getting to the town, then it doesn't seem that his autonomy is affected in a relevant way. But in other cases things are less clear-cut. If a state prohibits the sale of white wine, then the public is still left with a number of alternative types of wine, as well as a number of other alcoholic and non-alcoholic drinks, that they can choose from to drink. On the face of it, the decision to ban white wine appears to be a matter of prevention rather than coercion. At the same time, it seems that the public should have some say in the state's decision on this matter, which contradicts our account of the ACP.

But this represents a mistaken interpretation of what a 'suitable range of alternative options' is here. Whilst it's true that banning white wine leaves people with plenty of other options to choose from, it seems inappropriate to say that each of these options is fully comparable with one another. If I have a strong preference for drinking white

³⁷ Miller, D. 2009, p.220

Chapter 3. Participation

wine, and if I have a very low preference for alternative options, then it is clear that the state's decision doesn't leave me with a suitable range of alternative options to remain autonomous. In this case, drinking white wine (rather than any other drink) is the only way that I can enjoy an evening and the fact that I am prevented from doing so affects my independence. In fact, the only instance in which prohibition would leave me with a suitable range of options is if I am indifferent between white wine and other available drinks. This means that the ACP is not counterintuitive here, because, contrary to our initial thoughts, in our example the state's decision is coercive, rather than preventative.

If an agent is prevented from taking a specific course of action, then that agent is only coerced if they aren't left with a sufficient range of alternative options to the action that they wanted to take. But this doesn't mean that the agent is coerced if they are prevented from taking an option that they have a strong preference for, and it is necessary to be careful about how a suitable range of options is defined here. To illustrate this point, it's worth considering David Miller's response to Arash Abizadeh's argument for the democratic accountability of border controls.³⁸ Contrary to Abizadeh, Miller argues that border measures are not coercive because they leave potential immigrants with a suitable range of alternative options in order to achieve an autonomous life.

But on the face of it, this leaves us in a similar situation to the prohibition of white wine. If an individual wants to enter a particular state (say the UK) and they are prevented from doing so, then one might think that he is coerced by the decision to implement border controls because he is prevented from entering the country that he wants to live in. But this conflates the absence of one option with the absence of independence. As Miller rightly argues, the decision to close the UK border leaves a range of likewise options available to the individual, even if the exact option that he wanted is closed. It is difficult to say that the UK is the only country in which this person could lead an independent life. To be sure, if the UK is the only state in which you can practice a certain religion, or enjoy freedoms that are fundamental to your independence, then these border measures are coercive because they prevent agent

³⁸ Miller, D. 2010b; see also, Abizadeh, A. 2008

Chapter 3. Participation

from entering the only state in which one can live an autonomous life. But if there are other likewise options available then this isn't the case. A potential migrant has a number of alternative options for achieving an autonomous life, and the decision to close the UK border does not violate either the second, or third conditions of autonomy.

This is where our two examples of prohibition and border control differ. In the former case, our actions infringe an agent's autonomy, whereas in the latter, they do not. The difference here is that it seems sensible to assume that there are other suitable alternatives to achieving an autonomous life aside from living in the UK, whereas there are not necessarily suitable alternatives to enjoying white wine. This all depends on how much a person values each of these specific options (life in the UK and drinking white wine). But in the way that I've set out here, these two cases do have different implications for autonomy, and it's necessary to recognise this difference when thinking about how to justify a decision to someone.

On the one hand, coercion affects our autonomy in a way that requires our participation in a decision. On the other hand, as the examples above show, prevention does not require us to justify our decision in the same way. But *some form* of justification for prevention is required, even if it's not the same form of justification that coercion requires. The ACP fails to capture all of our concerns about justification and, as I show in the next section, it is also necessary to think about what prevention requires in terms of decision-making.

Before moving onto this issue, it's worth saying something about potentiality. As I suggested earlier, including actors on the basis of the AAP is problematic, in part because, for some decisions, the decision-making process determines who is actually affected by the decision. Given that people should include those who are actually coerced by a decision, what should be done about those who are potentially coerced by a decision? The first thing to say is that there are different interpretations of what it means to be potentially coerced by a decision (just as there are different interpretations of being potentially affected). For example, if a government engages in a discussion about which forms of energy should be subject to coercive regulation, then a large number of energy suppliers are potentially coerced by this discussion,

Chapter 3. Participation

because there is a large initial group from which those who will be actually coerced are drawn from. But this is a different form of potential coercion from a case in which a government is voting between two policy options, each of which coerces a different groups of actors. The difference here is between a vote and a discussion. Whilst both of these examples potentially coerce actors, they highlight the fact that there are different understandings of what it means to be potentially coerced by a decision.

Potential coercion is important when a decision is actually made, rather than when something is merely under discussion. If a decision potentially coerces an actor, then people should listen to their views and interests so that they can make an informed and accurate decision. But this doesn't mean that these actors should be included in the decision-making process. Participation is required because actors are actually coerced by decisions that infringe their autonomy. For this reason, it is necessary to listen to those who are potentially coerced by our decisions, rather than include them in the decision-making process.

2.5 Affected Interests

The DAP and the ACP should guide who participates in fair decision-making processes. Yet this is an incomplete account of what's needed for fairness. Whilst the ACP fits with many of our everyday intuitions, there are occasions when people owe an actor some justification for a decision, even if that actor's autonomy is not undermined. If a factory decides to adopt a more polluting production process then this may be very harmful for the inhabitants of a nearby town, who now have to take costly measures to clean up this pollution. But no one's independence or autonomy is undermined here. The residents of the town can continue to live independently, free from the will of other actors; they just face a cost due to someone else's decision. All the same, given that these actors have been disadvantaged by the factory's decision, it seems unfair that they are excluded from the decision to change the production method.

As I argued earlier, it also seems plausible to suggest that prevention requires some form of justification, even if it does not constitute coercion in a strict sense. In this

Chapter 3. Participation

respect, some think that fair participation should be wider than the ACP implies.³⁹ The problem is that coercion is just one form of disadvantage and there are other forms of disadvantage that people owe actors justification for. A complete theory of procedural justice needs to think about how to respond to these cases.

Further to the ACP and the DAP, procedural justice also requires that people listen to those whose interests are affected by their decisions. Here, I call this the Affected Interests Principle (AIP).

The Affected Interests Principle:

Those whose interests are potentially affected by a decision have the right to express their interests and views when that decision is made

Someone's interests are affected by decisions that: prevent them taking options that they would otherwise take, leave them better or worse off, or impose negative externalities or other costs and burdens on them. Whilst those whose interests are potentially affected do not have a right to participate in these decisions (as they do for the ACP), they still have a right to voice their views and concerns in the discussions, as well as a right to be heard.

The reasoning for this is as follows. Some decisions are legitimate, even if they disadvantage people. If people make decisions that negatively affect an agent's interests then procedural justice requires that they show that they have fully considered that agent's interests in their decision. This is also the case if these people could have made someone better off but chose not to. That is, fairness requires that people show these actors that they have not made the decision lightly, nor without due consideration of how those who are affected by our decision are burdened by it. People can only do this if they are aware of what these actor's interests actually are.

This alone doesn't require that decision-makers listen to those whose interests are affected by their decisions, or grant them a voice in a decision. It's possible to get an accurate account of their interests by listening to some other agent, or by making a

³⁹ Dryzek and Stevenson 2012a; 2012b

Chapter 3. Participation

judgement about how they are affected. It is the fact that decision-makers should treat those whose interests are affected with due respect that means that decision-makers should listen to them and grant them a voice in discussions. Treating an actor with the respect required by procedural justice means letting that actor represent his or her own interests and views regarding the decision, rather than getting this information from elsewhere. This also has an epistemic benefit, as listening to how people are affected allows us to make better decisions.

This principle extends to those whose interests are *potentially* affected by a decision. This is because, in some situations, people don't know whose interests are affected by their decisions until they know what the outcome of that decision is. Given that people should listen to those whose interests are actually affected by their decisions, this means that they should listen to all those whose interests are potentially affected. This also extends to those whose interests aren't necessarily affected by a decision, but could have been.

Decision-makers do not need the actor's consent to make a decision, but they should at least respect the actor's views and interests when doing so. They should also respect the actor's ability to accurately express these.

In the example above, those who are prevented from using the path by the landowner's decision are not entitled to a say in that decision because they are left with a sufficient range of alternative options for getting to town. The landowner is entitled to close the path for her own reasons. But it seems unfair if the landowner hasn't listened to how people are actually affected by her decision if those people are burdened or disadvantaged by her decision.

It might be that the landowner should compensate those who are disadvantaged by the decision, or that she should refrain from making the decision to develop her land in the first place. These points are not incompatible with the AIP. If someone is owed compensation, then people need to know how that person is affected by a decision. Even if people shouldn't make decisions that disadvantage people in the first place, there are at least some situations in which these decisions are unavoidable, or at least very costly to avoid. It might be the case that the landowner has no choice but to close

Chapter 3. Participation

the path to town because she cannot afford to maintain it, even if she wanted to. Alternatively, a state may have to pursue an infrastructure policy that creates negative externalities for those in other states, because it is the only way of meeting its own important development needs. Whilst people should avoid making such decisions in the first place where possible, sometimes imposing disadvantages on others is inescapable. In such situations, procedural justice requires that people listen to those who are disadvantaged by their decisions.

This provides a more nuanced account of who should participate in a decision-making process. This differs from the AAP because it gives stronger requirements for participation in a decision-making process. It differs from the ACP in at least two ways. First, it suggests that there are more ways of being affected that require justification than coercion alone. Second, it suggests that justification does not just relate to formal power in a decision-making process, but also concerns listening to the voices and opinions of people, and taking their interests into account.

This section has covered a lot of ground and it is worth restating the main arguments that I've made so far. The most convincing accounts for fair participation are given by the DAP and the ACP. At the same time, people should listen to those whose interests are potentially affected by their decisions. This gives us a third principle: the AIP. Taken together, the DAP, the ACP, and the AIP represent an account of 'fair participation' that should govern who participates in a fair decision-making process. In section four, I give an account of how these can be achieved in climate institutions. But before doing this, it is necessary to think about whether climate institutions actually affect actors in ways that meet these conditions.

3. The outcomes of climate change institutions

Having thought about what procedural justice requires for participation, it is now possible to think about what this means for climate institutions. In this section I consider whether the outcomes of these institutions meet the requirements of the DAP, the ACP, or the AIP. Given that climate change is a global phenomenon with diffuse causes and effects, determining exactly when a climate institution coerces a particular individual or affects their interests is extremely difficult, and deciding who is entitled to participate is likely to be messy and subject to dispute. But if procedural

Chapter 3. Participation

justice is accepted as a guiding principle for making policy proposals, then it's possible to make some general claims about which decisions are coercive, or affect actors. In what follows, I give a preliminary account of how different actors are affected by climate change institutions. There are four potential areas in which climate institutions meet the requirements for participation set out in section two. The account that I give here is by no means exhaustive, and only serves as a rough guide for how people should start to think about the decisions of climate change institutions. But it shows that there are at least some cases where people should have a right to participate in the decisions of climate institutions, and sometimes this includes those who are citizens of states that aren't members of the institution. Having done this, I then go on to consider how this principle can be achieved in practice in section four.

3.1 The physical effects of a changing climate

Climate institutions often make decisions that affect the global atmospheric concentration of greenhouse gases. These decisions relate to global temperature ranges, or emissions targets that specific institutions should achieve, and they have significant implications for actors on a global scale. There are a number of empirical accounts of the different ways in which these decisions already affect actors and how they will continue to do so in the future.⁴⁰ The physical effects of climate change include sea level rise, ocean acidification, changing weather patterns and increases in the geographical range of infectious diseases. As such, climate institutions may cause severe and irreversible changes to the climate system, which could have extreme consequences for fundamental human interests on a global scale.⁴¹ If climate change institutions make decisions that bring about increases in coastal flooding or extreme weather events, or if they force actors to invest in costly adaptation measures in order to maintain an adequate standard of wellbeing, then these decisions impose severe disadvantages on people. In other cases, such as the forced relocation of island populations, these decisions can be coercive. Whilst this is just a small sample of the possible implications that arise from the decisions made in climate change institutions, it seems plausible to say that at least some of these decisions meet the conditions for fair participation, and it seems reasonable to say that this is true for actors on a global scale.

⁴⁰ See the contributions of Working Group II to the IPCC Assessment Reports

⁴¹ Caney, S. 2009b; OHCHR 2009; Bodansky, D. 2012

Chapter 3. Participation

3.2 Mitigation policies

The methods that an institution employs to achieve emissions targets also have significant implications for actors. These measures include: regulations and standards, taxes and charges, or tradeable permits.⁴² An institution may impose measures on its member states, which in turn impose measures on their domestic populations. As such, these measures may force actors to take certain action that constrains their autonomy. This might include penalties for noncompliance, such as fines or sanctions. These decisions may also disadvantage actors, limiting certain options without invading their independence. If the EU imposes emissions regulations on certain industries, then the citizens of the UK are not necessarily coerced by this decision. They remain autonomous, and they are not subject to these measures themselves. But at the same time, British citizens may suffer a disadvantage as a result of this policy, as the cost of certain goods and services increase. For this reason, there are at least some situations for which decisions about regulatory policies either coerce, or disadvantage people.

But reducing emissions in one policy area is also likely to have significant implications for those actors in other policy areas. Emissions policies are enacted in the context of global trade, and any reduction in the consumption of goods that are produced using carbon intensive processes in one policy area reduces the demand for these goods elsewhere in the world. The negative implications of domestic mitigation policies for those who are dependent on the production of such fossil fuels are well documented.⁴³ But institutional decisions about mitigation policies are likely to have different implications for different actors on a global scale.

To illustrate this point, imagine that an institution imposes a mitigation policy that limits the demand of fossil fuels among its members. If this policy is large enough to affect the global demand of fossil fuels, then oil producers outside of the policy zone face a drop in demand for the goods that they produce. If an oil producer is still able to sell its products in other parts of the global market, then the policy is not coercive, because it leaves the producer with a likewise range of alternative options. Similarly, if the policy is sufficiently large to restrict the demand of fossil fuels in all global

⁴² For definitions of selected mitigation policy instruments, see: Gupta *et al.* 2007, p.70

⁴³ Brandi, C. 2010; Helm, D. 2012, p.12

Chapter 3. Participation

markets, but the oil producer has alternative means of maintaining its autonomy (for example, by switching its economy to tourism, or renewable energy production) then the policy is not coercive, because it leaves the oil producer with a suitable range of alternative options to lead an independent existence. But if the oil producer has no other means of generating income, then the institution's decision is coercive, because it affects the oil producer's autonomy. The literature on this issue recognises that different actors are affected by mitigation policies in different ways. Whilst mitigation policies may put significantly burdens on those who are already disadvantaged,⁴⁴ these measures are also likely to have significant implications for those who are relatively well off.⁴⁵ In either case, mitigation policies are have significant implications for actors globally.

3.3 Adaptation measures

Adaptation measures are also likely to have significant implications for actors. These measures may include infrastructure developments designed to help states deal with the changing climate, such as flood defence systems or changes to agricultural policies. If a small number of states cooperate to build a flood defence system, then this project may have severe implications both for actors within those states, as well as those who are outside of the institution. This might involve for example, the forced relocation of some actors, changes in the physical environment, or other significant costs.⁴⁶

An important thing to note is that the implications of decisions relating to adaptation measures are almost certain to be local in scope. So far, I've suggested that climate institutions are likely to make decisions that have global implications that meet the conditions for participation. Yet, if decisions also concern adaptation measures, then these institutions are also likely to affect actors in a way that requires participation on a local level.

⁴⁴ World Bank 2010, p.253

⁴⁵ Grubb, M. 1995, p.480

⁴⁶ For discussions concerning the impacts of adaptation measures see: Thomas and Twyman 2005; Huq and Khan 2006

Chapter 3. Participation

3.4 In whose name?

The policy areas that I've discussed so far lead us to believe that there are at least some policies that either coerce or affect people in a significant way. But, as I argued earlier, a further condition of participation is that, if a decision is made in someone's name, then that actor should be included in the decision-making process (the DAP).

Climate change institutions make decisions in the names of their participating member states. If an institution is made up of a certain group of states, then it seems reasonable to assume that the institution makes decisions in the names of those states. But people also typically assume that states act on behalf of other actors, in particular their domestic citizens. If the UK signs an international treaty, then it acts on behalf of the UK populace. Of course, the democratic accountability of some states is weak, and in some situations, such as brutal despotisms, it seems sensible to say that states do not act on behalf of their citizens at all. But such instances are the exception, and people usually assume that states do act on behalf of their domestic populations even if they have weak democratic standards and even if they are not directly accountable to their citizens. Certainly, states are the best placed actors to represent individuals in world politics and states shouldn't be dismissed on the basis that they do not meet stringent standards of democracy. Because climate institutions make decisions in the name of those states that are members of the institution, and given that these states act in the name of their citizens, climate institutions owe these individuals some form of participation in its decisions.

4. Fair participation in climate institutions

In section two I determined three principles for determining who should participate in a decision. In section three I then argued that, in some cases, climate institutions make decisions that affect actors in ways that require their participation in its decision-making processes. Now it's possible to turn our attention to thinking about best to achieve these principles in climate institutions that currently exist. In this section, I argue that there are two measures for achieving fair participation in climate institutions, one concerning who has a vote, and one concerning who has a voice.

Chapter 3. Participation

4.1 The right to vote

The first measure for achieving fair participation concerns voting. In climate institutions, voting should be exclusive to states. This gives us our first policy measure for fair participation:

Participation (1): Climate institutions should give voting rights to states that make up the initial institution, as well as to states that represent actors who are coerced by its decisions

The reasoning for this proposal is as follows. Procedural justice requires that certain actors participate in the decision-making processes of climate institutions. This includes those in whose name a decision is made, as well as those who are coerced by the institution. At the same time, many of the actors who fall into these categories cannot directly participate in the decisions of climate institutions. Participating in the decisions of multilateral institutions is wholly impractical for individuals, small actors, and disparate groups. Even if individuals could vote on a decision directly it would still be very costly for each individual to learn about and make an informed opinion about each decision. There are also significant time and resource costs of including large numbers of actors in decision-making processes and there would be many procedural difficulties if individuals participated directly. These practical issues also arise with the participation of small groups and other sub-state actors that are not traditionally represented in multilateral contexts. There are further practical issues associated with the participation of groups that are not easily identifiable, do not have clearly defined boundaries, or that contain disparate actors whose collective interests and views are difficult to determine.

Given that it is highly impractical to include every actor in the decision-making processes of multilateral institutions, some sort of representative should act on behalf of those who have a right to participate in these decisions. That is, representative agents should act on behalf of these actors, where representative agents include states and NSAs that traditionally participate in multilateral institutions, such as non-governmental organisations (NGOs), civil society groups and representatives of sub-state populations.

Chapter 3. Participation

Here, I'm specifically concerned with which representative agents should have a right to vote in climate institutions. I claim that this role should be fulfilled by states, and only states. Several reasons support this claim. Foremost, despite the fact that states are sometimes imperfect representatives of their citizens, they are often the best representatives of these actors in world politics. Whilst some states are undemocratic or poorly representative of those that they act on behalf of, they are often the best representatives available for acting on behalf of these actors within multilateral institutions. They have clearly defined constituencies and they are often accountable to their citizens in a way that other actors are not.

States are also the traditional participants of multilateral institutions. As such, these actors have the resources necessary for participating in these institutions, as well as the domestic institutions capable of advocating people's interests at the multilateral level. Many other actors do not share this traditional role in multilateral institutions, and are incapable of acting as effective representatives in the same way.

Further, states are the only actors that are capable of taking on the multilateral commitments needed to address climate change. If climate institutions give an actor a right to vote, then that actor should be expected to undertake the commitments of the institution. Part of the reason for this is that if giving actors the right to vote without any institutional commitments creates a disincentive to participate in the institution. Institutional members of multilateral institutions are states that agree to comply with the outcomes and decisions of the institution. The fact that institutional membership gives states a formal voting right in the decision-making processes of an institution provides strong incentives for states to join the institution and cooperate with other states. If states want to have a say in the way that these decisions are made, then they must agree to conform to the institutions requirements and rules. But this incentive diminishes if the institution grants decision-making power to those actors that do not take on any institutional commitments. Giving voting rights to states regardless of whether they are prepared to undertake any institutional commitments may lead to a situation in which every state can free ride on the efforts of others.

The only actors that are in a position to challenge states in this regard are local governments and representatives of indigenous populations. A sub-state local

Chapter 3. Participation

authority, such as a city-state, might be better placed to accurately represent a group of actors. Sub-state authorities may also be able to take on the commitments of climate change institutions. Furthermore, some groups are traditionally marginalised by state based representation in multilateral institutions. States may be poor representatives of indigenous groups that make up a small part of their constituencies. But these NSAs are incapable of participating on behalf of people in multilateral institutions at this point in time. They also lack the democratic accountability legitimacy that states have. States are also the only actors capable of enforcing sufficient action on climate change, and these are the only actors that take part in multilateral institutions. Whilst there may still be some problems with state representation in climate institutions, states are still the best actors to fulfil this role in climate institutions.

There are two further issues that need clarification. First, this proposal gives a state the right to vote if it represents actors who are coerced by the climate institution. But given that climate institutions affect people in very different ways, and given that states represent large numbers of actors, it's necessary to think about whether climate institutions should give voting rights to a state if only a subsection of its population is affected. Whilst the prospect of giving a state a right to vote on the basis that only a small section of its population is affected by a decision seems undesirable, this isn't so problematic given that it's possible to weight votes according to the number of people affected by the institution. I address this issue in chapter seven, where I argue that fair voting procedures weight votes in this way. The fact that only a small subset of a population is affected by a decision isn't so problematic for my account of participation in climate institutions.

A second issue that needs to be clarified is whether states have the freedom of exit from an institution. Freedom of exit means that an actor can leave an institution if it chooses to. In doing so, the actor gives up its right to participate, but it also gives up any commitments or obligations associated with its participation in the institution. This means that a state can leave an institution if it objects to the institution's decisions. Some authors argue that this is an important feature of legitimate power,

Chapter 3. Participation

because actors should have the ability to leave an authority if they want to.⁴⁷ An actor's absence from a decision means that the authority can no longer make decisions that coerce that actor, because the actor's participation is required for legitimate coercion. Given that climate change institutions justify coercive decisions by giving those who are coerced a right to participate in its decisions, and given that these actors are expected to subsequently take up institutional obligations, it's worth thinking about whether these actors have a right to exit the institution. After all, if a state has the freedom of exit from an institution, then this might prohibit coercive decisions.

The problem with this is that some coercive decisions are unavoidable for achieving certain important ends. Avoiding something like dangerous climate change inevitably involves making decisions that impose coercive externalities on those around the world. Climate change is simply too far-reaching, and too embedded in our society to avoid this. Whilst states can have the freedom to exit an institution, the absence of a coerced actor from a decision-making process shouldn't stop climate institutions from making coercive decisions. This is because addressing climate change requires making some decisions that are unavoidable. Whilst fairness sometimes requires that people are included in a decision, their absence shouldn't stop us from taking action on important matters. Sometimes, the stakes are too high to limit our decisions to those that every actor chooses to participate in. Given the high stakes involved with climate change, fair participation means that climate institutions should attempt to justify its decisions to these actors, but it doesn't mean coerced actors can hold progress up.

4.2 The right to speak

The right to vote in a decision isn't all that's important here; procedural justice also concerns giving people a voice in climate institutions. As I argued earlier, people should listen to those whose interests are potentially affected by their decisions. This is so that people take these actor's interests into account and make better decisions. I also argued that it is impractical for some actors, such as individuals, to directly participate in multilateral decisions. Now it's necessary to think about how best climate institutions can give those whose interests are affected by a decision a voice.

⁴⁷ Brighthouse and Fleurbaey 2010

Chapter 3. Participation

One immediate problem with this is that the decision-making processes of climate institutions are already strained and suffer from procedural deadlock. This is partly because of the vast numbers of actors present in the negotiation forum. A number of commentators have suggested that the UN's principles of unanimity and inclusiveness contribute to deadlock in the negotiations of the UNFCCC.⁴⁸ There were 37,000 registered participants at COP15 including 10,500 government delegates, 13,500 observers from civil society, and 3,000 journalists.⁴⁹ Increasing the number of participants in a decision only makes it harder to make decisions. This poses challenges for thinking about how climate institutions can incorporate the voices of all those whose interests are affected by a decision into the decision-making processes of climate institutions.

Taking this into account, there are three policy measures for increasing the number of voices in climate institutions. The first of these concerns the presence of NSAs in negotiations. Whilst it isn't possible to give each of these actors a voice in climate institutions, they can participate in other ways within the negotiation forum.

Participation (2): Climate institutions should encourage the involvement of NSAs in their decision-making processes

This means that NSAs, including civil society groups and NGOs, should participate alongside state delegates in the deliberative discussions of climate institutions. NSAs should also participate in side events and observer proceedings in the negotiation forum. But these actors should not have a vote in these discussions, nor should they have a right to speak in the negotiation forum. That is, these actors should participate on an informal basis.

The primary reason for this is a matter of fairness. Climate institutions should take into account a wide range of interests in their decisions. This is because climate change is likely to have profound affects for people on a global scale and those whose

⁴⁸ For discussions of deadlock in climate change negotiations, see: Victor, D. 2006; Haas, P.M. 2008; Dombrowski, K. 2010, p.413

⁴⁹ Dimitrov, R.S. 2010a

Chapter 3. Participation

interests are affected by a decision should have their interests advocated during the decision-making process. At the same time, practical constraints mean that it's only possible to make limited steps towards this goal. But climate institutions can still promote this end through other, more informal means. By encouraging states to engage with NSAs in negotiations more generally, climate institutions can ensure that a wide range of views and interests are heard in the debate.

There is a lot of support for the view that NSAs play an important role in this regard. Karen Bäckstrand argues that NSAs have extremely important roles for multilateral institutions even if they lack formal power in these contexts.⁵⁰ Support for this argument is also found in the literature on 'discursive representation'. This includes the studies by Dryzek and Niemeyer,⁵¹ which are subsequently applied to the issue of climate change by Dryzek and Stevenson.⁵² This literature suggests that it's possible to mimic the actual participation of actors in deliberations by ensuring that all relevant discourses are present in discussions, where a discourse is a set of information that captures the diversity of values, interests and needs of all affected actors.⁵³ Advocates of discursive representation argue that incorporating these discourses allows us to reach a second best alternative in multilateral negotiations when giving actors an actual voice in these discussions is very difficult. In this respect, the arguments for discursive representation support the idea that NSAs can play an important role as informal participants in climate institutions, representing a wide range of actors and providing a plurality of different views and opinions.

But whilst it is difficult to give a voice to all those whose interests are potentially affected by the decisions of climate institutions in multilateral negotiations, this doesn't preclude having at least some voices present in these forums. In fact, climate institutions should give some actors the right to speak in this forum, where this allows actors to formally address the entire decision-making body. Given that climate institutions can only do this to the extent that it doesn't create significant procedural problems, the formal right to speak should be limited to those who are most severely

⁵⁰ Bäckstrand, K. 2006, p.484

⁵¹ Dryzek and Niemeyer 2008

⁵² Dryzek and Stevenson 2011, p.1868; 2012a; 2012b

⁵³ Dryzek and Stevenson 2011, p.1868

Chapter 3. Participation

affected by climate change. This gives us our third policy measure for achieving fair participation.

Participation (3): The representatives of those most severely affected by climate change should have a right to speak in the negotiation forum of a climate institution

This means that both states and NSAs who act on behalf of those who are severely affected by climate institutions should have the right to address the negotiation floor of climate institutions. Those who are most severely affected are those whose most basic needs are at stake in a decision, or whose very survival is threatened by the institution's decisions. This gives representative actors the opportunity to put forward their interests in the negotiation forum when decision-makers are considering and discussing different options. It also means that the decision-making body listens to this information and takes any relevant information into account when it makes a decision. But this doesn't mean that these actors should have any formal power in the decision-making process. Rather, these actors should contribute to the debate and provide information without having any power over the decision-making process.

Whilst climate institutions should limit those who can speak in the negotiation forum, they should incorporate the interests of those who are affected into earlier stages of the debate. The decision-making processes of climate institutions represent the arena in which actors come together to finalise collective decisions. But these processes mark the culmination of many plenary meetings, consultations, and efforts to gather and share information. Even if climate institutions can't include all voices in the negotiation process itself, they can ensure that all affected interests are represented in the processes that precede formal negotiations. This gives us a fourth policy measure for fair participation.

Participation (4): NSAs should participate alongside states in the processes leading up to formal negotiations, increasing the amount of information that decision-makers can access and presenting different views in the debate

Chapter 3. Participation

This means that NSAs participate in the pre-negotiation processes to discuss issues and provide decision-makers with relevant information for making decisions. This includes consultations, as well as institutional efforts to collect information, such as the IPCC Assessment Reviews. In doing so, these actors act as epistemic agents, providing information to decision-makers and ensuring that all affected interests are taken into account in the final decision.

This is because procedural justice requires that climate institutions give a voice to those whose interests are affected by the outcome of a decision, so that their interests are taken into account. But, as I've argued, it isn't possible to incorporate all of these voices into the negotiations of climate institutions. This means that climate institutions should give these actors a voice in the deliberative stages that precede climate negotiations. This allows decision-makers to listen to all those who are affected by their decisions and incorporate these interests into their decisions, even if it's not possible to provide a voice for these actors in the official negotiation forum.

This gives us four policy measures for achieving our principles of fair participation in climate institutions. These measures emphasise the important role that NSAs play in climate institutions. But before concluding, it's worth briefly considering the democratic credibility of these actors.

4.3 The democratic legitimacy of representative actors

Climate institutions should put some constraints on which NSAs participate in these decision-making processes. The fact that many NSAs participate in multilateral negotiations without any direct accountability is a cause for concern here, and climate institutions should try to reduce inaccurate representation where possible. For example, accreditation requirements could be imposed on representative agents.⁵⁴ These agents could be expected to show that they are acting on behalf of the individuals that they claim to wherever it is possible. This might include, for instance, evidence of public support, or popular approval by those who are represented. Biermann *et al.* support this view, arguing that, whilst giving greater rights to NSAs in multilateral governance institutions is desirable, climate institutions should also try

⁵⁴ For a discussion of the participation and accreditation of NGOs specifically in the UNFCCC, see: Oberthür *et al.* 2002, p.130

Chapter 3. Participation

to establish more effective accountability mechanisms between these agents and the constituencies that they represent.⁵⁵ At the same time, it should be recognised that democratic accountability isn't always possible. Whilst stringent rules governing the accountability of representative agents are desirable, the fact that some groups are disparate or difficult to identify means that climate institutions shouldn't demand strong democratic standards in every instance.

5. Conclusion

The procedural deadlock that persists in climate institutions is deeply concerning. The fact that climate institutions need to achieve effective action on climate change quickly means that they should consider ways of reducing the problems of trying to reach agreement amongst large numbers of actors. At the same time, climate institutions should remain representative and fair. Often these goals are presented as mutually exclusive: either climate institutions achieve effective action at the cost of fair representation, or they continue to face stalemate in inclusive negotiation processes. In this chapter, I've proposed a way of taking both of these matters into account.

⁵⁵ Biermann *et al.* 2012. For more on this point, see: Scholte, J. 2002; Moore, M. 2006, p.34

Chapter 4. Political Equality

1. Introduction

In chapter two I argued that fair procedures have intrinsic value. I also proposed that fair procedures could lead us to find a mutually acceptable agreement when there is reasonable disagreement about the ends that climate institutions should achieve. In chapter three, I identified who should participate in the decision-making processes of climate institutions. Now it's necessary to say something about what fair procedures actually are. In order to do this, it's necessary to develop a more formal notion of procedural justice. Having done this, it's then possible to think about what procedural justice implies for *how* actors participate in the decisions of climate institutions.

To this end, this chapter has two aims. First, I explore the intrinsic value of procedural justice. In order to do this, I argue that there is a deep connection between procedural justice and democracy and that the same normative ideals form the basis of these two concepts. More specifically, I argue that fair procedures should be thought of as those that (i) allow decision-makers to participate autonomously, (ii) that let decision-makers advocate their interests equally in decisions, and that (iii) encourage decision-makers to justify their decisions to one another. Many theorists invoke these principles during their accounts of democratic theory and this chapter draws on these existing arguments in order to consider which values procedural justice is based on.

Having provided the normative basis for procedural justice, my second aim in this chapter is to discuss what this means for equality in the decision-making processes of climate institutions. Many people hold that fair procedures are those that invoke some notion of political equality.¹ This is something that's also frequently brought up in discussions of the fairness of climate change negotiations. In particular, several reports express concerns about the ability of developing countries to participate in decisions throughout the history of the UNFCCC, suggesting that decisions are unfair either because the rules of the game are biased, or because there are significant resources asymmetries between actors.² My aim in this chapter is to develop a normative account of procedural justice and then to draw on this to examine what role

¹ Beitz, C. 1989; Verba, S. 2003

² IPCC Special Report on Participation of Developing Countries (IPCC 1990); UNfairplay 2011

Chapter 4. Political Equality

political equality should play in the decision-making processes of climate change institutions, what form it should take, and what it entails in practice. I use these normative arguments in the context of the literature on the difficulties that decision-makers actually face in climate institutions.

In doing so, I claim that political equality consists of two principles:

- (1) Equal status among decision-makers
- (2) Equal opportunity to influence decisions

Having defended this, I then make some substantive suggestions for how climate institutions can achieve these principles in practice, and outline several policy measures that climate institutions can employ to meet the principles of political equality requires described above.

2. Procedural justice

One of the aims of this chapter is to determine what procedural justice requires. This means thinking about the normative ideals that ground fair procedures. Some people suggest that this is quite straightforward. For example, Ben Saunders suggests that procedural justice is about giving each actor an equal say in a decision (provided that each actor has a roughly equal stake in the decision).³ Similarly, when discussing political equality, Sydney Verba argues that fairness means that each should have an equal say in a decision-making process,⁴ and Thomas Christiano argues that fairness requires that each citizen has an equal vote in majority voting processes.⁵

But there's obviously more to fair procedures than having an equal say in a decision-making process. If we only cared about equality then we could just as well make decisions through lotteries or coin tosses. Instead, many suggest fair procedures are those that also include a commitment to justification and autonomy.⁶ People usually think that some epistemic value is also important. Therefore, before this thesis makes

³ Saunders, B. 2010

⁴ Verba, S. 2003

⁵ Christiano, T. 1996, p.3

⁶ Gould, C. 1988; Dryzek, J. 2000; 2010

Chapter 4. Political Equality

any claims about what procedural justice requires, it is necessary to say more about what grounds procedural justice.

If it's necessary to think about the normative grounds for procedural justice then one way to start is by considering some of the arguments given for democracy. This section starts by arguing that democracy provides a useful starting point for thinking about procedural justice. I then consider some of the prominent arguments for democracy, including arguments based on autonomy, justification, and equality. Having done this, I then outline the values that ground procedural justice.

2.1 Democracy and procedural justice

There are already a lot of arguments about the underlying values that ground democracy and many of these consider how decision-making processes can treat people fairly.⁷ If some of these arguments overlap with those for procedural fairness, then this should prove a helpful starting point for thinking about what grounds procedural justice. There are several reasons for thinking that the arguments that ground democracy overlap with those for procedural justice.

First, most accounts of democracy start from the premise that it is necessary to make collective decisions among people who disagree. Societies are typically very diverse, and it's often necessary to make collective decisions among people who have conflicting views and opinions. Many accounts of democracy claim that democratic processes are those that are made collectively and that treat each actor fairly.⁸ In this respect, these accounts share the same goals that fair procedures should achieve in climate institutions. In chapter two, I argued that procedural justice can help us to reach a mutually acceptable outcome when there is reasonable disagreement. I argued that if there is significant initial disagreement between people then it's unlikely that they will be able to reach a consensus through reasoned discussion. Any account of what grounds procedural justice should take this into account. Given that many accounts of democracy start from the premise that there is significant disagreement in

⁷ Thorough accounts of the grounds of democracy given by: Kelsen, H. 1955; Christiano, T. 1990; 2008; Estlund, D. 2008, p.70

⁸ Dahl, R. 1956; Saunders, B. 2010; Estlund, D. 2008, p.81

Chapter 4. Political Equality

society, this provides a useful place for thinking about what grounds procedural justice.

But it's not just that climate institutions need procedures that enable those who disagree to make collective decisions; climate institutions need procedures that everyone can perceive as sufficiently fair so that their outcomes are universally acceptable. In this respect, democratic procedures share a second motivation with procedural justice. For many democratic theorists, an important part of democratic decisions is that they bring about outcomes that everyone accepts and has a moral duty to comply with. Part of reaching an outcome that is morally binding is about developing a democratic process that sufficiently respects each actor so that each has a moral duty to comply with the outcome of that process. Given that our aim is to reach a procedure that each considers sufficiently fair so that its outcome is acceptable to all, arguments for democracy are likely to provide some ideas for the underlying values of procedural justice.

A third reason for looking at democracy is that some accounts of what grounds democracy appeal to the intrinsic value of procedures in reaching an outcome that all can accept as binding. That is, not only do these accounts of democracy share the ends that procedural justice should achieve, but they also do so by developing sufficiently fair procedures. Given that climate institutions need procedures that are sufficiently fair that each decision-maker can accept the outcome, even if they disagree with the correctness of the outcome itself, democracy should provide one way of starting to think about what fair procedures should look like.

For these three reasons, then, it is helpful to examine the normative grounds of democracy to gain an understanding of the value and nature of procedural justice.

2.2 The normative grounds of democracy

This section considers three of the most prominent arguments for democracy: autonomy, equality, and justification. Having looked at each of these arguments, in the next section I then argue that fair decision-making procedures are those that respect each of these values.

Chapter 4. Political Equality

Some argue that democracy is important on the basis of autonomy.⁹ People generally think that autonomy is a fundamentally important feature of our lives, and participating in decisions allows people to have some sort of input over important decisions that affect their lives. Many democratic decisions have profound impacts on people's lives. By taking part in these decisions, people can act as authors of the rules that govern them. The important point is that people are able to maintain some degree of self-government, even in a society where it's necessary to make decisions that restrict people's autonomy in profound ways. In chapter three, I emphasised the importance of participation in a decision-making process as a matter of autonomy. I argued that people have a right to representation in decision-making processes that coerce them, partly because coercion is damaging for autonomy and participation partially remedies this damage. This also fits with our thoughts about what's important in a democratic process. People usually think that having some sort of input into or control over a decision is important. That is, it's important that people actually vote in a decision, rather than just having their preferences collected and aggregated, even if they ultimately arrive at the same outcome.¹⁰

An alternative justification for democracy concerns equality. Egalitarian arguments often start by considering how people should address the problem of disagreement in society. Thomas Christiano advocates such an approach that focuses on giving each actor's interests equal consideration. Christiano argues that each individual has a fundamental interest in being treated as an equal in society. For Christiano, democracy is desirable because it is the only way of achieving this end when there is significant disagreement about justice in society.¹¹ Each individual's interests are intertwined with fundamental features of society and there are inevitable conflicts between different people's interests. Given this, one way of treating people's interests equally is to give each person an equal say in democratic decisions. Democracy does this by giving each individual the equal ability to advance his or her concerns in decisions about the organisation of society. According to Christiano, this leads us to a democratic process with features such as equal voting power, equality of opportunity to run for office, and equal opportunities to participate in democratic decisions.

⁹ For example: Gould, C. 1988. Jean-Jacque Rousseau's account of democracy is also based on autonomy (Rousseau, J-J. 1762).

¹⁰ David Estlund also makes this point, Estlund, D. 2008, p.76

¹¹ Christiano, T. 1990; 1996; 2004; 2008

Chapter 4. Political Equality

A further argument for democracy is based on the importance of justifiability. This is basis for some arguments for deliberative democracy.¹² The idea behind deliberative democracy is that outcomes are legitimate to the extent that they are the result of free and reasoned deliberation among equal actors. The process of deliberation involves arriving at a consensus through the exchange of mutually acceptable reasons. Each decision-maker puts forward reasons that others can come to accept or, to put it another way, reasons that are justifiable to others. According to Gutmann and Thompson, when there is disagreement and reasonable pluralism, citizens owe each other justifications for the laws that they impose on one another as a basic moral ideal. In Gutmann and Thompson's terms, this notion of 'reciprocity' allows us to arrive at an outcome in a way that treats each actor with sufficient respect so that each can accept the outcome as binding.¹³ The key point is that deliberative decisions produce legitimate outcomes, in the sense that these outcomes can be justified to others. Justification seems a promising ideal that democratic processes should aspire to. Because the aim of a deliberative process is to arrive at an outcome that each actor is willing to support, it shares some of our motives for designing a fair decision-making process.

These are three prominent arguments for the intrinsic value of democracy. But there are other reasons for thinking that democratic processes are important. In particular, some people claim that democracy is important for instrumental reasons, such as the desirable outcomes and externalities that it produces. But the arguments that I've shown here represent the most prominent intrinsic arguments for democracy. Given that ideals of democracy can provide one way of thinking about the ideals that ground procedural justice, these arguments can help us think about the normative ideals that ground procedural justice.

2.3 The grounds of procedural justice

I've argued that democracy is a useful starting point for thinking about what grounds procedural justice. I've also discussed three prominent arguments for democracy. In

¹² For more on deliberative democracy, see: Cohen, J. 1989; 1997; Bohman, J. 1997; Mansbridge *et al.* 2010

¹³ Gutmann and Thompson 2000; Joshua Cohen refers to this concept as deliberative inclusion (Cohen, J. 1989; 1996). See also: Rawls, J. 1993, p.137

Chapter 4. Political Equality

this section, I claim that fair procedures are those that respect these values, as well as some other normative values.

Climate institutions need procedures that are sufficiently fair so that its outcomes are universally acceptable. Christiano's argument for equality provides one way of doing this. Christiano's argument focuses on the need to respect interests when it is necessary to make decisions about the arrangement of society and people disagree about what this should be. Given that it allows us to reach an agreement that treats each decision-maker fairly, this is an appropriate way for thinking about fair procedures in climate institutions. But this isn't the only thing that's important here. As I suggested earlier, there is also something important about the fact that decision-makers actually play a role in reaching these decisions. This suggests that fair procedures should also pay some respect to autonomy in climate institutions. It is not enough that decision-makers' interests are advanced equally in a decision; the decision-makers themselves must play some role in the way that this happens.

Further to equality and autonomy, fair procedures are those in which decision-makers justify decisions to one another. In order to see this, it's worth recalling the argument from chapter two, where I suggested that fair procedures are those in which reasonable actors respect each other's claims. In this respect, it is not enough that decision-makers put forward claims in a decision-making process; decision-makers should justify their claims to one another in terms of reasonableness. This means that fair procedures are those in which decision-makers justify their decisions to one another. Justification implies that decision-makers respect one another and offer reasons that others can accept as reasonable, even if they disagree with the correctness of those reasons. This is how arguments for deliberative democracy proceed. These arguments are based on the idea that decision-makers should deliberate with one another by providing reasons that each can endorse. In this sense, fair procedures are also those that respect justification through deliberation.

Although there may be some conflict between these values, on the whole, these ideals all point in the same direction when we're thinking about fair procedures. These values suggest that it is necessary to give each actor equal respect and recognition in a decision-making process. They also suggest that decisions should be grounded in

Chapter 4. Political Equality

some notion of equality. Further, they all emphasise the agency of individuals, suggesting that decision-making processes should respect individuals as autonomous agents. Whilst there are different reasons for supporting fair procedures, for the most part, these all endorse the same approach to procedural justice.

This provides three intrinsic grounds for fair procedures. But these values aren't just important for the fairness of decision-making procedures in climate institutions. Designing decision-making procedures that respect autonomy, equality and justification brings about other, instrumental benefits, and it's worth briefly commenting on these.

2.4 Instrumental grounds for democracy

For one thing, designing decision-making procedures that respect these values should also bring about decisions that are more desirable on epistemic grounds. Decisions should accurately reflect the preferences and promote the interests of decision-makers. Some ways of making decisions, such as flipping a coin, fall down in this respect. But designing procedures that respect the values outlined above can bring about outcomes that have more epistemic value. For example, procedures that respect autonomy by giving people control over decisions are likely to lead to more accurate outcomes, since people are often the best placed agents for knowing what their interests are. Alternatively, procedures in which people justify their decisions to one another are likely to be epistemically superior, because deliberation encourages people to learn about each other's interests.¹⁴ It is therefore important that decision-making procedures accurately reflect the interests and preferences of the decision-making body as much as possible.

In addition to the epistemic accuracy of a procedure, solidarity is also important for designing procedures in climate institutions. Following the discussion from chapter two, it is not enough that climate institutions have procedures that are fair; decision-makers must *perceive* these procedures as fair. This is so that climate institutions can gain the necessary support for coordinating action on a large scale. But this means that other factors are also important for assuring decision-makers that their interests

¹⁴ Christiano, T. 1996, p.84

Chapter 4. Political Equality

are sufficiently taken into account in a decision-making process. In this respect, solidarity is also important, in the sense that it encourages decision-makers to see the process as fair and it instils institutional norms of cooperation and collective action.

But this isn't all that's important; fair procedures are also those that pay attention to some substantive values. In chapter two, I argued that there is reasonable disagreement about some of the ends that climate institutions should pursue. But this does not imply that there is complete disagreement on this issue. In fact, it is likely that there is a great deal that decision-makers will agree about on what climate institutions should achieve, including issues such as the need to avoid dangerous climate change, and the need to avoid outcomes that violate people's basic human rights. Climate institutions should have procedures that avoid these sorts of ends. The existence of reasonable disagreement doesn't refute this approach. Whilst decision-makers may disagree on some issues, it is likely that they will agree on some substantive ends. In this respect, there are also some minimum substantive ends that procedures should achieve.

Now that I've introduced the grounds of procedural justice, it is possible to think about what fair procedures should look like. The remainder of this chapter starts to do this. The purpose of this isn't to provide a full account of how climate institutions and their procedures should be designed to achieve these ideals. That is a matter that I undertake in the following chapters when I consider transparency, bargaining, and voting. Rather, the purpose of this chapter is threefold. First, as I have done in this section, it shows the values that fair procedures should achieve. Second, as I show in the next section, it provides some initial ideas about what this means for decision-making in general by defining a notion of political equality for procedural justice. Third, it then shows how this notion of political equality should be interpreted in climate institutions.

3. Political equality and climate change

Many people think that political equality is an important part of fair procedures. That is, there is something intrinsically valuable about the fact that decision-makers are equal in some respect. These arguments also arise in the context of climate change negotiations, where many comment on the disparities between the resources that

Chapter 4. Political Equality

different delegations have for influencing decisions. In this section, I use the normative arguments developed in section two in order to think about what fair procedures look like in climate institutions. I argue that there are two principles of political equality for climate change institutions.

- (1) Decision-makers should have equal status in a decision-making process

Equal status concerns both

- (1.1) Equal status by the decision-making authority
- (1.2) Equal status by other decision-makers

In addition to equal status, political equality implies that

- (2) Decision-makers should have the equal opportunity to influence decisions

There are two subsidiary principles for achieving the equal opportunity to influence decisions in climate institutions:

- (2.1) Decision-makers should have sufficient resources to participate on equal terms
- (2.2) The rules of a decision-making process should be such that decision-makers face a level playing field

Having drawn on the earlier arguments of this thesis to show why these principles are necessary for procedural justice, I then show how these principles can be achieved in climate institutions by making some practical policy recommendations.

Chapter 4. Political Equality

3.1 Equal status

There is something important about being treated and recognised as an equal in a decision-making process, regardless of what this means for one's ability to participate. To be sure, it is important that decision-makers *can* participate, in the sense that they have the ability to influence a decision. But this isn't the only thing that's relevant for procedural justice. It is also important that decision-makers are recognised and respected, in the sense that they are treated in a fair way, irrespective of what this means for their ability to participate. If, upon arriving at a polling station, I'm quickly ushered to a special booth for people with blue eyes, then there is something unfair about the way that I'm treated if all those with brown eyes are sent to a much nicer polling booth. This is true even though it has no impact on my ability to vote.

The first principle of political equality appeals to this idea. In climate institutions, it is important, as a matter of fairness, that decision-makers receive equal standing and status. The 'status' that each decision-maker receives relates to how decision-makers are treated. Procedural justice requires that similar types of decision-makers should receive the same status. This means that *the same types* of decision-makers are treated alike and recognised as agents worthy of respect. It might be appropriate to treat different types of decision-makers differently. In particular, states might be given more prominence and recognition than NSAs, given that they are typically seen as the most important actors in global politics by virtue of their democratic accountability or sovereignty. What's more, it might be worth giving some NSAs (such as those that represent indigenous groups) different status to others (such as those that represent business interests). But here I claim that similar decision-makers should be given the same equal status. This should be equal, because giving some more recognition necessarily means giving another less, and the important point is that each decision-maker is treated alike.

This means that decision-makers are treated alike, to the extent that they are equal in other important respects.¹⁵ This is similar to David Estlund's notion of anonymity, where anonymity means that, to the extent that each actor is equal, they should be

¹⁵ Many attribute the idea that justice involves treating similar cases alike to Aristotle (Aristotle 1999, book 5).

Chapter 4. Political Equality

treated as if they are interchangeable.¹⁶ Equal status means that the rules do not single out any particular individual (provided that they are equal in every other sense).¹⁷ For Knight and Johnson, this means that procedures shouldn't discriminate between decision-makers.¹⁸ There may be good reasons for treating actors differently if, for example, someone is unreasonable, or affected by a decision more than another actor.

One example that illustrates how climate institutions fall down on this issue concerns the language of negotiation documents. Sometimes, the documentation given to decision-makers is only provided in certain languages.¹⁹ Delegates whose native languages aren't included in these documents may still be capable of participating in decisions effectively, if these delegates speak the languages that are represented, or employ translators. But this still represents a matter of procedural justice, even if people can participate on equal terms. The point is that some actors are treated unequally by the decision to publish documents in specific languages.

One reason why this is important follows the discussion of status and solidarity in section 2.4. It is not enough that decision-making processes are fair; decision-makers must *perceive* these processes as fair. This is only likely to happen if decision-makers are treated as equals in a decision-making process. This is a necessary condition for assuring each decision-maker that its views are taken into account in a decision-making process because decision-makers are unlikely to think that their views are treated equally if they are given less recognition or respect than others.

But equal status is also an important part of decision-making processes that respect autonomy, justification and equality. Giving each decision-maker the same status in a decision-making process instils norms of equality and inclusiveness among decision-makers. Each decision-maker realises that other decision-makers should be treated with the same respect and none should be privileged or marginalised in decisions. If climate institutions don't give these actors sufficient recognition in this respect, then it

¹⁶ Estlund, D. 2008, p.73. Knight and Johnson also refer to as anonymity as treating voters 'blindly' by not discriminating on the basis of certain characteristics (Knight and Johnson 1997, p.288).

¹⁷ Cohen, J. 1996, p.74

¹⁸ Knight and Johnson 1997, p.288

¹⁹ UNfairplay 2011

Chapter 4. Political Equality

seems unlikely that they will in others. So equal status is also important for thinking that a decision-making process recognises our interests.

So there are several reasons for thinking that equal status is important for procedural justice, and these are based on the reasons that I explained earlier. Having explained why equal status is important, it's worth giving some greater definition to what this principle really implies. I claim that equal status consists of two elements, each of which relates to the identity of the actor that should 'recognise' the decision-maker: (1) decision-making authority, and (2) other decision-makers.

3.2 The decision-making authority

The decision-making authority of a particular climate institution is the body that organises, coordinates and controls its decision-making process. Most climate institutions have some sort of authority, or secretariat, that fulfils this role. In the UNFCCC, for example, the decision-making authority is the UNFCCC Secretariat. In the COP of the UNFCCC, this also relates to the Chair and its associated bodies. The point is that there are certain actors that organise and coordinate decisions in climate institutions and the way that these actors treat decision-makers is important for procedural justice.

In climate institutions, there are occasions when the decision-making authority systematically marginalises certain decision-makers. At COP15 in Copenhagen, the delegation of Tuvalu submitted a detailed text proposing ambitious obligations for major developing countries. Despite strong support from civil society actors and several state delegations, the proposal was not seriously considered as a possible negotiation platform. The presiding chairpersons repeatedly ignored calls from several delegates to negotiate on the basis of Tuvalu's proposal. At one point after persistent demands to address the Tuvalu proposal, the Chair responded "Tonight when I go to bed, I will take the proposal with me for bedtime reading."²⁰ Radoslav Dimitrov notes that other delegations wouldn't have been treated in this way and that this represented a lack of respect to the delegation of Tuvalu.²¹ This shows the sort of marginalisation that some decision-makers face from the decision-making authority itself. It is not just

²⁰ Dimitrov, R.S. 2010b, p.807

²¹ Dimitrov, R.S. 2010b, p.807

Chapter 4. Political Equality

the fact that Tuvalu's proposal wasn't taken into account; what is also important is the way that the decision-making body treated the proposal. This gives an illustration of how the decision-making authority may treat decision-makers unfairly in climate institutions.

Following the discussion from the previous section, the decision-making authority should give actors equal status in a decision. There are several measures that climate institutions can take to ensure that the decision-making authority treats each decision-making with equal status. For example, as I already suggested, information should be provided in a way that recognises the equal worth of each decision-maker. This might mean providing documents in every native language of the states present in the negotiation forum. Other measures might concern the location of institutional conferences. The COP to the UNFCCC meets biannually, and the major party conference takes place in a different location each year, with the host nation acting as the Chair for the event. Climate institutions could ensure that decision-makers are treated as equals by allowing each state to host the party conference at some stage, rather than limiting meetings to certain states. Other issues might include ensuring that decision-makers should have equal opportunities to address the decision-making forum and raise issues for discussion.

3.3 Other decision-makers

Having looked at how the decision-making authority should treat decision-makers, it's now necessary to consider the second element of equal status: equal recognition from other decision-makers. The problem is that equal status doesn't just apply to how a decision-making authority treats decision-makers. How decision-makers interact with each other is also a concern.

To see this, it's worth considering some of the ways that decision-makers have interacted with each other in climate institutions in the past. On at least some occasions there are clear instances where decision-makers haven't given each other sufficient respect.

This happens when decision-makers make decisions in select groups, without informing the wider decision-making body. During the closing stages of COP15 in

Chapter 4. Political Equality

Copenhagen, a Friends of the Chair group was created in response to the procedural problems of drafting an agreement amongst so many actors.²² This group consisted of the heads of state of 25 countries whose purpose was to draft an agreement. This largely excluded many other delegates and negotiators who were left out of the drafting process. Later, the heads of state of the United States, China, India and Brazil met in private in order to finalise the details of this, producing what became known as the Copenhagen Accord. Before the entire COP delegation had a chance to read this text, the members of this exclusive group held a press conference claiming that a global deal had been achieved.²³ This sparked outrage from the broader COP delegation, many of which weren't just kept out of these discussions, but were wholly unaware that they had taken place.²⁴ As a result, Venezuela, Cuba, Nicaragua and Bolivia later renounced the agreement on the grounds that this exclusive group was trying to impose an agreement on the rest of the COP.

In addition to this, some delegates have made strong, and sometimes insulting statements aimed at specific other states in climate negotiations. At the COP15 negotiations in Copenhagen 2009, Di-Aping Lumumba, the Ambassador to the Sudanese delegation, made powerful statements in response to the proposed Copenhagen Accord. This statement compared the Copenhagen Accord to the Holocaust, claiming that the economic dominance of some delegates were devoid of morality.²⁵ This was seen as an overly extreme statement to provoke hostility between delegates and disrupt cooperation. The point is not that the Sudanese delegation disagreed with the proposed agreement, but did so in a way that didn't respect other delegates. This kind of conduct thus provides a further example of how decision-making may fail to treat one another with the respect that is required by procedural justice.

So equal status isn't just about respect from a decision-making authority; it also concerns fair treatment by other decision-makers. There are at least two ways that decision-makers can do this. First, following the examples above, fairness means that actors should treat other reasonable actors (and their claims) with respect. Recalling

²² Dimitrov, R.S. 2010b, p.809-10

²³ Dimitrov, R.S. 2010b, p.810

²⁴ Dubash, N. 2009

²⁵ Dimitrov, R.S. 2010b, p.811

Chapter 4. Political Equality

what was said in chapter two, fair decisions are those in which actors participate in a reasonable way, where reasonableness puts certain constraints on the types of claims that an actor can make. These requirements stipulate, for example, that claims should be based on sound reasoning and that they have some normative basis. This essentially means that reasonable actors are those who put forward views that other reasonable actors are willing to accept as reasonable claims. But this doesn't just mean that actors make reasonable claims; reasonableness also means actors treat other reasonable claims with due respect.

Second, equal status also entails that participants should not engage in manipulation or coercion. In terms of bargaining strategies, this means adopting soft, or cooperative strategies, as opposed to hard, or aggressive ones.²⁶ For Christiano, this is a necessary feature of treating people as equals. If an outcome is determined through manipulation then it doesn't treat others as equals, because doing so means that some prioritise their own ends and interests above those of others.²⁷ Equal status is therefore necessary to achieve the equal advancement of interests. Given that manipulation involves controlling another actor through deceit, equal recognition is also important for autonomy.

This in turn means that decision-makers should engage with each other under a notion of reciprocity. That is, actors should not merely set out to maximise their own self-interest; they should show some restraint in their actions. But this doesn't mean that they act entirely selflessly either. Rather, they operate at some midpoint between these positions. This requires that there be an absence of threats, coercion and manipulation, which are issues that I discuss in greater detail in chapter six. For the moment, it is sufficient to define equal status as the equal recognition of decision-makers, where this applies to (1) the institution, and (2) other decision-makers.

This represents an account of what's required for equal status. But this isn't all that matters for political equality. Each decision-maker might have equal recognition in a decision-making process whilst important differences between them are ignored. For

²⁶ For discussion, see: Weiler, F. 2013

²⁷ Christiano, T. 2008, p.99

Chapter 4. Political Equality

this reason, it is also necessary to consider the capability of each actor to participate in a decision, which is something I undertake in the next section.

4. Political equality and equal opportunity

The aim of this section is to show that procedural justice requires that decision-makers have the equal opportunity to influence the decision-making processes of climate institutions. I show this by drawing on the normative arguments that I developed in section two to consider what political equality means for fair procedures. Having done this, I then go on to argue that there are two further subsidiary principles for fair decision-making in climate institutions: sufficient resources, and a level playing field. I also make some suggestions about how these principles can be achieved in climate institutions.

4.1 Resources and capabilities

Political equality is not just about equal status; decision-makers should also have the equal opportunity to influence decisions. This follows from section two. Decision-makers should be able to advance their interests equally in a decision-making process, in a way that allows them to act as independent agents. This means that decision-makers should have the same opportunity to influence a decision, where influence concerns the amount of control that a decision-maker has over the outcome of the decision.

There is an on going debate, however, regarding the means that should be used to achieve equal opportunity of influence in decisions. This debate concerns whether it's best to think of political equality in terms of equal resources or equal capabilities. In what follows, I discuss each of these views, before arguing that it is best to achieve equal opportunity for influence in the decision-making processes of climate institutions by equalising actors' *capability* to participate.

Take the resources approach first. John Rawls argues that it is possible to achieve equality of opportunity for political influence by focusing on the resources that each actor has for participating in a decision.²⁸ According to Rawls, it is possible to provide

²⁸ Rawls, J. 1993, p.183

Chapter 4. Political Equality

an equal opportunity for participation in political decisions by giving people sufficient ‘primary goods’, where primary goods relate to the rights and liberties that people use to influence political decisions. In climate institutions, these sorts of resources, or ‘primary goods’, might concern the voting rights that each state delegation has, the amount of time that it gets to speak in a debate, or its right to participate in COP discussions. Part of the desirability of Rawls’ approach is that it is simple and comparatively easy to implement; each decision-maker is given an equal amount of some defined resource. Although Rawls recognises that citizens differ in their ability to convert these resources into political influence, he assumes that each actor has the basic capability to participate as cooperative members of society.

But the problem with this approach is, as Rawls notes, that it neglects important differences in people’s ability to use these resources to influence decisions. In some situations, this might not be so problematic. If decision-makers are largely alike, and if none can gain a sufficient advantage over another in terms of influence, then equalising the resources that each decision-maker has for making decisions may be an effective way of realising equal opportunity of influence. But it is possible to imagine that, where decision-makers differ very widely in this respect, this is a significant problem for achieving equal opportunity for political influence. If, for example, some decision-makers are more charismatic or eloquent than others, then giving each decision-maker the same amount of time to speak in a debate may leave others with less influence over a decision.

For this reason, Knight and Johnson draw on James Bohman’s work to propose a capabilities approach for deliberative democracy, which focuses on the freedoms that people have to use resources for political functionings.²⁹ This provides a useful starting point for thinking about political equality in decisions more generally. Capabilities are the various capacities or abilities that actors have to perform a certain function, where a function is an activity that an agent can undertake.³⁰ Rather than focussing on the resources, or goods that a person has, the capabilities approach focuses on what people can achieve with these goods. Giving a decision-maker the right to participate in a decision is only part of what is required for giving each

²⁹ Bohman, J. 1997; Knight and Johnson 1997

³⁰ Amartya Sen advocates the use of a capabilities approach in relation to welfare (Sen, A. 1993).

Chapter 4. Political Equality

decision-maker the equal opportunity to influence an outcome. If decision-makers are to be able to advance their interests equally and independently then it is necessary to think about the different abilities that people have to make use of this right. Because capabilities concern the *ability* of an actor to perform a particular function, equalising capabilities is a more appropriate way of achieving the equal opportunity for political influence when there are large discrepancies in people's ability to convert decision-making resources into political influence. It recognises that there are sometimes fundamental differences between decision-makers that prevent them from influencing decisions to the same extent as others.

On the one hand, equalising resources seems the most appropriate means for ensuring equal opportunity of influence in a decision where there are not significant differences in the ability to convert these resources into influence, or when capabilities are hard to define. On the other hand, equalising capabilities is more appropriate for this end when there are significant differences between actors.

Turning to the issue of decision-making in climate institutions, the literature on this topic suggests that decision-makers do differ significantly in their ability to participate in the decision-making processes of climate institutions. Some state delegations, in particular those that represent wealthy or populous states, are often have access to technical and legal expertise.³¹ Whilst some can afford large numbers of highly skilled delegates and negotiators, others only have the resources to send a limited number to conferences.³² This means that some state delegates are at a distinct disadvantage in terms of influencing decisions in climate institutions. Even when these delegations receive the same primary goods, such as the right to participate or the right to speak in debates, the large asymmetries between these actors mean that some can influence a decision to a far greater extent than others. Given that it is best to think of political equality in terms of equal capabilities when there are large differences in the ability of decision-makers to participate in decisions, it is most appropriate to achieve equal opportunity of political influence in climate institutions by ensuring that each decision-maker has the equal *capability* to participate in a decision. Unlike an approach that focuses on equalising resources, this captures the

³¹ See, for example: IPCC Special Report on Participation of Developing Countries (IPCC 1990)

³² Schroeder *et al.* 2012

Chapter 4. Political Equality

concern that different decision-makers can convert decision-making resources to different extents.

4.2 Capabilities and functionings

Given that it is best to think of political equality in terms of equal capabilities in climate institutions, it's now necessary to think about what sorts of capabilities are most relevant here. Several authors have discussed the relevant capabilities that are necessary for participating in decisions generally, where the relevant function here is 'to participate in a decision-making process'.³³ To give this notion of participation some depth, Knight and Johnson identify several necessary features that are relevant for participation, including the 'capacity to formulate authentic preferences', 'the effective use of cultural resources,' and, 'basic cognitive abilities and skills.'³⁴ Although this provides a useful starting point for thinking about functions in decision-making contexts, this list is primarily concerned with deliberative decisions in a domestic democracy. Given that our concern is the decision-making processes in climate institutions, it seems reasonable to suppose that the decision-makers in these institutions (i.e. delegations) already have the basic cognitive ability to participate in decisions. As such, it isn't so important to address these issues here. Rather, in what follows, I propose a more relevant account of the functionings that are important for participating in the decision-making processes of climate institutions. These are understood as: forming opinions, making judgements, and advocating interests and positions.

First, decision-makers should have the capability to formulate views and make opinions about decisions. This involves understanding the issues involved, interpreting information, and making judgements about what positions to adopt. This doesn't just require that decision-makers *can* form views and opinions. After all, decision-makers may form opinions that are based on incorrect information, or on poor judgement. Rather, this means that actors can form accurate opinions, which are based on correct information and sound reasoning.

³³ Bohman, J. 1997; Knight and Johnson 1997

³⁴ Knight and Johnson 1997, p.298

Chapter 4. Political Equality

Second, decision-makers should be able to influence the outcome of a decision. In some situations, this means that decision-makers should have a right to vote. But, as I argued in chapter three, in some situations decision-makers should be able to influence a decision-making process by having a voice, but not a vote in the decision-making process. In this latter situation, if an actor is to effectively contribute to a debate and to influence an outcome then the ability to form judgements and opinions is insufficient for participation. Decision-makers should also be able to put forward their views and to have these heard in debates and discussions.

This means two things. First, decision-makers should be able put forward their views and to express these views effectively in a debate. Second, decision-makers should be able to *influence* the decision-making process, in the sense that they can persuade other decision-makers and have some control over the outcome of a decision. This doesn't necessarily equate to having a vote, or a say in a decision-making process. Rather, this concerns the ability to change peoples' minds and to advocate an argument effectively.

In conclusion, procedural justice requires that decision-makers have the equal opportunity to influence a decision-making process, and in climate institutions this means that decision-makers should have the equal capability to participate in these decisions, where capabilities concern the ability to achieve to some functionings. In what follows, I argue that two principles are necessary for achieving this end. One relates to resources, whilst the other concerns the rules that decision-makers face.

4.3 Sufficient resources

If climate institutions should ensure that each decision-maker has the equal capability to participate, then this requires that decision-makers should have enough resources so that they have the equal opportunity to influence a decision, where influence relates to the ability to make informed judgements about issues, to put forward views, and to influence others.

To substantiate this claim, it is necessary to address three questions. First, what sorts of resources are important for ensuring that decision-makers have the capability to participate in decisions? Second, why is sufficiency the relevant standard here? Third,

Chapter 4. Political Equality

what is an adequate baseline for a sufficient distribution of these resources in climate institutions?

Let's start by considering the question of resources first. Certain resources are important because they enable decision-makers to influence decisions. Given our account of procedural justice in section two, decision-makers need these resources in order to participate on equal terms. Some authors describe these resources as either internal or external.³⁵ Internal resources are those that are inherent to the decision-making process itself, including, for example, information about the decision, one's aptitude at persuasion, and negotiation or bargaining skill. External resources, on the other hand, are resources that are not directly linked to the decision-making process, but nevertheless have some bearing on the ability of an actor to participate. External resources include things such as material wealth or physical power. Whilst some authors suggest that it is necessary to focus on both of these issues, climate institutions should concentrate on internal decision-making resources.

For one thing, it's prohibitively costly to change the distribution of external resources that decision-makers have in climate institutions. At the multilateral level, external resources concern things like global political clout and economic GDP. Not only would it be highly impractical to equalise some of these resources (for example, political clout), in other cases it would also be extremely demanding. Changing the external resources that state actors have is an extreme measure for achieving political equality in a decision-making process. Equalising external resources focuses on the wrong issue. What's more important is ensuring that disparities in these resources do not play a strong role in determining the influence that each decision-maker has in a decision.

In a multilateral context, this means that it is necessary to focus on ensuring that decision-makers have sufficient *internal* resources instead. These are resources that determine how much a decision-maker can influence a decision. This includes the amount of information that decision-makers have, the technical expertise for interpreting information and forming opinions and positions, and the resources for

³⁵ For example: Weiler, F. 2013

Chapter 4. Political Equality

advocating positions in a decision-making process, such as the number of delegates that each actor has.

Turning to the issue of sufficiency, ensuring that each decision-maker has an equal capability to participate in climate institutions requires a sufficient, rather than an equal, distribution of internal resources. This is because procedural justice requires that decision-makers can participate on equal terms. But the problem is that some decision-makers face disadvantages on account of the fact that they do not have enough resources to participate effectively. This means that climate institutions should ensure that each decision-maker has sufficient resources to participate on equal terms.

A second reason for thinking that sufficiency is the relevant standard for climate institutions comes from our earlier discussion of capabilities. Some decision-makers can make use of resources to different extents. For example, if a particular decision-maker has access to high quality legal and technical expertise then it may be able to use other resources, such as information, to better use than another decision-maker that isn't in such an advantageous position. This means that it is necessary to ensure that each decision-maker has *sufficient* resources for influencing an outcome. That is, given that some use these resources more effectively than others, and given that each should participate to the same extent as others, it is important to ensure that each has enough to participate. But this doesn't require ensuring that each decision-maker has *equal* resources. What matters is the ability of each decision-maker to participate, rather than equality per se.

One might object that a problem with this approach is that some resources are positional. A positional good is valuable to the extent that an actor has more of it than someone else. In climate change institution, this might be the case with the number of delegates that each state delegation can send to a meeting. It is often noted that developing country delegations are much smaller than those from developed nations in multilateral negotiations and that this presents serious challenges to the ability of developing countries to negotiate on equal terms.³⁶ Once a delegation has enough

³⁶ Bruce *et al.* 1995; South Centre 2004; UNfairplay 2011

Chapter 4. Political Equality

delegates to participate in a meeting, the number of delegates is not valuable in itself; rather, it is the fact that some states have more than others that gives them an advantage. This might lead us to think that climate institutions should ensure that each has *equal* internal resources, rather than a sufficient distribution as I've proposed here.

This argument does not, however, show that what really matters here is equality. Rather the focus should be on giving each decision-maker sufficient resources to participate. It is just the case that where there are positional goods, giving each decision-maker sufficient resources to participate on equal terms also means giving each decision-maker equal resources.

Of course, this doesn't mean that climate institutions should allow decision-makers to accumulate unlimited resources for decision-making. This is particularly relevant for things like delegation size, where the number of delegates that each decision-maker has impacts on the overall quality of the decision-making process. Climate institutions should put limits on these sorts of resources for the sake of practicality. The appropriate criterion should be whether bringing more resources to the table is detrimental for the decision-making process.

Turning to the question of what a suitable baseline of resources is, decision-makers should have a sufficient amount of resources to participate as equals in a decision-making process, *given the design of the decision-making process and given the differences between them*. This means avoiding situations where decision-makers are unable to participate, or forced to compromise on an issue because they have insufficient resources. For example, some suggest that resource disparities have forced some participants to depend on coalitions in order to be heard in climate institutions, altering their negotiation positions in order to find common ground with others.³⁷ Others argue that insufficient resources have also led decision-makers to adopt reactive, defensive, and negative negotiating positions.³⁸ In other cases, some states do not have sufficient resources to attend different multilateral negotiations, and

³⁷ Gupta, J. 1999; Chasek and Rajamani 2003

³⁸ Richards, M. 2001

Chapter 4. Political Equality

are forced to choose where they will prioritise their interests.³⁹ These are clearly cases where states have insufficient resources to participate and it is necessary to avoid situations where these issues arise.

Given that each should have sufficient resources to participate on equal terms, it's also necessary to consider who should provide these resources. Since fair procedures are those in which decision-makers maintain some degree of autonomy and independence, each decision-maker should be responsible for providing their own resources for participation. But the point is that some actors have insufficient resources to participate on equal terms. Given this, there are several ways that a climate institution can ensure that each actor has access to a sufficient amount of resources for equal capability for participation.

First, NSAs play an important role. NSAs improve the negotiating position of state delegates by providing additional expertise and assistance to smaller state delegations.⁴⁰ NSAs often play an epistemic role in this respect by improving the information available to decision-makers. These ideas are supported in much of the literature on multilateral negotiations. For instance, UNfairplay is a policy brief created to augment the negotiating capacity of countries with small delegations by encouraging their engagement with civil society actors.⁴¹ The potential role that NSAs can play in assisting developing country delegates in multilateral negotiations is also recognised by Chasek and Rajamani, as well as the South Centre.⁴² These studies show how NSAs can help to provide decision-makers with the necessary resources to participate effectively in multilateral negotiations.

But it's important to note that NSAs may need assistance for providing this role. It is desirable to have a diversity of NSAs in decisions, rather than just those that have the necessary funds to participate in a decision-making process. Climate institutions should therefore try to provide the necessary resources for these actors to play a role in their decision-making processes.

³⁹ For example, Schroeder *et al.* argue that differences in delegation size in climate institutions partly reflect the priority that states with limited resources give an issue (Schroeder *et al.* 2012).

⁴⁰ Steffek *et al.* 2008; Scholte, J.A. 2011

⁴¹ UNfairplay 2011

⁴² Chasek and Rajamani 2003; South Centre 2004

Chapter 4. Political Equality

This isn't to say that climate institutions should provide resources to all NSAs, nor that all NSAs are equally important for political equality. In some cases NSAs play an important role in helping delegates and advocating interests. But NSAs differ in the extent to which they promote special interests rather than the common good.⁴³ Some NSAs may represent general interests, providing assistance to delegations that are unable to participate on equal terms. Others, including those that represent the interests of private corporations, may be orientated towards special interests. Climate institutions should be wary about the role that NSAs can play here, and state delegates shouldn't become solely reliant on these actors for participating in decisions.

A second option is to pool decision-making resources. Some actors share many interests in multilateral negotiations, and forming coalitions or alliances is one way of improving the resources that these actors have for advocating these interests.⁴⁴ Radoslav Dimitrov notes that there are several coalition groups in the UNFCCC that help states to advocate their interests in its decisions.⁴⁵ These allow state delegates to combine resources and improve their joint ability to participate in decisions. Climate institutions can promote political equality by encouraging states with similar interests and negotiating positions to engage with one another. At the same time, it is necessary to keep in mind this might force people to compromise their positions for the sake political influence. Whilst coalitions can bring about a number of benefits, this shouldn't come at the cost of compromised values.

A third measure involves domestic institutions.⁴⁶ Decision-makers should act as effective representatives of their constituents, as well as of other stakeholders. These decision-makers should also be able to participate effectively, which requires a sufficient standard of negotiation resources such as information and decision-making ability. But this requires a suitable amount of institutional development on the part of the decision-makers that are participating in these processes. That is, it's necessary to have a sufficient amount of education and awareness at the domestic level, which can

⁴³ Thomas Christiano makes this point in relation to special interest groups (Christiano, T. 1996, p.273).

⁴⁴ For discussion: Gupta, J. 2000; Chasek and Rajamani 2003

⁴⁵ Dimitrov, R.S. 2010a

⁴⁶ Chasek and Rajamani 2003

Chapter 4. Political Equality

translate into effective representation at the multilateral level. For this reason, climate institutions can improve the negotiation capability of state actors by improving the domestic institutions at the state level. This is something that is supported in the literature on negotiation capacity. For instance, the UNfairplay report notes that domestic capacity is a crucial feature of negotiation process.⁴⁷ In terms of trade negotiations, the South Centre notes that this may require countries to make significant resource investments in the development and improvement of the human, technical, financial, and physical infrastructure.⁴⁸ Improving the domestic institutions of states is therefore a third way of helping states to participate under terms of political equality.

4.4 A level playing field

Political equality isn't just about providing actors with sufficient resources to participate on equal terms. The problem is that the ability to participate in climate change institutions is not just a matter of resources; it is also a matter of the procedural rules that decision-makers face. Access to sufficient resources isn't enough for equal opportunity of influence; it's also necessary to ensure that decision-makers face a level playing field. For this reason, it's also necessary to think about the rules of the decision-making process.

This introduces a second principle for achieving equal opportunity of influence, which is that the rules of the decision-making process should be such that each decision-maker faces a level playing field. That is, procedural justice requires that the rules of decision-making process are designed so that, given that each has a sufficient amount of resources for participation, and each is able to participate to the same extent as everyone else. Following the discussion in section three, each decision-maker should have equal status in a decision-making process. But in addition to this, the rules of the decision-making process should allow decision-makers to participate on equal terms. Even if there are asymmetries between parties in a decision-making process (for instance, in external resources, or negotiation skill) these should not be allowed to influence the ability of decision-makers to participate in a decision-making process, given our understanding of participation as the ability to form opinions, make

⁴⁷ UNfairplay 2011, p.12

⁴⁸ South Centre 2004, p.2

Chapter 4. Political Equality

judgements, and influence an outcome. The rules of the game should allow each decision-maker to participate to the same extent as others, given its background resources.

These rules relate to the design of the decision-making process. This concerns rules such as the amount of time that each view gets in a discussion, the amount of information necessary to make an informed judgement on anyone decision, the language used in a decision-making process, or the number of meetings that each actor has to attend.

In order to realise what this really means, it's helpful to draw from some of the commentary from recent COP negotiations. Several authors note that marathon negotiation sessions that overshoot the scheduled completion of the conference are now a common characteristic of COP negotiations.⁴⁹ This is extremely demanding for states that are only able to provide a handful of delegates, or that are limited by financial constraints. For example, when the final negotiation session of COP17 overran by over 36 hours, several delegates had to leave the conference early to avoid missing their flights home.⁵⁰ This was after a single negotiation session had spanned three consecutive nights. Another issue concerns the large number of issues and agendas that a negotiation process attempts to address. Small delegations can struggle with the heavy workloads that are squeezed into one negotiation session, or the number of negotiation bodies that run simultaneously during a negotiation. For example, in the UNFCCC there are six negotiating bodies that meet at the annual COP negotiations.⁵¹ These examples give us some understanding of the problems that decision-makers face, as a result of the rules of the institution itself.

Climate institutions should take measures to resolve these issues by ensuring that each actor faces a level playing field in the negotiation process. Climate institutions can achieve this end by implementing specific procedural rules for ensuring that its decision-making processes don't marginalise any delegations. Many environmental institutions now have rules that to facilitate the participation of certain actors (in

⁴⁹ Werksman, J. 1999, p.13; Harvey and Vidal 2011

⁵⁰ Harvey and Vidal 2011

⁵¹ Vihma and Kulovesi 2012, p.7. See also: Doran and Gloel 2007; UNfairplay 2011, p.10

Chapter 4. Political Equality

particular, developing countries with small delegations). For example, in the UNFCCC, there is a requirement that all documentation is published simultaneously in all six UN languages so as to make it possible for a larger majority of delegates to participate fully in the negotiations.⁵² Other measures include limiting the number of meetings that take place simultaneously, so that small delegations are able to attend each of them.

5. Conclusion

Procedural justice is about more than providing the right to participate in a decision-making process. It also requires that actors can participate effectively, and on fair terms. In this chapter, I've argued that procedural justice is grounded in values of autonomy, equality and justification. I've also argued that this means that there is a standard of political equality for fair decision-making in climate institutions. This standard should be understood as an equal status in decision-making processes as well as the equal opportunity to influence the outcome of a decision-making process. I've also made some suggestions for how this standard can be achieved in practice. What this chapter hasn't addressed is how actors should bargain in a decision-making process, or how much influence (in terms of a say) each actor should have according to procedural justice. These are important issues in their own right, which I consider in later chapters.

It's worth concluding by briefly acknowledging the limitations of equality in climate institutions. Procedural justice requires procedures that allow actors to advance their interests equally in a decision. This chapter, in line with the rest of this thesis, considers the formal decision-making processes of climate institutions. But the problem is that many other informal mechanisms also play a role in climate institutions. Actors make decisions and interact with each other in many different contexts, and this is also relevant for helping actors to advance their interests equally in climate institutions. Whilst this chapter provides one way of thinking about how climate institutions can meet this condition in formal mechanisms, there are other issues at stake, which are beyond the scope of this thesis.

⁵² This is a more specific interpretation of draft responsibilities echoed in the UNFCCC founding text: [the UNFCCC Secretariat shall] 'receive, translate, reproduce and distribute the documents of the session' (UNFCCC Draft Rule 29b).

Chapter 5. Transparency

1. Introduction

Chapter three determined who should participate in the decision-making processes of climate change institutions. Chapter four then provided the normative background for procedural justice and outlined some of the requirements for political equality in these institutions. This chapter now determines what information about climate institutions should be made available to the public. That is, it determines how transparent climate institutions should be.

Transparency has become a contentious issue in climate change institutions, where there is a tension between the need to reach agreement on controversial issues and the need for fairness. On the one hand, several authors argue that reaching agreement on controversial decisions requires confidential discussions that take place in private, allowing actors to express views and make difficult compromises that they would not be able to make in public.¹ This approach is often advocated as a solution to some of the procedural problems that climate institutions face.² In fact, this is now standard practice in multilateral climate institutions, where small groups of delegates often meet to resolve controversial substantive issues before presenting the outcomes of these meetings to the public.³

On the other side of the debate people argue that decisions made behind closed doors are illegitimate or unfair.⁴ The UNFCCC Climate Change Conference in Bangkok (2009) drew heavy criticism after media representatives and other NSAs were excluded from participating in the negotiation sessions.⁵ These concerns are not limited to COP negotiations and there is a feeling that the negotiation processes of other multilateral institutions should be open to external scrutiny rather than concealed from public view.⁶ In fact, public access to information is something that has gained increased attention since the European Commission adopted the

¹ Keohane and Nye 2001, p.277; Bodansky, D. 2007, p.718

² Dubash, N. 2009; Antholis and Talbott 2010; Bapna and Werksman 2010; Vihma and Kulovesi 2012

³ Rapp *et al.* 2010; Rajamani, L. 2011a, p.514

⁴ Dubash, N. 2009, p. 8-9; Antholis and Talbott 2010, p.66-8

⁵ Vidal, J. 2009

⁶ The Cartagena Dialogue (Bowering, E. 2011) the MEF, and the G8 (Karlsson-Vinkhuyzen and McGee 2013, p.67) are closed to observers.

Chapter 5. Transparency

Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention 1998); a multilateral agreement governing the procedural rights of the public, including access to information about environmental decisions. This shows that there are strong demands for public access to institutional information and that there is a great deal of discontent over the growing practice of private decision-making in multilateral institutions.

Yet the alternative to making decisions behind closed doors is far from ideal. If the UNFCCC Conference in Bangkok represents one extreme of the transparency spectrum, then the final stages of the COP17 negotiations in Durban surely represent the other. On this occasion, two weeks of talks culminated in a final negotiating session that lasted for 60 hours over three consecutive nights. In a now famous moment of diplomatic improvisation, the South African foreign minister, Maite Nkoana-Mashabane, ordered delegates from China, India, US, Britain, France, Sweden, Gambia, Brazil and Poland to meet in a small huddle in the middle of the negotiation floor to resolve their differences.⁷ These delegates then came to an agreement on what ultimately became the Durban Accord. The ‘huddle that saved the world’ took place in full view of the world’s media, whilst many delegates from other nations documented the event on camera phones.⁸ The photos of exhausted and exasperated delegates discussing issues in the glare of the global public whilst surrounded by scores of delegates vying for a view is hardly an appealing picture of transparency.

These different accounts suggest that it is necessary to think carefully about what fairness requires in respect to transparency. They also suggest that there is a trade-off between the fairness of decisions that are transparent and the democratic quality of those that are made behind closed doors.

To this end, in this chapter I determine what information about climate institutions should be available to the public. I start by arguing that several normative values support a public right to know some information about what an actor is doing in

⁷ Harvey and Vidal 2011

⁸ Clark, P. 2011

Chapter 5. Transparency

certain cases. This includes information about the actions and decisions of actors that act on behalf of the public, or that affect public interests. But, this doesn't mean that there should be full information disclosure at every level. Instead, in section three I argue that actors should have the opportunity to deliberate behind closed doors, away from public scrutiny. Having considered what fairness requires, in section four I then discuss whether privacy and secrecy can ever bring about more desirable outcomes for climate institutions. Finally, I show how climate institutions can be made more transparent.

2. Fairness and the public right to know

Transparency is a topic that receives a great deal of attention from theorists, especially in the context of environmental governance.⁹ Yet it is often undefined and its desirability is frequently taken for granted. Ann Florini provides one of the more thorough accounts of transparency, defining it as:

*'...[T]he degree to which information is available to outsiders that enables them to have informed voice, in decisions and / or to assess the decisions made by insiders'.*¹⁰

Other elements in the literature on transparency include: providing institutional information to decision-makers,¹¹ making behaviour and motives available to interested parties,¹² the scrutiny of office-holders,¹³ and the disclosure of information to the general public, or to 'those affected' by a decision.¹⁴

A common theme throughout this literature is that transparency is about providing information to the public. Following these accounts, in this section I start by asking what information about climate institutions should be available to the public *as a matter of fairness*. Later, I consider whether public access to information is important for other ends. One thing worth stating at the outset is that public information is non-excludable, in the sense that once it is made available to some people, it isn't possible

⁹ See: Fenster, M. 2006; Florini, A. 2007, 2008; Gupta, A. 2008, 2010; Mason, M. 2008

¹⁰ Florini, A. 2007; also see: Dingwerth and Pattberg 2007

¹¹ Kuper, A. 2004, p.180; Lindstedt and Naurin 2010

¹² Hale, T.N. 2008, p.75

¹³ Florini, A. 2005, p.32

¹⁴ Dingwerth, K. 2007, p.26, 44

Chapter 5. Transparency

to stop others from accessing it.¹⁵ This means that it isn't possible to make institutions transparent to a limited group of people.

I begin by arguing for the following:

The public has a right to know certain information about an actor if it:

- (i) Acts in the name of the public
- (ii) Makes decisions that potentially affect public interests

This extends to information about:

- (i) What the actor is doing
- (ii) How its actions affect public interests
- (iii) How it participates in decisions

This is a public right to know. This right is grounded in the normative ideals that I outlined in chapter four: autonomy, the equal advancement of interests, and public justification. The remainder of this section shows how these ideals support the right to know.

2.1 Autonomy

One of the reasons for valuing transparency is autonomy. Following the findings of chapter four, fair procedures are those that respect people's autonomy. If people are to be autonomous – and to be able to act as authors of their own lives – they need to know how their interests are affected by an agent's decisions. This means that people have an interest in knowing what an agent is doing if that agent's actions affect their interests. Such knowledge is necessary if persons are to be able to make informed choices in response to these actions and appropriately react to them.¹⁶ This represents an autonomy-based interest in knowing when an agent's actions affect us: people can only maintain autonomous and independent lives if they are aware of actions that affect them. Note that this argument applies whether an actor acts in someone's name

¹⁵ Joseph Stiglitz defines knowledge as a global public good in this respect (Stiglitz, J. 1999).

¹⁶ Aarti Gupta argues that this is the goal of policies for information disclosure (Gupta, A. 2008).

Chapter 5. Transparency

or not. If someone's interests are affected then they need to know how they are affected for the sake of autonomy.

Now, this argument only has force where people are affected by an agent's actions. The autonomy-based interest in a right to know is about having the necessary information to react to something, rather than about having access to suitable information for the sake of participating in a decision. Suppose that a local council is legitimately planning to carry out road repair work outside my house, then I should be informed about this decision and suitably consulted, even if I don't have a right to take part in the decision-making process. This is so that I can plan my life around the event, by parking my car on a different street that day, or by spending the day at the library rather than studying at home. This means that people have a right to know how an agent's actions affect them.

2.2 Accountability

But people also value transparency because it allows them to hold actors to account. Accountability is a power relationship that allows one actor to exercise some form of authority or control over another. Transparency is thus a necessary condition of accountability because people need to know what an actor is doing in order to have any control over them.

Before discussing what sort of information accountability requires, it's worth thinking about the different forms accountability that exist at the multilateral level. People generally think that accountability operates through different mechanisms, which are broadly defined as either internal or external.¹⁷

Internal accountability occurs when one actor has direct control of another, such as the right to hold someone to account or the right to vote someone out of office. It typically implies that there is some formal mechanism that people can use to hold agents to account.¹⁸ Direct elections, the right to remove from office, and checks and balances are all examples of internal accountability mechanisms. These are 'internal'

¹⁷ Keohane and Nye 2001, p.29; Keohane and Grant 2005, p.39-40

¹⁸ Dingwerth, K. 2005

Chapter 5. Transparency

because they allow those who delegate authority to hold to the powerful to account. That is, they represent internal power relationships between actors.

But internal accountability isn't the only form of accountability available in world politics. Grant and Keohane argue that there is a range of accountability mechanisms that exist at the global level.¹⁹ These external accountability mechanisms operate through more informal or indirect routes where actors have some influence over an agent even in the absence of direct accountability mechanisms. These are 'external' because they extend to power relationships between the powerful and those who do not delegate authority, but are nonetheless affected by their decisions. Reputational accountability, for example, means that an agent is accountable to the public through its reputation. This is a form of 'regulation by disclosure', which allows the public to have a power relationship over what an actor does, even if this relationship isn't formalised.²⁰ Whilst some authors question the influence that the public can have over global actors,²¹ others are more optimistic about the role that public scrutiny can play in this respect.²²

Whether we're concerned with internal or external accountability, an actor needs to have access to information about what the actor is doing in order to hold that actor to account.²³ People can only hold an actor to account if they know what the actor is doing, which includes information about how it participates in decisions. Without this information, people can't have any sort of control over what the actor does and subsequently they cannot hold them to account.

Turning to the issue of which actors should be accountable to whom, it's necessary to keep in mind that our focus for the moment concerns what the public has a right to know. So far, I've argued that information about what an agent is doing is necessary for holding an agent to account and that this is true whether we're considering internal, or external accountability. Determining what information should be available to the public for the sake of accountability requires knowing which institutions should

¹⁹ Grant and Keohane 2005

²⁰ Florini, A. 2007; Bäckstrand, K. 2008, p.296; Mitchell, R.B. 2011

²¹ Hale, T.N. 2008

²² Stiglitz, J. 1999

²³ Rowat, D.C. 1979, p.21; Caney, S. 2006a, p.478-9; Fenster, M. 2006, p.899

Chapter 5. Transparency

be accountable to the public. I propose that institutions should be publicly accountable if they make decisions that affect the public's interests, or if they act on behalf of the public.

It is worth examining both of these considerations in turn. First an institution should be accountable to those whose interests it affects in order to prevent institutions from bringing about unjust outcomes. If an institution affects people's interests, then it can potentially bring about unjust outcomes. Even if it isn't necessary to have some formal power over an agent, it is still necessary to hold an actor to account and prevent them from committing harm. This requires that institutions provide information about what they are doing, and how their actions affect us.

Second, and in addition to this, if institutions claim to act on our behalf then, for this reason, transparency is necessary so that people can ensure that they actually fulfil this representative role. Transparency can help realise this role by providing an indirect form of accountability even when there isn't a right to hold an institution directly accountable. Whilst it might be the case that institutions should be directly accountable in some situations, here our concern is what information should be available to the public.

2.3 Participation

I now turn to a third consideration. In addition to its contribution to autonomy and accountability transparency is also necessary to enable agents to engage in meaningful participation. As I argued in chapter three, people have a right to participate in decisions that are made in their name, or decisions that are coercive. People also have a right to voice their interests in decisions that potentially affect their interests. In multilateral institutions, this means that representative actors should act on behalf of those who have these rights. But given that these representatives partly participate on behalf of other actors, it is also important to think about what information should be available to the public so that those who have a right to participate in a decision are represented in these decisions. Here, I am concerned with what information about an institution should be publicly available so that people can exercise their right to representation in multilateral decisions.

Chapter 5. Transparency

If agents are to participate in decisions, they need to have adequate information about the issues at stake. As I argued in chapter four, political equality means that decision-makers are able to access the information necessary to make an informed decision and participate effectively. In order to participate in a decision, people need to know what decisions are taking place, and what the implications of those decisions are. This is true whether they have a right to a vote in the decision, or if they merely have a right to voice their interests. People also need to be able to access this information if they are represented in a decision-making process. Representation requires that people are aware of decisions that are being made on their behalf, and what the implications of these decisions are. This is so that their interests and preferences are sufficiently represented.

People therefore have to know what decisions are taking place, and what the implications of these decisions are. This is so that people can participate in decisions, and so that decision-makers can justify their decisions to them. Given that climate institutions make decisions that affect people's interests on a global scale, and given that these institutions often make decisions on behalf of a large numbers of people, this information should be publicly available.

This forms the basis for what Robert Mitchell calls 'disclosure-based policies', which aim to improve the information that the public has about an actor for the sake of improving public participation in its decisions.²⁴ Mitchell distinguishes these policies from 'education-based policies', which provide information for the sake of helping people make better decisions about their own behavior. The latter of these policies relate to the autonomy-based argument for transparency that I discussed earlier. For Joseph Stiglitz, this means that people have a basic right to know what a government is doing so that they can remain informed about its decisions.²⁵ Michael Mason also suggests that 'empowerment through information' can allow people to become more involved in decisions.²⁶

2.4 Publicity and justification

²⁴ Mitchell, R.B. 2011

²⁵ Stiglitz, J. 1999

²⁶ Mason, M. 2008

Chapter 5. Transparency

In addition to its implications for autonomy, accountability, and participation, people also care about transparency for the sake of publicity, and subsequently for justification. Whilst the concepts of transparency and publicity are sometimes analysed together, some suggest that they are distinct. In contrast to transparency, which involves open access to information, Daniel Naurin suggests that publicity involves having one's actions exposed to an audience.²⁷ Whilst transparency means ensuring that the public has the option of accessing information if it wants to, publicity means that this information is actually analysed by the public and discussed in public forums. Transparency is therefore a necessary, but distinct feature of publicity.

Several authors argue that publicity is an important feature of government. For both Immanuel Kant and Jeremy Bentham, government acts should be public, in the sense that they are subject to, and stand up to, public scrutiny.²⁸ John Stuart Mill argues that there should be open voting processes on similar grounds.²⁹

These authors promote publicity for different reasons. For Kant, publicity determines whether or not an act is right. Actions should receive public support, and acts are wrong if they fail to gain public consent. For others, publicity is an important part of justification. In chapter four, I argued that deliberation is an important part of procedural justice. Part of the reason for this is that deliberation encourages people to offer reasons that others can accept. That is, deliberation is important because it means that people justify their actions to others.³⁰ For Charles Larmore, this means bringing our reasons in line with those of others by giving reasons that each is able to endorse, thereby arriving at some common point of view.³¹ Encouraging people to justify their decisions to one another means encouraging people to give reasons that others are prepared to accept. Publicity does this by subjecting our actions to public scrutiny. This means that people are able to see what our actions are and consider their significance and relevance. Transparency therefore helps to orientate representatives towards actions that gain public appeal.

²⁷ Naurin, D. 2006

²⁸ Kant, I. 1795, p.381; Bentham, J. 1843, p.581

²⁹ Mill, J.S. 1865, p.355

³⁰ Rawls, J. 1999, p.137

³¹ Larmore, C. 2006, p.375

Chapter 5. Transparency

Transparency is important for publicity and justification. People have a right to know why the laws that govern them are passed. Transparency forces decision-makers to give reasons for their actions, to be publicly available, and to inform the public why a decision is made. Given that an actor should justify its actions to those under its authority, this means that actors should provide information about their actions to those that they act on behalf of. This only concerns information about what an agent's actions are. A separate issue concerns whether the public should have access to information about how people deliberate in public institutions. There are many issues that arise when considering the openness of deliberative discussions, and for this reason I discuss this issue in its own right in section three.

2.5 Trust

Aside from these intrinsic reasons for thinking that there is a right to know, transparency is also valuable because it brings about desirable outcomes. A world in which the public knows what powerful institutions are doing is likely to be better for people overall and this is important regardless of the intrinsic value that people hold for information disclosure.

One particularly important feature of transparency in this respect is its role in promoting trust. Increasing public information about an institution increases public support and trust for the institution. Certainly, the public is likely to be sceptical or suspicious about the actions of an institution that withholds information from people. This is Jeremy Bentham's second reason for open government.³² Bentham argues that people are more likely to trust governments that are open because transparency stops suspicions arising about what a government is doing and encourages people to accept its laws and rules. If actors are prevented from accessing information about a decision-making process, then this might bring about mistrust and suspicion about the actions of the institution. Transparency is also likely to bring about greater solidarity among those who are subject to an institution's rules, which, as I argued in chapter four, is also important for fairness. People are more likely to understand the rationale for institutional decisions if they can see how the institution is operating and how it is making decisions. This openness is necessary for norms of solidarity to arise.

³² Bentham, J. 1843, p.581

Chapter 5. Transparency

Trust is important for institutions generally, but it becomes particularly significant when institutions depend on public support. Some institutions, such as climate institutions, require the support of many actors. This happens, for example, when the institution lacks sufficient enforcement mechanisms and consequently need people's voluntary support and compliance. This support is only likely to arise if there is sufficient public trust in what the institution is doing. Transparency is therefore additionally important for ensuring public trust and support, which are necessary elements for successful climate change institutions.

2.6 The value of information

This gives us several reasons for supporting the public right to know both as a matter of fairness, and on instrumental grounds. The public has a right to know what an agent is doing if that agent acts on their behalf, or if it makes decisions that potentially affect public interests. This right is based on the fact that this information is valuable for autonomy, accountability, participation, and publicity. This right extends to information about the agent's actions and its decisions. But simply having access to information is insufficient for fairness. Fairness also means that this information is provided in a way that people can readily use.

To illustrate this point, it's worth recalling some of the tactics that are used to get around public disclosure requirements. Actors who are subject to these demands often produce excessive amounts of information, or obscure information using technical jargon. Such tactics make it difficult or costly for people to actually use the information that is provided. Access to information is therefore insufficient for achieving the ideals that I've set out in this section. If people have a right to know, then they also have a right to information that is readily accessible and easy to interpret.

This raises questions about who is responsible for providing this information, and who should ensure that people can access and interpret it effectively. If people have a right to know what an actor is doing, then it seems reasonable to say that the actor is responsible for providing this information and for ensuring that the public can easily access it. That is, the right to know implies that if an institution is making decisions

Chapter 5. Transparency

that potentially affect people's interests, or in the public's name, then it has an obligation to provide this information in the public domain. This does not just represent information disclosure. Rather, this means that institutions actively educate and inform the public about their decisions.

3. Transparency and deliberation

Transparency isn't just important for the reasons I've set out so far. In this section I draw attention to an additional reason for valuing transparency. People care about the deliberative quality of decisions, and transparency also plays a role here. Whilst the previous section discussed what information about the actions of an agent should be public knowledge, in this section I examine what rights the public has to know about the deliberative process which led to particular decisions – including what arguments decision-makers make and how they actually deliberate with each other. Let us call this information 'deliberative', as opposed to 'institutional' information.

Our discussion so far has concerned 'institutional' information. That is, the public right to know concerns, for example, what an institution does and what its decisions are. An institution is transparent in this sense, if information about its actions and decisions are accessible to the public. But a further consideration is 'deliberative' information. This concerns how deliberative decisions take place, which concerns how decision-makers actually discuss things and what proposals are considered. Deliberative information is also important for fairness.

There is an on going debate over whether deliberative decisions are best served by open, or closed discussions. Open discussions expose deliberation to public scrutiny, which means that the public can access and analyse information about the decision. On the one hand, some argue that exposing deliberation to public scrutiny forces decision-makers to give reasons that all can endorse. On the other side of the debate, people argue that deliberation means making proposals that are too controversial to make in public. This section considers the merits of each of these arguments and contributes to the debate by providing a compromise position that takes each of these matters into hand. I argue that, whilst some elements of deliberation should remain private, other elements should be open to the public.

Chapter 5. Transparency

3.1 The civilising force of hypocrisy

One argument for having open deliberation is that it is likely to improve the deliberative process. The thought is that public deliberation moves decision-makers towards the common good through the ‘civilising force of hypocrisy’.³³ This orientates us towards ‘public’, rather than ‘private’ reason through two steps.

The Civilising Force of Hypocrisy:

1. The Exposure Step:

Open deliberation makes people substitute bargaining by arguing. Openness exposes people’s actions to public scrutiny, making people less inclined to pursue bargaining tactics and leading them to engage in reasoned debate.

2. The Filtering Step:

Open deliberation moves us away from self-interest and towards the common good. When people deliberate, they try to reach agreement by giving reasons for their actions. It follows that if people deliberate in public, then they are forced to give reasons that appeal to all.

I’m much more concerned with the second of these steps than the first. For one thing, I’m not ruling out the possibility of reaching agreement through bargaining, so the fact that people might adopt bargaining tactics isn’t a concern. But even if this wasn’t the case, then it’s still unclear whether or not open deliberation actually encourages arguing rather than bargaining. The Exposure Step assumes that representatives don’t want to be seen holding up progress by bargaining for a position during public discussions. Public deliberation therefore encourages reasoned debate by discouraging these actors from holding out for a favourable bargain. But, as I show below, open deliberation doesn’t always move us towards reasoned argument. In fact, there may be some situations where publicity encourages people to bargain if, for example, a public representative is under pressure to achieve a strong position on an issue (from his or her constituents).

³³ Elster, J. 1986, p.11; Naurin, D. 2002, p.7

Chapter 5. Transparency

Focusing instead on the second step of the civilising force of hypocrisy, it's necessary to think about whether public deliberation really forces decision-makers to give reasons that all can accept. In a discussion of this topic, Simone Chambers argues that there are two elements to the 'Filtering Step' of deliberation:³⁴

2. The Filtering Step:

2.1 The Socratic Element:

Deliberating in public forces people to explain themselves to the public thereby encouraging decision-makers to give reasons that are well considered and thought out.

2.2 The Democratic Element:

Deliberating in public subjects people's actions to public scrutiny. This forces decision-makers to give public reasons in deliberative debates.

The Socratic Element appears quite straightforward. Public scrutiny means that information is available to the public and subject to public criticism and debate. Whilst people shouldn't necessarily expect deliberation to be improved through open debate (after all, people may already have well considered reasons) public scrutiny should encourage decision-makers to give good reasons, if this is not already the case. In this way, openness encourages decision-makers to review the quality of their own reasoning, because their openness makes their actions accountable to the public.

But the Democratic Element seems more contentious. Why should public scrutiny force decision-makers to give public reasons? According to Chambers, public exposure does several things in this respect.

First, it removes obstructionist arguments. Opening discussions up to public scrutiny forces people to act reasonably, rather than deliberately forestalling decision-making to scupper agreement altogether. There is empirical support for this view in the

³⁴ Chambers, S. 2004

Chapter 5. Transparency

literature on multilateral negotiations. For example, some claim that the openness of the negotiations for the Biosafety Protocol and the World Summit on Sustainable Development prevented actors from obstructing progress for this reason.³⁵

Second, publicity moralises behaviour, orientating people away from self-interested positions and towards moral reasons. This is what Robert Goodin has in mind when he suggests that open voting procedures force people to publicly explain their actions and reasons, thereby motivating moral behaviour.³⁶ People are embarrassed if they are seen behaving immorally, and are motivated towards reasons that they are happy to express publicly: namely, moral reasons. John Stuart Mill also argues that voting rights should be public for the same reason.³⁷ For Mill, people have an obligation to consider the public interest when they make decisions, and open votes removes selfishness by exposing one's choices to the public.

Third, publicity removes corruption by making decision-makers accountable to the public. This is the motivation behind Jeremy Bentham's support for public visitors in government assemblies.³⁸ By ensuring that the actions of representatives are open to public view, the public can hold these agents to account, thereby preventing undesirable behaviour. Open discussion therefore improves the quality of deliberative decisions by ensuring that representatives act in the public interest.

3.2 Plebiscitary reasons and the value of private debate

But despite these benefits, it is important to keep two things in mind here. First, open deliberation is not guaranteed to orientate people towards public reason. Whilst open discussions should encourage decision-makers to give public reasons, they may just end up repeating the same arguments as before. Even if the actions of a decision-maker are open to public scrutiny, their behaviour won't change if accountability mechanisms are weak, or if the public are not particularly demanding in this respect.

Second, whilst there are some ways that open discussions are beneficial for deliberation, there are at least four ways in which transparency is problematic here.

³⁵ UNEP 2007, p.4-14

³⁶ Goodin, R. 1992, p.127

³⁷ Mill, J.S. 1861, chapter 10

³⁸ Bentham, J. 1962, vol. 2

Chapter 5. Transparency

- (1) Open deliberation may bring about self-interested arguments. If a representative is acting on behalf of a group, then open deliberations may encourage the representative to make more self-interested claims. The 'democratic element' may force representatives to give reasons that are public in the sense that they are reasons that are acceptable to their constituents. But this doesn't mean that these reasons are acceptable to a broader public. In fact, a constituency may demand self-serving policies from its representatives.
- (2) Open deliberation may force representatives to adopt defensive strategies and refuse to compromise on issues. This is because conceding a point in an argument is seen as a failure to get what one wants. Openness therefore puts pressure on representatives to refuse to compromise on an issue or to concede positions in debates.³⁹ This is something that has become an issue in climate change negotiations, where publicly compromising on an issue is regarded as a failure to get the best terms that one can.
- (3) Open deliberation is problematic when it is necessary to address controversial matters. Effective deliberation involves unrestricted discussion about all possible issues so that actors can come to change their initial views and arrive at a common agreement. It is only by considering and discussing all of the relevant issues that people can come to see the force of the better argument. Sometimes people need to make decisions on controversial issues that are heavily contested in the public sphere. If issues are highly politicised or political unsavoury then fear of public reprimand may prevent decision-makers from putting forward all of the relevant views for a debate. This has led some to argue that information disclosure limits free expression and prevents people from giving objective advice.⁴⁰ People often request 'Chatham House Rules', or to speak 'off the record' when they discuss sensitive issues in a debate so that they can speak freely, without fear of being held to account for something later on. Sebastian Oberthür suggests that this was a problem in the

³⁹ Naurin, D. 2003, p.32

⁴⁰ Fenster, M. 2006, p.908

Chapter 5. Transparency

negotiations for the Montreal Protocol, where the presence of NGOs restricted bargaining among state delegates and held up negotiations.⁴¹

- (4) Open deliberation may also bring about ‘plebiscitory’ reasoning. Simone Chambers argues that, contrary to some accounts of open deliberation, publicity can encourage people to give reasons that appeal to popular reason rather than the common good. For Chambers, the issue here isn’t about selfishness. Rather, the problem is that publicity encourages people to present views that are ‘plebiscitory’, rather than well reasoned.⁴² By this she means that some reason – plebiscitory reasons – gain public support by appearing appealing or desirable, whilst lacking substantive content. Chambers argues that plebiscitory reasons can arise from: manipulation, pandering, or image maintaining. Elster also recognises that open deliberation can bring about these problems, encouraging ‘grandstanding and rhetorical overbidding’.⁴³

For Chambers, this means that the ‘Socratic Element’ of deliberation is improved through openness, whereas the ‘Democratic Element’ is improved by privacy. The challenge is therefore to develop a way of simultaneously encouraging people away from plebiscitory reasons and towards public reason.

3.3 Responding to plebiscitory reasoning

Taking up this challenge, Chambers argues that the key element of publicity is criticism, which is what drives us towards sound and independent reasoning, and away from plebiscitory reasons. Chambers argues that it’s possible to maintain this functional aspect of criticism in private debates by ensuring that discussions are subject to a diversity of opinion.⁴⁴ This exposes our reasons to a hypothetical range of views thereby stimulating the criticism necessary to bring about the benefits of public deliberation. To be sure, Chambers’ proposal does not deal with Elster’s first purifying effect of transparency on public reason, which moves us away from bargaining and towards reasoned argument. But, as I argued earlier, this isn’t something that should concern us anyway. Some issues should be resolved through

⁴¹ Oberthür, S. 2000

⁴² Chambers, S. 2004, p.393

⁴³ Elster, J. 1998, p.117

⁴⁴ Chambers, S. 2004, p.26

Chapter 5. Transparency

discussion, but that doesn't mean that people can't reach agreement through bargaining.

I agree with Chambers to this extent. She isn't alone in thinking that public-spirited deliberation can exist in closed debates,⁴⁵ and a wide range of views does stimulate criticism in deliberation and that this should lead us away from plebiscitory reasoning. Further, the fact that some decisions will be settled by bargaining isn't too problematic. As I've argued, attempts to prevent people from reaching agreement through bargaining on the basis of procedural justice are misguided. But Chambers' approach doesn't resolve all of our problems. Whilst private discussion deals with plebiscitory reasoning, the fact that they are exclusive is detrimental for trust and support. Given the importance of public support for institutions, it is necessary to think about how institutions can address these issues.

Some people suggest that one way around this is to permit private discussions whilst making the contents of these discussions available at a later point in time. The important thing is that people can 'speak candidly, changing their positions, and accept compromises' without worrying about how the public will react.⁴⁶ Mark Fenster advocates this approach, arguing that whilst the justifications for private decision-making quickly diminish, whilst the benefits of publicity remain strong.⁴⁷ Whilst some things can remain private now, information about these meetings should be available at some point in the future. Likewise, Gutmann and Thompson suggest a system where discussions take place behind closed doors, but all of the information about these discussions is made available to the public after a decision has been made.⁴⁸ This is essentially what happened in the aftermath of the COP15 negotiations in Copenhagen when the newspaper, 'Der Spiegel', published secret recordings of a private 'mini-summit' between delegates six months after the negotiations had concluded. Whilst the delegates were unaware that they were being recorded at the time, the full details of the discussions eventually became public knowledge.

⁴⁵ Naurin, D. 2004

⁴⁶ Gutmann and Thompson 1996

⁴⁷ Fenster, M. 2006, p.940

⁴⁸ Gutmann and Thompson 1996

Chapter 5. Transparency

Fenster is right to say that people should look to maximise the benefits of making decisions in private whilst also allowing the public to analyse these decisions where appropriate. But he is wrong to say that people should evaluate these decisions as soon as possible. Doing so negates the point of having private discussions in the first place. Likewise, Gutmann and Thompson's proposal is unlikely to discourage plebiscitory reasoning if decision-makers are aware that their discussions will become public knowledge in the future. The point is that avoiding the problems of plebiscitory reasoning altogether requires some level of privacy that should remain completely closed for a very long time, if not forever.

3.4 Finding public reasons in private debates

Institutions need to avoid plebiscitory reasoning whilst discouraging selfish reasoning. I suggest that institutions can do this by keeping deliberative discussions confidential whilst making the content of these discussions available to the public. This rests on a distinction between the different types of information that can be made public about a deliberative debate. I propose that there is a distinction between the 'content' and the 'process' of deliberation in this respect. The content of deliberation concerns the final facts of deliberation: what is decided, who ultimately advocates which positions, and the rationale for the decision. The process of deliberation, on the other hand, concerns how decision-makers actually deliberate. This concerns what proposals each decision-maker brought up, how specific issues were discussed and debated, and how individual decision-makers deliberated.

I propose that institutions can avoid plebiscitory reasoning, encourage decision-makers to give public reasons, and maintain public trust by making information about the content of deliberation public whilst keeping information about the process of deliberation private. This means that discussions are kept behind closed doors, and that the details about how these discussions took place remain permanently private (or at least for a very long time). This concerns information about which actors proposed what topics, and how decision-makers actually deliberated issues. Transcripts and recordings of deliberative debates should be confidential and there should be some level of privacy for people to discuss issues openly and without fear of public scrutiny.

Chapter 5. Transparency

But the content of these discussions should be public knowledge. This concerns information about what the conclusions of the discussion are as well as which actors ultimately advocated which positions. This includes information about what bargains are made, what conclusions are reached, and what each actor's final position is. But the discussion itself should remain private. That is, discussions should be held in private and the information about the exact details of these discussions, such as transcripts and audio recordings, should not be available to the public. The public can access information about how a group of decision-makers came to reach a decision, even if information about who voted for what principles and who advocated which positions is kept private.

This discourages plebiscitory reasoning by removing the temptation to resort to arguments that play to public appeal. Representatives aren't encouraged to adopt deliberate for the sake of public appeal because their discussions aren't public. But this also moves decision-makers towards public reasons by making their positions subject to public scrutiny. This also maintains public trust and control over the decision-making process by keeping the public informed about how decisions are made.

This also fits with the requirements of the right to know. The public right to know means that certain information about an institution should be publicly available. This applies to what an institution is doing and how it makes decisions. But the public right to know doesn't extend to information about the process of deliberation. Withholding this information does not prevent people from acting independently, or holding people to account, or advancing their interests in decisions. People have a right to know what an actor is doing if it acts on their behalf. But this doesn't extend to information about how discussions take place between actors. Therefore, whilst this section argues that there are important benefits from private discussions, this doesn't limit the information required for the right to know.

4. Privacy, secrecy, and desirable outcomes

So far, we've looked at what fairness requires for transparency. I've argued that: i) there is a public right to know what an actor is doing in certain cases, and ii) that there should be some space for confidential deliberation. But aside from fairness, the

Chapter 5. Transparency

amount of information that an institution makes public is also important for achieving desirable outcomes. I've already argued that transparency is important for trust, and subsequently for the overall success of the institution. In this section, I consider whether privacy and secrecy are ever valuable for achieving desirable ends in climate institutions. I first consider the roles that privacy and secrecy can play in bringing about more desirable outcomes. I then argue that ensuring public support for climate institutions is so important that it outweighs any benefits that privacy or secrecy may bring about.

4.1 Privacy

If transparency is about making information available to the public, privacy involves withholding certain forms of information from the public. As I argued in section three, withholding some sorts of information from the public is beneficial for deliberation. But in addition to this, withholding information from the public sometimes can lead to more desirable outcomes. Whilst the public right to know is based on procedural justice, on this account privacy may be valuable for substantive reasons. If privacy does bring about more desirable outcomes, then this implies that achieving procedural justice may come at the cost of reaching better outcomes. For this reason, this section explores the potential merit of withholding information about climate institutions from the public. I argue that there are some limited cases where privacy may be desirable here.

First, withholding information about climate institutions from the public may be desirable if people are incapable of making judgments about what best serves their interests. Climate change is an extremely complicated subject. Making good judgements about global climate policy requires taking into account a lot of technical issues, as well as an understanding of the role that risk and uncertainty should play in policy decisions. This means that in some cases people might be very bad at making judgements about what decisions that serve their best interests, and what measures climate institutions should employ. In these cases, it might be easier to implement a desirable policy by withholding information from the public. For example, effectively avoiding dangerous climate change may require policies that are so costly that they will not gain public support, even if adopting these policies brings about far better outcomes than not doing so. It might be easier for a climate institution to enact these

Chapter 5. Transparency

sorts of policies if it withholds information about their full costs. By withholding this information, climate institutions could make these policies sufficiently palatable to the public so that they gain the necessary public support for implementing them.

A different example shows how the problem of poor decision-making is made worse by intentional attempts to distort information. Recently, the IPCC reported that, contrary to earlier predictions, the global average surface temperature has remained constant despite significant increases in greenhouse gas emissions.⁴⁹ This led some to argue that the extent to which global temperature increases are related to greenhouse gas emissions is not as high as previously predicted, which in turn encouraged some to doubt the urgency of reducing global emissions.⁵⁰ Yet these accounts misinterpret the IPCC research. Whilst the global surface temperature has remained largely constant, this represents a small lag in an otherwise steady upward trend in warming. Further, there are many factors that might explain the lull in temperature increase, such as the effects of solar radiation, oceanic warming, changes in atmospheric humidity and aerosols from volcanic eruptions. In this case, providing information to the public can lead to outcomes that are worse overall, given that people sometimes misinterpret information.

These examples show that there are at least some cases where people are incapable of making good judgments about how their interests are best served by climate institutions. This might involve decisions that are controversial, unpalatable, or too complicated for to understand. On this view, it might be desirable to withhold some information about a policy from the public when the public are bad at making decisions.

A second way that privacy might bring about better outcomes in climate institutions is by discouraging corruption and bribery. This is something that John Stuart Mill argued in relations to voter privacy, on the basis that privacy prevents voters from being bribed or coerced.⁵¹ Whilst Mill ultimately supports open voting procedures, he recognises that it can open the door to political threats and financial bribes. Given that

⁴⁹ IPCC 2013

⁵⁰ WSJ 2013

⁵¹ Mill, J.S. 1861, chapter 10

Chapter 5. Transparency

people typically think that decision-making should be free from coercion and bribery, privacy may be beneficial for climate institutions in this respect. This is because full information disclosure can prevent people from acting as independent agents. Because information is non-excludable, providing information about how individual decision-makers participate to the public means providing information to other decision-makers. Yet this might mean that some decision-makers have the potential to coerce or manipulate others, by knowing how they are participating in decisions and by having access to information that may lead to corruption or bribery. The exposure of diplomatic cables from the WikiLeaks disclosure showed the tactics the US Government used to obtain information about delegates during the negotiation process of the Copenhagen Accord. The cables show how the US attempted to obtain the biographical details of individual delegates of other nation states as well as the officials organising the negotiation process.⁵² There is a concern that obtaining this sort of information may allow some decision-makers to gain an advantage over others. This is because having access to this information may put some in a position to manipulate or coerce others. In this respect, privacy might be desirable because it allows decision-makers to withhold information from one another, thereby discouraging undesirable factors such as bribery.

A third reason for thinking that privacy might be valuable for climate institutions is that transparency may be very costly in some situations. Full disclosure requires providing information about what an institution is doing in a way that the public is able to interpret and understand. Meeting this requirement might be so costly that it prevents an institution from functioning effectively. Climate institutions involve international actors on a global scale and their decisions have implications for every level of society. Responding to Freedom of Information requests may be so time consuming that it prevents people from doing other important jobs. Providing information about these decisions in a way that's easy to understand and interpret may therefore prevent the institution from actually making decisions. This gives us at least one further reason for thinking that privacy may bring about more beneficial outcomes.

⁵² Carrington, D. 2010

Chapter 5. Transparency

These three examples show that there are at least some limited reasons for thinking that withholding some information from the public might bring about desirable outcomes in climate institutions. Given that there is a public right to know certain information about climate institutions, this implies that there is a potential trade-off between the public right to know and achieving desirable outcomes in climate institutions. In what follows, I discuss the merits of secrecy in climate institutions. I then argue that promoting trust in an institution is so important in climate institutions that privacy and secrecy are unlikely to bring about better outcomes.

4.2 Secrecy

In contrast to privacy, which merely involves withholding information from the public, secrecy involves withholding information about what information is actually withheld from the public. This means that, not only is the public unaware of something (i.e. that something is private), but that the public is unaware that information is withheld at all. That is, whilst a government might withhold certain information about its actions (privacy) it might also withhold information about what it is actually withholding information about (secrecy).

The recent scandal concerning the collection of large amounts of public data by the National Security Agency provides a helpful example. On the one hand, there is public alarm that government agencies are collecting personal data on large scale. But there is a second issue that disconcerts people, which is that the public was unaware that this data was being collected at all.⁵³

Some people suggest there may be some cases where secrecy brings about desirable outcomes (in the case of counterterrorism, for example)⁵⁴ and it's worth considering whether this is the case in climate institutions. Secrecy might bring about desirable outcomes if it's necessary to maintain privacy whilst avoiding suspicion and mistrust. One area where this might be the case is geoengineering. Geoengineering policies may have the potential to prevent the very worst effects of climate change, and may even be necessary for avoiding dangerous climate change in the future. Yet these policies are also wholly undeveloped and so far unproven. It might be desirable for

⁵³ Poitras and Gellman 2013

⁵⁴ Stiglitz, J. 1999; Thompson, D. 1999

Chapter 5. Transparency

climate institutions to invest in developing these technologies so that they are available if they become necessary. Yet people may be incapable of making good judgments about these policies if climate institutions make information about this research available to the public. But merely withholding information about this sort of research is insufficient. If the public is aware that this sort of research is taking place, but unaware of the full details of what a climate institution is doing, then they may become extremely sceptical and suspicious about these policies, causing mistrust among the public. Climate institutions can avoid this problem by keeping this information secret, withholding information about geoengineering from the public altogether.

This represents at least one occasion where people might think that secrecy is valuable for climate institutions. But in what follows, I provide an argument against secrecy and privacy based on their negative effects on public trust. Given the importance of public trust for achieving action on climate change, I argue that privacy and secrecy are incompatible with effective climate institutions. This means that, contrary to my earlier suggestion, there is no trade-off between procedural fairness and achieving desirable outcomes in climate institutions.

4.3 Privacy, secrecy and climate change

I've suggested that there are some cases where either privacy or secrecy can bring about desirable outcomes. This doesn't extend to climate institutions. In fact, privacy and secrecy are likely to lead to detrimental outcomes for climate institutions.

Whilst privacy and secrecy can bring about desirable outcomes, the cost at which it does so is unacceptable. The problem is that privacy and secrecy are only likely to lead to mistrust, and hostile negotiations between actors. They are counterproductive to reaching a cooperative procedure that all can endorse, because they involve excluding actors from decision-making processes. Excluding those who are affected, or those in whose name a decision is made, is likely to lead to mistrust and suspicion in the institution. In this sense, these issues are not conducive to reaching a mutually acceptable outcome. Taking the example of geoengineering, making these processes more opaque is only likely to lead to greater confusion about their benefits. If geoengineering is an unproven technology, with uncertain outcomes, then public

Chapter 5. Transparency

institutions should make information about such issues more available, rather than more restricted. It is only through these means that people can come to see that they shouldn't pursue these measures. For these reasons, climate change institutions only benefit from increased transparency, rather than from more opacity.

5. The transparency of climate institutions

This chapter has defended three claims:

- (1) The public have a right to know what an agent is doing when either
 - (a) its actions affect their interests
 - (b) it is acting in their name

This information relates to:

- (a) what it is doing
 - (b) how its actions affect people
 - (c) how it makes decisions
 - (d) how it behaves in a decision-making process
 - (e) its rationale for a decision
- (2) Information about the content, but not the process, of the deliberative decisions should be open to public scrutiny
- (3) Privacy and secrecy do not bring about more desirable outcomes in climate institutions

This section now considers the implications of these claims for institutional design. It first draws together the normative arguments from earlier and states exactly what procedural justice requires in climate institutions. It then makes four proposals for how climate institutions can meet these requirements.

- (1) Promote decision-maker engagement with NGOs and other NSAs

Chapter 5. Transparency

- (2) Strengthen the domestic capacity of states to provide information to the public
- (3) Strengthen international institutions for disseminating information
- (4) Discuss controversial matters in private and provide the means for doing so

5.1 The public right to know in climate institutions

This section draws together the earlier arguments and formalises what these mean for climate institutions. Following what's been said in this chapter so far, procedural justice requires four things in climate institutions.

First, climate change institutions should make information about their actions available to the global public. This includes what decisions they make and how these decisions affect people. It also includes information about *how* they make decisions and their rationale for doing so. This follows the arguments from section two. I argued that there is a public right to know certain information about an agent if it acts in the public's name or if it makes decisions that potentially affect public interests. Earlier in chapter four, I argued that climate institutions fulfil these conditions. Given that these institutions decisions are made on behalf of the public, and potentially affect people on a global scale, climate institutions should provide information about their actions to the public on a global scale.

Second, states and other actors who act as representatives should also provide information about their actions to those that they act on behalf of. This includes information about how these actors participate in the decision-making processes of climate institutions, such as what these actors vote for, what positions they advocate, and what bargains they make. This is because the public right to know not only concerns actors whose actions affect the public, but also actors who act on behalf of public interests. Many agents act on behalf of public groups in climate institutions. This doesn't just concern states, but also NSAs who claim to act on behalf of groups within these institutions. These actors should make information about their actions publicly available, and if we're considering climate institutions then the actions of these agents concerns their behaviour in decision-making processes.

Chapter 5. Transparency

Third, procedural justice requires that actors provide information to the public in a way that is accessible and useable. I've argued that open access to information isn't sufficient for fairness; it is also necessary to provide information in such a way that the public can make use of it. Information should also be provided so that the public can use it effectively. For this reason, climate institutions, as well as the representative agents within them, should provide information to the public so that the public can act autonomously, hold actors to account, and scrutinise the actions of representatives effectively, and do so in a way that doesn't involve undertaking unreasonable costs. Further, it is the agent's responsibility for providing this information and the public should be able to use the information without significant cost or effort. I've argued that it is the responsibility of actors who act in people's names, or who make decisions that affect public interests, to provide this information to the public. As such, it is these agents that should fulfil this role in climate institutions.

Fourth, climate institutions should allow decision-makers to discuss controversial issues in private. In section three, I argued that whilst information about the content of deliberative decisions should be public, information about the process of these decisions should remain private. As such, climate institutions should provide room for decision-makers to discuss controversial issues in private and information about how deliberative decisions are reached should remain private. Climate institutions should ensure that information about what is finally decided, as well as the rationale for the decision is accessible to the public. It is necessary to balance the benefits of privacy with those of trust and public support.

These requirements spell out what procedural justice requires for transparency in climate institutions. Having formally said what procedural justice requires, I now make four suggestions for how climate institutions can achieve these requirements in practice.

5.2 Engaging with non-state actors

Climate institutions should engage with, and support the participation of, NSAs as observers in their decision-making processes. NSAs such as NGOs and media observers play an important role in interpreting what happens in multilateral

Chapter 5. Transparency

negotiations, translating this information, and then making it available to the public on a global scale. Further, these actors are seen as independent actors within climate institutions. They consequently gain greater trust and support from the global public and play a unique role in educating the global public and help to inform people about how the actions of climate institutions affect people. They also play a role in ensuring that state delegates are accountable to the global public in this respect. Climate institutions should ensure that there are enough observers in meetings so that important information is accessible to the public. This doesn't mean that an unlimited number of observers should participate, but rather that enough of these actors are able to access and monitor its decisions so that information reaches the public.

But giving these actors access to meetings and decisions is just one part of ensuring the involvement of NSAs. Climate institutions should also ensure that enough of these actors *can* participate, and that there is a sufficient diversity of these actors so that information is accessible to the global public, rather than some limited number of countries that have a high representation of NSAs. Some areas of the world may have little representation of NSAs, and in some cases, climate institutions should focus on engaging with NGOs and media organisations from around the world, and provide resources and funds to these actors if they are incapable of otherwise acting in this role. The point is that ensuring high participation of these actors is not enough; it is also important to ensure that a diversity of these actors participate in this role.

5.3 Strengthening domestic capacity

Climate institutions should take efforts to improve the domestic capacity of states to provide information to the global public. As I've argued, transparency isn't just about ensuring open access to information; it is also about ensuring that the recipients of this information can use it. Climate institutions should ensure that the global public is able to use the information that it provides effectively, and domestic institutions play an important role here. That is, domestic institutions that educate the public and ensure that they are informed about the issues that affect them play a critical role in this respect. Climate institutions should therefore make efforts to improve these institutions and encourage the flow of information from state delegates to the public in individual states. These domestic institutions include government agencies for public education as well as more independent bodies such as the domestic media

Chapter 5. Transparency

organisations that exist in different states. If these actors are incapable of providing a sufficient platform for the global public to learn about climate institutions at the local level then these institutions should provide assistance for doing so.

5.4 Providing information globally

Domestic institutions aren't the only actors that provide information from climate institutions to the global public. International institutions also play an important role in this respect. I've argued that it's the responsibility of climate institutions to provide information about their actions to the global public. Part of this means promoting international institutions that can disseminate information about the institution directly to the global public. This means providing a forum where people can access information, and taking into account issues such as language barriers and the fact that a large proportion of the world's population doesn't have access to the internet. It also means creating specific organisations that disseminate information to the public on a global scale. The IPCC plays an important role in providing information about climate change to the global public. The UNFCCC also provides extensive coverage of COP negotiations in many different languages through the web. This includes videos and transcripts of its meetings. Climate institutions should promote these sorts of measures to encourage information reaches its intended audience.

5.5 Accommodating private debate

Climate institutions should ensure that decision-makers institutions have the option of discussing matters in private, away from public view. I've argued that there is a public right to know what climate institutions are doing. But I've also argued that this doesn't extent to information about deliberative decisions, and that climate institutions should provide information about the content of its deliberative processes, whilst keeping information about its processes private. This means that climate institutions should provide facilities for decision-makers to discuss controversial issues in private. Decision-makers shouldn't have to reveal what they proposed and discussed in the course of the deliberative discussion. This means that these meetings take place in private, and that information about how decision-makers discuss issues and put forward positions is not available to the public. Transcripts and videos of such meetings would not be available to the public. At the same time, decision-makers should be accountable to those that they act on behalf of, and put forward public

Chapter 5. Transparency

reasons. Providing space for private discussions means that actors can consider controversial offers and speak freely without resorting to plebiscitary reasons.

But this only concerns information about the process of deliberative discussions. Climate institutions should ensure that information about the content of these discussions are available to the public. This includes information about which decision-makers actually advocated positions at the end of a debate. It also includes the decision-making group's overall rationale for taking the decision. One way of making sure that the decision-makers actually provide this information would be to have an independent observer in all private meetings who could verify that decision-makers provided this information after the meeting. These actors could encourage public trust and support in private decisions.

6. Conclusion

Transparency is an important part of procedural justice and the public has a right to know how climate institutions affect their interests as a matter of fairness. But full disclosure is detrimental to deliberation and it is necessary to balance these competing issues. This chapter has clarified this by showing where procedural justice requires access to information, and where it does not. It has argued that whilst privacy and secrecy may bring about better outcomes in some areas, this is not the case for climate institutions. Further, it has shown how climate institutions can provide information necessary for procedural justice whilst also promoting effective deliberative procedures. In doing so, I've also provided some suggestions for how climate institutions can meet these requirements.

Chapter 6. Bargaining

1. Introduction

Given the number of different parties and interests present, deliberation is unlikely to bring about consensus on how multilateral climate institutions should be designed. In fact, as I showed in chapter two, there are certain situations where there is significant reasonable disagreement over the fair terms of cooperation that these institutions should be built on. This raises the question of how parties should act when there is persistent reasonable disagreement.

There are at least two kinds of response. One approach is to use a voting method to arrive at a mutually acceptable agreement, which I discuss in the next chapter. A second method is bargaining, which involves making a concession, trade, or compromise to reach agreement.¹ Given the difficulty of reaching universal agreement among large numbers of actors, bargaining is seen as critical part of effective decision-making in multilateral institutions.²

Yet bargaining raises problems about the fairness of a decision-making process. For example, bargaining processes can be exploitative when two parties value a negotiated agreement differently. Some suggest that this happened in the preliminary negotiations of the UNFCCC, when many oil producing states put a relatively low valuation on reaching a negotiated agreement on climate mitigation.³ These states were subsequently able to hold out for large concessions from those who valued a negotiated outcome much more.

In other cases, there are limits to the types of bargains that it is possible to make in a fair climate agreement. Bargains often involve ‘linking’ one issue to another in order to reach a mutually acceptable agreement. For example, some claim that Russia’s endorsement of the Kyoto Protocol was dependent on its acceptance into the World Trade Organisation (WTO). Some linkages, such as those involving side-payments, or

¹ Raiffa, H. 1982, p.142; for a similar definition, see Nash, J. 1950

² Sebenius, J.K. 1984; Susskind and Ozawa 1992; Zartman and Touval 2010

³ Depledge, J. 2008

Chapter 6. Bargaining

those that relate to development aid, are often criticised as unfair.⁴ Therefore it's also necessary to think about what sort of linkages are permissible in fair negotiations.

Whilst bargaining is an important part of decision-making, fairness requires some limits on the extent to which parties can pursue their own self-interest in bargaining processes. Recalling the arguments from chapter four, fair decision-making processes are those that promote autonomy and independence, allow actors to advance their interests equally, and encourage justification through deliberative procedures. In this chapter, I apply these requirements to the bargaining processes of climate institutions. I argue that fair bargains are those that allow people to advance their own interests in a decision, under some limits of reasonableness. In specific, I argue that fair bargains are those that are (i) voluntary, and (ii) reciprocal. Bargains are voluntary if the bargainers are informed and rational, and if the bargains are free from coercion and manipulation. Bargains are reciprocal to the extent that they involve roughly equal concessions between bargainers.

Following these claims, I argue that there are several policy measures that can bring about fair bargaining in multilateral negotiations. Foremost, I argue that climate institutions should prohibit states from linking certain issues in climate institutions. In particular, I caution against using side-payments as a form of issue linkage. Given that many authors argue that issue linkage improves the likelihood of arriving at a mutually acceptable agreement, these conclusions represent an alternative approach to traditional policy recommendations for bargaining in climate institutions.

2. Voluntariness

The first requirement of fair bargains is voluntariness. That is, actors should enter agreements freely and through their own volition. If a bargain is involuntary, then it is clear enough that the bargainers lose some elements of autonomy and independence. Consent is therefore a necessary feature of autonomy.⁵ But consent isn't enough for voluntariness. People often think that an arrangement is involuntarily if an actor is forced into an agreement, or if an actor is in no position to reasonably reject it,

⁴ Albin, C. 2001

⁵ Wertheimer, A. 1989; Zwolinski, M. 2007

Chapter 6. Bargaining

regardless of consent. To this end, this section spells out some of the necessary conditions for voluntariness.

2.1 Rational and informed choice

People usually think that an agreement is only voluntary if all parties are rational and fully informed about the bargain. This is a necessary, but not sufficient condition for fair voluntariness. For example, Serena Olsaretti argues that voluntary agreements are those in which the parties are fully informed about the terms of an agreement.⁶ This means that parties are aware of what the bargain involves, what is being exchanged, and what the value of the bargain is. People cannot make effective decisions unless they are informed about the decision and they cannot act autonomously unless they know what is at stake. Decision-makers should also be rational, in the sense that they can interpret information and make correct judgements about their interests. These conditions are also true for equality and justification in a decision-making process. Decision-makers can only advance their interests in a decision and justify their decisions to one another if they are aware of the issues at stake and are informed about the decision.

But whilst decision-makers need information about what is being exchanged, this doesn't extend to information about how much each actor values something. This is often referred to as someone's 'reservation price'. A reservation price is the highest cost that an actor is willing to pay for a good, which reflects how much that actor values the good. This is a critical feature of bargaining. If A knows how much B values a good then, then A can demand that B pays his full reservation price for that good. Procedural justice doesn't require that decision-makers know what each other's reservation prices are. House buyers are not obligated to tell estate agents how much they are willing to pay for a house, nor are bidders expected to reveal how much they are willing to pay for a lot in an auction. Hidden reservation prices are compatible with fair procedures, because information about these prices isn't necessary for voluntary bargains. Voluntariness only requires that each bargainer knows what is being exchanged and is able to make an accurate judgement of his or her own valuation of the good.

⁶ Olsaretti, S. 2004

Chapter 6. Bargaining

But voluntariness also requires a certain degree of rationality. This means that actors bargain under some minimal conditions of rational thought and that they are capable of acting according to their own interests. That is, people are rational if they are able to formulate opinions and advance their interests and views in a bargaining process through negotiation and discussion.

This gives us two preliminary conditions for voluntariness: information and rationality. We can, however, go further. Voluntariness also involves being able to act independently of others. This gives us two further conditions, namely: an absence of manipulation, and an absence of coercion, which I discuss in turn below.

2.2 Manipulation

A further condition of voluntariness is that an agreement is free from manipulation, *if actors are reasonable*. There may be some cases where manipulation is justified if actors are unreasonable, but manipulation is unjustified if actors are reasonable. Manipulation, as with coercion and persuasion, is an attempt to influence someone's behaviour.⁷ Where coercion attempts to change behaviour through threats, persuasion does so through the force of better argument. Manipulation, on the other hand, involves changing someone's behaviour either through deception or by taking advantage of a weakness. The problem with this, as I show below, is that it alters our volition.

There are many different accounts of what manipulation involves and why it is undesirable.⁸ In general, these accounts share the premise that manipulation involves influencing another actor's behaviour, although they make different conclusions about how this is done. For Derk Pereboom, manipulation is about controlling an agent's actions in some way.⁹ But manipulation isn't just about controlling someone, in the sense of forcing someone to do something. Rather, for Pereboom, manipulation allows an actor to keep some elements of freedom and independence. For example, if someone manipulates me into joining a club by threatening to reveal something

⁷ Rudinow, J. 1978

⁸ Kane, R. 1999; Pereboom, D. 2001; Wertheimer, A. 1996

⁹ Pereboom, D. 2001, p.112

Chapter 6. Bargaining

embarrassing about me, then I still have a choice as to whether or not I join. In this respect, manipulated people maintain some independence.

Similarly, Robert Kane argues that what is distinct about manipulation is that it influences our behaviour changing our preferences and desires, rather than influencing our actions directly.¹⁰ For Kane, there is at least some sense in which a manipulated person acts according to his or her own free will. With coercion, people act according to the will of another.

But there is more to manipulation than Pereboom and Kane's accounts. If manipulation just involved influencing behaviour by changing preferences then it would be no different from persuasion. Rather, here I argue that manipulation alters our preferences through deception, or by taking advantage of a weakness.

Taking deception first, some argue that deception is a necessary feature of manipulation. For Robert Goodin, manipulation necessarily involves misdirection or fraud, because manipulation means that people are unaware that someone is changing their preferences.¹¹ If people are aware that someone is trying to manipulate us, then our subsequent actions must come about through our own volition, so people can only be manipulated if they are unaware that it is happening. Of course, manipulation doesn't necessarily mean that someone has intentionally misled us. I can manipulate someone if I know that they have an incorrect view but fail to rectify it.¹² But on this account manipulation does rely on some element of secrecy or deception.

But there is more to manipulation than just this. There are many situations where people are aware that someone is influencing their behaviour by changing our preferences, yet they are not acting according to their volition. If a bakery opens its windows in order to entice customers to buy bread, then people might say that its actions are manipulative. I might be on a strict low carb diet, yet unable to resist the smell of freshly baked bread, even if I am aware of the bakery's underhand tactics to influence me. Alternatively, if a salesman is particularly charming, then people might

¹⁰ Kane, R. 1999, p.64

¹¹ Goodin, R.E. 1980, p.9, 19

¹² I owe this point to Thomas Christiano (Christiano, T. 1996, p.118).

Chapter 6. Bargaining

think that he manipulates a gullible customer even if there is no deception involved. The salesman might make the customer feel comfortable and more willing to buy a product, simply by telling jokes and openly acting in a friendly way. These are cases in which people are manipulated, even in the absence of deception. Joel Rudinow shares this view.¹³ In a series of progressive thought experiments, Rudinow argues that deception isn't the only method through which manipulation operates. Rather, manipulation also involves changing someone's behaviour by playing on a supposed weakness that they have. In either case, our behaviour is changed in a way that fails to respect our freedom to act as independent agents. People become objects of someone's will, even if they do not fully lose their independence. As such, manipulation is problematic for autonomy and it is incompatible with fair bargaining.

This gives us three conditions for voluntariness. The first two conditions relate to information and rationality, whilst the third relates to manipulation.

2.3 Coercion

Having argued that voluntariness requires three features (information, rationality and lack of manipulation) I now turn to a fourth. In addition to the requirements of bargaining ability and absence of manipulation, voluntariness also requires the absence of coercion. Here, I argue that this is because coercion makes us subject to the will of another, thereby removing our ability to act as independent and autonomous agents. Coercion is also problematic for equality and justification in decisions. If someone's actions are subject to the will of another then they aren't able to advance their interests in a decision, nor are they able to justify our decisions to one another. Following our discussion from chapter four, fair bargains are therefore those that are free from unjustified coercion. I use the term: *unjustified* coercion because, as I ultimately show, there may be some circumstances in which coercion is permissible in fair bargains. But first it's necessary to consider what coercion entails.

There is a large literature on coercion and it is a concept that is defined in a number of different ways. This literature generally assumes that coercion involves getting someone to do something that they wouldn't have otherwise done. But this leaves no

¹³ Rudinow, J. 1978

Chapter 6. Bargaining

distinction between coercion and other forms of influence, such as manipulation and persuasion. As such, most authors argue that coercion involves forcing someone to do something. But there are very different understandings of what this ‘force’ involves. Here, I review several strands of this literature in order to draw some conclusions about what coercion is and why it is relevant for thinking about what fair bargaining involves.

I start by considering Robert Nozick’s account of coercion. For Nozick, A coerces B if A communicates a credible threat to B which makes B change his or her actions.¹⁴ This means that coercion is based on threats and sanctions, rather than direct force. Coercion is subsequently problematic for voluntariness because it removes an actor’s autonomy. Whilst this meets some of our ideas about coercion, it also seems too narrow. Under Nozick’s conception, coercive acts are limited to those that force an actor to do something through a threat. But not all coercive acts involve threats. As I argued in chapter three, A is coerced if B legitimately puts up a fence preventing A from getting to town. The fact that B has no other reasonable alternatives means that A’s actions impact B’s autonomy regardless of whether there is a threat involved. The important point is that something is coercive if it prevents us from making a free choice.¹⁵ This doesn’t just happen if someone threatens us. It also happens if someone forces an agent to take an option, or if people aren’t in a position to reject something. So it’s also necessary to think about cases where there is a direct use of force, which is something that Grant Lamond does.

Lamond defines a coercive act as one that meets three conditions: i) it forces an actor to do something against his or her will, ii) it subjects the actor to the will of another, and iii) the coerced actor is unable to do otherwise.¹⁶ This third condition is where Lamond’s account diverges from Nozick’s. It is not enough that an actor is threatened; an actor must also be forced to do something. This requires that there are no other reasonable alternatives available to the coerced actor. Coercion is important because it removes free choice; if a reasonable alternative is available, then the actor isn’t forced into an agreement.

¹⁴ Nozick, R. 1974

¹⁵ Olsaretti, S. 2004, p.119

¹⁶ Lamond, G. 2000

Chapter 6. Bargaining

A 'reasonable' set of alternative options is a sufficient range of options so that an actor can remain autonomous. If an agent's options are sufficiently limited then they don't have a choice over whether or not they accept an agreement. Procedural justice means that each actor should be in a position that is sufficiently appealing so that they aren't forced into accepting an agreement, because they are in a position to reject the proposal. In the bargaining literature, this is sometimes referred to as a Best Alternative To a Negotiated Agreement (BATNA).¹⁷ Bargainers with good BATNAs are in strong bargaining positions, whereas those with poor BATNAs are at a disadvantage. Procedural justice requires that bargainers have sufficiently good BATNAs so that they are not forced into accepting agreements. For Olsaretti, a sufficiently acceptable alternative is one that does not require us to give up any of our basic needs.¹⁸ This is one reasonable position to take on this issue. If people are in a situation in which they are unable to meet their most basic needs, then they are not in position to reject certain bargains, agreements or offers. If people are not in a position to reject something, then they have no choice and they are, in effect, forced into accepting the agreement.

But it's possible to force a person into a proposal even if they are able to meet their basic needs. I can coerce a wealthy person into accepting an agreement, if I threaten to reveal incriminating information to the public about her. The wealthy person is able to meet her basic needs, yet she does not have a sufficient BATNA to reject my offer of blackmail: either she accepts the unfavourable agreement, or she faces defamation. Whilst basic needs provide one way for thinking about whether or not an actor has a suitable range of alternative offers, this is only one limited part of what is important. It's necessary to provide each actor with sufficient options so that each is in a position to reject an offer. Our concern is that there are some offers that people cannot refuse because they are in a position that is so unfavourable that they literally have no choice but to accept what is put in front of them, however unfavourable that offer actually is. Whilst Olsaretti's definition of a reasonable alternative option is appropriate to a certain extent, it's also important to think about when an option is so bad that actors have no choice but to accept a proposal.

¹⁷ Fisher and Ury 1991

¹⁸ Olsaretti, S. 2004

Chapter 6. Bargaining

I've argued that someone can be forced into accepting an offer when his or her alternative to the offer is sufficiently bad that the person has no choice but to accept the offer. I propose that there is no way to answer what a sufficiently bad option is without considering individual cases in their own context. That is, in order to think about whether an actor faces a sufficiently bad alternative range of alternative options, it's necessary to consider whether that actor is in a position to reject a proposal in individual cases. Olsaretti's definition of basic needs provides one way of doing this, but there is more at stake than just this. Procedural justice requires that each actor has a sufficient range of alternative options to an agreement, yet the only way to determine this is to think about whether an actor is in a position to reject an agreement in individual cases.

It's worth pointing out that simply having one option on the table does not mean that people do not have a reasonable BATNA. If someone's current situation is sufficiently acceptable, then they are not forced into accepting an agreement, even if it is a 'take it or leave it' offer. Further, 'take it or leave it' offers are acceptable, provided that people are already able to meet their basic needs. It's also worth pointing out that if an actor has a very poor BATNA, then it does not follow that an actor is coerced in a bargain. If I fall over the side of a ship into freezing water and a sailboat happens to be passing by, then I hardly have a favourable BATNA when the sailboat offers to pull me out of the water. But it seems wrong to say that I'm coerced on this occasion. What is important about having an insufficient BATNA is that actors are not in a position to reject offers that they would otherwise refuse. But this doesn't mean that having an insufficient BATNA necessarily implies that someone is coerced if they accept an agreement.

In addition to this account of coercion, some authors also emphasise the role of intention for coercion. For Lamond, it is not enough that a coerced actor is forced into doing something. Rather, if A coerces B, then B must be subject to A's will. This means that coercion involves deliberately imposing a disadvantage on another actor. For Lamond, the fact that one actor intentionally changes the will of another makes it particularly damaging for autonomy. But intention doesn't play a critical role here. People can be forced into acting in a certain way even if they are not directly subject

Chapter 6. Bargaining

to the will of another. Recalling our example from earlier, a landowner may build a fence to keep foxes off her land. Whilst this prevents the farmer from getting to town, thereby restricting his autonomy (presuming there are no reasonable alternatives), it is not the landowner's intention to do this. Whilst intention may give us additional reasons for worrying about coercion, it is unclear why coercion doesn't involve acts that restrict our autonomy, even if this is unintended.

Alan Wertheimer offers an alternative account that avoids this problem by leaving intention aside. Wertheimer suggests that coercive arrangements involve two elements:¹⁹ (i) a choice element, whereby people are unable to exercise their free will, and (ii) a proposal element, whereby agreements take advantage of people. The first element suggests that an act is coercive if an agent is unable to exercise his or her free will. The second element implies that an act is coercive if it takes advantage of someone. For Wertheimer, these are the necessary conditions for coercion. A coerces B if A creates a situation in which B has no choice to accept A's proposal if A acts wrongly in creating B's situation. This seems to capture our main concerns about coercion, whilst leaving aside the issue of intention. Coercion is important because of its implications for autonomy. But we are not so concerned with autonomy per se; we are concerned acts that affect our autonomy. The important point here is that coercive acts infringe an actor's independence and autonomy. In this respect, intention doesn't play a key role and Wertheimer's account seems more appropriate for our understanding of coercion.

But contrary to Wertheimer's account, coercion doesn't necessarily involve taking unfair advantage of anyone. Whilst situations in which people take unfair advantage on one another are important, this is a matter of exploitation, rather than coercion. As I show in the following section, exploitation is a separate matter, and coercion doesn't necessarily involve taking unfair advantage of someone. This means that we should accept the 'choice' element of Wertheimer's account, whilst leaving aside his 'proposal' element.

This leaves us with two necessary conditions for coercion.

¹⁹ Wertheimer, A. 1989, p.32

Chapter 6. Bargaining

- i) There are no reasonable alternatives
- ii) There is a credible threat or forceful action

Given that fair bargains are free from coercion, one necessary condition for fair bargains is that these conditions are not met simultaneously. Some authors suggest that this means that decision-makers should be substantively equal. The only way to avoid coercion, so the argument goes, is to make sure that actors cannot make use of favourable distributions of power and resources.²⁰ But substantive inequalities don't necessarily lead to coercive decision-making. Substantive equality is very difficult to achieve in multilateral institutions, and radical resource transfers are likely to be unfeasible in practice. Further, there is no reason for thinking that substantive equality is a necessary part of avoiding coercion. To be sure, substantive equality would remove the possibility of coercion here, but this doesn't mean that substantive symmetries between actors will lead to coercive decision. Rather, it's necessary to ensure that these asymmetries do not play a part influencing decisions.

Before moving on, it's worth considering whether coercion or manipulation are ever justified in fair bargains. As I said earlier, if we're considering bargaining among reasonable actors, then fair bargains are those that are free from coercion and manipulation. But, although there isn't sufficient room to give this question the full attention it deserves here, coercion and manipulation do seem justified if we're dealing with unreasonable actors. Unreasonable actors are those that are irrational, or who make extreme claims and proposals. These actors can hold up decision-making and obstruct agreement. Given the need to reach agreement on climate change, there may be some situations where coercion is an important part of effective climate institutions. This might involve forcing unreasonable actors to accept an agreement or adopt more reasonable positions, or forcing uncooperative states to participate in, or comply with agreements. Whilst there is not enough space to develop these arguments fully here, coercion and manipulation may play important roles in effective climate institutions.

²⁰ Knight and Johnson 1997, p.294

Chapter 6. Bargaining

3. Reciprocity and exploitation

Thus far, I've argued that fair bargaining requires voluntariness and that this in turn requires sufficient information, rationality, and a lack of unjust manipulation and coercion. But this isn't all that's important here. There are some situations in which two parties enter an agreement voluntarily, each benefits, neither is coerced or manipulated, and yet people feel that there is something wrong with the agreement. This happens, for example, when bargainers receive highly disproportionate benefits from the agreement, or if the agreement leaves one party in an extremely disadvantageous position, leading us to think that the agreement is invalid because it is unconscionable in some way. I claim that such arrangements are unfair because they exploit one party. I suggest that fair bargains are those that allow actors to pursue their own self-interest to a limited extent, but that also involve some degree of reciprocity between actors. This is partly because, following chapter five, parties should be able to advance their interests equally in a decision-making process.

I'm going to show this by drawing from the existing literature on exploitation and reciprocity. Starting with exploitation first, the literature generally suggests that an agreement is exploitative if one actor takes unfair advantage of another. Unfortunately, as many point out, this gives us as many different ideas about exploitation as there are about what fair treatment requires.²¹ Several authors have tried to provide more concrete basis for exploitation, and the remainder of this section considers these claims, arguing that these are insufficient for thinking about exploitation.

3.1 Consent and mutual advantage

Some, such as David Miller, argue that exploitation depends on some defect in consent.²² That is, an actor wouldn't freely enter into an exploitative agreement, so exploitation must conflict with our requirements of voluntariness set out above. On this account, exploitation only arises if an actor is coerced, or if the bargainers have incomplete information, or if some other condition of voluntariness is absent. If this is the case then it isn't necessary to consider the problem of exploitation at all. If fair bargains are those that meet the requirements of voluntariness, and if exploitation

²¹ Arneson, R. 1992, p.350

²² Miller, D. 1987

Chapter 6. Bargaining

only arises when these are not met, then we've already set the conditions for avoiding exploitation.

But this seems a very limited account of exploitation. Whilst it's possible to imagine situations in which exploitation arises because an actor is coerced or manipulated, it's also possible to imagine situations in which people are exploited even if they fully consent to agreements.²³ If I forget my umbrella on a particularly rainy day, then I might think that I'm exploited if the only umbrella shop in town raises its prices to take advantage of my misfortune. But it seems strange to suggest that I don't consent to the agreement if I choose to buy an umbrella. I could brave the rain instead, and I am certainly not forced into the agreement. This example suggests exploitation doesn't depend on a defect in consent and a broader account of exploitation is needed than one that only focuses on this feature.

Given that I've already specified that fair bargains are those that are free from these issues, I'm particularly interested in cases where people feel that something is wrong even when an agreement is consensual. Further, given that actors only voluntarily enter agreements that are mutually beneficial, I'm concerned with consensual, mutually beneficial exploitation.

Some authors, such as Joel Feinberg, say that exploitation cannot arise in consensual, mutually beneficial transactions. Feinberg claims that it is wrong to say that one party gains at another's expense if a transaction is mutually advantageous (compared to a no-transaction baseline), since both parties benefit from the arrangement.²⁴ Given that people often think that exploitation involves taking advantage of someone, this suggests that exploitation cannot occur in mutually beneficial transactions. I agree that exploitation can leave one party worse off than before. But, contrary to this view, I claim that it is too restrictive to say that A never gains at B's expense in mutually beneficial transactions. A might gain from B's expense by taking a highly disproportionate share of the benefit, even if both parties benefit from the transaction.²⁵ This suggests that exploitation can occur in consensual, mutually

²³ For discussion, see: Wertheimer, A. 1996, p.247

²⁴ Feinberg, J. 1990, p.178

²⁵ Zwolinski, M. 1988, p.87

Chapter 6. Bargaining

advantageous transactions. It's therefore necessary to think about how exploitation can arise in such transactions

3.2 Alternative notions of exploitation

I've argued that, contrary to Miller, exploitation isn't dependent on a defect in consent and, contrary to Feinberg, it need not be mutually disadvantageous. But how else should we think about exploitative agreements? In what follows I suggest that our concerns about exploitation are most prevalent where people are left much worse off, or disadvantaged by a bargain. I argue that A exploits B when A takes advantage of a weakness of B in order to gain a highly disproportionate share of a bargain. In order to do this I first reject two common ways for thinking about exploitation. I then defend the claim that exploitation involves unfair advantage, and unfair outcomes.

Alan Buchanan offers one suggestion for thinking about exploitation, defining it as: 'the harmful, merely instrumental, utilisation...' of an individual '...for one's own advantage'.²⁶ But whilst this captures some of our thoughts about exploitation, one might think that there are cases that aren't exploitative even if someone uses an individual for their own advantage, and people can benefit from others without exploiting them. If two gamblers sit down at a poker table then people don't think that the loser has been exploited when the winner walks away with the kitty. There are clearly cases where people can fairly benefit from a bargain, provided certain conditions are met.

Others suggest that it's important to focus more specifically on the fairness of the transaction itself. For example, when discussing the exploitation of sweatshop workers, Jeremy Snyder suggests that there is a sense in which people care about the fairness of the transaction, regardless of what the outcome is.²⁷ Snyder argues that a person exploits someone if they benefit from an unfair situation. This happens, for example, if a person is not in a position to reject a proposal. This seems a more reasonable position to endorse. People certainly think that consensual exploitation can arise if someone is in an unfavourable situation, otherwise the exploited actor wouldn't accept the agreement.

²⁶ Buchanan, A.1988, p.87

²⁷ Snyder, J.C. 2008, p.391

Chapter 6. Bargaining

But the problem with this approach is that it isn't clear why an exploited actors needs to be in an unfair situation. It is possible to think of cases in which someone is exploited if they are in an unfavourable situation, regardless of whether this position is fair. Following our example from above, I'm not in an unfair position if I need an umbrella when it's raining, yet I am certainly in an unfavourable one. What's left is a notion of exploitation that relates to (i) an unfavourable position, and (ii) taking an unfair advantage. The first of these elements concerns the choices that are available to an actor, whereas the second concerns the distribution of the bargain (what Snyder calls 'a lack of reciprocation').

To this end, some theories of exploitation claim that there are at least two features at play: one procedural, and one substantive. For example, both David Miller, and Alan Wertheimer argue that an exploitative transaction is one that (i) arises from some advantage that one party has over another (the procedural element), and (ii) results in an outcome that is unfair for one of the actors (the substantive element).²⁸ In what follows, I suggest that exploitation concerns both of these elements. I argue that the first part of exploitation concerns asymmetric bargaining power: one party uses an advantage to gain more from another in a transaction. The second part of exploitation concerns unfair advantage: exploitation occurs when one party uses this advantage to gain an unfair share of the gains from a transaction.

3.3 Exploitation (1): asymmetric bargaining power

The first of these elements seems quite straightforward: A can only exploit B if A has a superior bargaining position (if we're considering consensual exploitation). If not, then it is difficult to see why B would accept the exploitative agreement. An actor is in a superior bargaining position if they have greater bargaining power. Although bargaining power is conceptualised in a number of different ways, it is often characterised as the relative ability of a party to align the outcome of a bargain with its own interests.²⁹

²⁸ Miller, D. 1987; Wertheimer, A. 1996

²⁹ See: Kverndokk, S. 1995, p.201; Zartman and Rubin 2000, p.7; Weiler, F. 2013

Chapter 6. Bargaining

Superior bargaining power can come about through different factors.³⁰ Bargaining power can arise through the resources that an actor has, which are often categorised as either ‘internal’ or ‘external’. Internal resources are those that are endogenous to the bargaining process itself, such as the ability to haggle, or the amount of information that an actor has about a decision. External bargaining resources are exogenous to the bargaining process, which includes issues such as the amount of material wealth that an actor has, or its political clout in the broader political context. Both internal and external resources influence the outcome of a bargaining process. An actor with more bargaining resources is able to shape the outcome of the bargain more than another. If an actor has greater bargaining power by virtue of either its internal, or external bargaining resources, then it is in a position to exploit another actor.

But bargaining power is also defined in terms of the relative value that each actor has on a negotiated agreement.³¹ If actors place different valuations on reaching a mutually acceptable agreement, then one actor can reach a more favourable outcome by rejecting the agreement and holding out for a better outcome. If I possess a ticket to a concert that you are desperate to attend, then I can exploit you by virtue of my bargaining power. I know that you value the ticket more than I do and that you will go to great lengths to attend the concert. This is what some people refer to as ‘hard’ bargaining (in comparison to ‘soft’ bargaining).³² One party can make threats or extract higher returns from an agreement because it values a mutual agreement less than another. Thomas Christiano says that this is how the US has traditionally acted in trade negotiations, where it has been able to negotiate advantageous agreements by making take it or leave it offers to those who are not in a position to refuse the agreement.³³ Because developing countries are unable to turn these offers down, the US has been able to secure trade agreements that are highly asymmetrical.

This account of exploitation requires the absence of a range of reasonable alternative options. This raises familiar questions about what an adequate range of reasonable alternative options is. Earlier, I suggested that someone can be coerced in an agreement if they do not have a reasonable alternative option to the agreement. I then

³⁰ Raiffa, H. 1982, p.54

³¹ Harstad, B. 2010, p.279

³² Weiler, F. 2013

³³ Christiano, T. 2009

Chapter 6. Bargaining

argued that there are situations where an agreement is exploitative even if it isn't coercive. But here it seems as though I am suggesting that an actor can be exploited if they are in an unfavourable bargaining position, where an unfavourable bargaining position can be defined in terms of the options that are available to an actor.

The problem is that this seems to support Miller's view (which I earlier rejected) that a defect in consent is necessary feature of exploitation. If an actor has no reasonable alternatives then he or she isn't in a position to refuse exploitative offers. According to this argument, a lack of reasonable alternative options is a necessary condition for exploitation. But this seems to pose a problem for my argument, which states that there can be voluntary, non-coercive exploitation. If a lack of reasonable alternatives is a necessary condition for both exploitation and coercion, then this argument no longer holds.

But this assumes that there is only a narrow understanding of what is meant by a 'reasonable set of alternative options'. Rather than describing whether or not someone faces a reasonable set of options as two distinct points, there might be a range of different positions. As Miller points out, this distinction is more likely to represent a spectrum with a range of different option sets rather than two binary positions.³⁴ If there is one reasonable option available (including the option to reject an offer), then a person is coerced if he accepts that option. If someone faces some limited set of reasonable options, then he might not be coerced, but he can still be exploited. If the only umbrella shop puts up the prices of its umbrellas on a particularly wet day, then it seems farfetched to say that I am coerced if I choose to buy an umbrella. I could brave the rain, or I could abandon my newspaper in an attempt to keep my hair dry. Each of these represents some reasonable alternative that I could pursue. Even if I am on the way to a job interview and I am desperate to remain presentable, I still have the option of rejecting the umbrella shop's offer. But whilst I'm not coerced by the shop's price hike, we might nonetheless say that I'm exploited. If my choices are limited (I'm desperate to stay dry) and the price of umbrellas is extreme then we do think that there is some sense in which I'm exploited. The point is that exploitation isn't dependent on a lack of reasonable alternative options. Rather, exploitation can arise in

³⁴ Miller, D. 2009, p.220, footnote 29

Chapter 6. Bargaining

situations where people face some limited range of options, which means that rejecting the agreement is an extremely difficult thing to do.

This is only a sufficient condition for exploitation. Asymmetries in bargaining power do not necessarily imply that one party is exploited. After all, if I offer to sell you the ticket at its face value, then I haven't exploited you. So there is more involved with exploitation than just asymmetric bargaining power.

3.4 Exploitation (2): unfair advantage

This is where the second element of exploitation comes into play. A transaction is exploitative if someone uses a favourable bargaining position to achieve a disproportionate share of the gains from a bargain. If 'asymmetric bargaining power' represents a procedural condition of exploitation, 'unfair advantage' represents a substantive condition. It is not just that parties have asymmetric bargaining power; exploitation means that one party uses this power to gain a disproportionate share of the gains from an agreement. Whilst selling the concert ticket at face value is not exploitative, demanding an exorbitant price clearly is. There is therefore a second necessary condition of exploitative transactions, which is that exploitative transactions involve taking unfair advantage of an actor.

But problems arise in thinking about what unfair advantage really means. In some cases, this is quite straightforward. If an actor is left in a very bad situation, or if there are highly disproportionate gains from an agreement, then it seems reasonable to say that one party has an unfair advantage. But then it is difficult to make more specific claims about what an unfair advantage is. In what follows, I consider some different options for thinking about this. For the most part, these all suggest that there should be some sort of equality in the arrangement, although there is a great deal of disagreement over what sort of equality this should be. Having done this, I then outline my own idea of how to think about disproportionate gains.

For Jeremy Snyder, exploitation is about failing to meet people's very basic needs. On this account, unfair advantage arises if someone is left in a situation where she is unable to meet her most basic needs. Snyder's subject is the exploitation of sweatshop workers, so his focus on basic needs is appropriate for his topic. But just because

Chapter 6. Bargaining

someone is left unable to meet her basic needs, it doesn't follow that she is necessarily exploited in a bargain. Imagine that a heavily indebted employee is discussing the terms of his employment with a new employer. The employer doesn't exploit the employee if he offers a very reasonable wage for the employee's services. This is true even if the employee is unable to provide for his basic needs, on account of his high debt. Snyder's account therefore seems a limited approach to exploitation and it's necessary think about cases where people are exploited even when their basic needs aren't compromised.

This leaves us in a difficult situation regarding unfair advantage. So far, I've suggested that fair bargains are those that are free from exploitation. I've also argued that there are two necessary conditions for exploitation: asymmetric bargaining power, and unfair advantage. But it is difficult to define exactly what unfair advantage entails. In response to this, I propose that, in situations where there are large asymmetries in bargaining power, fair bargains are those in which the final distribution meets a requirement of reciprocity. I outline and defend this claim below.

3.5 Reciprocity

My suggestion is that if actors have asymmetric bargaining power then fair bargaining requires that they bargain under a norm of reciprocity. This means that the more powerful actors make a 'fitting and proportional return for the good or ill we receive'.³⁵ That is, reciprocity involves acting in the way that we would expect others to act if they shared our circumstances. People make the same concessions that they expect others to make and they make offers that they would accept themselves.

Rather than maximising their self-interest, actors should restrain their behaviour. This doesn't mean that people should offer equal terms, or that they should make altruistic proposals. But it does require some limits on our own self-interest when there are differences in bargaining power. This notion of restraint is something that Henry Shue has proposed for fair bargaining in climate negotiations. Shue argues that:

³⁵ Becker, L.C. 2005, p.18

Chapter 6. Bargaining

“Justice is about not squeezing people for everything one can get out of them... [A] commitment to justice includes a willingness to choose to accept less good terms than one could have achieved – to accept only agreements that are fair to others as well as to oneself.”³⁶

In addition to Shue’s argument, people should restrain their actions according to reciprocity. Not only should they constrain their self-interest when others are in an unfavourable position, but they should do so by offering terms that they would accept as reasonable were they in a similar situation. This stops people from taking unfair advantage of others. The problem with exploitation is not that someone benefits from an agreement, nor that someone benefits from a favourable bargaining position. Exploitation is problematic when someone benefits from a bargain in a *disproportionate* way through a particularly favourable bargaining position. If decision-makers have unequal bargaining positions then they should restrain their actions by treating others as they would think they should be treated if they were in the same situation.

It is possible to make several claims about what a fair distribution looks like in this respect. (i) The final distribution should not represent a highly asymmetric distribution of the gains from a bargain. This means that there should be at least some minimal degree of proportionality in the benefits that arise from an agreement. (ii) Neither party should be left in a worse situation than before the bargain. If both parties should gain some benefit from the transaction then neither party should be in a worse situation after the agreement. (iii) The outcome of a bargain should not worsen existing asymmetries in bargaining power. This is because exploitation does not just involve the distribution of the gains from cooperation. One party can exploit another by taking further advantage of an existing advantage in bargaining power. Fairness requires that bargains do not exacerbate existing asymmetries in bargaining power. Taken together, these provide some minimal requirements for fair bargaining among actors with roughly equal bargaining power. These requirements are necessary because fair bargains are those that are free from exploitation. I’ve argued that, whilst

³⁶ Shue, H. 1992, p.385; Cecelia Albin makes a similar argument (Albin, C. 2003a, p.377-8).

Chapter 6. Bargaining

the exact requirements of exploitation are difficult to define, these represent some minimal criteria for avoiding exploitation in bargaining processes.

It's worth asking why procedural justice doesn't allow self-interested bargaining among free and equal parties. One might argue that if people consent to the terms of an agreement, then it doesn't matter whether the agreement has come about through manipulation or aggressive bargaining tactics. In some bargains, coercion and self-interest are fundamental elements of the game, so it seems strange to suggest that people should constrain their self-interest in the way that I've suggested.

To respond to this objection, it's worth noting that the cases where it's permissible to pursue our own self-interest unchecked are very rare, and only occur when certain conditions are met. For example, both parties are well aware of what the rules are (no one is unaware that the other is withholding information, even though that information is unknown about), and neither is bargaining over basic needs. But this isn't the case in the bargaining processes in climate institutions, where reasonable actors should bargain fairly over the fair terms of cooperation on climate change. This is a public context where important issues are at stake. Whilst there are some situations where aggressive bargaining is permissible, these are very different to the subject that we're addressing.

4. Issue linkage

So far, I've argued that there are two conditions for fair bargains: (i) voluntariness, and (ii) reciprocity. This section builds on these claims by specifically considering the most prominent form of bargaining in climate institutions: issue linkage. This involves 'linking' one policy issue to another, thereby allowing actors to exchange things that they value differently in order to reach a mutually acceptable agreement. Because this process involves trading concessions and gains, issue linkage is a case of a bargaining process.

This section starts by defining issue linkage and discussing its role in climate institutions. I show that there are several different forms of issue linkage in multilateral institutions. This provides the necessary background for making policy

Chapter 6. Bargaining

recommendations about issue linkage in climate institutions, which is something that I go on to do in section five.

4.1 Positive and negative issue linkage

Issue linkage is often classified as either positive, or negative. Positive issue linkage occurs when both parties gain from the agreement. In this sense, positive linkages are ‘integrative bargains’, which are those for which the total payoff available to actors increases through the process of bargaining.³⁷ This happens, for example, if two actors value something differently, or if each party has a production advantage over another. If I have a ticket for a window seat on a train, but I prefer to have a lot of leg space, and if you have an aisle seat but enjoy fine views, then we can achieve a mutually advantageous bargain by exchanging our tickets. In climate institutions, positive linkages might concern linking issues such as trade and emissions mitigation. Some suggest that Russia’s acceptance of the Kyoto Protocol was a direct condition of its accession to the WTO.³⁸ The idea here is that Russia was initially reluctant to join the Kyoto Protocol. Yet Russia valued participation in the WTO very highly, whereas many members of the WTO valued Russia’s participation in the Kyoto Protocol. Given that these two groups valued Russia’s participation in these two agreements, they were able to reach a mutually acceptable agreement by finding a mutually acceptable agreement.

In contrast to positive linkage, where both parties gain from the agreement, negative linkage involves one party being made worse off than before. Given that bargainers will not voluntarily enter agreements that make them worse off, negative linkage is associated with the use of coercion, either through sanctions or threats.³⁹ Barrett and Stavins set out several negative linkages that states can make in climate institutions, including reciprocal measures, financial penalties and trade restrictions.⁴⁰ The authors also note that the threat of trade restrictions played an important role in ensuring the participation and compliance of a large number of states in the Montreal Protocol. The key point here is that, in contrast to positive linkage, negative linkage involves

³⁷ Raiffa, H. 1982, p.144

³⁸ Chasek *et al.* 2006, p.126; Hall *et al.* 2010, p.672; Karp and Zhao 2010; Andonova and Alexieva 2012

³⁹ For a discussion of threats in decisions, see: Knight and Johnson 1997, p.294

⁴⁰ Barrett and Stavins 2003, p.363

Chapter 6. Bargaining

making an actor worse off than before, or threatening to make an actor worse off than a pre-bargain baseline.

4.2 Related and unrelated issue linkage

In addition to the distinction between positive and negative linkage, I suggest that there is also a distinction between linking issues that are ‘related’ or ‘unrelated’. Related issues are those that have some sort of connection, or overlap in some way. This means that taking action on one policy area directly affects another. There are several examples of this in climate institutions, and two of the most prominent are the Clean Development Mechanism (CDM) and Reducing Emissions for Deforestation and Forest Degradation (REDD). The CDM is a mitigation scheme that links emission reduction projects in developing countries to emissions trading schemes in industrialised countries. The idea is that this promotes development whilst also reducing carbon emissions. REDD connects forestry projects to emissions mitigation policies, thereby realising joint gains between these two ends. Both of these policies involve linking different areas (development and mitigation, and forestry and mitigation) in order to realise joint gains. Other examples concerning climate change include the linking of the climate and trade regimes.⁴¹

It’s also possible to link ‘unrelated’ issues in multilateral institutions. These are issues that aren’t directly related: changing policies in one issue area doesn’t affect the other. For example, an unrelated issue linkage might involve linking extradition treaties to trade agreements. Alternatively, territorial disputes could be linked to environmental matters. These sorts of issue linkage are less prevalent in climate institutions. For one thing, climate change affects almost every aspect of society, so it’s very difficult to think of issues that aren’t related to climate change in some way.

4.3 Issue linkage and procedural efficiency

Some suggest that issue linkage is important for mutually acceptable multilateral agreements. Issue linkage increases the potential for parties to reach agreement on contested decisions. For this reason, many decision theorists advocate incorporating a

⁴¹ Stokke, O.S. 2004, p.350; Ghosh and Woods 2009, p.473; Harstad, B. 2009b, p.292

Chapter 6. Bargaining

wide range of issues and dimensions in multilateral negotiations.⁴² This is something that has been taken up in the literature on environmental governance, which includes discussions about the potential benefits of linking environmental issues to: energy security,⁴³ economic development,⁴⁴ financial side-payments,⁴⁵ technology transfer,⁴⁶ and trade.⁴⁷ In fact, several authors suggest that issue linkage is crucial to helping parties to reach agreement in climate institutions.

But some argue that issue linkage is not always favourable from the point of view of procedural efficiency. Cecelia Albin criticises issue linkage on the grounds that it complicates negotiations that are already technically dense.⁴⁸ Climate change negotiations are already difficult to manage and introducing more issues is likely to put additional burdens on decision-making processes that are already strained. Limiting negotiations to a single issue keeps things simple.

Other authors suggest that issue linkage may lead to obstructionism. Andresen and Wettestad argue that increasing the number of issues at stake in a negotiation makes it more likely that potential controversies and ‘blocking points’ will arise.⁴⁹ This might be particularly relevant for climate institutions, where many issues are politically sensitive. Attempting to link sensitive issues to other policy areas rather than dealing with them in their own right may stir up greater resistance to progress and agreement. Whilst supporting issue linkage for some reasons, James Sebenius suggests that linking divisive issues may destroy the possibility for an agreement on otherwise tractable issues in multilateral negotiations.⁵⁰

This shows that, whilst it is sometimes desirable from the point of view of procedural efficiency, issue linkage also has its downsides. There are strong arguments on both sides of the debate of whether issue linkage improves the possibility of reaching

⁴² Raiffa, H. 1982; Susskind and Ozawa 1992, p.152; Susskind, L. 1994, p.87; Harstad, B. 2010, p.291

⁴³ Hall *et al.* 2010, p.672

⁴⁴ Depledge and Yamin 2009, p.448

⁴⁵ Barrett, S. 2001; Barrett and Stavins 2003; Sheeran, K.A. 2006

⁴⁶ Carraro and Siniscalco 1996

⁴⁷ Barrett, S. 1995; 1997

⁴⁸ Susskind and Ozawa 1992; Mitchell and Keilbach 2001, p.894 footnote; Albin, C. 2003a, p.14 footnote

⁴⁹ Andresen and Wettestad 1992

⁵⁰ Sebenius, J.K. 1984, p.182-217

Chapter 6. Bargaining

agreement in multilateral institutions. This is a matter for empirical analysis and it isn't possible to make any concrete statements about the desirability of issue linkage in climate institutions. But it is possible to make some remarks about how climate institutions should respond to this debate. Climate institutions should take each of these sides of the argument into account when making proposals about what issues decision-makers can bring to the table in its decision-making processes. They should acknowledge that increasing issue linkage can improve the chance of reaching a successful agreement, whilst also remaining wary that issue linkage can complicate and exacerbate already difficult negotiations.

Taking both sides of this argument on board, we can now turn our attention to the fairness of issue linkage. In what follows, I draw on the earlier arguments of this chapter to show that, whilst issue linkage is important, certain issue linkages are neither desirable, nor permissible in climate institutions.

5. Issue linkage in climate institutions

In this chapter, I've done two things. First, I've argued that there are two conditions for fair bargains: (i) voluntariness, and (ii) reciprocity. Voluntariness means that bargainers are informed and that bargains are free from manipulation and coercion. Reciprocity means that each decision-maker puts restraints on the sorts of demands that it can make from other actors. Provided that these conditions are met, procedural justice allows actors to pursue their own self-interest in bargains. Second, I've also shown how one particular form of bargaining, issue linkage, takes place in multilateral institutions. In doing so, I've provided a brief typology of some of the different forms of issue linkage that takes place in this context. This section now combines these two strands in order to make some policy recommendations for issue linkage in climate institutions. I suggest that climate institutions should promote issue linkage between related and unrelated issue areas in negotiations. However, there are several limits on the sorts of linkages that are permissible in this context.

5.1 Promoting positive issue linkage

Following the different categories of issue linkage that I defined in section four, I propose that climate institutions should promote and facilitate positive issue linkage between both related, and unrelated issues in multilateral negotiations, with some

Chapter 6. Bargaining

limitations. This is for the sake of the procedural benefits outlined in section 4.3. Issue linkage allows parties to come to mutual agreement on contested issues and it is an important part of making decisions in climate institutions. At the same time, climate institutions should be wary about promoting issue linkage where this makes negotiations too complicated, or where it introduces issues that are divisive. Climate institutions are already extremely complicated and face many procedural difficulties. In some cases, expanding issues causes more problems than it solves. This happens when introducing issues makes negotiations more complicated, or introduces controversial or divisive issues. That is, climate institutions should encourage and facilitate linking different policy areas where these policy areas concern the same issues, and where this does not make negotiations overly complicated.

This is true even when decision-makers do not have a sufficient BATNA. Earlier, I suggested that bargaining can be problematic if decision-makers do not have a sufficient BATNA, because this introduces the possibility of coercion, manipulation, or exploitation. But this doesn't mean that climate institutions should prohibit bargains between actors that do not have sufficient BATNAs, since this would prevent those actors who are in this position from benefitting from bargaining. Just because manipulation, coercion and exploitation *can* arise if an actor has an insufficient BATNA, it does not mean that these issues *will* arise. Rather than preventing bargaining between those that don't have sufficient BATNAs, climate institutions should ensure that bargaining processes that involve these actors are fair, despite the fact that some actors do not have sufficiently fair alternatives to a negotiated outcome.

This means that there are certain limits on the linkages that decision-makers should be able to make in climate institutions. In what follows, I draw on the normative arguments from sections two and three to stipulate what types of linkages are permissible in climate institutions, even when states do not face a reasonable BATNA. I propose that some issue linkages are permissible in climate institutions, even when there are large power asymmetries between actors, provided that certain conditions are met.

Chapter 6. Bargaining

5.2 Prohibiting negative linkage

In section two, I argued that fair bargains are those that are free from unjustified manipulation and coercion. This is because fair bargains are those that are voluntary, and these are two necessary conditions for voluntariness. For this reason, climate institutions should prohibit unjustified negative issue linkage in its decision-making processes. Decision-makers should not be allowed to make unjustified threats to one another, nor should they be allowed to force each other into agreements. These sorts of linkages go against the conditions of voluntariness set out earlier.

But this doesn't mean that climate institutions should prohibit negative issue linkage altogether. As I suggested in section two, there may be some cases in which both coercion and manipulation are justified in fair bargains. This might happen, for example, if decision-makers are unreasonable, if for example, they intentionally obstruct agreement, or make extreme and unreasonable demands. In these cases it might be necessary and permissible to use threats and sanctions in order to encourage these actors to act reasonably. The question of whether or not states can legitimately impose threats or sanctions on those who are not part of a climate change agreement is too great to take up here. However, the point that I want to make is that negative issue linkage cannot be ruled out as a possible policy response to unreasonable actors.

One thing worth saying here is that these measures should be used with caution. Whilst threats and sanctions may be permissible if actors are unreasonable, using these measures is likely to be very detrimental to the overall negotiation process. This might lead to hostility within the institution and a breakdown of cooperation. Whilst manipulation and coercion may be important parts of climate institutions that address climate change successfully, there may be severe downsides here.

5.3 Third party approval

Further to negative issue linkage, there are other conditions for fair issue linkage in climate change agreements. Climate institutions should ensure that issue linkage does not bring about manipulation, coercion or exploitation. In what follows, I propose that climate institutions should monitor bargains and prevent actors from linking issues that are detrimental to the overall negotiation process, or that allow one state to exploit another. Earlier, I suggested that people shouldn't take advantage of those who

Chapter 6. Bargaining

are not in a position to reject an offer. I also argued that reciprocity also means that the terms of the agreement should not represent a highly asymmetric distribution of the benefits of cooperation that the outcome of a bargain should not perpetuate existing disadvantages.

This means that, where states have insufficient BATNAs, climate institutions should prevent other states from taking advantage of them. This doesn't mean that climate institutions should prohibit linkages with these actors. This would be doubly unfair, since it would prevent those who are already worse off from enjoying the benefits of issue linkage. But climate institutions should ensure that these actors aren't manipulated, coerced, or exploited in the bargaining process by virtue of the fact that they are not in a position to turn refuse an offer.

One way of achieving this would involve an objective third party actor that would monitor and approve any issue linkages and bargains between states. Bargains would have to meet this actor's approval, and bargainers would have to show that neither party is exploited in the bargaining process. This could involve the Chair of the institution, or some other similar body, to monitor the way that decisions are made and prevent bargains and agreements where these conditions aren't met. Decision-makers would also be able to raise concerns about manipulation and coercion with the Chair in order to prevent this sort of linkage.

Further, climate institutions should prevent bargains that worsen existing power asymmetries. This might mean restricting linkages to issue areas outside of climate institutions. For example, Burtraw and Toman argue that there are several potential areas in multilateral negotiations where there may be the potential for coercive use of unrelated issues.⁵¹ These include, for instance, the Jackson-Vanik Amendment (1974), which was a provision of US federal law that denied the "most favored nation" status to trading partners that constrained free emigration and other human rights. Likewise, Cecilia Albin also argues that it is unethical to offer economic aid to poor states in exchange for entering agreements that compromise their safety.⁵² Climate institutions

⁵¹ Burtraw and Toman 1993, p.128

⁵² Albin, C. 2003a, p.14 footnote

Chapter 6. Bargaining

should therefore avoid linking issues where there is a possibility that states may be able to exploit advantageous positions in other issue areas.

5.4 Side-payments

Further to these conditions, climate institutions should also discourage the use of side-payments in bargaining processes. Whilst positive issue linkage links two policy areas to each other, side-payments specifically involve the transfer of material wealth for the purpose of making an agreement more attractive to a decision-maker.⁵³ Some argue that side-payments play an important role in creating incentives for participation and compliance in multilateral institutions.⁵⁴ But linking issues to monetary values is also problematic, and there are at least two reasons why climate institutions should prevent side-payments between states.

The first problem is that using side-payments may bring about moral hazard. That is, if states see that others are receiving compensation for their endorsement of an agreement then they may make similar demands in exchange for their own endorsement. Alternatively, providing side-payments for cooperation may lead to a shift in attitudes away from supporting public institutions for collective action and towards the expectation of a payment. Of course, this is also likely to arise with other forms of issue linkage. If a state links one policy to another to encourage state participation, then other states may demand the same benefits. But there is something distinct about monetary transactions that specifically encourages perverse incentives.

A second point is that side-payments are sometimes seen as a form of bribery. This is problematic because these sorts of linkages are seen as unfair or disrespectful. Bribery carries many negative connotations and is something that's been brought up within the UNFCCC. At COP15 some states saw the offer of adaptation funds in return for their agreement as a bribe.⁵⁵ The delegation of Cuba was most vocal on this issue, claiming that it represented 'blackmail'. The point here is that there are at least some linkages that are damaging for the climate institutions more generally, aside from considerations about what it means for specific bargaining parties. Given that they

⁵³ For discussion in relation to the trade regime, see: Ghosh, A. 2010, p.3. For a discussion in the context of climate change: Burtraw and Toman 1992, p.131.

⁵⁴ DeSombre, E. 2002, p.19; Barrett and Stavins 2003; Viguier, L. 2004, p.197

⁵⁵ Dimitrov, R.S. 2010b, p.813

Chapter 6. Bargaining

involve direct transfers of wealth, side-payments seem to present more problems in terms of manipulation, coercion and exploitation. For this reason, climate institutions should limit the use of side-payments in bargaining processes.

But this does not rule out the use of all monetary transfers between states in climate institutions. Some transfers, such as those relating to compensation for environmental damage or development aid for adaptation, are important as a matter of justice. These sorts of payments differ from side-payments to the extent that they are based on what is owed to people as a matter of principle, as opposed to improving the desirability of an agreement for self-interested bargainers. So whilst climate institutions should limit the use of side-payments, this does rule out all monetary transfers between states. The relevant standard for a justified payment is whether it is based on principle, rather than self-interest.

5.5 Information and influence

This gives us several policy measures for ensuring fair bargaining in climate institutions. But there is one further issue that arises from the earlier discussion about fair bargains that doesn't directly concern issue linkage. Earlier I argued that fair bargains are free from manipulation and this implies that there are limits on the sorts of factors that can come to influence the final outcomes of decisions.

When thinking about fair bargaining in climate institutions, this puts some constraints on the sorts of factors that should influence discussions. This is something that Brighthouse and Fleurbaey discuss in the context of competence in democratic decision-making.⁵⁶ The authors suggest that there are many factors that can come to influence a decision aside from formal power (such as a voting right). This includes charisma, reputation, bargaining skill, and the ability to give reasons. For Brighthouse and Fleurbaey, people should distinguish between legitimate and illegitimate sources of influence, where legitimate sources are those that lead people to adopt positions through rational reflection, whilst those that are illegitimate do not. That is, legitimate sources of power are those that bring people to change their minds because they have come to accept sound reasons. Whilst Brighthouse and Fleurbaey's discussion concerns

⁵⁶ Brighthouse and Fleurbaey 2010, p.11

Chapter 6. Bargaining

legitimate deliberation, their argument is also relevant for our discussion of fair bargaining.

Climate institutions should ensure that decision-makers are swayed by legitimate, rather than illegitimate sources of influence. This is because illegitimate sources of influence are manipulative. These factors influence discussions through deception, or by taking advantage of a weakness. Climate institutions should take steps to prevent illegitimate factors from influencing discussions. This might involve putting constraints on the information that states can make use of in discussions, by requiring that all information is publicly verifiable. It might also involve holding actors to account for the statements that they make in discussions in order to avoid situations where people make charismatic but vacuous speeches.

6. Conclusion

Bargaining is an important part of decision-making in climate institutions and it is necessary to think about how this can be done fairly. In this chapter, I've argued that fair bargains are those that are voluntary and reciprocal, which means that bargains are free from manipulation and coercion, and that they take place among informed and rational actors. Following these points, there are several constraints that climate institutions should put on the sorts of linkages that decision-makers can make in their decision-making processes.

Chapter 7. Voting

1. Introduction

Climate change institutions require voting mechanisms to make collective decisions. At present, there is an emphasis on consensus in the UNFCCC, as well as most multilateral climate institutions, which means that decisions are only adopted if none of the decision-makers openly objects to the decision. The problem with this approach is that universal support is needed before decision-makers can reach an agreement on an outcome. This gives individual actors the power to block agreement and leads to outcomes that reflect the ‘lowest common denominator’.¹ One way around this is to adopt majority rule, which is increasingly seen as a potential solution to some of the procedural problems of climate institutions.²

Despite the support for using an alternative voting mechanism to the consensus rule in climate institutions, little has been said about the fairness of such rules, or about the voting weights that should be used if climate institutions pursue this option. Voting weights determine the amount of influence, or say that each actor has in a decision. This isn’t an issue if decisions are made by consensus, since every decision-maker has an equal opportunity to block a decision by objecting to it. Giving more votes to an actor therefore has no impact on the final decision. But voting weights are important if decisions are made by majority rule. Multilateral institutions that use majority rule for making decisions assign voting weights in very different ways, and this is something that has important implications for the overall fairness of the decision-making process. Some institutions, such as the UN, use a system of voting parity by applying a rule of ‘one state-one vote’, which emphasises the importance of the state.³ Other institutions, such as the IMF and the World Bank, assign votes in a way that reflects the financial contribution that each actor makes to the institution. Given that there are great disparities in the population size of different countries, there are also questions about what role population should play fair voting processes.

¹ Prins and Rayner 2007b, p.974

² Harstad, B. 2009a, p.3; Rajamani, L. 2011a; Biermann *et al.* 2012

³ UNFCCC ROP Rule 41, paragraphs 1-2. The ROP use the term ‘regional economic integration organizations’ rather than ‘coalition’.

Chapter 7. Voting

This means that there are two issues at stake in the design of fair voting process. First, there are questions about the choice of the voting procedure that climate institutions should use. Second, there are questions about how climate institutions should weight votes in a decision-making process. This chapter uses the normative criteria introduced in chapter four to consider both of these issues in turn. In doing so, it makes three central claims.

- (1) Climate change institutions should make decisions by majority rule, but only after considered deliberation
- (2) Votes should be weighted in part according to the number of individuals that each state represents
- (3) In specific circumstances, climate institutions should exclude states that are wholly unrepresentative of their constituencies

2. Voting rules

Voting rules differ in respect to the proportion of votes required for a decision to be formally adopted.⁴ Generally speaking, there is a spectrum of voting rules that range from unanimity at one end, to simple majority rule at the other. Fair voting rules are those that promote the criteria for procedural justice set out in chapter four: autonomy, the equal advancement of interests, and justification. The epistemic quality of a voting rule, and the extent to which it promotes reasonableness are also important issues.

But voting procedures are important for other values too. For one thing, the choice of voting procedure is important for procedural efficiency, or the ability to reach a decision quickly. Given that the choice of voting procedure (and voting weight) determines the say that each actor has in a decision-making process, this has important implications for who participates in the institution. Whilst fairness is valuable, it is also important not to exclude other considerations before making specific policy recommendations for voting reform.

⁴ For discussions of voting in multilateral institutions, see: McIntyre, E. 1954; Blake and Payton 2009; Payton, A.L. 2010

Chapter 7. Voting

This section introduces the most frequently used voting rules in multilateral institutions: unanimity, consensus, and majoritarian voting.⁵ This section considers each of these forms of decision-making in order to determine what procedural fairness requires. I argue that, majority rule is important for fairness and efficiency.

2.1 Unanimity

Unanimity effectively gives each decision-maker an equal vote in the decision-making process, since any one member can either accept the decision or veto it by abstaining from the vote.⁶ This seems important for procedural justice in at least three ways.

First, unanimity promotes autonomy in a decision-making process. Because it depends on finding an outcome that is mutually acceptable to all, unanimity ensures that no actor has to accept a policy that it does not endorse as correct. This means that unanimity does not infringe independence or autonomy by forcing a person to go against his or her will. In this respect, unanimity means that decision-makers act as authors of the decisions that they are subject to, thereby allowing them to act as autonomous agents in decisions.

Second, unanimity encourages actors to deliberate and justify their reasons to one another. If each actor has a veto right over a decision, then everyone's position has to be recognised and accommodated in the decision-making process. This means that decision-makers listen to each other, exchange information, and acknowledge each other's opinions. It also helps actors to form opinions that acknowledge the views and positions of others. In this respect, unanimity serves an important function in encouraging actors to justify their decisions to one another.

Third, unanimity also seems fair because it gives each actor an *equal* say over the final decision, rather than privileging any single actor. Unanimity therefore promotes equality in at least one sense, to the extent that it gives each participant an equal degree of influence over the final outcome.

⁵ Steinberg, R.H. 2002; Touval, S. 2010, p.83

⁶ For discussion of this principle, see: Zamora, S. 1980; Blake and Payton 2009; Touval, S. 2010, p.83

Chapter 7. Voting

But giving each an equal power to veto a decision is also detrimental to equality in a different sense. By giving each actor the right to veto a decision it, unanimity privileges those who favour the status quo.⁷ Each member of a group has the power to prevent a new option from being collectively adopted. Imagine that a bus carrying 100 people approaches a motorway service station and the driver offers to pull over if the group votes to do so. Under unanimity, one person can veto the decision to stop for refreshments, even if 99 people want to stretch their legs. Contrary to giving equal consideration to each actor's interests, which was one of the requirements of procedural justice that I introduced in chapter four, this gives greater say to those who favour the status quo. This is the primary reason for thinking that unanimity is inappropriate for fairness.

Unanimity also rewards those who hold extreme views. Because it's necessary to get everyone on board in order to make a decision, actors who do not value an agreement as much as others can hold out for what they want rather than compromising on an issue. In doing so, unanimity can discourage people from deliberating with one another and encourage them to adopt hard bargaining strategies with the promise of getting what they want. Jorgen Wettestad suggests that this is something that happened in the early stages of the negotiations for the UNFCCC, where major oil producers advocated unanimity so that they could later block emission reduction commitments.⁸

Aside from concerns about fairness, there are also other problems with unanimity. For one thing, voting procedures should provide a way of reaching agreement even when people are unable to arrive at a unanimous agreement. As I argued in chapter two, there is reasonable disagreement over some issues in climate institutions. If this is the case, unanimity either leads to stalemate or brings about outcomes that represent the lowest common denominator.⁹ Several authors suggest that the use of unanimity in the UNFCCC has held up decisions and brought about outcomes that are unambitious or intentionally ambiguous.¹⁰

⁷ For discussion, see: Christiano, T. 1996, p.88

⁸ Wettestad, J. 1999, p.216

⁹ Sohn, L.B. 1974, p.445; Zamora, S. 1980, p.571

¹⁰ Harstad, B. 2009a, p.3; Dimitrov, R.S. 2010a; Payton, A.L. 2010, p.1

Chapter 7. Voting

For these three reasons then unanimity is problematic for fair decisions.

2.2 Consensus

An alternative voting rule is consensus. Recent discussions show that the meaning of consensus is open to interpretation and still subject to much academic debate.¹¹ Whilst consensus is traditionally understood as the absence of expressed objection, some authors suggest that this definition should be expanded to include cases where there is some opposition to a decision.¹² For example, Jacob Werksman notes that in several other cases the COP has adopted decisions even though some parties have objected to the agreement.¹³ This is was also evident at the UNFCCC COP16 in Cancun (2010) where the Chair accepted the negotiation text despite express opposition to the decision by Bolivia. These represent more lenient standards for accepting an agreement than unanimity, since they can accommodate some disagreement among decision-makers.

By appealing to a less demanding standard for agreement than unanimity, consensus avoids at least some of the deadlock and political stalemate associated with unanimity. A decision can be adopted without the endorsement of every actor, so long as there isn't any expressed objection or abstention. Consensus therefore represents a compromise between the need to push ahead with a decision and the need to respect each actor's position on an issue. This is a significant benefit in situations where there is a premium on making decisions quickly.

Despite these benefits, consensus fails to address the problems that led us to reject unanimity. Like unanimity, consensus still faces the problem of stalemate when there is reasonable disagreement on something. It also fails to meet our demands for the equal consideration of interests, since it gives those who favour the status quo the ability to prevent agreement. A further concern is that consensus masks disagreement rather than resolving it.¹⁴ If a group presses ahead with a decision even though some parties harbor disagreement, then this might just postpone conflict until some later

¹¹ For example: LRI 2011c; Rajamani, L. 2011b; for the consensus rule in multilateral institutions, see: Van Houtven, L. 2002; Steinberg, R.H. 2002; Rajamani, L. 2011a, p.516

¹² Rajamani, L. 2011a, p.515

¹³ Werksman, J. 1999, p.12

¹⁴ Brunnée, J. 2002, p.10

Chapter 7. Voting

time. Whilst consensus can provide a more efficient way of making decisions, it might mean that some actors later renege on the outcome of the decision because they feel that their interests weren't sufficiently taken into account during the decision.

In practice, the search for consensus can be just as elusive as unanimity and may lead to political stagnation. It's also unclear why consensus is an improvement in terms of fairness. Given that climate institutions suffer from a lack of progress, and given the need for urgent action on climate change, it is worth considering the merits of majority rule procedures.

2.3 Majority rule

In light of the procedural problems that are brought about by unanimity and consensus, majority rule is often seen as a desirable alternative.¹⁵

Some might think that majority rule doesn't fare well in terms of autonomy because it forces people to accept decisions that they do not endorse. It is true that some element of independence is lost in a majority rule process. But majority rule doesn't mean that people give up all of their independence. For one thing, people still express their interests and views in the deliberative processes. People also maintain an element of autonomy through the voting process itself, expressing their interests or judgements about decisions. Whilst unanimity may score better on the grounds of autonomy in some sense, it's also important to consider how to make decisions when people disagree.

Some might also criticise majority rule in terms of deliberation. The purpose of deliberation is to arrive at a mutual consensus. In this respect, one might argue that majority rule is inappropriate because it can bypass deliberative discussion, when decision-makers should really be trying to reach mutual agreement.¹⁶ But this is an incorrect view of the role of majority rule in deliberative discussion. Majority rule doesn't replace deliberation, nor is it a procedure that people should turn to once decision-makers have failed to reach a consensus. Rather, majority rule is a way of expressing our judgement about something *after deliberative discussion*. Jeremy

¹⁵ Biermann *et al.* 2012; for discussion: Blake and Payton 2009, p.5; Brunnée, J. 2002

¹⁶ Sohn, L.B.1974, p.441

Chapter 7. Voting

Waldron convincingly argues that aiming for consensus in deliberation doesn't mean that it should be supported as the appropriate political outcome.¹⁷ Rather, people should first deliberate and then make a decision by a fair voting rule. In this sense majority rule is fully compatible with deliberation.

Whilst the desirability of majority rule is questionable in terms of autonomy or deliberation, there are at least two ways in which it is important for fairness. Importantly, majority rule is more favourable than either unanimity or consensus on some accounts of equality. Earlier, I suggested that there is some sense in which unanimity is an unequal voting rule, because it gives undue power to a minority. Majority rule, on the other hand, is fairer in this respect. Under majority rule, it is possible to give decision-makers different numbers of votes and in some situations, this is important for equality. Assuming that actors are roughly equal, in the sense that they are roughly affected by a decision to the same extent, then giving each actor an equal vote in majority rule voting procedure is fair because it gives each an equal say in that decision.¹⁸ But actors are unlikely to be equal in this respect for many decisions. As I argue in section three, there are many cases where it is important to give more votes to certain actors, if people have different stakes in a decision, or if a decision-maker represents more actors. This isn't possible under unanimity or consensus, since under these rules, each decision-maker has the same power to either support or reject an agreement. For this reason, majority rule can be more advantageous for the equal consideration of interests, because, unlike consensus, it is possible to give actors different amounts of votes, which is important for fairness in some cases.

A second way that majority rule is important for fairness concerns respect. For Waldron, majority rule respects individuals by accommodating some difference over different conceptions of justice and the common good.¹⁹ Striving for consensus can play down difference, encouraging us to think that someone is wrong, or incorrect if they disagree with us. But majority rule allows individuals to maintain their difference. It accommodates the fact that people might simply disagree on some

¹⁷ Waldron, J. 1999, chapter 5

¹⁸ Christiano, T. 1996, p.88

¹⁹ Waldron, J. 1999, p.111

Chapter 7. Voting

matters and in this sense it respects individuals where unanimity and consensus do not.

These two arguments give us strong reasons for thinking that majority rule is more desirable than unanimity and consensus when it comes to fairness. It is also advantageous in terms of procedural efficiency. But there is a mixed picture here and there are at least two potential objections to majority rule.

First, one might object that majority rule is not a fair way of making decisions since it allows a minority to rule over a decision. Buchanan and Tullock argue that those who hold more orthodox views support this claim.²⁰ The orthodox argument is that if people have a choice between two options, A and B, and more than a simple majority is needed to reach a decision (i.e. more than 51% of the vote) then it's possible to end up with a situation in which the minority controls the final decision. That is, a majority of 75% is needed for a decision and 74% support A whilst 26% support B, then the minority can prevent the adoption of option A. According to this argument, the minority controls whether or not a decision is made. Buchanan and Tullock rightly criticise this view, arguing that it equates positive decisions to authorise group action with negative decisions that block actions proposed by others. Whilst the minority can prevent the adoption of option A, it cannot bring about the adoption of option B. To this extent, neither group controls the outcome, but rather blocks an action from coming about.

A second concern is that majority rule marginalises those who are in the persistent minority.²¹ If a minority has preferences that are consistently different to the majority, then that group is always overruled in the decision-making process. This might mean that an entire group is marginalised and disenfranchised from collective decisions. This is a serious concern, but there are ways of resolving this problem and it doesn't mean that majority rule should be rejected altogether. Individuals should be required to listen to one another and take into account each other's interests during deliberation, which should encourage the majority to take the interests of the minority into account when making decisions. In extreme situations, where a minority is

²⁰ Buchanan and Tullock 1962, p.243

²¹ Bodansky, D. 1999, p.607

Chapter 7. Voting

significantly affected, it might be necessary to grant veto rights to a minority group for certain decisions. This might involve appointing independent actors to observe decisions and determine whether a certain group is persistently marginalised by decisions to a significant degree. Alternatively, majority rule might be inapplicable on certain occasions. These are measures that should be taken in light of specific decision-making contexts, and the point here is to give some preliminary thoughts about how these problems can be avoided. I give a more thorough account of how majority rule can be designed to react to more specific cases later.

So majority rule is not just a fair way of making decisions; it also scores better in terms of other important values. Further, I've shown that it stands up to two potential objections. But this is only one side of the voting coin. The following section takes up the challenge of how to weight votes in a fair way.

3. Vote weighting

Having determined that majority rule is the fairest way of making decisions this section now turns to the fairness of vote weighting. The allocation of voting weights determines how much influence each actor has in a decision-making process and this varies significantly between different multilateral institutions.²² In this section, I look at some of the prominent proposals for how votes should be weighted in decisions. I consider whether votes should be weighted according to: (i) the stake that an actor has in a decision, (ii) how many people it represents, and (iii) how accurately it represents them. I argue that votes should be weighted according to these rules provided that certain criteria are met. I also argue against two further principles for vote weighting: (iv) contribution, and (v) competence.

3.1 Proportionality

Let us consider (i) first – the magnitude of someone's stake in a decision. It is often claimed that fair, or democratic voting processes give each voter an equal vote.²³ The idea is that each member of a group should be given an equal say over its collective decisions. But some authors suggest that fairness requires that those who have a greater stake in a decision receive more votes. This is known as the proportionality

²² For vote weighting in multilateral organisations, see: Blake and Payton 2009, p.5-4

²³ Kelsen, H. 1955; Saunders, B. 2010

Chapter 7. Voting

principle, and it implies that those who are affected more by a decision should have a greater say in how it is made.²⁴ In what follows, I introduce the argument for proportionality and discuss its merit as a principle of fairness. I argue that it is a fair way of making decisions *when actors are voting to advance their interests in a decision*. I then go on to argue that proportionality is not a fair way of making decisions *when voters are voting to express their judgement or opinion in a decision*.

I start by looking at Brighthouse and Fleurbaey's comprehensive review of the proportionality principle, in which they give four arguments for favouring it over equal suffrage.²⁵

The first argument is based on premise that fair decision-making processes are those that treat each individual with equal respect. For the authors, equal respect means giving equal consideration to each individual's interests in a decision-making process. In this respect, Brighthouse and Fleurbaey share Thomas Christiano's justification for democracy.²⁶ But the problem with Christiano's approach is that giving each actor an equal say in a decision doesn't give equal consideration to each actor's interests when some are affected by a decision more than others. For Christiano, this means that a necessary condition for democracy is that every member of a group is affected by its decisions to roughly the same extent, which puts a strong restriction on the sorts of decisions people can make. For Brighthouse and Fleurbaey, however, if some are affected by a decision more than others, then these actors should be given more votes for the sake of achieving an equal consideration of interests. This is the main argument for proportionality.

But there are at least three other arguments for proportionality. The proportionality principle is necessary for fairness because it is important for autonomy. If individuals have unequal stakes in a decision, then giving each an equal vote means that those who are more affected by a decision are subject to the will of those who are less concerned. By giving each actor a say according to the stake that they have, the

²⁴ For discussion, see: Arrhenius, G. 2004; Tännsjö, T. 2005; for support of this principle, see: Warren, M. 2006; Brighthouse and Fleurbaey 2010

²⁵ Brighthouse and Fleurbaey 2010, p.138

²⁶ Christiano, T. 1996; 2008, p.78

Chapter 7. Voting

proportionality principle gives individuals greater control over these decisions, thereby enhancing autonomy and independence.

A third argument appeals to epistemic concerns. Those who are more affected by a decision are more likely to be better placed to make decisions about it. This means that giving more votes to the more affected should lead to better outcomes, in the sense that these outcomes have higher epistemic quality. Although this isn't an argument for fairness, it does give additional support to proportionality.

A fourth argument is instrumental. Brighouse and Fleurbaey argue that proportionality can avoid the problem of persistent minorities. If decisions are made through a simple majority, then some actors may be persistently disenfranchised from a decision-making process. But proportionality can help alleviate this problem by giving a greater say to those who are affected by a decision more than others. A minority that is significantly affected receives a greater say, preventing situations where a majority persistently overrules one particular group.

Brighouse and Fleurbaey claim that these arguments give us good reason for adopting the proportionality principle. The authors acknowledge that there are likely to be practical problems of implementing the policy and recommend that it is used as a guideline rather than as a basis for developing a mathematical formula for vote weighting. Bell and Rowe give an example of how this could be done in local climate policy in the UK. These authors endorse proportionality whilst drawing quite general policy recommendations, arguing that those who are worse off in society are likely to be the most affected by its decisions and that greater voting power should be given to those in this group.²⁷ This seems a sensible step to take. Determining how much each actor is affected by a decision and how this should translate into voting power is going to be subject to disagreement, if not practically demanding. But this doesn't prohibit us from making some broad proposals for implementing proportionality in practice.

²⁷ Bell and Rowe 2012

Chapter 7. Voting

The idea that affect proportionality promotes autonomy and epistemic value whilst avoiding disenfranchisement is plausible enough. But the crux of Brighthouse and Fleurbaey's argument lies in its appeal for the equal consideration of interests, which is more controversial. If people only make decisions for the sake of advancing their own interests, then Brighthouse and Fleurbaey's argument for proportionality is appropriate for procedural justice.

But people don't just make decisions for the sake of promoting their own interests, and it is worth considering whether the principle holds when people vote to express a judgement or opinion about something. In what follows I argue that proportionality is only appropriate where people vote on their own interests, rather than where they vote to express their judgement or opinion about a matter.

The important point for this argument lies in the distinction between judgements and interests. Christiano argues that whereas an interest is something that is an important component of wellbeing, a judgement is a belief about a fact.²⁸ A judgement about something can either be correct or incorrect, whilst an interest cannot. If people vote for the sake of advancing their interests in a decision, then fairness requires that the amount of votes that each actor has is proportionate to the stake that each actor has in the decision. But if people vote for the sake of expressing a judgement on an issue, then proportionality is less convincing.

To illustrate this point, imagine that several friends are travelling home together in a car. The car comes to a crossroad with several alternative routes and it is necessary to make a collective decision about which route the group should take. Each member of the group has a different preference over which route the group should take. One prefers travelling along a road that goes through scenic countryside, whilst another prefers a different route that doesn't have the same scenery that offers a smoother journey with fewer potholes. Another prefers a safer road with less traffic, and so on. Further, assume that each is equally competent at making decisions on this issue. This is a controversial assumption, which I relax later in section 3.5. After discussing which route to take, the travellers are unable to reach a decision because of their

²⁸ Christiano, T. 1996, p.54

Chapter 7. Voting

conflicting and irresolvable preferences. Each tries to convince the others of the merit and importance of his or her view, but the group cannot reach a unanimous decision, deciding to vote on the issue in order to resolve their disagreement instead.

In this scenario, each individual votes to express a personal preference about the route that the group should take. Here, fairness requires that votes are weighted according to the stake that each actor has in a decision-making process. If one individual wants to take a certain route because the choice affects them in a particularly strong way (e.g. to get home quickly to look after a sick relative), then that actor should have a greater say in the decision so that each individual's interests are given equal consideration in a decision. This means that proportionality is a fair way of making decisions *when actors are voting to advance their interests in a decision*.

Now imagine a second scenario, where each of the friends wants to get home as quickly as possible, and no one has other preferences over which route they take. The group discusses the options available and each of the friends puts forward his or her views on the matter. Some think that the quickest route is a main road, whilst others feel that it would be quicker to take a quieter route with less traffic. After considered deliberation, the travellers are unable to agree on which route to take and opt to resort to a voting mechanism in order to reach a decision.

In this second scenario, each individual is expressing a judgement about what they think the fastest route home is. In this case, fairness requires that decision-makers respect each actor's judgement by giving each actor the same say in the voting process. In this respect, proportionality is inappropriate here. To see why each should have an equal say, rather than a say in proportion to their stake in a decision, it's necessary to think about why it is that people disagree about these sorts of decisions. Assume for the moment that each actor is minimally capable of making rational decisions (I relax this assumption later in section 3.5). Further, following the argument from chapter two, assume that people are reasonable, in the sense that they act under certain normative constraints. People can disagree about something like the correct route to take home for a number of reasons. Recalling our discussion of the burdens of judgement from chapter two, people might disagree because they are mistaken, or because they hold different world views, or because of subjective bias.

Chapter 7. Voting

Given that disagreement arises not just from mistake, but also from difference, people should respect each actor's judgement in a decision, even if they think that it is wrong. This doesn't mean that people should give equal weight, or consideration to each person's judgement. If one person is an expert on an issue then people might give that person's opinion greater attention when they are making up their own minds about something. But when people to express their judgement in a voting process, each should have an equal say in the decision. This is the only way of giving each actor sufficient respect, given the fact of reasonable disagreement brought about through the burdens of judgement.

This means that proportionality is not a fair way of making decisions *when voters are voting to express their judgement or opinion in a decision*. Whether the principle of proportionality is an appropriate principle of procedural justice depends on the sort of decision that voters are being asked to vote on.

3.2 Proportional representation

Having discussed whether voting rights should depend on the extent to which an agent is affected, I now ask whether voting rights should depend on the population size that each voter represents. In multilateral institutions, representatives vote on behalf of the domestic constituencies that they represent. Some institutions, such as the UN General Assembly, operate on a policy of 'one state, one vote', which is also known as 'sovereign equality'.²⁹ This prioritises the state above other types of actor, giving each state the same vote regardless of its population, leading some to claim that it is undemocratic.³⁰ Other institutions assign votes according to the population that each state has.³¹ It's necessary to think about what fairness requires when voters represent different numbers and different types of actors. In what follows, I claim that votes should be distributed according to the number of actors that each voter represents.

Fair decision-making processes are those that allow individuals to advance their interests equally in a decision-making process. This means that each individual's

²⁹ McNicoll, G. 1999, p.411; Rajamani, L. 2006

³⁰ Nye, J.S. 2001; Müller *et al.* 2003, p.4-7

³¹ McIntyre, E. 1954, p.494; Müller *et al.* 2003, p.4-7; Biermann *et al.* 2012

Chapter 7. Voting

interests should be valued to the same extent as any other's. Where voters act as representatives, procedural justice means that those who are represented have their interests advanced equally in a decision. What matters here is the equal advancement of the interests of individuals represented in a decision, rather than the interests of those who are actually voting. If voters are voting in order to advance the interests of those that they act on behalf of, then each voter should receive a number of votes proportionate to the number of actors that it represents. If voters act as representatives in a decision, then there is a strong case for thinking that each voter should have a say according to the number of actors that they represent.

But there is a problem here concerning the type of actor that each voter acts on behalf of. As I argued in chapter three, procedural justice concerns many different actors, and it is not just confined to the fair treatment of individuals. States are important actors in their own right, but they also act on behalf of other actors, including community groups and private corporations. Fairness requires that the decision-making processes takes into account both the number, and type of actor that each voter represents.

This gives us an idea about how to think about proportional representation *when people vote on behalf of their own interests*. But, as I suggested earlier, there is sometimes a distinction between voting for the sake of advancing one's interests and voting for the sake of expressing a judgment. Therefore, it is also necessary to consider whether proportional representation is appropriate *when people are voting in order to express a judgement on something*. In this case, each voter is being asked to vote on what they think the correct option is. Here, I claim that fairness also requires that people take into account the number of actors that each voter represents.

To see this, it's helpful to look at Christiano's argument for giving equal hearing to each viewpoint in a decision.³² Christiano considers a case in which three people are discussing whether to adopt option A or B. Two people (John and Jane) support option A, whilst a third (Joel) supports option B. Christiano argues that what matters for each actor is whether or not his or her viewpoint is taken into account in a

³² Christiano, T. 1996, p.92

Chapter 7. Voting

discussion, rather than how much time is given to each perspective on an issue. For John and Jane, it matters that option A is fully discussed and considered in a debate. But this doesn't mean that option A is given twice as much time for discussion as option B.

Returning to the issue of voting weights, one might think the same reasoning applies. If people are voting over which judgement is correct, then this would mean giving each voter an equal say, regardless of how many actors it represents. But this conclusion is wrong. In a discussion, what's important is that each viewpoint is heard. This doesn't mean that people should disregard the number of people that share a particular viewpoint. There are at least two reasons why this is so. Foremost, each actor's judgement should be treated with equal respect. If voters represent different numbers of actors, then giving each the same votes fails to treat each actor with the same respect. Second, the very fact that more actors share a certain judgement is a reason for giving it greater weight in a decision. If John and Jane both support A, whilst only Joel supports B, then decision-makers should take this fact into account on epistemic grounds. This means that votes should be weighted according to the number of actors each voter represents when people are voting for the sake of expressing an opinion or judgement.

In conclusion, proportional representation is a fair way of weighting votes whether decision-makers are making decisions for the sake of advancing people's interests, or making decisions in order to express a judgment about an issue. This means that, where voters represent different numbers of actors, votes should be distributed so that each voter receives a number of votes that is proportionate to the number of actors that he or she represents.

3.3 Democratic legitimacy

Earlier I identified three issues concerning representation. Having discussed two of them, I now turn to the third. If votes should be weighted according to the number of actors that each voter represents, then it is also important to think about how representative each voter is. In this section, I claim that those decision-makers that are poor representatives should not receive fewer votes by virtue of their representativeness. Those decision-makers that are completely unrepresentative

Chapter 7. Voting

should, however, receive fewer votes.

In the last section I argued that voters should have more votes if they represent more actors. But decision-makers can be poor representatives, in the sense that they fail to effectively translate the interests and views of their constituents in decisions. Giving a voter who represents more actors more votes makes little sense if that voter is a poor representative on those of whom it is supposed to act on behalf. For this reason, one might think that proportional representation means that fewer votes should be given to those that are poor or inefficient representatives.

But there are problems with this approach. For one thing, if a voter is a poor representative of its constituency, but it is still nonetheless the best representative available, then giving that voter fewer votes is doubly unfair. Not only is that constituency poorly represented, but it has less of a say as well. It is therefore unfair to deprive people of representation in decisions by virtue of the fact that they are poorly represented. This means that climate institutions shouldn't give fewer votes to states that are poor representatives of their constituencies, even though some of these actors do not represent their constituents accurately. Whilst it isn't ideal that some states are poorly representative in this way, states are still the best representatives at the multilateral level, and climate institutions shouldn't limit voting rights on this basis.

But the situation changes if actors are wholly unrepresentative of those that they claim to act on behalf of. Whilst there might be some justification for refraining from giving poor representatives fewer voting rights on the basis that these are the nonetheless the best actors for the job, this isn't the case if a decision-maker is completely unrepresentative of its constituency. If procedural justice means that actors should be given a certain number of votes on account of the constituency that it represents, then it is pointless to give an unrepresentative actor votes if it completely fails to act on behalf of its constituency, because the actor isn't fulfilling the role that warrants giving it more votes in the first place. Thinking about climate institutions, in some cases, states are wholly unrepresentative of their constituencies. In these cases climate institutions shouldn't give these actors voting rights according to population size for this reason.

Chapter 7. Voting

*

These three principles give us an idea about what fairness requires in terms of vote weighting. Votes should be weighted in a way that takes into account the stake that an actor has in a decision, but only if voters are making decisions that advance the interests of their constituents. Further, votes should be weighted according to the number of actors that each voter represents, and whether or not an actor is representative of its constituency. Before considering how this should be interpreted in climate change institutions, it's worth considering two other common methods of weighting votes. In what follows, I discuss and then reject these two other methods for vote weighting.

3.4 Contribution

One such method is to distribute votes according to the contribution that each actor provides to a cooperative arrangement. This is what happens in the IMF and World Bank, where votes are weighted according to the financial contribution that each member state makes to the institutions.³³ This is done for the sake of historical precedent and political feasibility as much as it is for fairness.³⁴ Still, it's worth considering whether or not this is a fair way of weighting votes.

One thing to note about contribution straightaway is that there are a number of ways that it can be interpreted. In the case of climate change institutions, contribution might be thought of in terms of emissions reductions (potential or actual), financial terms (both in relation to mitigation *and* adaptation), or some combination of these. It's not clear why a particular interpretation of contribution is important for procedural justice.

Taking contribution more generally, there might be some cases where it is appropriate to distribute voting rights in this way. If I own a stake in a racehorse, then it makes sense to say that I should have a say in which races the horse participates. Likewise,

³³For discussion of voting in the World Bank, see: Blake and Payton 2009, p.5-4; For discussion of voting in the IMF, see: Van Houtven, L. 2002, p.5; Rapkin and Strand 2005; Payton, A.L. 2010, p.3-4

³⁴Several authors argue that these voting arrangements arose due to feasibility issues during the design of the institution: Lister, F. 1984, p.37; Rapkin and Strand 2005, p.1994; Payton, A.L. 2010, p.2

Chapter 7. Voting

people often think that shareholders should have a say in a company's decision that is proportional to their shareholding. This applies to public institutions as much as private ones. If several states collaborate in the development of an infrastructure project, then it seems reasonable to suggest that states should have a say in proportion to their contribution to the project.

Whilst contribution is an appropriate way of making decisions in some situations, it is not appropriate for fair decisions in climate institutions. Contribution seems most appropriate when (i) there is a clearly defined good for contribution, (ii) where it is important to give parties incentives to contribute more, and (iii) where decision-makers are primarily affected by the extent to which they contribute to the decision. In these sorts of cases, each party benefits from the contribution principle, because each decision-maker has an incentive to contribute more. Further, if the amount each actor contributes largely determines the extent to which actors are affected then the contribution principle seems to appeal to a notion of proportionality, rather than contribution to a collective arrangement. The contribution principle also seems most appropriate when decision-making power should be determined by the resources that each actor has. In some cases, giving decision-makers power according to their contribution is important, because these are the actors who are primarily affected by these decisions, and it is important that these actors are encouraged to contribute more to the cooperative arrangement.

This is not the case with climate institutions. Climate institutions concern decisions about the fair terms of cooperation for dealing with climate change, where these decisions have profound implications for people on a global scale, regardless of their contribution to the institution (however it is interpreted). Given the vast disparities in state resources, and given the high stakes involved in climate institutions, the principle of contribution is an inappropriate way of weighting votes. The contribution principle would allow wealthier states, or those with high emissions profiles, to dominate decisions that affect people around the world. Whilst contribution seems an appropriate principle in some cases, it is not suitable for climate institutions.

Chapter 7. Voting

3.5 Moral and technical competence

In addition to contribution, some argue that those who are better at making decisions should receive more votes. According to Brighouse and Fleurbaey, there are at least two respects in which some people are more competent at making decisions.³⁵ People might be more technically competent, if they have the skills or knowledge to make good decisions. People can also be morally competent, in the sense that they are better at understanding different viewpoints and acting on behalf of others.

Taking technical competence first, many have considered whether it's desirable to give more votes to those who are better placed to make good decisions. I argued in chapter two that fairness requires that decision-makers act under a standard of reasonableness, which includes some minimal standards of rationality. Here, it's worth thinking about whether decision-makers should receive votes on the basis of technical competence. As I suggested in section 3.1, those who are more affected by a decision may be better placed to make good judgements about an issue. Alternatively, it might be that those who are better educated or more rational are better at making judgements. Arriving at a correct outcome means taking into account the soundness of each individual's judgement. For John Stuart Mill, people rightly feel offended if they are ignored in a decision, but this doesn't mean that people can't attach greater weight to those who are experts.³⁶ This means that people should respect each actor but only according to his or her expertise or ability. Jeremy Waldron also argues that people could endorse some plural voting scheme based on rationality, whilst acknowledging that there are likely to be many practical problems in doing so.³⁷

But this is only true if all that is important is arriving at a correct outcome. Here, fairness is important too. There is also an important difference between giving greater consideration to the views of experts and giving those experts a greater say in the decision-making process. Brighouse and Fleurbaey argue that influence in a deliberative stage amounts to providing information and evidence about a decision.³⁸ But giving greater consideration to the views of experts in the deliberative stage does not amount to giving some more votes than others. Rather, fairness requires that each

³⁵ Brighouse and Fleurbaey 2010

³⁶ Mill, J.S. 1861, chapter 8

³⁷ Waldron, J. 1999, p.115

³⁸ Brighouse and Fleurbaey 2010, p.10

Chapter 7. Voting

actor receives equal respect in a decision-making process, which involves giving each an equal say (provided that they are equal in the terms discussed above).

There are at least three further reasons why technical competence is not relevant for vote weighting. First, just because someone is a technical expert, it doesn't mean that he or she will make decisions that represent the interests of others. As such, giving that person more votes goes against giving equal consideration to each person's interest. Second, there are also issues with autonomy. Giving more votes to those who are better able to make decisions gives people less control over decisions, reducing their independence, which is also problematic for fairness. Third, people disagree on some issues because they interpret the world differently. This follows our discussion of the burdens of judgement from chapter two. Given that people disagree because they have different worldviews and experiences (rather than just because of mistake and self-interest) fairness means that people should respect each actor's judgement equally, even if some are better at making decisions than others. This means that procedural justice does not require giving people votes on the basis of technical competence, provided that decision-makers meet some minimal standards of rationality.

Turning to moral competence, Brighouse and Fleurbaey argue that some people are less morally competent than others. In fact, the authors argue that people often think that trustees should be delegated with power when people are unable to meet some minimal level of moral competence. This happens when people make decisions on behalf of children or the mentally disabled. This implies that people should only be given votes if they meet some minimal requirements of moral rationality. But this doesn't mean that those who are more morally competent should receive more votes in a decision. Rather, votes should be given to people who are sufficiently rational, and then give each an equal say thereafter. But, as I argued in chapter two, fair decisions are those that involve reasonable actors, where reasonable actors are those who meet some minimal standards of rationality. So it seems reasonable to assume that moral competence should not play a role in how votes are weighted in climate institutions.

Chapter 7. Voting

In conclusion: fairness requires that that votes are weighted according to proportionality, representation, and representativeness. It does not require us to weight votes according to either contribution or to competence.

4. Voting in climate institutions

Having identified what procedural justice requires in terms of voting, this section now considers how these requirements should be implemented in climate change institutions. There are several policy measures that climate institutions should take to do this, each supporting different aspect of procedural justice.

4.1 Majority rule in climate institutions

First, in line with the arguments above, climate institutions should make decisions by majority rule, but only after sufficient reasoned deliberation about each decision. This involves making sure all viewpoints are heard and taken into consideration in a debate, where a viewpoint concerns an opinion or position on a matter. It also means that each actor attempts to understand and acknowledge the views and opinions of others, rather than voting without hearing all of the issues at stake. Climate institutions should therefore only vote by majority rule after this deliberative debate. There are several reasons for doing this.

First, moving to majority rule improves the fairness of the decision-making process. As I argued in section two, majority rule gives a fair say to each actor, rather than privileging those who favour the status quo. It also avoids many of the procedural problems associated with unanimity and consensus. In this respect, majority rule is more favourable both in terms of fairness, and procedural efficiency.

Second, it offers some protection to those who are in a persistent minority, by encouraging all decision-makers to take into account each other's interests and act on behalf of others. Whilst this is not an outright solution to the problem of persistent minorities, it should at least provide one way of orientating decision-makers towards the common good and encouraging people to acknowledge the interests of others when they come to vote.

Chapter 7. Voting

Third, this measure also ensures that majority rule is not merely a substitute for deliberative discussion, but rather reflects an extension of the deliberative procedure. Fair decision-making processes require majority rule. But fairness also requires that decision-makers deliberate with one another. This is one of the fundamental features of procedural justice. But the epistemic value of deliberation is also important, helping each decision-maker to understand the views and interests of others. Climate institutions can maintain these benefits by ensuring that there is sufficient deliberation and discussion of all views before taking a decision by majority rule.

4.2 Supermajority voting

I turn now to a second proposal, namely that climate institutions should require a high proportion of votes to adopt a decision. This means that a supermajority is required to accept a decision, rather than a simple majority. This goes some way towards preventing the disenfranchisement of a minority group. Requiring a high proportion of votes makes it less likely that one particular group is persistently disenfranchised in a decision. It also encourages deliberation and discussion, because those who form the majority have to convince a larger group of actors of the merits of their position.

This approach also acts against problems of noncompliance. Part of the reason that unanimity is desirable in multilateral institutions is that states are only expected to comply with rules that they consent to, where that means 'voted for'. This makes it unlikely that a state will refuse to comply with the rules of an agreement. But under majority rule situations might arise where a minority strongly disagrees with the outcome of a decision endorsed by a majority. Given that multilateral institutions depend on voluntary compliance, majority rule might either lead some states to exit the agreement, or fewer states to sign up in the first place. A high majority mitigates this problem to some extent. If a high majority is needed to make a decision then fewer actors will be left disgruntled by the outcome of a decision that they do not support.

There is at least one further reason for thinking that this objection is not overly troubling. For one thing, this objection assumes that the commitments that states make under consensus are the same as those that would arise from majority rule. Consensus encourages compliance, but it also means that any outcome reflects the lowest

Chapter 7. Voting

common denominator. In climate negotiations, this has often meant that outcomes have been unambitious, or intentionally ambiguous. Under majority rule, some actors might not endorse the outcome, even if it comes about from a fair procedure. But the outcomes of majority rule should be more ambitious (given that they do not reflect the lowest common denominator). Whilst there may be greater defection from an agreement under majority rule, it is important to remember that this is a stricter rule overall.

4.3 Equal time to views in debates

The third measure for promoting fairness in the voting processes of climate institutions is that, within a deliberative forum, climate institutions should give each viewpoint the same time and attention for discussion, irrespective of the population size of each voter. This means giving each perspective on an issue the same time for debate, rather than each actor's individual view, or each actor, the same time for presentation in debate. The primary reason for doing this is to ensure that each view and opinion on a matter is considered in a decision-making process. What's important for fairness is that each view is heard, rather than each view being repeated by all those who share it. Whilst people should take into account the fact that more people share a particular view or judgement than others, this doesn't mean that they should give more time or say according to how many people share that view.

There are at least two supporting reasons for this policy measure. First, there is some epistemic value to this approach. Giving each viewpoint time in a debate means that all views are actually heard, which should make it more likely that decision-makers will make correct judgements when they come to vote (where people vote on issues that are either correct or incorrect). A second supporting reason is that giving each view equal time in a debate respects each actor's views, ensuring that each actor knows that his or her interests are presented and heard in a debate. This is important for fairness, but it is also important for other issues such as trust and legitimacy. As I argued in chapters two and four, it isn't just important that climate institutions *are fair*; people should *perceive* these institutions as fair. Given this, there is additional merit to giving each viewpoint the same amount of time in debates.

Chapter 7. Voting

4.4 Veto rights

Fourth, climate change institutions should give a veto right to those who are most severely affected by particular decisions. Those who are most severely affected are those who are left incapable of meeting their most basic needs, or whose very survival is threatened by a decision.

It's important that those with more of a stake in a decision should have more of a say in how it is made, if people are voting for the sake of advancing their interests. At the same time, doing this in practice is very challenging, not least because there will be disagreement about who is affected the most and how affectedness should be translated into voting weights. Further, there are also difficulties with identifying whether voters are advancing their interests in a decision, or expressing an opinion or judgement. Implementing the proportionality principle is therefore likely to be difficult in practice. But one way of implementing this principle without running into these difficulties is to give a veto right to those who are most affected by the outcome of decision, where the most affected are those who are unable to meet their most basic needs. Procedural justice concerns those who are unable to meet their basic needs here (rather than those who suffer hardships but are nonetheless still well off) because these actors are those with the greatest stake in a decision. By giving this group a veto right over a decision, climate institutions can give some attention to proportionality in a voting process.

This policy carries the additional benefit of giving some protection to persistent minority groups. If a group is severely affected by a decision, then it is a minority (otherwise, it seems unlikely that the decision would be adopted under majority rule). Giving this group a veto right should offer some protection to those who are in a persistent minority that faces extreme hardships. This represents just one minimal measure for implementing the proportionality principle. At the same time, practical difficulties are likely to make this principle hard to achieve in practice.

4.5 Population weighting

A fifth measure is that climate institutions should weight votes in part according to population size. At the same time, climate institutions should recognise that states are also important actors in their own right. To see this point, it's worth considering some

Chapter 7. Voting

of the differences in population size between different states. As of 2010, the UN estimates the population of China at 1 341 335 000 whilst the population of Tuvalu is 10 000.³⁹ Implementing a policy of ‘one state, one vote’, means that a state that represents over a billion individuals has the same decision-making power as one that represents several thousand.

Flipping the scenario, by making voting rights directly proportionate to population size, means that China has voting power equivalent to 100 000 times that of many other states. In fact, the populations of certain states, including China and India, are so large that distributing voting rights in this way would mean that these countries dominate almost every decision within a climate institution that they participate in. This would not only leave many actors entirely disenfranchised from decisions, it would also mean that climate institutions ignore the importance of states in their own right. Whilst fairness requires that votes are weighted according to population size, states are also important actors beyond any representative role that they play.

It’s necessary to find some middle ground here. Climate institutions should respect the fact that different states represent vastly different numbers of individuals in climate institutions whilst recognising that states represent group interests and collective identities, which are important matters aside from the size of their population. This already happens in some political systems. For example the political system of the US has one body that represents each state equally (the Senate) and one body representing states according to population size (the House of Representatives).⁴⁰ Climate institutions could take similar measures so that voting weights are distributed in a way that takes both of these issues into account. One way of doing this is to assign each state actor a set number of votes regardless of its population size (at the most basic level, this means one vote each). Climate institutions could then distribute some additional votes according to the population that each state represents. For example, this might mean one additional vote per 10 million-population size. In the event that there are least some states that represent extremely small populations, climate institutions could ensure that each receives some minimum number of votes so that none is put at a severe disadvantage in a voting

³⁹ World Population Prospects 2010

⁴⁰ For discussion, see Balinski and Young 2001, chapter 2

Chapter 7. Voting

process. This gives some attention to the size of the population that each state represents, whilst also respecting each state actor in the decision-making process.

One further issue concerns NSAs such as NGOs that represent community groups, business interests and civil society actors. As I argued in chapter three, these actors are also important for procedural justice. But whilst these actors are important, it seems inappropriate to give more votes to an actor on the basis that it represents more NSAs. It is difficult to think of how to address issues such as: how much weight to give to each NSA and which state actually represents these actors. What's important is that these actors are heard in the deliberative forum and that their views and interests are taken into account. In conclusion, climate institutions shouldn't give greater voting rights to states on the basis that NSAs are also important for procedural justice. Rather, the views of these actors should be incorporated into discussions and debates.

4.6 Excluding unrepresentative states

Finally, climate change institutions should question the presence of dictatorial regimes and autocratic governments that are entirely unrepresentative of their domestic constituents. Whilst fairness requires that votes are weighted according to population size, there are clearly some states that are wholly unrepresentative of their constituents. Climate change institutions should avoid giving votes to these states. Having said this, there are three things that should be kept in mind when doing this.

First, there is a difference between states that are wholly unrepresentative and those that are simply poor, or inaccurate representatives. There are many forms of representation in world politics and not all of them depend on democracy.⁴¹ Climate change institutions shouldn't exclude states on the basis that they are not democratically accountable. Whilst climate institutions should avoid giving votes to wholly unrepresentative states, this doesn't mean that fewer votes should be given to poor representatives. Many states that participate in climate institutions are undemocratic, and even those that are democratic do not always represent the interests of their constituencies accurately. The important criterion here is whether a state is a

⁴¹ For discussion, see: Kelsen, H. 1955, p.7

Chapter 7. Voting

worse representative of its constituent than other bodies would be. If a state is so unrepresentative that it is possible to identify a different actor that would be better at representing the people of a country then climate institutions should exclude states on the grounds that they are unrepresentative. At the same time, climate institutions should recognise that states are still often the best representatives of their domestic populations and, where this is the case, climate institutions should not exclude these states, even if they are poor representatives.

Second, there are reasons for thinking that unrepresentative states should be included in climate change institutions aside from procedural justice. Climate institutions might, for example, need a certain state to participate for the sake of the overall effectiveness of an institution. So climate institutions should include unrepresentative states for the sake of effectiveness, even if this comes at the cost of procedural justice. This means that it is necessary to think about how to respond to trade-offs between different values, which is something I explore in the following chapter.

A further issue is that it might be important for climate institutions to continue to engage with these actors as part of a process of encouraging them to democratise. Some people argue that engaging with autocratic states in multilateral institutions can play an important role in this respect.⁴² The idea is that engaging with autocratic actors in these contexts is more likely to promote norms of democracy and lead to better outcomes overall than isolating these states from global affairs. In this respect, climate institutions might continue to engage with these actors as part of an on going process to promote democratic practices. At the same time, these sorts of policies require continuing efforts to promote democratic norms across the multilateral political spectrum.

5. Conclusion

Reforming the voting procedures of climate institutions is one way of making decisions both fairer and more efficient. Certainly, many now consider majority rule an important option for resolving deadlock in climate institutions. But little has been said about the fairness of these measures, or about the choice of voting weights if

⁴² Adesnik and McFaul 2006; Levitsky and Way 2006

Chapter 7. Voting

these policies are adopted. This chapter has shed some light on this matter, by arguing that majority rule, subject to some constraints, is a fair method of decision-making, and that climate institutions should pursue population weighting for voting rights.

Chapter 8. Procedural justice and institutional design

1. Introduction

In chapter two, I argued that procedural values are important for climate institutions. This is because there is reasonable disagreement over the substantive ends that these institutions should achieve, as well as a need to implement action quickly. In chapters 3-7, I then introduced several principles of procedural justice and showed how these translate into policy design. During this discussion, I highlighted the many trade-offs that arise when climate institutions try to achieve procedural justice. In particular, I emphasised that procedural justice conflicts with the ability of climate institutions to achieve their goals by introducing procedural obstacles that prevent them from taking action.

Before committing ourselves to any policy recommendations for institutional reform, it is necessary, however, to think systematically about how to respond to this problem. It is necessary, that is, to think about the relative importance of procedural justice in comparison to other principles of normative design, as well as how climate institutions should respond to the various trade-offs that may arise when they adopt principles of procedural fairness. The purpose of this chapter is to undertake this task. I draw on several empirical studies on climate change to argue that climate institutions require action that is: stringent, urgent, sustained, and comprehensive. I argue that, whilst it may conflict with urgency in some situations, procedural justice is fundamental to achieving these ends. I go on to suggest that climate institutions should be designed so that they incorporate all of these aims, rather than prioritising any one of them above any other.

In doing so, I make five central claims.

- (1) Climate change institutions should aim to avoid dangerous climate change
- (2) Avoiding dangerous climate change requires action that is: stringent, urgent, sustained, and comprehensive

Chapter 8. Procedural justice and institutional design

- (3) There is a potential trade-off between designing climate institutions that are procedurally fair, and those that achieve collective action quickly

However,

- (4) The only way to achieve long-term and sustained cooperation on climate change on a comprehensive scale is by ensuring that climate institutions are procedurally fair

Therefore

- (5) Procedural justice is an important feature of climate institutions that successfully avoid dangerous climate change

Contrary to many existing arguments on this matter, I argue that it isn't possible to forego procedural fairness for the sake of achieving more immediate action in the short-term. Instead, I show that procedural justice is an intractable element of normative design for effective climate change institutions.

2. The substantive goals of climate institutions

Climate institutions need to achieve a number of different ends. Whilst some of these ends are important in themselves, others are valuable because they are instrumental for achieving other important goals. Some are important for both of these reasons. The IPCC often claims that the most important criterion of institutional design is 'effectiveness'. This section clarifies what effectiveness actually means in climate institutions and what is required for achieving this end. I argue that effectiveness is often interpreted as successfully avoiding dangerous climate change. In doing so, I argue that effective institutions are those that meet four further goals: i) stringency, ii) urgency, iii) sustained cooperation, and iv) comprehensiveness.

Chapter 8. Procedural justice and institutional design

2.1 Effectiveness

When people say that an institution should be effective, they often mean that the institution should achieve its intended goals.¹ This defines the ultimate goal that the institution should achieve. Institutional design then requires thinking about other normative criteria, which can be either beneficial or detrimental to achieving the overall aim of the institution. This thesis has considered one particular element of institutional design: procedural justice. It's now necessary to think about what the goals of climate institutions are, and the role that procedural justice plays in achieving these ends. One common suggestion – in line with the guiding principle of the UNFCCC – is to stabilise atmospheric concentrations of greenhouse gases at a level that avoids dangerous climate change.²

Whilst there are different ideas about what this means, there is now some agreement that avoiding dangerous climate change means limiting global temperature change to no more than 2°C above pre-industrial levels. This goal is affirmed in the Copenhagen Accord, the Cancún Agreements, the Durban Platform and the Declaration of the Leaders of the MEF.³ Not everyone agrees with this view, and many argue that a more stringent temperature target is needed in order to avoid dangerous climate change.⁴ But the 2°C target is something that receives a lot of support. Further, the implications of dangerous climate change are so severe that missing this target means endangering many other policy goals. For these reasons, I assume that climate institutions should aim to bring about action that is compatible with this goal.

It's important to realise that this doesn't mean that any single institution should achieve this goal on its own. As I set out in chapter one, climate institutions form part of a framework of interacting, and overlapping institutions that operate to coordinate state action on climate change.⁵ The aims of individual institutions may be insufficient to achieve climate stabilisation, but this doesn't mean this end can't be met through the combined efforts of a collective institutional framework. Effective

¹ Höhne *et al.* 2002, p.33

² UNFCCC Article 2

³ UNFCCC 2009; 2010; 2011; MEF 2009

⁴ Steinacher *et al.* 2013

⁵ Falkner *et al.* 2010; Keohane and Victor 2010

Chapter 8. Procedural justice and institutional design

climate institutions are therefore those whose ends are compatible with climate stabilisation when part of a collective framework for action on climate change.

2.2 Stringency

Given that climate institutions should limit global temperature changes to no more than 2°C above pre-industrial levels, it's now possible to turn our attention to what this requires in terms of emissions reductions. This question is addressed in two articles published in the journal 'Nature' in 2009. In one article Meinshausen *et al.* argue that people should look at cumulative emissions to the year 2050 as an indicator of whether the world will stay within the 2°C limit by 2100. Taking this approach, the authors provide emissions targets for achieving specific temperature increases by 2100.⁶ In a second article, Allen *et al.* argue that the impact of emissions should be considered over a much longer time period and provide emissions targets for limiting atmospheric warming until 2500. Both of these articles suggest that meeting the 2°C limit requires limiting our total cumulative emissions from the industrial revolution to less than a trillion tonnes of carbon dioxide. Both studies suggest that meeting the target requires large cuts in global emissions. This gives us a 'carbon budget' that cannot be exceeded if people are serious about remaining within the 2°C temperature threshold. Other research supports the findings of these studies. For example, the IPCC also suggests that meeting this temperature target requires that global emissions are reduced by 50–85% by 2050 relative to 1990 levels.⁷

This gives one requirement of effective climate institutions: stringency. Stringency implies that global emissions of greenhouse gases are reduced in accordance with the pathways defined by Meinshausen *et al.*, Allen *et al.*, and the IPCC. Limiting global average temperature increase to no more than 2°C means enforcing stringent emissions reductions.

The problem is that the world is not on track towards meeting this end. Whilst the international community has made a number of pledges to reduce emissions, these are inadequate for what is required.⁸ A recent report from the International Energy

⁶ Meinshausen *et al.* 2009

⁷ Gupta *et al.* 2007, p.775

⁸ UNFCCC Climate Change Secretariat 2011

Chapter 8. Procedural justice and institutional design

Agency (IEA) states that current emissions trends are consistent with a long-term temperature increase of more than 3.5°C.⁹ Unless emissions reductions start happening soon, the 2°C target required for climate stabilisation is unlikely to be met.

2.3 Urgency

So stringency isn't the only issue here; the timeframe for implementing effective action is also important. Avoiding dangerous climate change is as much about the rate at which emissions are reduced as it is about the stringency with which this is done. There are several reasons why this is the case.¹⁰

Firstly, people have already emitted a lot. Since the industrial revolution, the world has emitted a cumulative total of around half a trillion tonnes of carbon dioxide.¹¹ This has pushed up global atmospheric concentrations of greenhouse gases to 400 parts per million, which is the highest that they have been in at least the past three million years. The fact that so much has already been emitted has two important implications. One is related to adaptation and one to mitigation.

On the one hand, climate change is already happening and will continue to get worse in the future.¹² The greenhouse gases that have been put into the atmosphere since the industrial revolution have already caused an increase in the global average surface temperature of around 1°C.¹³ This has caused changes to the climate that are having severe impacts on human welfare globally.¹⁴ This problem is exacerbated by the fact that the physical effects of climate change are time-lagged. Due to inertia within the atmosphere, the full effects of emissions that are generated today are not felt until sometime in the future. This also means that those emissions that were generated in the past will continue to cause an increase in global temperatures regardless of the action that people undertake from this point forwards.¹⁵ Given that climate change is already happening and will continue to happen in the future, any attempt to mitigate the very worst effects of climate change must take place as soon as possible.

⁹ IEA 2011; see also, den Elzen 2010

¹⁰ These points draw from those in Allen *et al.* 2009a

¹¹ Allen *et al.* 2009a

¹² Hare and Meinshausen 2006; Allen *et al.* 2009a

¹³ IPCC 2013

¹⁴ Patz *et al.* 2005; Human Rights Council 2008

¹⁵ Hare and Meinshausen 2006; Rogelj *et al.* 2011

Chapter 8. Procedural justice and institutional design

On the other hand, there is a further issue associated with the fact that the world has already emitted a lot, which is that the atmospheric concentration of greenhouse gases is already close to the threshold limit for avoiding dangerous climate change.¹⁶ Given the intensity with which people are currently burning fossil fuels, it is expected that this threshold will be reached within the next two decades.¹⁷ This means that the opportunity to prevent severe climate change is rapidly diminishing. If people are serious about staying within the 2°C limit then action on climate change needs to happen soon.

A second reason for urgency is that the stakes are high and the outcomes unknown. Climate science is characterised by high uncertainty. The atmosphere is extremely complex and the implications of changes in atmospheric concentrations of greenhouse gases are difficult to model. Despite our best efforts to make predictions about climate change there is still a great deal of uncertainty about what its full effects will be in the future. This is particularly important given that climate change may bring about consequences that are non-linear, irreversible, and potentially catastrophic in nature.¹⁸ The effects of emissions are non-linear because there are both tipping points and positive feedback loops within the earth's climate. This means that any given amount of emissions may lead to far greater changes in the atmosphere than the same amount of emissions brought about in the past. Some of these tipping points may bring about changes that are wholly irreversible.¹⁹ Climate change is also potentially catastrophic. The atmospheric changes that come about from unabated emissions could lead to a situation in which larger parts of the planet become uninhabitable. Even if the likelihood of such outcomes arising is very small, there are still strong arguments for reducing emissions as quickly as possible.²⁰ When these three features of climate change are combined, it is difficult to argue against taking immediate action to mitigate global emissions.

¹⁶ Several authors argue that the 2°C target will soon become unachievable: IPCC 2007; Peters *et al.* 2013, p.5

¹⁷ Oliver *et al.* 2012

¹⁸ Schneider and Lane 2006; For climate change tipping points see: Lenton, T.M. 2011; Voorhar, R. 2012; for abrupt climate change, see: Alley *et al.* 2005

¹⁹ Halsnæs *et al.* 2007, p.127; Solomon *et al.* 2009; Frolicher and Joos 2010

²⁰ Weitzman, M. 2009

Chapter 8. Procedural justice and institutional design

A third reason for urgency is that our ability to implement the necessary measures to avoid dangerous climate change is diminishing with time. This is for at least two separate reasons. On the one hand, there is technical inertia in implementing emissions reductions. This means that the total amount of emissions that can be reduced in a certain amount of time is finite.²¹ Carbon emissions are fundamental to every aspect of global society and making the necessary changes to global energy infrastructure to bring about a reduction in emissions will take a long time. On the other hand, ‘political’ or ‘social’ inertia is also an issue here.²² Decisions about energy infrastructure involve very long-term time scales, meaning that any decisions made now are likely to have implications that last for a very long time. Coal fired power plants, wind turbines, and smart electricity grids have operational lifetimes of several decades.²³ As a result, some authors argue that policy decisions about climate change run the risk of ‘lock-in’, whereby decisions taken today have long-term implications for carbon emissions.²⁴ This problem is worsened by the large costs involved with the development of energy infrastructure. Any decisions that are made now will continue to have implications for the future because reversing these decisions is prohibitively costly. Achieving the large reductions necessary for climate stabilisation therefore requires action now because delaying action may lead us in a direction that can’t be changed.

A fourth reason for urgency is that postponing action now makes future emissions reductions very costly.²⁵ This is partly due to the issues raised above. If a large proportion of the total carbon budget needed to stay within the 2°C limit are ‘locked-in’ by existing energy infrastructure, then any additional infrastructure has to be entirely carbon free. This is likely to be much more costly than a mitigation policy that takes gradual steps towards reducing emissions, phasing out emissions intensive infrastructure over time rather than stopping all emissions abruptly.

But further to this, if action isn’t taken to reduce the growth of global emissions now then even more stringent measures have to be adopted later on. It’s not just the case

²¹ den Elzen, Meinshausen and van Vuuren 2006, p.7

²² See: Matthews and Solomon 2013

²³ IEA 2011

²⁴ Unruh, G.C. 2000; IEA 2011, p.2

²⁵ den Elzen, Meinshausen and van Vuuren 2006; IEA 2011; Dirix *et al.* 2013

Chapter 8. Procedural justice and institutional design

that people are failing to reduce their emissions; global emissions are actually increasing and are expected to continue doing so in the future. The IEA predicts that global energy demand is likely to grow by over a third between now and 2035. Most of this growth comes from increased energy consumption in developing countries that are experiencing rapid economic development. As a result of this increase in energy demand, energy-related carbon emissions are predicted to rise from an estimated 31.2 Gt to 37.0 Gt in the same period.²⁶ Postponing action on mitigation until some point in the future means that the rate at which emissions have to be reduced will be higher than if people started to reduce them now. Given that the cost of reducing emissions is related to the level that it is necessary to reduce them from, postponing emissions mitigation until some point in the future will involve higher costs.

This argument is based on the idea that it is economically efficient to take action on mitigation now rather than later. But some authors dispute this view, arguing that, rather than taking costly action to immediately reduce our emissions now, it is more cost effective to invest in clean technology for the future and postpone mitigation until suitable alternatives for producing energy are developed.²⁷ This is because what matters for staying below a certain global temperature target is the total cumulative amount of emissions up to a certain point in time, rather than the rate at which they are reduced.²⁸ Furthermore, the cost of mitigating emissions in the future can be discounted because people in the future, on aggregate, are expected to be better off given technological development and economic growth. Under this approach, people could continue to emit at current levels, or even increase emissions in the near future, and still meet the 2°C target. Given that it is possible to develop clean ways of generating energy, people should invest in these technologies and reduce our emissions in the future rather than taking costly mitigation measures now.

This is an extremely optimistic view of how things might play out. Whilst it is impossible to rule out the possibility of developing sufficient alternatives to emissions intensive energy production in the future, there are at least two important things that should be kept in mind. First, the world is already very close to exceeding the total

²⁶ IEA 2011

²⁷ Lomborg, B. 2001

²⁸ Allen *et al.* 2009a

Chapter 8. Procedural justice and institutional design

amount of emissions needed to meet the 2°C target. Given the physical inertia of the climate system and the problem of carbon lock-in, many think that global emissions need to peak in the immediate future if dangerous climate change is to be avoided. There simply isn't enough time to develop clean technologies whilst avoiding mitigation.

Second, the argument for postponing mitigation is based on the assumption that it is possible to develop cheap and reliable ways of producing clean energy. Yet, whilst there has been some investment in clean energy in the past few years, this is yet to produce ways of generating low carbon energy that are cost comparable with fossil fuels.²⁹ Clean energy technology is still extremely costly and suffers from technical problems such as intermittency. There is no guarantee that investment in clean energy will bring about the necessary advances in technology that allow us to maintain our current standards of living. This doesn't mean that people should stop investing in research and development for clean energy. Developing clean energy may ultimately be crucial for helping people live decent lives without causing dangerous climate change. But it may take a long time for the price of clean energy to fall and it shouldn't be taken for granted that these technologies will be developed in the near future. Continuing to produce emissions now in the hope that suitable alternative modes of energy production will come about in the future is therefore naïve. In fact, starting to reduce our emissions now rather than later delays the point at which certain temperature limits are reached.³⁰ This gives us more time to develop clean energy technologies and build the necessary infrastructure for meeting our energy needs in a low carbon world. If people are serious about developing clean technologies they should pursue mitigation policies now rather than later.

A third point that supports these two arguments is that the necessary technological advances in energy production may only come about once sufficient incentives are in place to develop them. One of the main problems with clean energy at the moment is that it is so expensive in comparison to fossil fuels. This makes it difficult to encourage people to develop and use these forms of energy production. One way of changing this situation is to provide sufficient incentives for people to move away

²⁹ McCrone *et al.* 2012; REN21 2013

³⁰ Joshi *et al.* 2011

Chapter 8. Procedural justice and institutional design

from carbon intensive methods of energy production and towards low-carbon options. Mitigation policies can play an important role here. These policies increase the cost of using fossil fuels thereby encouraging people to use and develop clean energy technology. As these technologies are developed their costs will fall, in turn encouraging their use. Contrary to the objection that some make, developing cheaper clean energy partly depends on adopting policies to reduce emissions, whereas continuing to emit simply reinforces the dominance of fossil fuels in the global energy market. Whilst people should take efforts to develop clean energy technology, people should also be sceptical about the prospect of meeting the 2°C target without taking emissions reductions soon.

In summary, there is a great deal of evidence suggesting that people should take immediate action to address climate change. These arguments relate to different aspects of climate change, yet they all point in the same direction: people cannot afford to delay taking action to mitigate our emissions and develop adaptation policies. Ordinarily, getting bogged down in procedural issues would mean losing out on the benefits of immediate collective action until some future point in time. With climate change things are very different. Prolonged inaction not only has severe consequences for the near future, it also makes it unlikely that catastrophic outcomes can be avoided in the long-term. This means that urgency should be given great importance here. But urgency isn't all that's important, and avoiding dangerous climate change means that climate institutions need to be both sustained, and comprehensive as well.

2.4 Long-term action

Climate change is also characterised as an issue that requires long-term and sustained action. It is therefore necessary to think about how institutions sustain cooperation in the long run whilst achieving immediate action now. Several points support this view.³¹

First, emissions are important whenever they are created. Assuming that people want to prevent dangerous climate change from ever occurring, it does not matter whether a

³¹ For a thorough account of the need for sustained action see: Dirix *et al.* 2013, p.5

Chapter 8. Procedural justice and institutional design

unit of emissions is generated today, in a year's time, or in 50 years time. In terms of the overall effect on the climate, what matters here is the total cumulative amount of emissions that are generated, rather than the rate at which they are emitted, or the point in time at which they are produced. One might argue that postponing emissions now and emitting them at some future point in time avoids causing damage to the climate in the interim. This is true. But the point here is that it is important to avoid *ever* exceeding the 2°C threshold, rather than seeking some temporal respite from climate damages. This means that any mitigative action in the short-term can be quickly undone by action in the future. Whilst mitigative action today may prevent the harmful effects of climate change from happening in the short-term, unless people refrain from creating emissions on a sustained basis then climate change will simply be delayed until a later point in time. Consequently there is little point in creating institutions that achieve action in the immediate future without ensuring that this action takes place in the future as well.

Second, as I mentioned above, it may take a very long time to implement the necessary mitigation measures needed to address climate change. Carbon emissions have become a fundamental part of almost every area of society. It is generally thought that reducing global emissions enough to avoid the very worst effects of climate change requires large-scale changes to the global economy and to global energy infrastructure. This is unlikely to be achievable in a short time frame. Implementing the necessary measures to address climate change requires the development of new technologies and infrastructure over a very long time period. This is only possible through sustained efforts to bring about large-scale changes to society. Therefore sustained action is needed to bring about the necessary societal changes to avoid dangerous climate change.

It might also take a long time to implement mitigation measures because of the amount of time needed to negotiate and design a successful mitigation agreement. Designing a successful climate agreement among states is an extremely complicated and challenging task. Bodansky and Diringler argue that, rather than taking the necessary time to develop a cooperative arrangement climate change, the global community has so far tried to implement a cooperative framework for the climate as

Chapter 8. Procedural justice and institutional design

quickly as possible.³² This has meant that key issues have been left unresolved and have caused problems at later points in time. Barrett and Stavins also criticise the negotiation process of Kyoto Protocol on these grounds, arguing that it sought immediate benefits without taking into account how participation and compliance could be achieved in the long-term.³³ Successful climate mitigation therefore requires a long-term approach on account of the time needed to design a successful agreement.

A third reason for needing long-term action is that global geopolitics is not static. Measures for collective action on climate may prove ineffective if the global context in which they are developed change in the future. For example, it's sometimes argued that a climate change agreement need only take into account the major emitters of the world because these actors produce the bulk of global emissions.³⁴ It isn't necessary to include those who do not fall into this group, such as small or less developed countries, because these actors aren't significant contributors to the problem. However this argument overlooks the fact that many states with low emissions now have the potential to become major contributors to climate change in the future. In this respect, taking a short-term view that only considers the current geopolitical situation is likely to be ineffective in the long-term and a successful climate agreement needs to take a long-term approach to climate policy.

Strictly speaking, this last point necessitates a dynamic approach to climate change as much as it does a long-term perspective. Still, it brings attention to the fact that a long-term perspective should be adopted when designing climate change institutions, rather than taking the current state of global affairs as given. Given these various reasons, it is necessary to implement regulation across a sustained period of time, rather than over a short-term period.

2.5 Comprehensiveness

In addition to the requirements of urgency and long-term action, avoiding dangerous climate change requires institutions that are part of a broadly comprehensive framework for addressing climate change. The primary reason for this is that

³² Bodansky and Diringier 2007

³³ Barrett and Stavins 2003, p.353

³⁴ Prins and Rayner 2007a; Prins *et al.* 2010

Chapter 8. Procedural justice and institutional design

emissions are created globally and it is therefore necessary to have a global approach to mitigation. Without a global approach, those who are outside of the institutional framework can free ride on the efforts of others. In fact, given that mitigating climate change is a global public good, those who are outside the institutional framework may have an incentive to increase their emissions, knowing that others are already taking action on climate change. So addressing climate change requires a global approach.

Against this view, one might argue that climate institutions should only look at those states that are emitting a lot now and pursue an agreement amongst this group of exclusive actors.³⁵ Unilateral, or minilateral approaches are seen as pragmatic responses to climate change, which are more realistic than the overambitious approach of the UNFCCC.

But, contrary to this argument, avoiding dangerous climate change requires a comprehensive approach to collective action. This might not entail a fully global approach that incorporates every single actor on a global scale, but it does require at least a large proportion of the world's states. There are at least four arguments in support of this view.

First, as I've already argued, it is likely that many developing countries that have low emissions now will become major emitters in the near future.³⁶ This is because, whilst many developing countries have low emissions now, they are expected to undergo rapid economic growth in the next few years. According to the IEA, the bulk of the increase in global energy demand over the next two decades is expected to come from non-OECD countries.³⁷ Given the lack of clean energy options for meeting this demand, most of this energy will be supplied from fossil fuel sources. This means that it is impossible to make significant cuts to global emissions in the long run without the involvement of many of the world's developing countries.³⁸

³⁵ Bodansky and Rajamani 2013

³⁶ Hahn, R.W. 2009, p.569

³⁷ IEA 2011

³⁸ Keohane and Victor 2013, p.106

Chapter 8. Procedural justice and institutional design

A second issue is that unilateral mitigation policies are unlikely to be effective if they do not involve a large number of actors due to the problem of carbon leakage.³⁹ This is because domestic mitigation policies have to achieve emissions reductions in a world of international trade. This is problematic if there is international trade in carbon-embodied goods, which are goods whose production involves the emission of greenhouse gases. Often, a carbon-embodied good is produced in one state and then consumed in another. This is the case, for example, if the UK imports cars that are produced in a factory in Japan, or if the US imports televisions from China. If one state enacts a carbon mitigation policy, such as a carbon tax, then this policy is undermined if carbon embodied goods that are not subject to the same tax are imported from another state. In fact, implementing a policy in one zone might cause manufacturing processes to shift to states that do not enforce the same policy. This is known as carbon leakage, and it is a serious issue for enacting successful mitigation policies when there are differential regulations across the global market.⁴⁰ Some authors have proposed ways around this problem, including the use of border carbon adjustments, which put tariffs on imported carbon embodied goods.⁴¹ But, as of yet, there are no proven measures for addressing this issue. Although this is just one problem of trying to reduce carbon emissions, it does show that there are issues with implementing effective mitigation measures when there is only partial participation in an institutional framework.

These two arguments give strong support for a comprehensive approach. But there are at least two further points that can be made in support of a comprehensive approach. First, it is well recognised that many of the world's cheapest mitigation options exist in the developing world.⁴² This is because much of the energy infrastructure in the poorer parts of the world is inefficient, or based on highly polluting energy sources, such as coal. As a result, there are significant mitigation opportunities that are much cheaper than pursuing mitigation in the industrialised world alone.

³⁹ For more on carbon leakage, see: Droege, S. 2009; Eckersley, R. 2010

⁴⁰ For an account of the amount of carbon embodied in global trade, see: Peters and Hertwich 2008

⁴¹ Kuik and Hofkes 2010; Monjon and Quirion 2011

⁴² Hahn, R.W. 2009, p.569

Chapter 8. Procedural justice and institutional design

A second, related issue is that the developing world holds a vast proportion of the world's forests.⁴³ This is a problem because deforestation and land degradation are large contributors to global emissions and are likely to be even more so in the future. Population growth and an associated increase in the global demand for food are expected to put significant pressure on the world's tropical forests as more of this land is converted into farmland. Forests play an important role in the carbon cycle and deforestation is a significant contributor to climate change. Given that many of the world's forests are in developing countries, it is necessary to have a comprehensive approach to climate change in order to ensure that this is taken into account in an overall institutional framework.

These four points give us good reason for thinking that climate change requires a comprehensive approach to institutional design. But this doesn't mean that any one institution must take a fully global approach to achieving successful action on climate change. Nor should these institutions be thought of as ends in themselves. As I argued in chapter one, multilateral climate institutions operate in a 'framework' or 'regime', overlapping and interacting with each other. These institutions therefore act together to take a comprehensive approach to climate change, rather than meeting this end individually. But this institutional framework itself is not necessarily an end point in its own right. A global treaty, or a patchwork of institutions, shouldn't be seen as a panacea for climate change because multilateralism is unlikely to be sufficient in bringing about all of the necessary change needed to achieve climate stabilisation. Rather, these institutions are one part of the total action necessary to implement climate change mitigation. What's important is to aim for is some notion of comprehensiveness when implementing these institutions collectively.

3. Procedural trade-offs

Thus far, I've argued that climate stabilisation should be the ultimate goal of climate institutions, and that effective institutions are those that address the joint issues of stringency, urgency, long-term action, and comprehensiveness. In chapter two, I argued that procedural justice is important for both intrinsic, and instrumental reasons. But throughout this thesis I've also argued that the requirements of procedural justice

⁴³ Streck, C. 2008

Chapter 8. Procedural justice and institutional design

are sometimes in tension with certain other ends. In particular, I've suggested that procedural justice can conflict with the ability to reach agreement quickly.

In this section, I show how some of these trade-offs are problematic for effective institutions. In doing so, I present an argument for rejecting procedural justice in favour of other, more important ends. This argument assumes that, given that a failure to take action on climate change immediately may cause catastrophic outcomes, mitigation should be the overriding goal of climate institutions. This means that there is a strong case for setting aside concerns of procedural justice for the sake of achieving more immediate gains. But this isn't the complete picture here. Procedural justice doesn't just conflict with certain ends; it also helps us to achieve them in certain cases. For this reason, in section four I go on to argue that procedural justice is a necessary feature of effective climate institutions, and that it is premature to give up on this value for the sake of effectiveness.

3.1 Procedural justice and urgency

Meeting the demands of procedural justice is extremely costly for procedural efficiency. That is, procedural justice often puts constraints on the ability of actors to reach meaningful decisions quickly. Given the importance of urgency, this has profound implications for our project here. Whilst people don't care about making decisions quickly for the sake of it, this is still important for meeting our overall goals. If institutions are unable to make effective decisions quickly then this prohibits them from taking collective action on climate change.

To see how procedural justice can conflict with procedural efficiency, take our requirements for fair participation, as set out in chapter three. This chapter suggested that climate institutions should increase the number of participants in its decision-making processes, so that more voices are included in the debate. But having more actors in a decision-making process is difficult on a practical level. Bringing more voices into a debate means that decisions take longer and are more complicated. This should lead us to think that including more actors prohibits our ability to reach agreement and make decisions quickly.

Chapter 8. Procedural justice and institutional design

To illustrate this, imagine a situation where a select group of actors with similar interests come together to make a decision, whilst excluding those who have a right to participate. Whilst this is procedurally unfair, according to our standards, it is significantly easier to make decisions in this arena rather than in one that includes those who have a right to participate. Including fewer actors means that fewer procedural obstacles arise, allowing decision-makers to cut to the chase and act quickly. Generally speaking, the greater the number of participants to a decision-making process the harder it is to reach agreement.

This is also the case with the proposal for transparency that I set out in chapter five. In this chapter, I argued that procedural justice requires that climate institutions publicise important information about their decisions. Whilst this is required for fairness, it also makes for a less efficient decision-making process. Ensuring that all of the information about the decisions of climate institution is published may prolong negotiation processes, or prevent small groups from making decisions quickly in private. This may place severe restraints on the actions of decision-makers, holding back progress on issues and preventing a procedurally efficient process. In addition to this, making information publicly available on a global scale is likely to be very costly. Given that procedural justice requires that climate institutions provide this information in a way that is easy to interpret and use, there might be large financial costs involved in meeting these demands.

The aim of the preceding chapters has been to identify the terms of fair decision-making. In part, this is so that the outcome of a decision is sufficiently fair so that it is acceptable to all parties involved. But it might be desirable to exclude certain actors from a decision-making process if people are unable to reach agreement on what a sufficiently fair process actually is. This would allow decision-makers to move forward on an issue, even if some decision-makers do not have the chance to advance their positions in a decision to the same extent as everyone else. This is a further instance where there may be a trade-off between procedural fairness and procedural efficiency.

This represents just a small number of cases of where trade-offs arise between procedural justice and other important ends. As I've argued in this thesis, there are

Chapter 8. Procedural justice and institutional design

many other instances where procedural justice conflicts with procedural efficiency, and it is not worth repeating each of these here. This should leave us sceptical about the compatibility of procedural justice with the requirement for urgency. If urgency is fundamental to avoiding dangerous climate change, and if this goal should be prioritised above all others, then one might argue that people should give up on procedural justice for the sake of achieving action sooner.

3.2 Procedural justice and stringency

In addition to this, there are other reasons for thinking that procedural justice may prevent meaningful action on climate change, beyond its implications for urgency.

Foremost, procedural justice may bring about less concerted action on climate change. This might happen if accommodating the interests of all relevant actors brings about an outcome that is less stringent than one that does not. Procedural justice involves including the views and judgements of a diversity of stakeholders. If people are poor decision-makers, or if there is wide disagreement about the correct course of action that climate institutions should take, then including these actors in a decision-making process may be detrimental for the final outcome of a decision. A frequent argument in the literature on environmental democracy is that democratic decisions are not necessarily those that promote environmental ends.⁴⁴ This happens for many reasons, and I highlighted some of these when I discussed the merits of privacy in chapter five. It might be that some are incapable of realising what their best interests are, or dominated by short-term views.

If procedural justice wasn't important, then an expert group could make these decisions, or decision-makers could exclude those whose opinions are not aligned with their own. But doing this goes against our requirements for procedural justice. According to procedural justice, people should endeavour to treat other reasonable actors in a reasonable way, seeking to find mutually acceptable fair terms of cooperation. Provided that each actor meets the conditions of reasonableness set out in chapter two, people should treat that actor's views with respect, even if they think that view is wrong. But accommodating each actor's views and opinions may prevent

⁴⁴ Holden, B. 2002

Chapter 8. Procedural justice and institutional design

us from taking more stringent action on climate change. One might argue that if a group knows that it should take a certain course of action (for example, preventing dangerous climate change), then it should push ahead with this goal if it can rather than getting bogged down by accommodating the interests of many different actors. Indeed, some advocate a unilateral approach to climate governance for this very reason.⁴⁵ This leaves us with a potential trade-off between procedural justice and the overall desirability of an outcome.

A second trade-off occurs when decision-makers in climate institutions are poor representatives of those that they act on behalf of. Procedural justice requires that states participate in climate institutions on behalf of their domestic constituencies. These actors gain their legitimacy in part because they represent domestic citizens. Procedural justice therefore requires that these actors accurately represent those that they claim to act on behalf of. As I argued in chapter seven, if a state is wholly unrepresentative of its domestic population then climate institutions should consider excluding that state from a decision-making process. After all, the state gains its legitimacy in part because it acts on behalf of those who have a right to participate in the decision. If a state isn't acting on behalf of these actors, then climate institutions should reconsider its place in the decision-making process.

But a problem arises if a large emitting state is wholly unrepresentative of its citizens. In this case, procedural justice means that climate institutions should consider excluding that state from the decision-making process. But achieving climate mitigation depends on including all major emitters (or at least, all large emitting states) in an institutional framework. Given that any state that is excluded from a decision is unlikely to adopt any institutional commitments, this means that there is likely to be a trade-off between procedural justice and the overall stringency of the institution. This trade-off arises because procedural justice requires that climate institutions exclude some states from the decision-making process even when including these states is necessary for avoiding dangerous climate change.

⁴⁵ Prins and Rayner 2007a; Victor, D. 2001

Chapter 8. Procedural justice and institutional design

3.3 Alternatives to procedural justice

In response to these trade-offs, it's worth considering some of the alternatives to procedural justice. This involves forgoing procedural justice for the sake of achieving more significant action sooner.

For example, a pragmatic institution with only a small subset of key actors may be better suited to achieving action on climate change, even if it does not meet our standards of procedural justice. By limiting participation to only a small number of key actors, these exclusive institutions may avoid some of the procedural problems of reaching agreement in a large group, even if they exclude those who have a right to participate as a matter of fairness. Some have suggested that this sort of pragmatic approach is more likely to achieve action on climate change, rather than comprehensive, binding agreements.⁴⁶

But unilateral approaches aren't the only alternatives to procedural justice. A second option might involve a comprehensive agreement that does not meet our standards of fairness. This could allow an institution to implement immediate and stringent action even in the absence of procedural justice. For example, the UNFCCC could make decisions behind closed doors, without the full participation of all states or without global transparency. Not only might this allow the institution to achieve action sooner, it might even result in decisions that are more just. In chapter two, I argued that people disagree about what the exact terms of substantive justice should be. But people do agree that catastrophic climate change would bring about severe harms to some who have played no part in bringing it about. Even if people disagree about the exact nature of distributive justice, most recognise that this is an extreme unjust situation and that avoiding catastrophic climate is fairer overall, regardless of the exact terms of distributive fairness. So one might think that climate institutions should push ahead with an agreement regardless of procedural concerns. It would, after all, be better to avoid very bad substantive outcomes through an unfair process rather than to risk catastrophic outcomes for the sake of fair procedures.

⁴⁶ Levi and Michonski 2010

Chapter 8. Procedural justice and institutional design

But this is a mistaken view to take. Earlier, I argued that successfully avoiding dangerous climate change depends on achieving long-term and sustained cooperation. In what follows, I argue that procedural justice is a fundamental part of achieving these ends. As such, procedural justice is unavoidable for the design of effective climate institutions, and this value cannot be given up for the sake of achieving more immediate action now.

4. The necessity of procedural justice

Procedural justice does conflict with certain other values. However, it also plays a critical role in achieving meaningful action on climate change. In this section, I argue that it is a key element of achieving long-term and sustained action on climate change. For this reason, procedural justice is an unavoidable, or necessary part of institutional design, and it can't be given up simply for the sake of urgency. Instead, it is necessary to find a compromise between the need for urgency, and the need for long-term action, rather than prioritising either one of these issues.

4.1 Compliance and enforcement

In order to see why procedural justice is a key part of long-term and sustained cooperation on climate change, it is worth briefly recalling the argument so far. This chapter has made the following claims.

- (1) The ultimate aim of climate change institutions is to avoid dangerous climate change
- (2) Achieving this end means implementing action that is: stringent, urgent, sustained, and comprehensive
- (3) There is a trade-off between designing climate institutions that are procedurally fair, and those that achieve action quickly

It is now time to turn our attention to the fourth claim of this chapter:

- (4) Long-term and sustained cooperation on climate change on a comprehensive scale is currently dependent on procedural fairness

Chapter 8. Procedural justice and institutional design

I've already argued that procedural justice is instrumentally important where there is reasonable disagreement. This is the main argument of chapter two. What I now show is *why* climate institutions need to gain the agreement of actors, and *how* procedural justice is important for doing this. There are several arguments that support claim (4). Whilst I go on to discuss each of the supporting arguments reasons for this claim, it's helpful to state these in full at the outset:

- i) State participation and compliance is a necessary condition for effective climate institutions; but,
- ii) There is currently a lack effective compliance and enforcement mechanisms for climate change at the global level; therefore:
- iii) State compliance in climate institutions must take place on a voluntary basis; furthermore,
- iv) Voluntary compliance depends on the fairness of an institution; meaning that:
- v) Effective cooperation on climate change is currently dependent on procedural fairness

I've already alluded to some of these arguments in chapters one and two. In particular, chapter one suggested that cooperative action must take place on a voluntary basis,⁴⁷ and chapter two suggested that voluntary compliance depends on fairness.⁴⁸ In the remainder of this section, I build on these arguments to develop a fuller account of why addressing climate change requires procedural justice.

The first premise is straightforward enough: it is unlikely that an institution will be effective unless a large number of states comply with its commitments and regulations. Climate change is a collective action problem, which means that states have an individual incentive to continue emitting, even when there is a collective interest to mitigate.⁴⁹ Following our earlier discussion about comprehensiveness, it is

⁴⁷ Chapter one, p.24

⁴⁸ Chapter two, p.3

⁴⁹ Barrett and Stavins 2003, p.358

Chapter 8. Procedural justice and institutional design

also necessary to have a large number of states to participate in the institution in order to mitigate global emissions.

The second premise needs more explanation. As I already mentioned in chapter one, there are no sufficiently credible enforcement mechanisms for ensuring participation and compliance with multilateral treaties at this point in time.⁵⁰ This is because there is no global sovereign power that can force a state to participate in international treaties. There are also international norms that prevent states from forcing each other to participate in treaties. Even if this were not the case, then it is generally thought that there are insufficient mechanisms for encouraging participation and compliance at the international level. This is because most enforcement mechanisms harm the enforcing state as much as they harm the offending state.⁵¹ States are also reluctant to punish others, fearing that they may face reciprocal action.⁵² Threats to impose economic sanctions or trade restrictions on another state therefore suffer from a credibility problem.⁵³ Whilst there are some limited enforcement mechanisms for ensuring compliance once a state has entered a treaty, these are relatively weak. Despite several instances of noncompliance, those who have refused to cooperate with climate institutions have not yet faced any sort of punishment. Canada failed to meet its commitments under the Kyoto Protocol and walked away from the agreement unpunished whilst Japan, Russia and the US refused to sign up to a second commitment period without facing any penalties at all.⁵⁴ This means that state compliance with climate institutions, if it is to happen at all, must take place on a voluntary basis.

4.2 Procedural justice and voluntary cooperation

This is where procedural justice comes in. Climate institutions need the voluntary support of actors on a comprehensive scale. This means that institutions should be *fair*. This is because actors are more likely to support an institution and comply with its commitments if it is fair, even if this is detrimental to their own interests. This

⁵⁰ See chapter one, p.9. There is a strong line of literature supporting this premise: Barrett and Stavins 2003; Vogler, J. 2005; Chasek *et al.* 2006, p.208

⁵¹ Hoel, M.1992; Barrett, S. 1994; 1999

⁵² Birnie, P. 1988, p.113

⁵³ These measures are proposed in Aldy, Orszag, and Stiglitz (2001) and Nordhaus, W.D. (1998).

⁵⁴ Metz, B. 2013

Chapter 8. Procedural justice and institutional design

view is supported in the literature on multilateralism.⁵⁵ The idea that procedural justice encourages obedience to the law is something that's been shown in empirical studies.⁵⁶ But this also means that other actors, whose participation is not directly necessary for the effectiveness of an institution, nonetheless come to support it. This is what some authors refer to when they talk about trust in a climate change agreement.⁵⁷ It's important that a wide range of actors support and trust climate institutions, regardless of whether they participate directly. Justice plays an important role in bringing this about.

So fairness is a necessary element of gaining the support of actors on a comprehensive scale. But, as I argued in chapter two, there is reasonable disagreement over the substantive ends that a climate institution should employ. This means that it is not possible to specify what the fair terms of cooperation should be in advance of engaging in a procedure to determine what these should be. So it is necessary to rely on procedural fairness in order to develop a climate institution that is sufficiently fair so as to gain the support of a large number of actors. This means that procedural justice is an inescapable feature of climate institutions; people cannot simply forsake it for the purpose of achieving more effective, or more urgent outcomes.

This gives us our fifth claim:

- (5) Procedural justice is an important feature of effective climate change institutions

4.3 Combining urgency with the long-term view

But the issue of urgency still looms large here. Whilst it is important to take a long-term view towards climate change, and whilst this requires considering procedural fairness, it is also necessary to keep in mind the need for urgency. Whatever one thinks about the need for a long-term view, these arguments become trivial if catastrophic outcomes aren't prevented in the interim. Prioritising either urgency, or the long-term view is the wrong approach to take here. Climate stabilisation requires

⁵⁵ Barrett, S. 2003; Winkler and Rajamani 2012

⁵⁶ Frieland, Thibaut and Walker 1973; McEwan and Maiman 1984

⁵⁷ See, for example: Bodansky and Diringer 2010; Moncel *et al.* 2011

Chapter 8. Procedural justice and institutional design

us to look at both of these issues, rather than giving up on either one for the sake of the other. So it's necessary to develop climate institutions that: (i) deal with urgency in the short-term, (ii) whilst promoting long-term cooperation, and (iii) that do so in a fair way. This section considers how these aims can be reconciled.

Several authors have suggested ways of combining (i) and (ii). These approaches allow climate institutions to take some immediate action on climate change, whilst also focussing on long-term aims for the future. For example, Daniel Bodansky suggests that climate institutions should adopt an 'evolutionary framework', which would take some immediate action now with the view to adopt stronger measures in the future.⁵⁸ Arunabha Ghosh argues that the UNFCCC could take a similar approach to the WTO, which undertook 'flexible' commitments during its initial implementation.⁵⁹ This involved an initial agreement amongst a limited group of actors that gradually expanded its membership and commitments over time. Johannes Urpelainen suggests that climate institutions should start on a small scale and progressively coordinate agreements between different policy areas. For Urpelainen, a key requirement is that states *demonstrate* that their participation in small-scale agreements contributes to the development of an ambitious agreement in the future.⁶⁰ A common theme throughout these examples is that small groups combine select issues at first, with the ultimate aim of reaching a stronger agreement in the future.

These sorts of approaches combine issues (i) and (ii) above. But it is also necessary to combine (iii) fairness. That is, it is necessary to think about how climate institutions can achieve immediate action, whilst keeping a long-term focus, *in a fair way*. Here I focus on two ways of doing this.

First, some authors, such as Bodansky, advocate what I call an 'umbrella' approach. Rather than taking a fully comprehensive approach, this involves initially developing agreements on different sectors and among different actors in the way set out above. But for Bodansky, this should be done under the guise of a core institutional arrangement, or 'umbrella' that controls and directs these smaller agreements. Whilst

⁵⁸ Bodansky, D. 2012

⁵⁹ Ghosh, A. 2010

⁶⁰ Urpelainen, J. 2012

Chapter 8. Procedural justice and institutional design

Bodansky doesn't specifically mention fairness, this sort of approach would allow an institution to impose standards of procedural justice on small-scale agreements, whilst building towards a comprehensive agreement.

Second, some advocate the role of participation, trust and transparency in bringing about institutional arrangements that are sufficiently flexible to adapt and adopt new commitments over time. A key part of doing this is maintaining the participation of non-member states and high levels of transparency. For example, Ghosh argues that the evolution of the WTO benefited from 'progressive multilateralism' and that the UNFCCC should take a similar approach.⁶¹ This meant that some states contributed to its design even though they weren't subject to its full commitments. Likewise Dirix *et al.* argue that an important part of flexible institutions is keeping external actors involved in the development of small scale institutions, in order to develop sufficient trust to arrive at a comprehensive agreement in the long-run.⁶² Robyn Eckersley attempts to reconcile the benefits of unilateral agreements with those of comprehensive climate multilateralism.⁶³ Eckersley defends a form of inclusive unilateralism, which coordinates collective action amongst a key group of major emitters, whilst a 'Climate Council' of those who are most affected by climate change participates in its design and implementation. This allows immediate action, whilst maintaining a sufficiently fair process to develop a comprehensive agreement in the long-run.

The important thing to realise is that urgency and sustained cooperation aren't mutually incompatible aims and that climate institutions should strive to achieve both of these simultaneously. At the same time, fairness also plays an important role as a necessary feature of sustaining long-term cooperation. All of these issues should be kept in mind when thinking about how to design procedures. If there are trade-offs between long-term outcomes and more urgent goals, then climate institutions should attempt to resolve these issues as much as possible, rather than giving up on either one. This section has given at least some examples of how this can be done.

⁶¹ Ghosh, A. 2010

⁶² Dirix *et al.* 2013

⁶³ Eckersley, R. 2012

Chapter 8. Procedural justice and institutional design

4.4 Leadership

An important part of creating institutions that balance the need for urgency and long-term action is leadership. This section defines this term and shows why it is important for institutional design.

There are often large costs involved with being the first to take action in collective problems.⁶⁴ In these cases, someone has to be the first to act; yet no one wants to suffer the costs of doing so. These problems are made worse when the stakes are high and things are complicated.⁶⁵ This has led some to blame the deadlock in climate negotiation on the fact that no one is willing to take the first step.⁶⁶

One way of solving this is through leadership, which involves taking individual action for the sake of bringing about cooperation from others. Thinking about climate change institutions, then this means taking action, either by taking on additional commitments, or by directing negotiations, in order to get others to join an institution and take action as well. Procedural justice requires that those who have the capacity to act as leaders fulfil this role. But leadership is understood in several ways here, and it is necessary to say why some have an obligation to act when others don't.⁶⁷

Some understand leadership as international leverage, which involves using political and economic power to influence others into do something.⁶⁸ For example, Scott and Rajamani argue that the EU is involved in expanding its own domestic policies in part to stimulate action elsewhere as well as to substitute for the inaction of others.⁶⁹ Others argue that leadership is about taking on additional efforts when others are not acting. For example, Hohl and Roser argue that if some are doing less than they should to reduce their emissions then others have an obligation to do more to make up for the shortfall.⁷⁰ This view is disputed, and some authors oppose the idea that people have a duty to take up the slack when others do not do their part.⁷¹ Regardless of what

⁶⁴ Gupta and Grubb 2000

⁶⁵ Karlsson *et al.* 2011, p.93

⁶⁶ Gupta and Ringius 2001, p.283

⁶⁷ See Young, O.R. 1991; Underdal, A.1994; Gupta and Grubb 2000

⁶⁸ Young, O.R. 1991; Underdal, A. 1994. This is something that David Victor alludes to, whilst not specifically mentioning leadership (Victor, D. 2013).

⁶⁹ Scott and Rajamani 2012

⁷⁰ Hohl and Roser 2011

⁷¹ Murphy, L. 2000; Miller, D. 2011

Chapter 8. Procedural justice and institutional design

one thinks about the duty to take up the slack when others do not act, there are other problems with this suggestion. Not only is there no guarantee that others will follow suit if someone takes up the slack, but doing this might actually discourage others from doing so. If everyone has an obligation to do something but I know that you're doing my bit for me, then I might just carry on doing nothing. Given that it is important to think about how others can be encouraged to participate in climate institutions, this form of leadership isn't appropriate for what we're trying to achieve here.

A more apt definition of leadership is along 'procedural', or 'directional' terms.⁷² This involves using political clout or influence directly within the negotiation process, to set an example that others can follow, or to encourage trust in an institution. For example, several authors note that the EU plays has play a strong role in coordinating action in the UNFCCC by taking on additional commitments, setting ambitious emissions targets for the future regardless of what other states commit to do, and implementing innovative policies such as the EU Emissions Trading Scheme.⁷³ Some argue that the Kyoto Protocol wouldn't have come about without this sort of leadership from the European Union.⁷⁴ China's aggressive investment in clean energy technologies is also seen as a form of directional leadership.⁷⁵ These measures involve taking on additional burdens even when there is no guarantee that others will follow suit. They are important because they show that something is possible, or that trust can arise.

But leadership isn't just about taking on additional burdens when others fail to act. In some cases, leadership involves encouraging others to act through diplomacy and persuasion.⁷⁶ For example, Farhana Yamin argues that leadership also involves encouraging others to act in a negotiation discourse.⁷⁷ Andresen and Agrawala also argue that the IPCC played an important role in engaging with developing countries

⁷² Karlsson *et al.* 2011, p.92. Gupta and Grubb call this 'instrumental' leadership (Gupta and Grubb 2000).

⁷³ Jaeger *et al.* 1997; Andresen and Agrawala 2002; Dimitrov, R.S. 2010b, p.803

⁷⁴ Gupta and Ringius 2001, p.294

⁷⁵ Karlsson *et al.* 2001

⁷⁶ Oberthür and Kelly 2008

⁷⁷ Yamin, F. 2000

Chapter 8. Procedural justice and institutional design

during the opening years of the UNFCCC.⁷⁸ This might not involve taking on significant costs (at least, not on the scale of those that arise from taking on additional emissions reductions). Rather, these involve acting as a leader during a negotiation process in order to establish trust and cooperation.

The point here is that leadership is also important for coordinating action that achieves the joint aims of urgency and long-term cooperation. Whatever approach is taken, meeting these ends requires some actors to take the first step, which is likely to involve taking on some additional costs,

Given that collective action is dependent on someone acting in this way, who should fulfil this role? The first thing to say here is that only those who are able to take sufficient first steps to encourage action have the ability to act as leaders. For example, Bales and Duke suggest that the US is an important leader because it is a significant polluter and leader of innovation.⁷⁹ Sebastian Oberthür argues that the EU is in a unique position as a leader on account of its ability to coordinate global action.⁸⁰ Therefore those who are capable of acting as leaders are those who are capable of stimulating action in climate institutions. This includes those states with high emissions or strong political clout.

Turning to the question of who should act as a leader, this role should be fulfilled by those who are capable of acting as leaders. That is, those who have the ability to act as a leader also have an obligation to do so. Encouraging action in climate institutions may require some to take on initial steps for the sake of getting others to follow suit. Achieving action on climate change is so important it should be seen as an obligation. But there's no point in doing this if people aren't capable of stimulating action in multilateral institutions. Therefore those who have a duty to act as leaders are those who have the capacity to do so. This concerns large emitting states, those who have sufficient resources to drive technological innovation, as well as those that have strong political influence in the international sphere.

⁷⁸ Andresen and Agrawala 2002, p.45

⁷⁹ Bales and Duke 2008

⁸⁰ Oberthür, S. 2000

Chapter 8. Procedural justice and institutional design

This is something that could be codified in the formal treaty text of the institution itself. This might require that states do undertake leadership commitments. There are already several substantive normative principles in the treaty texts of climate institutions. For example, the principle of Common but Differentiated Responsibilities, and the principle of Equity are both enshrined in the text of the UNFCCC. These could be expanded to include principles that require states to act under principles of leadership and reciprocity with climate institutions.

5. Conclusion

Throughout this chapter, I've emphasised the intractable nature of procedural values in the overall design of climate institutions. This is not to say that procedural justice is an absolute value, or that it should be prioritised above other values. Rather, it is simply intractable from other elements of institutional design, given that it is an important part of climate stabilisation. I've also made some preliminary suggestions about how it is possible to design climate institutions to meet these ends. In the next chapter I expand on this by making some more formal statements about how climate institutions should be designed.

Chapter 9. Conclusion

1. Introduction

This thesis has made several claims about procedural justice in the context of climate change institutions. The purpose of this chapter is to clarify these claims and to show how the decision-making processes of climate institutions can be made fairer. It does so by making some policy recommendations for climate institutions as well as commenting on the relative desirability of different forms of governance available for climate institutions. This involves taking into account what is achievable, or feasible in practice, which is something I undertake in section four.

This thesis has covered a lot of ground, so it's worth starting by quickly summarising the main findings from each of the chapters so far.

Chapter 2: Reasonable Disagreement

This chapter emphasised the importance of procedural values in climate institutions by showing that there is reasonable disagreement over the fair distribution of emission rights. It made two central claims.

- (1) There is reasonable disagreement over some of the substantive ends that climate institutions should achieve.
- (2) Procedural justice is intrinsically important, as well as instrumentally important for climate institutions.

Chapter 3: Participation

This chapter asked who should participate in climate change institutions. It rejected the AAP as a principle of fair participation. In doing so, it came up with three alternative principles of procedural justice.

- (1) If a decision is made in an actor's name then that actor should have a say in the way that the decision is made.

Chapter 9. Conclusion

- (2) If a decision coerces an actor then that actor should have a say in the way that it is made.
- (3) Those whose interests are potentially affected by a decision have the right to express their interests and views in the way that it is made.

This chapter then considered what these principles mean for participation in climate institutions. It suggested several policy measures for fair participation.

- (1) States that represent those in whose name a decision is made, or those who are coerced by a decision, should participate in the voting processes of climate institutions.
- (2) Representative actors, including states and NSAs, should participate in the deliberative stages of climate institutions on behalf of those whose interests are affected by these decisions.

Chapter 4: Political Equality

Having discussed *who* should participate I then turned to the question of *how* actors should participate. To answer this, I introduced some normative ideas of democracy that should guide our thinking about procedural justice. I argued that there are several principles for fair decision-making, including: the equal advancement of interests, autonomy, and justification. I then developed a notion of political equality for fair decision-making. In doing so, I argued that political equality consists of two elements:

- (3) Equal status among decision-makers
- (4) Equal opportunity to participate in a decisions

Having done this, this chapter then developed several policy measures that can be used to achieve these ends in climate institutions.

- (1) Climate institutions should encourage the involvement and participation of NSAs in their decision-making processes.

Chapter 9. Conclusion

- (2) Climate institutions should encourage actors with similar interests to work together and pool resources for the sake of making better decisions.
- (3) Climate institutions should improve the domestic capacity of states by creating interstate institutions and providing resources to those who are unable to act as effective decision-makers.

Chapter 5: Transparency

A full account of fair decision-making requires an analysis of the role of transparency in the process. This chapter therefore examined what information about climate institutions should be publicly available. I considered several reasons for valuing transparency, as well as some reasons for thinking that privacy is also important. I made a central claim about what the public has a right to know.

- (1) There is a public right to know what an institution is doing when it is making decisions that potentially affect people's interests or when it makes decisions on behalf of the public. This includes information about an institution's actions and decisions.

This chapter also took into account the desirability of open decision-making. I argued that private decision-making forums are important for deliberation. Ultimately, I made two central suggestions about the information that climate institutions should make available to the public.

- (1) Climate institutions should make information about their decisions available to the global public in a way that is easy to understand and use.
- (2) Climate institutions should provide a way for decision-makers to make decisions in private, even if the content of these decisions becomes available later.

Chapter 9. Conclusion

Chapter 6: Bargaining

Having examined who should participate, on what terms, and what principles of transparency apply, in Chapter 6 I then gave an account of what's required for fair bargaining. I defended the following claims:

- (1) Fair bargains are voluntary and reciprocal.
- (2) Voluntary bargains are those that are free from manipulation and coercion, and where bargainers are informed and rational.
- (3) Reciprocal bargains are those that are not exploitative, where exploitation means that one party gains a disproportionate benefit from the bargain.

I then considered how these principles could be achieved in practice. In doing so, I suggested several proposals for policy reform. This includes putting the following limits on the types of issue linkages that states can make in climate change negotiations:

- (1) Climate institutions should prohibit unjustified negative issue linkages in climate negotiations.
- (2) Climate institutions should prevent decision-makers from linking issues that are detrimental to the overall negotiation process, or that allow decision-makers to exploit each other.
- (3) Climate institutions should prohibit side-payments between decision-makers.

I concluded by suggesting that only certain forms of influence should be allowed to influence the debate in the climate institutions, and that the focus should be on reasoned argument rather than rhetoric or non-rational modes of persuasion.

Chapter 9. Conclusion

Chapter 7: Voting

The final component of an account of just climate governance concerns how decisions are made. In Chapter 7, I therefore discussed what's required for fair voting in climate institutions. I argued that fair voting procedures are those that:

- (1) Make decisions by majority rule.
- (2) Weight votes according to the number of people that an actor represents.
- (3) Weight votes according to the stake that these people have in a decision, provided that decisions are made for the sake of advancing each decision-maker's own interests.

I then made several policy suggestions for achieving these principles in climate institutions:

- (1) Climate institutions should make decisions by majority rule, but only after parties have deliberated all of the issues at stake.
- (2) Climate institutions should weight votes according to the number of actors that each state represents according to population size.
- (3) Climate institutions should give veto rights to those who are severely affected by the outcomes of its decisions.

Chapter 8: Procedural justice and institutional design

Chapter 8 considered how climate institutions should weigh procedural justice against other important criteria of normative design. It drew from the earlier findings of the thesis to arrive at the following conclusions.

- (1) There are several normative principles of procedural justice that should guide the design of decision-making processes of climate institutions.

Chapter 9. Conclusion

- (2) Procedural justice may conflict with other important criteria, but it is also an inescapable element of effective climate change institutions.

This means that procedural justice shouldn't be given up for the sake of achieving other values. Rather, procedural justice should be promoted alongside other important ends.

Following these claims, this chapter now does three things. First, it draws together the main policy measures suggested so far in order to recommend some practical measures for making climate institutions procedurally fairer. Second, it makes some suggestions as to what forms of climate governance are most desirable in the international domain. Whilst this thesis has primarily analysed interstate governance in the form of multilateral institutions, there are many new forms of governance that model the ways that different actors interact with each other in relation to climate change at the international level. This chapter comments on the relative desirability of these modes of governance to determine which of these processes is most likely to promote procedural justice. Third, it considers the practical applicability of these findings by thinking about whether or not they represent feasible policy measures.

2. Policy proposals

I've argued that fair climate institutions are those that meet certain normative principles. Throughout this thesis, I've suggested that these principles should be considered as guiding principles for thinking about how to make climate institutions fairer. These proposals are starting points for thinking about how climate institutions should be designed, and do not represent a detailed account of policy reform. The purpose of this section is take these principles and to think more carefully about what practical measures can be taken to implement these principles in climate institutions. I argue that there are four main policy recommendations for making climate institutions fairer. In section three, I then make several suggestions about what this means for climate governance, before considering the feasibility of these measures in section four.

Chapter 9. Conclusion

(1) Rules of Procedure

Climate institutions should adopt several rules of procedure for improving the fairness and efficiency of their decision-making processes. Formal rules of procedure (ROP) are the agreed institutional rules that define how decisions should be made in an institution. These are often set out in the treaty text of an institution. The principles set out in this thesis require that formal rules are codified in this way.

This involves, for example, rules governing who can participate in an institution and how, what sort of a majority is required adopting a decision, what sort of role NSAs should play in negotiations, and when it's permissible to exclude a decision-maker from decisions. But these rules also specify the norms that states should adhere to in a decision-making process. Whilst the ROP of the UNFCCC currently specifies norms of burden sharing, nothing is said about procedural issues. Principles such as leadership and reciprocity should also be incorporated into the treaty text of an institution.

This is something that is often neglected in climate institutions. Institutions frequently operate without formally adopted rules, or under implied norms of fairness. The MEF, for example, operates on a spontaneous basis, without agreed ROP. The UNFCCC is yet to formally adopt rules of procedure, instead adopting some rules by proxy. This has prevented decisions being made by majority voting and perpetuates procedural problems.

Codifying the ROP would also require a serious discussion about procedural rules. This would encourage states to think about how to implement issues such as majority voting and rules about participation, rather than continuing to make decisions by consensus. This would force decision-makers to give serious consideration to whether certain decision-makers should be excluded for the sake of making progress on decisions. Making sure that climate institutions formally adopt rules of procedure ensures that these issues are fully considered, rather than implicitly adopted or implied through past behaviour.

Chapter 9. Conclusion

(2) Non-state Actors

A common theme throughout this thesis is the importance of Non-state Actors (NSAs) for procedural justice. NSAs include: community groups, civil society actors, regional representatives, and Non-governmental Organisations (NGOs) such as those that represent business or environmental interests. Climate institutions should encourage the involvement of these actors in climate institutions, to the extent that they improve the overall decision-making process. These actors should have a voice in the deliberative phase of decision-making, where they can put forward views that aren't presented elsewhere. They should also be able to work alongside state delegations in order to assist them with their work and providing information about decisions to the global public.

This serves several purposes. First, NSAs play a role in making sure that all views are heard in debates. Following the findings of chapter three, climate institutions should make sure that each viewpoint about a decision is heard in the decision-making process. NSAs fulfil representative roles in this respect, providing decision-makers with the necessary empirical knowledge to make informed decisions. They also put forward important viewpoints that are otherwise left out of decisions, such as those of indigenous groups or marginalised communities.

Second, the engagement of NSAs should improve the capability of state delegates to participate in negotiations. Chapter four highlighted several areas where states are not always able to participate on equal terms in negotiations. It showed that one way of improving this is through engaging with NSAs. NSAs can provide assistance to those that are unable to participate on equal terms in these processes, as well as fulfilling an epistemic role by providing additional expertise and information.

Third, NSAs fulfil an important role for transparency in climate institutions. These actors interpret what is happening in these institutions and provide this information to the global public in various ways. In doing so, NSAs provide an important accountability role. Media actors, as well as many NGOs are often seen as critical to providing this function, improving public trust and accountability of the institution on a global scale.

Chapter 9. Conclusion

Given these benefits, climate institutions should increase the role that NSAs play in negotiations. This can be done by removing some of the barriers and obstacles that NSAs face for participating in climate institutions. The treaty text of the UNFCCC already contains provisions for the participation of civil society actors in its decision-making processes.¹ Similar measures could be taken in other institutions, where NSAs do not have a formal role and are traditionally excluded from decisions. This is particularly the case with the MEF and the G8, where NSAs have no formal role in negotiations whatsoever.

But climate institutions should also actively encourage the participation of NSAs in climate institutions, rather than simply removing official barriers to their entry. Some important NSAs may be disadvantaged if they have fewer financial resources, which might mean that some groups and interests become marginalised in debates. The decision-making authority of a climate institution, such as the Conference Chair, of Secretariat, should ensure that there is a sufficient diversity of NSAs in climate institutions so that the full range of views and interests are presented in these debates. This is to avoid a situation where participating NSAs represent a small subset of viewpoints, of those who provide financial assistance to them. On some occasions, this might mean that the institution should encourage states to provide the necessary resources for NSAs to participate in negotiations.

It's also worth keeping in mind three things about the role of NSAs in climate institutions. First, NSAs should not gain undue clout and power in climate institutions. The role of NSAs is to provide a voice and offer technical expertise and negotiation assistance to state delegates. NSAs should not directly influence these actors, nor should they direct the formal debate. Second, climate institutions should ensure that these actors are accountable to those that they speak on behalf of and prove their democratic credentials wherever this is possible. NSAs could be required to demonstrate that who they represent public interests and that there is public support for their positions. NSAs sometimes represent public interests, but they also act on behalf of private interests in climate institutions, and decision-makers should take this

¹ UNFCCC 1992, Article 6

Chapter 9. Conclusion

into account when engaging with them.² Third, it isn't desirable to increase the participation of NSAs *ad infinitum*. Obviously increasing the number of NSAs puts procedural constraints on decision-makers, and the criterion for including more NSAs in debates should rest on whether they improve the overall decision-making process.

(3) Coalitions

Coalitions can also play an important role for procedural justice. Coalitions are groups of decision-makers who act together as a single entity in a decision-making process to advocate common positions and interests. Within the UNFCCC, there are several groups that do this, including the G77, the Alliance of Small Island Nation States (AOSIS), the EU, and the Umbrella Group.³ Some coalitions, such as the EU, vote on behalf of their constituents, gaining a voting stake proportionate to the number of states they represent.

Coalitions are important for procedural justice for a number of reasons. They aggregate common interests, helping state delegates to pool their resources. This prevents states from becoming disadvantaged or marginalised by ensuring that each has sufficient resources to participate in decisions. Coalitions also address some of the issues that might arise under population weighted voting, as set out in chapter eight. In this chapter, I argued that climate institutions should pursue a notion of population weighting if majority rule is used, although I cautioned that this might result in the marginalisation of those states with extremely small populations. These states often have similar positions, and by forming coalitions, these actors can increase their voting power. This is the case with the AOSIS, where many members share common positions on climate change. Coalitions may also help decision-makers to pursue more cooperative forms of decision-making, by encouraging them to listen to one another and consider each other's views rather than acting independently. Coalitions can also improve the overall efficiency of a decision-making process. If a number of decision-makers are able to act as a single entity, rather than as a group of independent actors, then they are less likely to face the familiar practical problems of making decisions among large numbers of actors.

² For discussion, see: Vormedal, I. 2008

³ UNFCCC Webpage 2013; for discussion, see Dimitrov, S. 2010

Chapter 9. Conclusion

At the same time, it's necessary to keep in mind that coalitions are not always desirable from the perspective of fairness. It is important that states participate in decisions on their own terms, and that they aren't forced into forsaking their position on an issue for the sake of joining a coalition. Climate institutions should ensure that decision-makers don't become marginalised in a decision-making process by ensuring that each decision-maker has the sufficient capacity to act as an independent agent, rather than need to give up a position on one issue for the sake of additional clout in on another. This is a particular problem given that those who have the most to gain from forming coalitions are those who traditionally lack significant negotiation power. Climate institutions should monitor coalitions and to ensure that those who are marginalised do not face greater hardships in getting heard in the negotiation process. Where this is the case, climate institutions should take measures to encourage these actors to act as independent agents, by giving greater attention in debates, or providing financial assistance.

(4) Improving capacity

Climate institutions should improve the capacity of states and NSAs to participate in decision-making processes. This can be done in two ways.

First, climate institutions can improve the negotiation capacity of decision-makers. Following the findings of chapter four, this means providing sufficient resources to participate in decisions effectively. Part of this involves engaging with NSAs. But climate institutions can also provide financial, technical, and administrative assistance by setting up institutions that provide this assistance where necessary. Alternatively those states that have the ability to provide resources should act as leaders here.

But this isn't the only way that institutions can improve capacity of state actors. A second important issue is domestic capacity. This means strengthening domestic institutions so that states are able to provide for their own needs in negotiations. This might involve, for example, providing financial assistance and resources for states to understand the needs and interests of their own populations and to communicate multilateral policies to them. This improves representation in climate institutions by empowering individuals to play a greater role in decisions. It also improves the transparency of the institution, by helping domestic actors to understand what's going

Chapter 9. Conclusion

on within climate institutions. I've argued that climate institutions need to overcome significant compliance challenges to achieve successful action on climate change. Ultimately, successful climate change institutions must gain the support of actors on a wide reaching scale. This can only be done by empowering domestic populations and allowing them to have an effective voice in important decisions. Improving the domestic capacity of states would therefore have the additional benefit of increasing the overall effectiveness of the institution.

(5) Exclusion

This thesis draws attention to several cases where fairness requires that climate institutions consider excluding certain actors from a decision-making process. This happens when states are: obstructive, unreasonable, or unrepresentative. This involves revoking a right to vote, or preventing from speaking during deliberative debates.

Climate institutions should exclude those states that clearly obstruct negotiations. These are decision-makers that do not meet the requirements of reasonableness set out in chapter two. Deliberately obstructing the decision-making process fails to show an adequate respect for other decision-makers and constitutes unreasonable behaviour. Unreasonable actors make demanding claims and do not respect other actors in a decision-making process. If a decision-maker intentionally obstructs progress and agreement in climate change institutions then there are grounds for excluding that actor from formally participating in the decision-making processes of the institution.

Climate institutions should also consider excluding states that are grossly unrepresentative of those that they claim to represent. This means that climate institutions should consider excluding states that have very poor democratic standards, or that clearly act against the interests of their citizens. This does not mean that states are required to meet high standards of democratic accountability in order to participate in an institution. But it acknowledges that if people care about procedural justice in climate change institutions, then they should also care about whether states act fairly towards their own citizens. In situations of blatant procedural injustice, climate institutions should consider excluding these actors from the decision-making body of climate change institutions.

Chapter 9. Conclusion

Excluding these actors is one way of ensuring that climate institutions can make progress on decisions in a fair way. But excluding a state from a decision-making process almost certainly means that it no longer participates as an institutional member in the institution, since a state is unlikely to continue to accept an institution's rules if it doesn't have a right to participate in its decisions. Given that the effectiveness of an institution is typically proportionate to institutional membership, the exclusion of any state is going to make it harder to reduce emissions. In fact, some states may be so important for mitigation that climate institutions should accommodate them even if they are unreasonable or unrepresentative. This represents a trade-off between preventing dangerous climate change and achieving procedural fairness and it is necessary to balance these issues carefully when excluding actors on the basis of procedural justice. There are three things that can be said about this compromise.

The first thing to say is that, whilst some states are important for achieving global mitigation, excluding obstructionist states is unlikely to be problematic for the effectiveness of the institution. Obstructionist actors are already holding up progress in climate institutions, so excluding these actors from a decision-making process is unlikely to make things worse in this respect.

The second thing to say is that including unrepresentative, or unreasonable states is unlikely to bring about the necessary support for long-term cooperation on climate change. As I argued in chapter eight, successful climate institutions are those that are able to coordinate action over long-term timeframes. Fairness is a crucial element of bringing around the long-term support needed for doing this. The problem with including states that are either unreasonable, or unrepresentative is that this is unfair on other members of the institution. By including these actors for the sake of achieving action on climate change, climate institutions may lose the trust and support that's needed for achieving action in the long run. This might also create incentives for other states to act unreasonably, knowing that they can demand strong concessions in return for their participation.

The third thing to say is that climate institutions should consider including unreasonable actors, if their participation is absolutely necessary for avoiding

Chapter 9. Conclusion

dangerous climate change. It might be the case that climate institutions can only achieve successful mitigation policies by including certain important actors. If there is a choice between including unreasonable actors in climate institutions and causing dangerous climate change, then climate institutions shouldn't prioritise fair procedures above the need for effective mitigation. But climate institutions should only accommodate unreasonable actors as a last resort. The standard for inclusion should be whether including an actor brings about better outcomes overall. But accommodating unreasonable actors tarnishes the institution by making its decision-making processes unfair for other states. Climate change requires sustained action. This thesis has emphasised that this is only likely to come about if fair decision-making procedures are in place. Whilst there are some gains from accommodating unreasonable actors, climate institutions should be aware of the long-term damages this might cause.

This provides some ideas about how to enact procedural justice in climate institutions that build on the procedural rules set out in the rest of this thesis. The policy measures that I've suggested here act as practically orientated guides for thinking about how these procedural rules can be achieved in practice. But policy recommendations have to be feasible if they are going to work in practice. I therefore discuss feasibility in the final section of this chapter. Before this, I discuss what sort of governance is best for addressing climate change.

3. Climate governance

This thesis has considered how multilateral climate institutions can be made procedurally fair. In doing so, it has primarily considered climate institutions that fit the 'top-down', state-based model of governance. This concerns institutions that implement collective action among member states through mutually endorsed rules. But actors interact with each other through many others forms of governance at the international level. Some authors argue that the top-down, comprehensive approach of the UNFCCC has failed to achieve any meaningful action and alternative ways of addressing the problem should be sought.⁴ As a result, some authors now argue that, not only is climate governance best characterised as 'decentralised', or 'fragmented',

⁴ Prins and Rayner 2007a; Rayner, S. 2010; Biermann *et al.* 2012

Chapter 9. Conclusion

but also that people should focus their efforts on implementing action through these means.⁵

This section considers whether our discussion of procedural justice can contribute anything to this debate. In doing so, it focuses on the discussion between top-down, comprehensive approaches, and those that are more fragmented, or decentralised. In specific, it looks at whether procedural justice (and effective action more generally) is more likely to be met through a top-down or decentralised system of governance. I argue that drawing a line between top-down and decentralised governance is the wrong approach to take. Instead, I argue that, whilst procedural justice is more likely to be achieved through a traditional top-down approach, this should be complemented with decentralised forms of governance.

3.1 Top-down governance

Top-down approaches to coordinating action involve developing rules and regulations at the multilateral level and then imposing these rules at the state level. Whilst top-down approaches are not necessarily comprehensive, people often associate top-down governance with a global approach to climate change. Top-down approaches focus on predetermined rules and procedures. They allow institutions to set specific rules, goals, and policies for an institution. Top-down approaches focus on preventing noncompliance, thereby allowing institutions to set more ambitious goals. Top-down governance also offers a forum for collective debate about what the aims of the institution should be, and how best these ends can be achieved.

However, these approaches are increasingly seen as ineffective for addressing climate change.⁶ After two decades of deadlock, the UNFCCC is yet to achieve any meaningful action. Each year, thousands of state delegates gather in an attempt to grind out an agreement in the COP. Yet so far this process has had minimal results. This encourages inaction elsewhere, as domestic governments and private organisations wait for collective action to materialise from the top-down before taking action on climate change. This is leading to a number of authors to support more alternative systems of governance that aren't dependent on a comprehensive

⁵ Biermann *et al.* 2009

⁶ For criticism of top-down approaches, see: Prins and Rayner 2007a; 2007b; Rayner, S. 2010

Chapter 9. Conclusion

agreement at the multilateral level. These arguments suggest the world should put its efforts into addressing climate change in alternative avenues that are more likely to deliver effective action in the immediate future.

3.2 Alternative forms of governance

In response to the problems associated with top-down approaches, some recommend putting resources into other forms of governance. One prominent alternative is to take a bottom-up approach.⁷ This maintains a state based system of governance but on a much more spontaneous basis, allowing actors to adopt self-determined policies and commitments voluntarily. States agree to undertake the commitments that they propose, given the agreed commitments proposed by other states to the treaty. This is the sense in which these arrangements are ‘bottom-up’ as opposed to the ‘top-down’ proposals of the UNFCCC, which allocate regulatory commitments on an institutional basis. Some argue that this is what happened at the COPs in Copenhagen in 2010 and Cancun in 2011, where states made their own voluntary pledges regarding the emissions reductions that they would undertake.⁸

The desirability of bottom-up approaches rests on two features. First, they allow states to make voluntary pledges, improving compliance. Given that states are likely to be more amenable to undertaking stringent emissions reductions on their own terms, rather than following the demands proposed on an institutional basis, bottom-up approaches have the potential to avoid the procedural problems associated with climate institutions. Second, bottom-up approaches allow states to join a treaty on an interim basis, once others have adopted similar commitments. This allows states to join a treaty on an incremental basis, rather than pursuing an immediate, comprehensive binding treaty. Some states might be particularly reluctant to join a top-down treaty on the basis that they are unwilling to adopt commitments until other states have guaranteed similar measures. If it is necessary for some states to take the lead on a preliminary basis, then a bottom-up approach might prove one way of achieving such an end.

⁷ Reinstein, R. 2004; Yamaguchi and Sekine 2006

⁸ Bodansky, D. 2012

Chapter 9. Conclusion

But there are also more informal governance arrangements aside from the state-centric approaches of top-down and bottom-up governance. These are often defined as fragmented, or decentralised forms of governance, in the sense that they are informal arrangements between state, as well as non-state actors. These include, for example, arrangements between local governments, or between public and private actors. Whilst many view the UNFCCC process as fundamentally flawed, there is a great deal of optimism about these new processes. They allow actors to formulate policies on their own, rather than waiting for otherwise elusive cooperation at the multilateral level. They also represent a more pragmatic approach to climate change, implementing action where it is possible, rather than following impractical policies developed at the multilateral level. Given the urgency of climate change, some argue that these options should be pursued instead.⁹

There are relevant considerations on both sides of this debate. Whilst some claim that efforts should be directed towards developing a comprehensive treaty, others argue that this strategy is fundamentally flawed and only prolongs further inaction. The remainder of this section provides some guidance on how to proceed on this issue.

3.3 Procedural justice and effective climate governance

Following the early discussions of this thesis, procedural justice is most likely to arise through coordinated, and clearly defined governance structures. This means that we should support a top-down approach to climate governance, which has some central institutional structure that can coordinate action and impose rules. There are several arguments that support this claim. Procedural justice means imposing specific rules and principles on the way that decisions take place within a governance arrangement. It requires that deliberation, voting and bargaining all operate according to principles of fairness. It also means that we can incorporate a large number of outside interests into the deliberative debate on the action we should take.

A formal, state-centric governance approach is the only plausible way that this is likely to happen. Fragmented governance structures are too spontaneous to bring about the sorts of ideals that procedural justice requires. These modes of governance

⁹ Prins and Rayner 2007b

Chapter 9. Conclusion

are more likely to unfairly exclude actors from the debates, and are more likely to be characterised by self-interested bargaining and a lack of reciprocity.

But a top-down approach is also more desirable than a bottom-up approach to governance. Whilst top-down approaches, such as the UNFCCC, are yet to bring about significant action on climate change, bottom-up approaches haven't fared any better. The voluntary commitments and pledges that states have made are so far insufficient to avoid dangerous climate change.¹⁰ Those who favour urgent action on climate change often think that top-down approaches are more likely to achieve this goal than bottom-up initiatives.¹¹

But the problems of multilateral governance are serious. Serious action is yet to be achieved through these institutions. It's necessary to find a way of supporting top-down approaches to governance, whilst also addressing the issue of urgency.

3.4 A complementary approach to governance

One way of doing this is to combine decentralised approaches with more traditional modes of top-down multilateralism. As I argued in chapter 8, the debate over whether we should pursue a centralised, or decentralised approach to governance is misplaced. Rather than presenting these as two conflicting ideas of governance, action should be pursued in each of these domains.

Top-down, comprehensive accounts haven't provided much progress so far. But, these approaches seem to be the most appropriate for achieving procedural justice and for implementing action in the long-term. At the same time, more decentralised approaches offer promises of more immediate action now, even if this does not meet the same standards of fairness and effectiveness. Whilst these decentralised approaches may help things forward, it is difficult to envisage these as capable of achieving successful action in the long term.

But my point here is that it isn't necessary to choose between these two approaches. A top-down architecture doesn't require us to give up on alternative mechanisms for

¹⁰ den Elzen, M. 2010

¹¹ Aldy *et al.* 2009

Chapter 9. Conclusion

coordinating action. As I argued in chapter 8, there are different ways that institutions can be designed to be complimentary, including, for example, using an overarching institutional arrangement that oversees small-scale agreements that arise from the bottom-up. There is no reason why institutions can't seek long-term action whilst allowing more immediate action through bottom-up processes. These arrangements continue to seek long-term solutions that bring in as many actors as possible whilst also pursuing more immediate action.

4. The feasibility of procedural justice

This chapter has made some proposals for policy reform. But having done this, it's necessary to consider whether these proposals are actually achievable. That is, it's necessary to think about whether there are reasonable prospects of successfully implementing these principles in climate institutions. In this section I draw on the existing literature to develop an account of what sorts of measures are feasible in climate institutions. I then argue that the proposals made in this thesis are feasible by virtue of the fact that they sufficiently take into account the real world constraints of global politics.

4.1 Feasibility

Making policy recommendations requires thinking about what is actually achievable in practice. That is, it is necessary to take into account a number of considerations, including a policy's acceptability, which is sometimes referred to as feasibility.¹² A policy is feasible if it is actually possible to bring it about given the current state of the world. This is important for two reasons. On one hand, it is pointless to specify policies that are ultimately unachievable. It might be desirable to state an ideal policy that people should try to aim for even if it isn't immediately achievable. But there is no point in making policy suggestions that are wholly unachievable. On the other hand, feasibility is also important because it allows us to rate the desirability of different policies. If two policy options are equally desirable, but one is more feasible than the other, then we might choose to adopt the more feasible policy for this reason. But there are different reasons for thinking about whether or not something is realisable in practice, and there is an on going debate about how to think about

¹² Gupta *et al.* 2007, p.752

Chapter 9. Conclusion

feasibility and justice.¹³ This section draws on this debate to make some conclusions about the feasibility of the policies described thus far. In what follows, I argue that feasibility can be thought of in terms of technical possibility, and political acceptability.

Feasibility can relate to what is technically possible.¹⁴ That is, something is technically feasible if there are no practical constraints or physical barriers that stop us from achieving that thing. A proposal to reduce global carbon emissions immediately whilst maintaining current standards of wellbeing at a low cost is technically unfeasible, because the technology doesn't exist to do this.

But we don't just care about whether or not something is practically achievable. Sometimes a policy is so demanding that it isn't acceptable, even if it is technically achievable. If a policy imposes a high personal cost on someone then that the policy won't be accepted. This is sometimes referred to as political feasibility. When it comes to political feasibility, some things are unfeasible because they are wholly unacceptable, whereas in other cases people are merely unwilling to take on high costs. Here, I claim that if something is wholly unacceptable, then it is necessary should revise a proposal to accommodate this fact. But if something is a matter of acceptability, then people should maintain a prescriptive approach.

4.2 Feasible climate policies

Having thought about what feasibility is, I now consider what this means for climate institutions. Feasibility often arises in two ways in this respect. First, people question the feasibility of policies that put strong demands on domestic populations. Any policy that's adopted by a state at the multilateral level ultimately has to be ratified by that state's government, and subsequently accepted by its domestic population. Some argue that climate institutions should take this into account. For example, Bosetti and Frankel argue that no country will accept a climate agreement that involves large domestic costs, estimating this as 1% of income.¹⁵ Similarly, Jeffrey Frankel gives seven political axioms that climate architecture must meet in order to be politically

¹³ See: Gilabert, P. 2008; Gilabert and Lawford-Smith 2012; Gheaus, A. 2013

¹⁴ Gheaus, A. 2013; Alan Buchanan refers to this as accessibility (Buchanan, A. 2004, p.61).

¹⁵ Bosetti and Frankel 2011

Chapter 9. Conclusion

feasible, including those that limit the expected domestic cost of participating in a climate agreement.¹⁶ Others still propose ‘safety-valves’ that limit the total costs that mitigation policies cause.¹⁷

But people also suggest that some climate change policies are unfeasible due to technical constraints. This is a frequent criticism of top-down, comprehensive institutions. Several authors argue that there are too many divergent interests and too much complexity involved with climate change to reach a comprehensive agreement.¹⁸ These arguments are presented as technical constraints that make collective action impossible.

Some of the claims of this thesis requires actors to undertake large costs. Providing resources for states and NSAs to participate in negotiations requires financial resources. Making decisions by majority rule and engaging with NSAs means giving up autonomy. The feasibility of other claims could be questioned on the grounds of their technical feasibility. One might question the technical feasibility of making information about climate institutions available on a global scale. Given that formal policy proposals need to take into account feasibility, it’s now necessary to consider whether the claims of this thesis are in fact achievable.

4.3 The feasibility of procedural justice

Here, I claim that despite these costs, my approach to procedural justice does not entail an unrealistic, or unachievable approach to climate change policy.

Taking the issue of cost first, there is no reason for thinking that our account of procedural justice is overly demanding. Many states already pour vast resources into participating in these negotiations. In comparison, the proposals of this thesis represent incremental financial costs. Further, these costs are minimal in comparison to what’s at stake in climate change. Climate change involves almost every aspect of society on a global scale. It is a problem that has the potential to bring about large-scale destruction. Given the high costs at stake, the costs of undertaking the measures

¹⁶ Frankel, J. 2010, p.33

¹⁷ Jacoby and Ellerman 2004

¹⁸ Prins and Rayner 2007b

Chapter 9. Conclusion

proposed in this thesis are negligible. This is true whether costs are considered in financial terms or otherwise. Even if some policies, such as making decisions by majority rule, require that states forego some elements of autonomy, this is relatively minimal in comparison to the costs that these actors will face in the event of dangerous climate change.

Turning to the issue of technical feasibility, things are less clear. Critics of the top-down approach draw on the fact that only minimal efforts have been achieved in over two decades of negotiations. These authors claim that this makes it difficult to be optimistic about the prospects of a comprehensive and coordinated effort to address climate change arising anytime soon. This leads some to question the technical feasibility of top-down, comprehensive approaches to governance. But it is wrong to infer that such measures are technically unfeasible because they have not yet been developed. There is no reason to be any more confident about the prospects of effective action through a bottom-up process. This thesis has stressed the need to focus on a comprehensive, binding approach to climate multilateralism, whilst implementing pragmatic policies in the immediate future. Whilst it might be unfeasible to implement a comprehensive approach that is sustainable in the long-term, this doesn't mean that it shouldn't remain an overall goal for now. This sort of approach may be the only way of actually dealing with climate change successfully.

Whilst the issue of feasibility remains important, there is no reason to think that the policies suggested in this thesis are achievable, either in terms of the costs that they ask people to make, or in terms of their technical feasibility. Even though actors may have to undertake large costs to meet the requirements of procedural justice, these should not lead us to think that these policies cannot be achieved in practice.

5. Conclusion

This chapter has drawn together the separate threads of this thesis in order to make some coherent and achievable proposals for climate governance. In doing so, it has discussed the feasibility of different approaches, as well as the different forms of governance that are ultimately desirable for achieving procedural justice. The final message of this thesis is that the primacy of comprehensive, long-term governance is undeniable. This is the ideal form of governance in the sense that it is likely to be the

Chapter 9. Conclusion

most effective and the fairest. Practical constraints and feasibility issues sometimes undermine this approach. But top-down and bottom-up modes of governance are not mutually exclusive options. Successful action on climate change will involve a combination of these approaches. The stakes are so high that our efforts and resources should be put into a number of approaches, rather than limited to any particular form of governance.

Bibliography

- Abizadeh, A. (2008). "Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders." Political Theory. **38**: 111-120.
- Adesnik, D. and M. McFaul (2006). "Engaging Autocratic Allies to Promote Democracy". The Washington Quarterly. **29**(2).7-26.
- Adger, W.N., K. Brown, et al. (2003). "Governance for Sustainability: Towards a 'Thick' Analysis of Environmental Decisions." Environment and Planning. **35**: 1095-1110.
- Adger, W.N., J. Paavola, et al. (2006). Fairness in Adaptation to Climate Change. Cambridge, Mass., MIT Press.
- Agarwal, A. and S. Narain (1991). Global Warming in an Unequal World, a Case of Environmental Colonialism. New Delhi: Centre for Science and Environment.
- AGBM (1996). "Quantified Emission Limitation and Reduction Objectives Within Specified Time-frames: Review of Possible Indicators to Define Criteria for Differentiation Among Annex I Parties". FCCC/AGBM/1996/7.
- Agné, H. (2006). "A Dogma of Democratic Theory and Globalization: Why Politics Need Not Include Everyone it Affects." European Journal of International Relations. **12**(3): 433–458.
- Albin, C. (2001). Justice and Fairness in International Negotiation. Cambridge, Cambridge University Press.
- Albin, C. (2003a). "Negotiating International Cooperation: Global Public Goods and Fairness." Review of International Studies. **29**(3): 365-385.
- Albin, C. (2003b). "Getting to Fairness: Negotiations over Global Public Goods". Providing Public Goods: Managing Globalization. I. Kaul, P. Conceição, K. Le Goulven and R.U. Mendoza (eds.). Oxford, Oxford University Press.
- Aldy, J.E., P.R. Orszag, et al. (2001). "Climate Change: An Agenda for Global Collective Action." Pew Center on Global Climate Change.
- Aldy, J.E., S. Barrett, *et al.* (2003). "Thirteen Plus One: a Comparison of Global Climate Policy Architectures." Climate Policy. **3**: 373–397.
- Aldy, J.E. and R.N. Stavins (2007). Architectures for Agreement. Cambridge, Cambridge University Press.
- Aldy, J.E. and R.N. Stavins (2010). Post-Kyoto International Climate Policy: Implementing Architectures for Agreement. Cambridge, Cambridge University Press.
- Allen, M.R. (2009). "Planetary Boundaries: Tangible Targets are Critical". Nature Reports Climate Change. **3**(0910). 114-115.

Allen, M.R., D.J. Frame, et al. (2009a). "Commentary: The Exit Strategy." Nature Reports Climate Change. **3**: 56-58.

Allen, M.R., D.J. Frame, et al. (2009b). "Warming Caused by Cumulative Carbon Emissions Towards the Trillionth Tonne." Nature. **458**: 1163-1166.

Alley, R.B., J. Marotzke, et al (2005). "Abrupt Climate Change." Science **299**.

Andonova, L.B. and A. Alexieva. (2012). "Continuity and Change in Russia's Climate Negotiations Position and Strategy." Climate Policy. **12**:5. 614–629.

Andresen, S., Wettestad, J. (1992). "International Resource Cooperation and the Greenhouse Problem." Global Environmental Change, Human and Policy Dimensions. **2**:4. 277-291.

Andresen, S. and S. Agrawal (2002). "Leaders, Pushers, and Laggards in the Making of the Climate Regime." Global Environmental Change. **12**: 41-51.

Antholis, W.J. and S. Talbott (2010). Fast Forward Ethics and Politics in the Age of Global Warming. Brookings Institution Press.

APP. (2012). "Asia-Pacific Partnership On Clean Development and Energy." from: <http://www.asiapacificpartnership.org/english/default.aspx>

Archibugi, D., D. Held, et al. (1998). Re-imagining Political Community: Studies in Cosmopolitan Democracy. Cambridge, Polity Press.

Aristotle (1999). Nicomachean Ethics. Indianapolis: Hackett.

Arneson, R.J. (2004). "Democracy is Not Intrinsically Just". Justice and Democracy. K. Dowding, R. E. Goodin and C. Pateman (eds.). Cambridge, Cambridge University Press.

Arrhenius, G. (2005). "The Boundary Problem in Democratic Theory". Democracy Unbound. F. Tersman (ed.). Stockholm, Stockholm University.

Arrhenius, S. (1896). "On the Influence of the Carbonic Acid in the Air upon the Temperature of the Ground." Philosophical Magazine and Journal of Science. **41**(251): 237-276.

Ashton, J. and X. Wang (2003). "Equity and Climate: in Principle and Practice". Beyond Kyoto: Advancing the International Effort against Climate Change. Washington, DC. Pew Center on Global Climate Change.

Atkinson, R., N. Chhetri, et al. (2011). Climate Pragmatism: Innovation, Resilience and No Regrets. The Breakthrough Institute.
http://thebreakthrough.org/blog/Climate_Pragmatism_web.pdf

Bäckstrand, K. (2006). "Democratising Global Governance? Stakeholder Democracy after the World Summit on Sustainable Development." European Journal of International Relations. **12**(4): 467-498.

Bäckstrand, K. (2008). "Accountability of Networked Climate Governance: The Rise of Transnational Climate Partnerships." Global Environmental Politics. **8**(3): 74-102.

Bäckstrand, K. (2010a). "Democratizing Global Governance of Climate Change after Copenhagen". Oxford Handbook on Climate Change and Society. J. Dryzek, R. B. Norgaard and D. Schlosberg (eds.). Oxford: Oxford University Press.

Bäckstrand, K. (2010b). Environmental Politics and Deliberative Democracy: Examining the Promise of New Modes of Governance. Cheltenham, Edward Elgar.

Bäckstrand, K., J. Khan, et al. (2010). "The Promise of New Modes of Environmental Governance". Environmental politics and Deliberative Democracy: Examining the Promise of New Modes of Governance. K. Bäckstrand (ed.). Cheltenham, Edward Elgar.

Baer, P. and T. Athanasiou (2007). "Frameworks & Proposals; a Brief, Adequacy and Equity-Based Evaluation of Some Prominent Climate Policy Frameworks and Proposals." Heinrich Boll Foundation Global Issue Papers. **No.30**. Heinrich Boll Foundation.

Baer, P., G. Fieldman, et al. (2009). "Greenhouse Development Rights: A Proposal for a Fair Global Climate Treaty." Ethics, Place & Environment. **12**(3): 267-281.

Bales, C.F. and R.D. Duke (2008). "Containing Climate Change: An Opportunity for US Leadership." Foreign Affairs. **78**.

Balinski, M.L. and H.P. Young (2001). Fair Representation: Meeting the Ideal of One Man, One Vote. Brookings Institute. Washington D.C.

Banuri, T., K. Goran-Maler, et al. (1995). Equity and Social Considerations. Economic and Social Dimensions of Climate Change. Contribution of Working Group III to the Second Assessment Report of the Intergovernmental Panel on Climate Change. J.P. Bruce, L. Hoesung and E. Haites (eds.). Cambridge, Cambridge University Press.

Bapna, M. and J. Werksman (2010). A Climate of Corruption? Transparency Challenges for Cancun and Beyond. World Resources Institute. Washington DC.

Barrett, S. (1992). "Transfers and the Gains from Trading Carbon Emission Entitlements in a Global Warming Treaty". Combatting Global Warming: Study on a Global System of Tradeable Carbon Emission Entitlements. A. Rose, S. Barrett, M. Grubb et al. (eds.). Geneva, Switzerland: UNCTAD.

Barrett, S. (1994). "Self-Enforcing International Environmental Agreements." Oxford Economic Papers. **46**: 878-894.

Barrett, S. (1995). Trade Restrictions in International Environmental Agreements. London Business School, London.

Barrett, S. (1997). "The Strategy of Trade Sanctions in International Environmental Agreements." Resources and Energy Economics. **19**(4): 345- 361.

Barrett, S. (1998). "The Political Economy of the Kyoto Protocol" Oxford Review of Economic Policy. **14**: 20-39.

Barrett, S. (2001). "International Cooperation for Sale." European Economic Review. **45**(10). 1835-50.

Barrett, S. (2003) Environment and Statecraft. Oxford: Oxford University Press.

Barrett, S. and R.N. Stavins (2003). "Increasing Participation and Compliance in International Climate Change Agreement." International Environmental Agreements: Politics, Law and Economics. **3**: 349–376.

Bashmakov, I., C. Jepma, et al. (2001). "Policies, Measures, and Instruments". Climate Change 2001: Mitigation. Contribution of Working Group III to the Third Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge, Cambridge University Press.

Becker, L.C. (2005). "Reciprocity, Justice, and Disability." Ethics. **116**(1). 9-39.

Beerbohm, E. (2012). In Our Name: The Ethics of Democracy. Princeton, N.J.; Oxford: Princeton University Press.

Beitz, C.R. (1989). Political Equality: an Essay in Democratic Theory. Princeton, Princeton University Press.

Bell, D. (2011). "Procedural Justice and Local Climate Policy in the UK." Draft Report. The Joseph Rowntree Foundation. Part of the Programme: A Socially Just Transition to a Low Carbon Economy and Society. www.climatefairness.com

Bell, D. and F. Rowe (2012). Are Climate Policies Fairly Made? Joseph Rowntree Foundation. York.

Benhabib, S. (1996). Democracy and Difference: Contesting the Boundaries of the Political. Princeton, N.J., Princeton University Press.

Bentham, J. (1843). On Publicity. The Works of Jeremy Bentham. Vol. 1-11. J. Bowring (ed.). Edinburgh: Simpkin, Marshall and Company.

Berk, M.M. and M.G.J. den Elzen (1998). "The Brazilian Protocol Evaluated." Climate Change. **44**: 19-23.

Besson, S. (2005). The Morality of Conflict: Reasonable Disagreement and the Law. Oxford. Hart Publishing.

Besson, S. (2009). "Institutionalizing Global Democracy". Legitimacy, Justice and Public International Law. L. H. Meyer (ed.). Cambridge, Cambridge University Press.

Betsill, M.M. and E. Corell (2001). "NGO Influence in International Environmental Negotiations: A Framework for Analysis." Global Environmental Politics. 1(4): 65-85.

Biermann, F. (2010). "Beyond the Intergovernmental Regime: Recent Trends in Global Carbon Governance." Current Opinion in Environmental Sustainability. 2: 284–288.

Biermann, F., O. Davies, et al. (2009a). "Environmental Policy Integration and the Architecture of Global Environmental Governance." International Environmental Agreements: Politics, Law and Economics. 9(4): 351–369.

Biermann, F., Pattberg, P., van Asselt, H., Zelli, F. (2009b). The Fragmentation of Global Governance Architectures: a Framework for Analysis. Global Environmental Politics. 4:14-40.

Biermann, F., M.M. Betsill, et al. (2010a). "Earth System Governance: a Research Framework." International Environmental Agreements: Politics, Law and Economics 10(4): 277–298.

Biermann, F., Pattberg, P., et al. (2010b). Global Climate Governance Beyond 2012: Architecture, Agency and Adaptation. Cambridge, Cambridge University Press.

Biermann, F., K. Abbott, et al. (2011). "Transforming Governance and Institutions for Global Sustainability: Key Insights from the Earth System Governance Project". Earth System Governance Working Paper No. 17. Lund and Amsterdam: Earth System Governance Project.

Biermann, F., K. Abbott, et al. (2012). "Navigating the Anthropocene: Improving Earth System Governance." Science. 16.335 (6074): 1306-1307.

Birnie, P. (1988). "International Law and Solving Conflicts". International Environmental Diplomacy: The Management and Resolution of Transfrontier Environmental Problems. J. E. Carroll. Cambridge, Cambridge University Press.

Blake, D.J. and A.L. Payton (2009). "Decision Making in International Organizations: An Interest Based Approach to Voting Rule Selection." Research in International Politics Workshop. 16 January 2008.

Blake, M. (2001). "Distributive Justice, State Coercion, and Autonomy." Philosophy & Public Affairs. 30(3): 257-296.

Bodansky, D. (1993). "The United Nations Framework Convention on Climate Change: A Commentary." Yale Journal of International Law. 18(2): 451–558.

Bodansky, D. (1999). "Legitimacy of International Governance: A Coming Challenge for International Environmental Law?" The American Journal of International Law. **93**(3): 596-624.

Bodansky, D. (2001). "The History of the Global Climate Change Regime". International relations and global climate change. U. Luterbacher and D. F. Sprinz (eds.). Cambridge, Mass.; London, MIT Press.

Bodansky, D. (2007). "Legitimacy". The Oxford Handbook of International Environmental Law. D. Bodansky, J. Brunnée and E. Hey (eds.). Oxford; New York, Oxford University Press.

Bodansky, D. (2010). "Climate Change and Human Rights: Unpacking the Issues." Georgia Journal of International and Comparative Law. **38**(3): 511-524.

Bodansky, D. (2012). "The Durban Platform: Issues and Options for a 2015 Agreement." Centre for Climate and Energy Solutions.

Bodansky, D. and S. Chou (2004). International Climate Efforts Beyond 2012: a Survey of Approaches. Pew Center on Global Climate Change. Washington DC.

Bodansky, D. and E. Diringer (2007). Towards an Integrated Multi-Track Framework. Arlington, VA., Pew Center on Global Climate Change.

Bodansky, D. and E. Diringer (2010). "The Evolution of Multilateral Regimes: Implications for Climate Change". Arlington, VA., Pew Center on Global Climate Change.

Bodansky, D. and L. Rajamani (2013). "Evolution and Governance Architecture". International Relations and Global Climate Change. D. Sprinz and U. Luterbacher (eds.). Cambridge, Mass.; London. MIT Press.

Bohman, J. (1997). "Deliberative Democracy and Effective Social Freedom: Capabilities, Resources, and Opportunities". Deliberative Democracy: Essays on Reason and Politics. J. Bohman and W. Rehg (eds.). Cambridge: MA; London, MIT Press.

Bosetti, V. and J. Frankel (2012). "Politically Feasible Emissions Targets to Attain 460ppm CO2 Concentrations." Review of Environmental Economics and Policy. **6**(1): 86-109.

Bovens, L. (2011). "A Lockean Defense of Grandfathering Emission Rights". The Ethics of Global Climate Change. D.G. Arnold (ed.). Cambridge: Cambridge University Press.

Bowering, E. (2011). "After Kyoto: the Cartagena Dialogue and the Future of The International Climate Change Regime". Prepared for the United Nations Framework Convention on Climate Change COP17. www.globalvoices.org.au

Brams, S.J. and A.D. Taylor (1995). "An Envy-Free Cake Division Protocol." The American Mathematical Monthly. **102**(1): 9-18.

Brandi, C. (2010). International Trade and Climate Change: Border Adjustment Measures and Developing Countries. Bonn, Deutsches Institut für Entwicklungspolitik / German Development Institute.

Brazilian Party (1997). Proposed elements of a protocol to the United Nations Framework Convention on Climate Change. Presented by Brazil in response to the Berlin Mandate at the United Nations Framework Convention on Climate Change.

Brighouse, H. and M. Fleurbaey (2010). "Democracy and Proportionality." Journal of Political Philosophy. **18**(2): 137-155.

Bruce, J.P., L. Hoesung, et al. (1996). "Climate Change 1995: Economic and Social Dimension of Climate Change." Contribution of Working Group III to the Second Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge, Cambridge University Press.

Brunnée, J. (2002). "COPing with Consent: Law-making under Multilateral Environmental Agreements." Leiden Journal of International Law. **15**(1): 1-52.

Buchanan, A.E. (2004). Justice, Legitimacy, and Self-determination: Moral Foundations for International Law. Oxford, Oxford University Press.

Buchanan, A.E., R.O. Keohane (2006). "The Legitimacy of Global Governance Institutions." Ethics and International Affairs. **20**(4): 412.

Buchanan, J.M. and G. Tullock (1962). The Calculus of Consent: Logical Foundations of Constitutional Democracy. Ann Arbor: University of Michigan Press.

Bulkeley, H. and P. Newell (2010). Governing Climate Change. Milton Park, Abingdon, Oxon; New York, Routledge.

Burtraw, D., M.A. Toman (1993). "Equity and International Agreements for CO2 Constraint." Journal of Energy Engineering. **118**: 2. 122-135.

Caney, S. (2005a). "Cosmopolitan Justice, Responsibility and Global Climate Change." Leiden Journal of International Law. **18**: 747-745.

Caney, S. (2005b). Justice Beyond Borders: a Global Political Theory. Oxford, Oxford University Press.

Caney, S. (2006a). "Cosmopolitan Justice and Institutional Design: an Egalitarian Liberal Conception of Global Governance." Social Theory and Practice. **32**(4): 725-756.

Caney, S. (2006b). "Cosmopolitan Justice, Rights and Global Climate Change." Canadian Journal of Law and Jurisprudence. **19**: 255-278.

- Caney, S. (2006c). "Environmental Degradation, Reparations, and the Moral Significance of History." Journal of Social Philosophy. **73**(3): 464-482.
- Caney, S. (2009a). "Climate Change and the Future: Discounting for Time, Wealth, and Risk." Journal of Social Philosophy. **40**(2): 163-86.
- Caney, S. (2009b). "Climate Change, Human Rights and Moral Thresholds". Human Rights and Climate Change. S. Humphreys and M. Robinson (eds.). Cambridge, Cambridge University Press.
- Caney, S. (2009c). "Justice and the Distribution of Greenhouse Gas Emissions." Journal of Global Ethics. **5**(2): 125-146.
- Caney, S. (2012). "Just Emissions." Philosophy and Public Affairs. **40**(4): 255-300.
- Carraro, C. and D. Siniscalco (1997). "R&D Cooperation and the Stability of International Environmental Agreements". International Environmental Agreements: Strategic Policy Issues. C. Carraro (ed.). Cheltenham., E. Elgar.
- Carraro, C. and D. Siniscalco (1998). "International Environmental Agreements: Incentives and Political Economy." European Economic Review. **42**. 561-572.
- Carrington, D. (2010). "US Goes to Basics over Copenhagen Accord Tactics". The Guardian. Friday 3 December 2010. London.
- Chambers, S. (1996). Reasonable Democracy: Jürgen Habermas and the Politics of Discourse. Ithaca, N.Y., Cornell University Press.
- Chambers, S. (2003). "Deliberative Democratic Theory." Annual Review of Political Science. **6**: 307-326.
- Chambers, S. (2004). "Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation." Journal of Political Philosophy **12**(4): 389-410.
- Chasek, P. and L. Rajamani (2003). "Steps Toward Enhanced Parity: Negotiating Capacities and Strategies of Developing Countries". Providing Public Goods: Managing Globalization. I. Kaul, P. Conceição, K. Goulven and F. Mendoza (eds.). Oxford, Oxford University Press.
- Chasek, P.S., D.L. Downie, et al. (2006). Global Environmental Politics. Boulder, Colorado, Westview Press.
- Chayes, A. and A. H. Chayes (1995). The New Sovereignty: Compliance with International Regulatory Agreements. Cambridge, Mass; London. Harvard University Press.
- Chimni, B.S. (2004). "International Institutions Today: an Imperial Global State in the Making." The European Journal of International Law. **15**(1): 1–37.

Christiano, T. (1990). "Freedom, Consensus, and Equality in Collective Decision Making." Ethics. **101**(1): 151-181.

Christiano, T. (1996). The Rule of the Many: Fundamental Issues in Democratic Theory. Boulder, Colorado; Oxford, Westview Press.

Christiano, T. (2004). "The Authority of Democracy." Journal of Political Philosophy. **12**(3): 266-90.

Christiano, T. (2008). The Constitution of Equality: Democratic Authority and Its Limits. Oxford, Oxford University Press.

Christoff, P. (2006). "Post-Kyoto? Post-Bush? Towards an Effective Climate Coalition of the Willing". International Affairs. **82**(5): 831-860.

Clark, P. (2011). "ClimateCchange: The Great Regrouping". 15th December 2011. Financial Times. London.

Cohen, J. (1989). "Deliberation and Democratic Legitimacy". The Good Polity: Normative Analysis of the State. A. Hamlin and P. Petit (eds.). New York, Blackwell.

Cohen, J. (1994) "Pluralism and Proceduralism." Chicago-Kent Law Review. **69**. 589-618.

Cohen, J. (1997). "Procedure and Substance in Deliberative Democracy". Deliberative Democracy: Essays on Reason and Politics. J. Bohman and W. Rehg (eds.). Cambridge: MA; London, MIT Press.

Cooper, R.N. (1998). "Towards a Real Treaty on Global Warming." Foreign Affairs. **77**: 66-79.

Corbera, E. and H. Schroeder (2011). "Governing and Implementing REDD+." Environmental Science & Policy. **14**(2): 89-99.

Dahl, R.A. (1956). A Preface to Democratic Theory. Chicago; London, University of Chicago Press.

Dahl, R.A. (1975). "Procedural Democracy". Philosophy, Politics and Society. P. Laslett and J. Fishkin (eds). Oxford, Blackwell.

Dahl, R.A. (1989). Democracy and Its Critics. New Haven, Yale University Press.

Daniels, N. (1996). Justice and Justification: Reflective Equilibrium in Theory and Practice. Cambridge; New York, Cambridge University Press.

den Elzen, M. (2002). "Exploring post-Kyoto Climate Regimes for Differentiation of Commitments to Stabilize Greenhouse Gas Concentrations." Climate Change Policy Support Project. Dutch Ministry of Environment.

den Elzen, M. (2010). "The Emissions Gap Report." UNEP.

<http://www.unep.org/publications/ebooks/emissionsgapreport/>

den Elzen, M., M. Meinshausen, et al. (2006). "Multi-gas Emission Envelopes to Meet Greenhouse Gas Concentration Targets: Costs versus Certainty of Limiting Temperature Increase." Global Environmental Change. **17**: 260.

Depledge, J. (2005a). "Against the Grain: The United States and the Global Climate Change Regime." Global Change, Peace and Security. **17**(1): 11–27.

Depledge, J. (2005b). The Organization of Global Negotiations: Constructing the Climate Change Regime. London, Earthscan.

Depledge, J. (2008). "Striving for No: Saudi Arabia in the Climate Change Regime " Global Environmental Politics. **8**(4): 9-35.

Depledge, J. and F. Yamin (2009). "The Global Climate Change Regime: A Defence". The Economics and Politics of Climate Change. D. Helm and C. Hepburn (eds.). Oxford, Oxford University Press.

DeSombre, E.R. (2002). The Global Environment and World Politics. London, Continuum.

Dimitrov, R.S. (2010a). "Inside Copenhagen: The State of Climate Governance." Global Environmental Politics. **10**(2): 18-24.

Dimitrov, R.S. (2010b). "Inside UN Climate Change Negotiations: The Copenhagen Conference." Review of Policy Research **27**(6). 795-821.

Dingwerth, K. (2005). "The Democratic Legitimacy of Public-Private Rule Making: What Can We Learn from the World Commission on Dams?" Global Governance. **11**(1): 65-83.

Dingwerth, K. (2007). The New Transnationalism: Transnational Governance and Democratic Legitimacy. Basingstoke. New York. Macmillan Press.

Dingwerth, K. and P. Pattberg (2007). "The Effects of Transnational Environmental Regimes". PVS - Politische Vierteljahresschrift, Sonderheft 39 "Politik und Umwelt". K. Jacob, F. Biermann, P. Busch and P. H. Feindt. (eds.)

Dirix, J., W. Peeters, et al. (2013). "Strengthening Bottom-up and Top-down Climate Governance." Climate Policy. **13**(3): 363-383.

Dixon, W.J. (1983). "The Evaluation of Weighted Voting Schemes for the United Nations General Assembly " International Studies Quarterly. **27**(3): 295-314.

Dombrowski, K. (2010). "Filling the gap? An Analysis of Non-governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance". International Environmental Agreements: Politics, Law and Economics. **10**(4): 397-416.

Doran, P. and J. Gloel (2007). "Capacity of Developing Countries to Participate in International Decision-making." International Institute for Sustainable Development.

Droege, S. (2009). "Tackling Leakage in a World of Unequal Carbon Prices." Report Climate Strategies.

Droege, S. (2011). "Using Border Measures to Address Carbon Flows." Climate Policy. **11**(5). 1191-1201.

Dryzek, J. (2000). Deliberative Democracy and Beyond. Oxford. Oxford University Press.

Dryzek, J.S. (2010). Foundations and Frontiers of Deliberative Governance. Oxford, Oxford University Press.

Dryzek, J. and S.J. Niemeyer (2006). "Reconciling Pluralism and Consensus as Political Ideals." American Journal of Political Science. **50**(3): 634-649.

Dryzek, J. and H. Stevenson (2011). "Global Democracy and Earth System Governance". Ecological Economics. **70** (11): 1865–1874.

Dryzek, J. and H. Stevenson (2012a). "The Discursive Democratization of Global Climate Governance." Environmental Politics **21**(2). 189-210.

Dryzek, J. and H. Stevenson (2012b). "Legitimacy of Multilateral Climate Governance: a Deliberative Democratic Approach". Critical Policy Studies. **6**(1). 1-18.

Dubash, N.K. (2009). "Copenhagen: Climate of Mistrust." Economic & Political Weekly. **XLIV**(52): 8-11.

Duxbury, A. (2011). The Participation of States in International Organisations: the Role of Human Rights and Democracy. Cambridge, Cambridge University Press.

Dworkin, R. (1981). "What is Equality? Part II Equality of Resources." Philosophy and Public Affairs. **10**(4). 283-345.

Dworkin, R. (1988). "What is Equality - Part IV: Political Equality." University of San Francisco Law Review. **22**(1). 1-30.

Dworkin, R. (1996). Freedom's Law: the Moral Reading of the American Constitution. Oxford, Oxford University Press.

Eckersley, R. (2004). The Green State. Cambridge, Mass.; MIT Press.

Eckersley, R. (2010). "The Politics of Carbon Leakage and Fairness of Border Measures." Ethics and International Affairs. **24**(4): 367-94.

Eckersley, R. (2012). "Moving Forward in the Climate Negotiations: Multilateralism or Minilateralism?" Global Environmental Politics. **12**(2): 24-42.

Elster, J. (1986). "The Market and the Forum: Three Varieties of Political Theory". Foundations of Social Choice Theory. J. Elster and A. Hylland (eds.). Cambridge University Press, Cambridge.

Elster, J. (1998). Deliberative Democracy. Cambridge, Cambridge University Press.

Erman, E. (2010). "Why Adding Democratic Values is Not Enough for Global Democracy". Legitimacy Beyond the State? Re-examining the Democratic Credentials of Transnational Actors. E. Erman and A. Uhlin (eds.). Basingstoke, Palgrave Macmillan.

Estlund, D.M. (2008). Democratic Authority: a Philosophical Framework. Princeton, N.J.; Oxford, Princeton University Press.

Falk, R. and R. Strauss (2000). "On the Creation of a Global People's Assembly: Legitimacy and the Power of Popular Sovereignty." Stanford Journal of International Law. **36**: 191-220.

Falkner, R., H. Stephen et al. (2010). "International Climate Policy after Copenhagen: Towards a 'Building Blocks' Approach." Global Policy. **1**(3): 252-62.

Farrelly, C. (2007). "Justice in Ideal Theory: A Refutation." Political Studies. **55**: 844-864.

Feinberg, J. (1990). The Moral Limits of the Criminal Law, Volume 4: Harmless Wrongdoing. New York, Oxford University Press.

Fenster, M. (2006). "The Opacity of Transparency." Iowa Law Review. **91**: 885-949.

Ferng, J-J. (2003). "Allocating the Responsibility of CO2 Over-emissions from the Perspectives of Benefit Principle and Ecological Deficit." Ecological Economics. **46**: 121-141.

Fisher, R., W. Ury, et al. (1991). Getting to Yes: Negotiating Agreement Without Giving In. New York, Penguin Books.

Fishkin, J.S. and P. Laslett (2003). Debating Deliberative Democracy. Malden, Mass.; Oxford, Blackwell.

Florini, A. (2005). The Coming Democracy: New Rules for Running the World. Washington, DC: Brookings Institution Press.

Florini, A. (2007). The Right to Know: Transparency for an Open World. New York, Columbia University Press.

Florini, A. (2008). "Making Transparency Work." Global Environmental Politics **8**(2). 14-16.

Foti, E., L. de Silva, et al. (2008). Voice and Choice: Opening the Door to Environmental Democracy. Washington, DC, Word Resources Institute.

Franck, T. (1995). Fairness in International Law and Institutions. Oxford: Clarendon Press.

Frankel, J. (2010). A Proposal for Specific Formulas and Emission Targets for All Countries in all Decades. Post-Kyoto International Climate Policy: Implementing Architectures for Agreement. J.E. Aldy and R.N. Stavins (eds.). Cambridge, Cambridge University Press.

Fraser, N. (2008). Scales of Justice: Reimagining Political Space in a Globalizing World. Cambridge. Polity.

Friedland, N., J. Thibaut, et al. (1973). "Some Determinants of the Violation of Rules." Journal of Applied Social Psychology. **2**: 265-270.

Frolicher, T.L. and F. Joos (2010). "Reversible and Irreversible Impacts of Greenhouse Gas Emissions in Multi-century Projections with the NCAR Global Coupled Carbon Cycle-climate Model." Climate Dynamics. **39**: 1439-1459.

Fu-Bertaux, X. and A. Ochs (2012). "An Uncertain Mandate from Durban." Worldwatch Institute. www.worldwatch.org/node/9491

Fuji, Y. (1990). "An Assessment of the Responsibility for the Increase in CO2 Concentration and Inter-generational Carbon Accounts". International Institute for Applied Systems. Working Paper 90-55.

Gardiner, S. (2004). "Ethics and Global Climate Change." Ethics. **114**: 555-600.

Gardiner, S. (2006). "A Perfect Moral Storm: Climate Change, Intergenerational Ethics and the Problem of Moral Corruption." Environmental Values. **15**: 397-413.

Gardiner, S. (2011). A Perfect Moral Storm: the Ethical Tragedy of Climate Change. New York, Oxford University Press.

Garnaut, R. (2009). The Garnaut Report. Economic and Social Research Council. Great Britain.

Gheaus, A. (2013). "The Feasibility Constraint on the Concept of Justice." forthcoming in the Philosophical Quarterly.

Ghosh, A. (2010). "Making Climate Look Like Trade? Questions on Incentives, Flexibility and Credibility." Policy Brief for Centre for Policy Research. Dharma Marg, Chanakyapuri, New Delhi.

Ghosh, A. and N. Woods (2009). "Governing Climate Change: Lessons from other Governance Regimes". The Economics and Politics of Climate Change. D. Helm and C. Hepburn (eds.). Oxford, Oxford University Press.

- Gilbert, P. (2008). "Global Justice and Poverty Relief in Nonideal Circumstances." Social Theory and Practice. **34**(3). 411-438.
- Gilbert, P. and H. Lawford-Smith (2012). "Political Feasibility: A Conceptual Exploration." Political Studies. **60**: 809–825.
- Goodin, R.E. (1980). Manipulatory Politics. New Haven; London, Yale University Press.
- Goodin, R.E. (1992). Motivating Political Morality. Oxford, Blackwell.
- Goodin, R.E. (2007). "Enfranchising All Affected Interests and Its Alternatives." Philosophy & Public Affairs. **35**(1): 40-68.
- Gould, C. (1988). Rethinking Democracy: Freedom and Social Cooperation in Politics, Economics and Society. New York, Cambridge University Press.
- Gosseries, A. (2003). Historical Emissions and Free-riding. Historical Justice. L. Meyer (ed.). Baden-Baden, Nomos.
- Gosseries, A. (2005). "Cosmopolitan Luck Egalitarianism and Climate Change." Canadian Journal of Philosophy Supplementary. **31**: 279-309.
- Grasso, M. (2007). "A Normative Ethical Framework in Climate Change." Climate Change. **81**: 223-246.
- Grasso, M. (2010). Justice in Funding Adaptation under the International Climate Change Regime. Springer. Dordrecht; New York
- Griffin, J.W. (2008). On Human Rights. Oxford; New York, Oxford University Press.
- Grubb, M. (1992). "Options for An International Agreement". Combatting Global Warming: Study on a Global System of Tradeable Carbon Emission Entitlements". Grubb, M., Rose, A. (eds.). UNCTAD. Geneva, Switzerland.
- Grubb, M. (1995). "Seeking Fair Weather: Ethics and the International Debate on Climate Change." International Affairs. **71**(3): 463-496.
- Gupta, A. (2008). "Transparency Under Scrutiny: Information Disclosure in Global Environmental Governance." Global Environmental Politics. **8**(2): 1-7.
- Gupta, A. (2010). "Transparency in Global Environmental Governance: A Coming of Age?" Global Environmental Politics. **10**(3). 1-9.
- Gupta, J. (1999). "Global Decision-making: Climate Change Politics". Climate Change – An Integrated Perspective. P. Martens and J. Rotmans (eds.). **1**: 319-356.
- Gupta, J. (2000). "On Behalf of My Delegation..." A Survival Guide for Developing Country Climate Negotiators. Published jointly by the Center for Sustainable

Development of the Americas and the International Institute for Sustainable Development.

Gupta, J. and M. Grubb (2000). Climate Change and European Leadership: A Sustainable Role for Europe. Dordrecht, Kluwer Academic Publishers.

Gupta, J. and L. Ringius (2001). "The EU's Climate Leadership: Between Ambition and Reality." International Environmental Agreements. Politics, Law and Economics. **1**(2): 281-299.

Gupta, S., D.A. Tirpak, et al. (2007). Policies, Instruments and Co-operative Arrangements. Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. B. Metz, O.R. Davidson, P.R. Bosch, R. Dave and L.A. Meyer (eds). Cambridge, Cambridge University Press.

Gutmann, A. and D. Thompson (1990). "Moral Conflict and Political Consensus." Ethics. **101**(1). 64-88.

Gutmann, A. and D. Thompson (1996). Democracy and Disagreement. Cambridge MA, Harvard University Press.

Haas, P.M. (2008). "Climate Change Governance after Bali " Global Environmental Politics. **8**(3): 1-7.

Habegger, B. (2010). "Democratic Accountability of International Organizations: Parliamentary Control within the Council of Europe and the OSCE and the Prospects for the United Nations." Cooperation and Conflict. **45**(2): 186-204.

Hahn, R.W. (2009). "Climate Policy: Separating Fact from Fantasy." Harvard Environmental Law Review. **33**. 557-591.

Hale, T.N. (2008). "Transparency, Accountability, and Global Governance." Global Governance. **14**(1): 73-94.

Hall, D., M. Levi, et al. (2010). "Policies for Developing Country Engagement." Post-Kyoto International Climate Policy: Implementing Architectures for Agreement. J.E. Aldy and R.N. Stavins (eds.). Cambridge, Cambridge University Press.

Halsnæs, K., P.R. Shukla, et al. (2007). Framing Issues. Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Inter-governmental Panel on Climate Change. B. Metz, O.R. Davidson, P.R. Bosch, R. Dave and L.A. Meyer (eds.). Cambridge, Cambridge University Press.

Hamlin, A. and Z. Stemplowska (2012). "Theory, Ideal Theory and the Theory of Ideals." Political Studies Review. **10**: 48-62.

Hare, B. and M. Meinshausen (2006). "How Much Warming are we Committed to and How Much Can be Avoided?" Climate Change. **75**:1-2.

Hare, W., C. Stockwell, et al. (2010). "The Architecture of the Global Climate Regime: a Top-down Perspective." Climate Policy. **10**(6): 600-14.

Harstad, B. (2009a). "Rules for Negotiating and Updating Climate Treaties." Harvard Project on International Climate Agreements. Belfer Center for Science and International Affairs. John F. Kennedy School of Government.

Harstad, B. (2009b). "The Dynamics of Climate Agreements." CMS-EMS Discussion Paper. **1474**. <http://www.kellogg.northwestern.edu/faculty/harstad/htm/nt.pdf>

Harstad, B. (2010). "How to Negotiate and Update Climate Agreements". Post-Kyoto International Climate Policy: Implementing Architectures for Agreement. J.E. Aldy and R.N. Stavins (eds.). Cambridge, Cambridge University Press.

Hart, H.L.A. and T. Honor (1985). Causation in the law. Oxford, Clarendon Press.

Harvey, F. and J. Vidal (2011). "Global Climate Change Treaty in Sight after Durban Breakthrough Climate Conference Ends in Agreement after Two Weeks of Talks". The Guardian. London.

Hayward, T. (2007). "Human Rights Versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space." Ethics and International Affairs. **21**(4). 1-35.

Held, D. (2004). Global Covenant. Cambridge, Polity Press.

Held, D., M. Theros, et al. (2011). The Governance of Climate Change. Cambridge, Polity.

Helm, D. (2012). "The Kyoto Approach has Failed." Nature. **491**: 663-665.

Hoel, M. (1992). "International Environmental Conventions: The Case of Uniform Reductions of Emissions." Environmental and Resource Economics **2**: 141-159.

Hohl, S. and D. Roser (2011). "Stepping in for the Polluters? Climate Justice under Partial Compliance." Analyse und Kritik. **33**(2): 477–500.

Höhne, N., C. Galleguillos, et al. (2002). "Evolution of Commitments under the UNFCCC: Involving Newly Industrialized Economies and Developing Countries." The German Federal Environmental Agency (Umweltbundesamt).

Höhne, N., F. Yamin, et al. (2008). The History and Status of the International Negotiations on a Future Climate Agreement. Beyond Bali: Strategic Issues for the Post-2012 Climate Change Regime. C. Egenhofer (ed.). Brussels, Centre for European Policy Studies.

Holden, B. (2002). Democracy and Global Warming. London, Continuum.

Huang, J. (2009). "A Leadership of Twenty (L20) within the UNFCCC: Establishing a Legitimate and Effective Regime to Improve Our Climate System." Global Governance. **15**(4): 435-441.

The Human Rights Council. (2008). "Human Rights and Climate Change." <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCClimateChangeIndex.aspx>

Hurd, I. (1999). "Legitimacy and Authority in International Politics." International Organization. **53**(2): 379-408.

Huq, S. and M.R. Khan (2006). "Equity in National Adaptation Programs of Action (NAPAs): The Case of Bangladesh". Fairness in Adaptation to Climate Change. N.W. Adger, J. Paavola, S. Huq and M.J. Mace (eds.). Cambridge, Mass.; London: MIT Press.

Hymas, L. (2013). "Republican calls for climate action - and has to remain anonymous to keep job." Grist.org http://grist.org/news/republican-calls-for-climate-action-and-has-to-remain-anonymous-to-keep-job/?utm_source=syndication&utm_medium=rss&utm_campaign=feed.

IEA (2011). World Energy Outlook 2011: Executive Summary. International Energy Agency. http://www.worldenergyoutlook.org/media/weowebiste/2011/executive_summary.pdf

IISD (2010). "Earth Negotiations Bulletin: Summary of the Cancun Climate Change Conference." Earth Negotiations Bulletin. **12**(498). 1-30.

IPCC (1990). "IPCC Special Report on Participation of Developing Countries." Intergovernmental Panel on Climate Change.

IPCC (2001). Third Assessment Report: Climate Change 2001. Contribution of Working Groups I, II and III to the Third Assessment Report of the Intergovernmental Panel on Climate Change. Watson, R.T. and the Core Writing Team (eds.). Cambridge University Press. Cambridge, United Kingdom, and New York, NY, USA.

IPCC (2007). Fourth Assessment Report: Climate Change 2007. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. Core Writing Team, Pachauri, R.K. and Reisinger, A. (eds.) IPCC, Geneva, Switzerland.

IPCC (2012). "Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation." Special Report of the Intergovernmental Panel on Climate Change. Cambridge University Press. Cambridge.

IPCC (2013). Climate Change 2013: The Physical Science Basis: Summary for Policymakers. Working Group I Contribution to the IPCC Fifth Assessment Report. Intergovernmental Panel on Climate Change.

- Jacoby, H.D. and A.D. Ellerman (2004). "The safety valve and climate policy." Energy Policy. **32**:(4). 481-491.
- Jaeger, C., T. Barkerc, et al. (1997). "Procedural Leadership in Climate Policy: a European Task." Global Environmental Change. **7**(3): 195–203.
- Jagers, S.C. and J. Stripple (2003). "Climate Governance Beyond the State." Global Governance. **9**(3): 385-99.
- Joshi, M., E. Hawkins, et al. (2011). "Projections of when Temperature Change will Exceed 2 °C above Pre-industrial Levels." Nature Climate Change **1**: 407–412.
- Kane, R. (1999). The Significance of Free Will. New York, Oxford University Press.
- Kanie, N., H. Nishimoto, *et al.* (2010). "Allocation and Architecture in Climate Governance beyond Kyoto: Lessons from Interdisciplinary Research on Target Setting." International Environmental Agreements: Politics, Law and Economics. **10**(4): 299-315.
- Kant, I. (1795). Perpetual Peace. London. Vernor and Hood.
- Karlsson, J. (2006). "Affected and Subjected-The All-Affected Principle in Transnational Democratic Theory." Social Science Research Center Berlin. Discussion Paper **SP IV 2006-304**.
- Karlsson, J. (2008). "Democrats Without Borders: A Critique of Transnational Democracy." Gothenburg Studies in Politics. Bo Rothstein (ed.). Department of Political Science, University of Gothenburg.
- Karlsson, C., C. Parker, et al. (2011). "Looking for Leaders: Perceptions of Climate Change Leadership among Climate Change Negotiation." Global Environmental Politics. **11**(1). 89-107.
- Karlsson-Vinkhuyzen, S.I. and J. McGee (2013). "Legitimacy in an Era of Fragmentation: The Case of Global Climate Governance." Global Environmental Politics. **13**(3): 56-78.
- Karp, L. and J. Zhao (2010). "Kyoto's Successor". Post-Kyoto International Climate Policy: Implementing Architectures for Agreement. J.E. Aldy and R.N. Stavins. Cambridge, Cambridge University Press.
- Kaul, I., P. Conceição, et al. (2003). Providing Public Goods: Managing Globalization. Oxford, Oxford University Press.
- Kelsen, H. (1955). "Foundations of Democracy." Ethics. **66**(1): 1-101.
- Keohane, R.O. (2003). "Global Governance and Democratic Accountability". Taming Globalization. D. Held and M. Koenig-Archibugi. Cambridge. Polity Press.

Keohane, R.O. (2006). "Accountability in World Politics." Scandinavian Political Studies. **29**(2): 75–87.

Keohane, R.O. and R.W. Grant (2005). "Accountability and Abuses of Power in World Politics." American Political Science Review. **99**(1): 29-43.

Keohane, R. and J.S. Nye (2000). "Globalization: What's New? What's Not? (And so What?)." Foreign Policy. **118**: 104-119.

Keohane, R.O. and J.S. Nye (2001). "The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy". Efficiency, Equity, Legitimacy: The Multilateral Trading System at the Millennium. R. Porter, P. Sauvé, A. Subramanian and A.B. Zampetti (eds.). Washington, Brookings Institution.

Keohane, R.O. and D.G. Victor (2010). The Regime Complex for Climate Change. Harvard Project on International Climate Agreements, Belfer Center for Science and International Affairs, Harvard Kennedy School.

Keohane, R.O. and D.G. Victor (2013). "The Transnational Politics of Energy." Dædalus, the Journal of the American Academy of Arts & Sciences. **141**(1): 97-109.

King, D., K. Richards, et al. (2011). "International Climate Change Negotiations: Key lessons and Next Steps." Smith School of Enterprise and the Environment. The University of Oxford.

Kingsbury, B., N. Krisch, et al. (2005). "The Emergence of Global Administrative Law." Law & Contemporary Problems. **68**(3&4): 15-61.

Klinsky, S. and H. Dowlatabadi (2009). "Conceptualizations of Justice in Climate Policy." Climate Policy. **9**: 88-108.

Knight, J. and J. Johnson (1997). "What sort of Political Equality does Democratic Deliberation Require?" Deliberative Democracy. J. Bohman and W. Rehg (eds.). Cambridge, Mass., MIT Press.

Krasner, S.D. (1982). "Structural Causes and Regime Consequences: Regimes as Intervening Variables." International Organization. **36**: 185-205.

Kravchenko, S. (2010). "Procedural Rights as a Crucial Tool to Combat Climate Change." Georgia Journal of International and Comparative Law. **38**(3): 613-48.

Kuik, O. and M. Hofkes (2010). "Border Adjustment for European Emissions Trading: Competitiveness and Carbon Leakage." Energy Policy. **38**(4). 1741–1748.

Kulovesi, K. and M. Gutiérrez (2009). "Climate Change Negotiations Update: Process and Prospects for a Copenhagen Agreed Outcome in December 2009." Review of European Community and International Environmental Law. **18**(3): 229–243.

Kuper, A. (2004). Democracy Beyond Borders: Justice and Representation in Global Institutions. Oxford, Oxford University Press.

- Kverndokk, S. (1995). "Tradeable CO2 Emission Permits: Initial Distribution as a Justice Problem." CSERGE GEG Working Paper. 92-35.
- Lamond, G. (2000). "The Coerciveness of Law". Oxford Journal of Legal Studies. **20**(1). 39-62.
- Larmore, C.E. (2006). "Public Reason". Cambridge Companion to Rawls. Cambridge, Cambridge University Press.
- La Rovere, E.L., L. Valente de Macedo, *et al.* (2002). "The Brazilian Proposal on Relative Responsibility for Global Warming". Building on the Kyoto Protocol: Options for Protecting the Climate. K. Baumert, O.C. Blanchard, S. Llosa and J.F. Perkaus (eds.). Washington.
- Lenton, T.M. (2011). "Early Warning of Climate Tipping Points." Nature Climate Change. **1**. 201-209.
- Levi, M.A. (2009). "Copenhagen's Inconvenient Truth; How to Salvage the Climate Conference." Foreign Affairs. **88**: 92-104.
- Levi, M.A. and K. Michonski. (2010). "Harnessing International Institutions to Address Climate Change." Council of Foreign Relations Working Paper. Council of Foreign Relations. New York.
- Levitsky, S., L.A. Way (2006). "Linkage versus Leverage. Rethinking the International Dimension of Regime Change". Comparative Politics. **38**(4): 379-400.
- Lijphart, A. (1984). Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries. New Haven; London, Yale University Press.
- Lindstedt, C. and D. Naurin (2010). "Transparency is not Enough: Making Transparency Effective in Reducing Corruption." International Political Science Review. **31**(3): 301–322.
- Lister, F. (1984). Decision-making Strategies for International Organizations: The IMF Model. Series in World Affairs. **40**(4).
- Lomborg, B. (2001). The Sceptical Environmentalist. Cambridge, UK. Cambridge University Press.
- LRI (2010a). "Draft Rule 42." Legal Response Initiative Briefing Paper. Legal Response Initiative. London.
- LRI (2010b). "Human Rights and Climate Change." Legal Response Initiative Briefing Paper. Legal Response Initiative. London.
- LRI (2011a). "A Guide to the UNFCCC Institutions." Legal Response Initiative Briefing Paper. Legal Response Initiative. London.

LRI (2011b). "Issues on Consensus in the UNFCCC Process." Legal Response Initiative Briefing Paper. Legal Response Initiative. London.

LRI (2011c). "Proposal by Mexico and PNG to amend the COP's voting rules." Legal Response Initiative Briefing Paper. Legal Response Initiative. London.

Luban, D. (1996). "The Publicity Principle". The Theory of Institutional Design. R. Goodin. Cambridge. Cambridge University Press.

Macdonald, T. (2008). Global Stakeholder Democracy: Power and Representation Beyond Liberal States. Oxford; New York, Oxford University Press.

Mace, M.J. (2006). "Adaptation under the UN Framework Convention of Climate Change: The International Legal Framework". Fairness in Adaptation to Climate Change. N.W. Adger, M.J. Mace, S. Huq and J. Paavola (eds.). Cambridge, Mass.; London: MIT Press.

Mackie, J.L. 1980. "The Cement of the Universe: A Study of Causation". Oxford: Oxford University Press.

MEF (2009). Declaration of the Leaders. The Major Economies Forum on Energy and Climate.

http://www.whitehouse.gov/the_press_office/Declaration-of-the-Leaders-the-Major-Economies-Forum-on-Energy-and-Climate

MEF (2013). Major Economies Forum on Energy and Climate.

<http://www.majoreconomiesforum.org/>

Mansbridge, J. (2009). "Deliberative and Non-deliberative Negotiations." Kennedy School of Government, Faculty Research Working Papers Series. Harvard Project on International Climate Agreements, Belfer Center for Science and International Affairs, Harvard Kennedy School.

Mansbridge, J. et al. (2010). "The Place of Self-Interest and the Role of Power in Deliberative Democracy." Journal of Political Philosophy. **18**(1): 64-100.

Mason, A. (2004). "Just Constraints." British Journal of Political Science. **34**: 251-268.

Mason, M. (2008). "Transparency for Whom? Information Disclosure and Power in Global Environmental Governance." Global Environmental Politics. **8**(2). 8-13.

Matthews, H.D. and S. Solomon (2013). "Irreversible Does Not Mean Unavoidable." Science. **340**(438).

McCrone, A., E. Usher, V. Sonntag-O'Brien, U. Moslener, C. Grüning (2012). Global Trends in Renewable Energy Investment 2012. Frankfurt School UNEP Collaborating Centre for Climate & Sustainable Energy Finance

- McDermott, D. (2008). "Analytical Political Philosophy". Political Theory: Methods and Approaches. D. Leopold and M. Stears (eds.). Oxford; New York, Oxford University Press.
- McEwen, C. and R. Maiman (1984). "Mediation in Small Claims Court: Achieving Compliance through Consent." Law & Society Review. **18**: 11-49.
- McIntyre, E. (1954). "Weighted Voting in International Organizations." International Organization. **8**(4): 484–497.
- McMahon, C. (2009). Reasonable Disagreement. Cambridge. Cambridge University Press.
- McNicoll, G. (1999). "Population Weights in the International Order." Population and Development Review. **25**(3): 411–442.
- Meinshausen, M., N. Meinshausen, et al. (2009). "Greenhouse-gas Emission Targets for Limiting Global Warming to 2°C." Nature. **458**(7242): 1158.
- Metz, B. (2013). "The Legacy of the Kyoto Protocol: a View from the Policy World." WIREs Clim Change **4**: 51–158.
- Metz, B., M. Berk, *et al.* (2002). "Towards an Equitable Global Climate Change Regime: Compatibility with Article 2 of the Climate Change Convention and the Link with Sustainable Development." Climate Policy. **2**(2-3): 211–230.
- Meyer, A. (2007). "The Case for Contraction and Convergence." Surviving Climate Change. Levene, M., Cromwell, D. (eds.). Pluto Press, London.
- Michaelowa, K. and A. Michaelowa (2012). "Negotiating Climate Change." Climate Policy. **12**(5). 527-533.
- Mill, J.S. (1861). "Considerations of Representative Government". On Liberty and other essays. Oxford, Oxford University Press.
- Miller, D. (1987). "Exploitation in the Market". Modern Theories of Exploitation. A. Reeve (ed.). London. Sage
- Miller, D. (2005). "Against Global Egalitarianism." The Journal of Ethics. **9**: 55-79.
- Miller, D. (2008). "Global Justice and Climate Change: How Shall Responsibilities be Distributed?" Tanner Lectures on Human Values. Delivered at Tsinghua University, Beijing march 24–25, 2008.
- Miller, D. (2009). "Democracy's Domain." Philosophy & Public Affairs. **37**(3): 201–228.
- Miller, D. (2010a). "Against Global Democracy". After the Nation: Critical Reflections on Post-Nationalism. K. Breen and S. O'Neil (eds.). Basingstoke: Palgrave Macmillan.

Miller, D. (2010b). "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh". Political Theory. **38**(1). 111–120.

Miller, D. (2011). "Taking Up the Slack? Responsibility and Justice in Situations of Partial Compliance". Responsibility and Distributive Justice. Z. Stemplowska and C. Knight (eds.). Oxford.

Mitchell, R.B. (2011). "Transparency for Governance: the Mechanisms and Effectiveness of Disclosure-based and Education-based Transparency Policies." Ecological Economics. **70**(11): 1882-1890.

Mitchell, R.B. and P.M. Keilbach (2001). "Situation Structure and Institutional Design: Reciprocity, Coercion, and Exchange". International Organisation. **55**:4. 891-917.

Moncel, R., P. Joffe, et al. (2011). Building the Climate Change Regime. United Nations Environment Programme. World Resources Institute.

Monjon, S. and P. Quirion (2011). "A Border Adjustment for the EU ETS: Reconciling WTO Rules and Capacity to Tackle Carbon Leakage." Climate Policy **11**(5). 1212-1225.

Moore, M. (2006). "Globalization and Democratization: Institutional Design for Global Institutions." Journal of Social Philosophy. **37**(1): 21-43.

Müller, B. (1999). "Justice in Global Warming Negotiations: How to Obtain a Procedurally Fair Compromise " Oxford Institute for Energy Studies. **EV26**.

Müller, B. (2010). "Copenhagen 2009; Failure of Final Wake-up Call for Our Leaders." Oxford Institute for Energy Studies. **EV49**.

Müller, B., J. Drexhage, et al. (2003). "Framing Future Commitments: A Pilot Study on the Evolution of the UNFCCC Greenhouse Gas Mitigation Regime." Oxford Institute for Energy Studies. **EV 32**.

Murphy, C.N. (2000). "Global Governance: Poorly Done and Poorly Understood Global Governance: Poorly Done and Poorly Understood." International Affairs. **76**(4): 789-803.

Naím, M. (2009). "Minilateralism: the Magic Number to Get Real International Action." Foreign Policy. **173**. 135-136.

Nash, J. (1950). "The Bargaining Problem." Econometrica **28**: 155-152.

Näsström, S. (2011). "The Challenge of the All-Affected Principle." Political Studies. **59**: 116–134.

Naurin, D. (2002). Taking Transparency Seriously. Brighton: Sussex European Institute.

Naurin, D. (2003). "Does Publicity Purify Politics?" Journal of Information Ethics **12**(1).

Naurin, D. (2004). "Dressed for Politics: why Increasing Transparency in the European Union will not make Lobbyists Behave any Better than they Already Do." Thesis (doctoral). Göteborgs Universitet.

Negley, G. (1966). "Philosophical Views on the Value of Privacy." Law and Contemporary Problems. **32**(2): 319-325.

Neumayer, E. (2000). "In Defence of Historical Accountability for Greenhouse Gas Emissions." Ecological Economics. **33**: 185-192.

Nordhaus, W. D. (1998). Economics and Policy Issues in Climate Change. Washington, DC, Resources for the Future.

Nordhaus, W.D. (2009) "Economic Issues in a Designing a Global Agreement on Global Warming". Keynote Address Prepared for: Climate Change: Global Risks, Challenges, and Decisions. Copenhagen, Denmark March 10-12, 2009.
http://nordhaus.econ.yale.edu/documents/Copenhagen_052909.pdf

Nozick, R. (1974). Anarchy, State and Utopia. New York, Basic Books.

Nye, J.S. (2001). "Globalization's Democratic Deficit: How to Make International Institutions More Accountable." Foreign Affairs. **80**(4): 2-6.

Oberthür, S. (2000). "The EU in International Environmental Regimes". Climate Change and European Leadership: A Sustainable Role for Europe? M. Grubb and J. Gupta (eds.). Dordrecht. Kluwer Academic Publishers.

Oberthür, S. and C. R. Kelly (2008). "EU Leadership in International Climate Policy: Achievements and Challenges." The International Spectator: Italian Journal of International Affairs. **43**(3): 35-50.

OECD (2012). OECD Environmental Outlook to 2050: The Consequences of Inaction. OECD Publishing. <http://dx.doi.org/10.1787/9789264122246-en>

OHCHR (1966). "International Covenant on Civil and Political Rights." Office of the United Nations High Commissioner for Human Rights.

OHCHR (2009). "Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human Rights." The Office of the United Nations High Commissioner for Human Rights and the Office of the High Commissioner and the Secretary-General.
<http://www.ohchr.org/Documents/Press/AnalyticalStudy.pdf>

OHCHR and UNEP (2012). "Human Rights and the Environment, Rio+20." Joint Report United Nations Human Rights Office of the High Commissioner and UNEP. OHCHR; UNEP.

Oliver, J., G. Janssens-Maenhout, and J.A.H.W. Peters (2012). Trends in global CO₂ emissions; 2012 Report. The Hague: PBL Netherlands Environmental Assessment Agency; Ispra: Joint Research Centre.

Olsaretti, S. (2004). Liberty, Desert and the Market: a Philosophical Study. Cambridge, Cambridge University Press.

Paavola, J. (2003). "Environmental Justice and Governance: Theory and Lessons from the Implementation of the European Union's Habitats Directive". Centre for Social and Economic Research on the Global Environment. Norwich, Centre for Social and Economic Research on the Global Environment.

Paavola, J. (2005). "Seeking Justice: International Environmental Governance and Climate Change." Globalizations. **2**(3): 309-322.

Palerm, J.R. (1999). "Public Participation in Environmental Decision-making: Examining the Aarhus Convention." Journal of Environmental Assessment and Policy Management. **1**(2): 229-244.

Pan, J. (2003). "Emissions Rights and their Transferability. Equity Concerns Over Climate Change Mitigation." International Environment Agreements: Politics, Law and Economics. **3**(1): 1-16.

Pattberg, P. and J. Stripple (2008). "Beyond the Public and Private Divide: Remapping Transnational Climate Governance in the 21st Century." International Environmental Agreements. **8**(4): 367-388.

Patz, J.A. et al. (2005). "Impact of regional climate change on human health." Nature. **438**(17): 310-317.

Payton, A.L. (2010b). "Consensus Procedures in International Organizations." EUI Working Papers. **22**.

Pereboom, D. (2001). Living without Free Will. Cambridge; New York, Cambridge University Press.

Peters, G. and E.G. Hertwich (2008). "CO₂ Embodied in International Trade with Implications for Global Climate Policy." Environmental Science and Technology. **42**(5): 1401-7.

Peters, G.P., R.M. Andrew, et al. (2013). "The Challenge to Keep Global Warming Below 2°C." Nature Climate Change. **3**(1) 4-6.

Philibert, C. and J. Pershing (2001). "Considering the Options: Climate Targets for All Countries." Climate Policy. **1**: 211-227.

Pogge, T.W. (2005). "World Poverty and Human Rights." Ethics & International Affairs. **19**(1): 1-7.

Poitras, L., Gellman, B. (2013) "U.S., British intelligence mining data from nine U.S. Internet companies in broad secret program" The Washington Post. Published 13th June 2013.

Prins, G. and S. Rayner (2007a). The Wrong Trousers: Radically Rethinking Climate Policy. Joint Discussion Paper of the James Martin Institute for Science and Civilization, University of Oxford and the MacKinder Centre for the Study of Long-Wave Events, London School of Economics.

Prins, G., and S. Rayner (2007b). "Time to ditch Kyoto". Nature. **449**. 973–975.
Prins, G., I. Galiana, et al. (2010). "The Hartwell Paper: A New Direction for Climate Policy After the Crash of 2009." Institute for Science, Innovation and Society. University of Oxford.

Raiffa, H. (1982). The Art and Science of Negotiation. Harvard University Press, Cambridge, Mass.

Rajamani, L. (2000). "The Principle of Common but Differentiated Responsibility and the Balance of Commitments under the Climate Regime." RECIEL. **9**(2): 120-131.

Rajamani, L. (2006). Differential Treatment in International Environmental Law. Oxford, Oxford University Press.

Rajamani, L. (2009). "India and Climate Change: What India Wants, Needs, and Needs to Do." India Review. **8**(3): 340-374.

Rajamani, L. (2011a). "The Cancun Climate Change Agreements: Reading the Text, Subtext and Tea Leaves." International & Comparative Law Quarterly. **60**(2). 499-519.

Rajamani, L. (2011b). "The Climate Regime in Evolution: The Disagreements that Survive the Cancun Agreements." Climate and Carbon Law Review. **136**

Rapkin, D.P. and J.R. Strand (2005). "Developing Country Representation and Governance of the International Monetary Fund." World Development. **33**(12): 1993-2011.

Rapp, T., C. Schwägerl, et al. (2010). "The Copenhagen Protocol: How China and India Sabotaged the UN Climate Summit". Der Spiegel. 5th May 2010.
http://al.odu.edu/mun/docs/Article_2010_may_5_Spiegel.pdf

Rawls, J. (1971). A Theory of Justice. Cambridge, MA: Harvard University Press.

Rawls, J. (1993). Political Liberalism. New York, Columbia University Press.

Rawls, J. (1999). The Law of Peoples. Cambridge, Mass.; London, Harvard University Press.

Rayner, S. (2010). "How to Eat an Elephant: a Bottom-up Approach to Climate Policy." Climate Policy. **10**(6). 615-621.

- Rayner, S., E. Malone, *et al.* (1999). "Equity Issues and Integrated Assessment". Fair Weather? Equity Concerns in Climate Change. F. Toth (ed.). London, Earthscan.
- Rayner, S. and M. Thompson (1998). "Cultural Discourses". Human Choice and Climate Change. S. Rayner and E. Malone (eds.). Battelle Press, Columbus, OH.
- Raz, J. (1988). The Morality of Freedom. Oxford, Oxford University Press.
- Reinstein, R. (2004). "A Possible Way Forward on Climate Change." Mitigation and Adaptation Strategies for Global Change. **9**: 295-309.
- REN21 (2013). Renewables 2013; Global Status Report. (Paris: REN21 Secretariat).
- Richards, M. (2001). "A Review of the Effectiveness of Developing Country Participation in the Climate Change Convention Negotiations." Overseas Development Institute. London.
- Risse, M. (2004). "What We Owe to the Global Poor." Journal of Ethics. **9**: 81-117.
- Risse, M. (2008). "Who Should Shoulder the Burden? Global Climate Change and Common Ownership of the Earth." Harvard Kennedy School Faculty Research Working Paper Series. No. RWP08-075.
- Robeyns, I. (2008). "Ideal Theory in Theory and Practice." Social Theory and Practice. **34**(3): 341-62.
- Rogelj, J. *et al.* (2011). "Emission Pathways Consistent with a 2 °C Global Temperature Limit". Nature Climate Change. **1**: 413-418.
- Rogelj, J., L. McCollum, *et al.* (2013). "Probabilistic Cost Estimates for Climate Change Mitigation." Nature. **493**(7430): 79-83.
- Rousseau, J-J. (1762). The Social Contract. Harmondsworth: Penguin.
- Rowat, D.C. (1979). Administrative Secrecy in Developed Countries. London and Basingstoke, MacMillan Press.
- Rudinow, J. (1978). "Manipulation." Ethics **88**: 338-347.
- Saunders, B. (2010). "Democracy, Political Equality, and Majority Rule." Ethics. **121**. 148-177.
- Scanlon, T. (1998). What We Owe to Each Other. Cambridge, Mass. London. Belknap Press of Harvard University Press.
- Scharpf, F. (1999). Governing in Europe: Effective and Democratic? Oxford. Oxford University Press.

Schelling, T. (1997) "The Cost of Combating Global Warming: Facing the Trade Offs." Foreign Affairs. **76**: 8-14.

Schlosberg, D. (1999). Environmental Justice and the New Pluralism: the Challenge of Difference for Environmentalism. Oxford. Oxford University Press.

Schneider, S. H. and J. Lane (2006). "Dangers and Thresholds in Climate Change and the Implications for Justice". Fairness in Adaptation to Climate Change. N.W. Adger, J. Paavola, S. Huq and M. J. Mace (eds.). Cambridge, Mass., MIT Press.

Scholte, J.A. (2002). "Civil Society and Democracy in Global Governance." Global Governance. **8**(3). 281-304.

Scholte, J.A. (2011). Building Global Democracy? Civil Society and Accountable Global Governance. Cambridge: Cambridge University Press.

Schroeder, H., M.K. Boykoff, et al. (2012). "Equity and State Representations in Climate Negotiations." Nature Climate Change. **2**: 834–836.

Scott, J. and L. Rajamani (2012). "EU Climate Change Unilateralism International Aviation in the European Emissions Trading Scheme." European Journal of International Law. **23**(2): 1-31.

Sebenius, J.K. (1984). Negotiating the Law of the Sea. Cambridge, Mass, Harvard University Press.

Sebenius, J.K. (1994). "Towards a Winning Climate Coalition". Negotiating Climate Change: the Inside Story of the Rio Convention. I.M. Mintzer and J.A. Leonard (eds). Cambridge, Cambridge University Press.

Sen, A. (1993). "Capability and Well-being". The Quality of Life. M. C. Nussbaum and A. Sen (eds.). Oxford. Oxford University Press.

Sheeran, K.A. (2006). "Side-payments or Exemptions: The Implications for Equitable and Efficient Climate Control." Eastern Economic Journal. **32**:2. 515-532.

Shelton, D. (2007). "Equity". Oxford Handbook of International Environmental Law. D. Bodansky, J. Brunnée and E. Hey (eds.). Oxford, Oxford University Press.

Shue, H. (1992). "The Unavoidability of Justice". The International Politics of the Environment: Actors, Interests and Institutions. A. Hurrell and B. Kingsbury (eds.). Oxford, Clarendon Press.

Shue, H. (1993). "Subsistence Emissions and Luxury Emissions." Law & Policy. **15**(1): 39-58.

Shue, H. (1995). "Avoidable Necessity: Global Warming, International Fairness, and Alternative Energy". Theory and Practice: NOMOS XXXVII. New York and London, New York University Press.

- Shue, H. (1996). "Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy". Princeton, N.J.: Princeton University Press.
- Shue, H. (1999). "Global Environment and International Inequality." International Affairs. **75**(3): 531-545.
- Singer, P. (2002). One World: the Ethics of Globalization. New Haven, Conn; London. Yale Nota Bene.
- Snyder, J.C. (2008). "Needs Exploitation." Ethical Theory and Moral Practice. **11**(4): 389-405.
- Sohn, L.B. (1974). "Introduction: United Nations Decision-Making: Confrontation or Consensus." Harvard International Law Journal. **15**(3): 438–445.
- Solomon, B.D. and D.R. Ahuja (1991). "International Reductions of Greenhouse Gas Emissions; an Equitable and Efficient Approach." Global Environmental Change. **1**(5): 343–350.
- Solomon, S., G.-K. Plattner, et al. (2009). "Irreversible Climate Change due to Carbon Dioxide Emissions." Proceedings of the National Academy of Science of the United States of America. **106**(6): 1704-1709.
- South Centre (2004). "Strengthening Developing Countries' Capacity for Trade Negotiations: Matching Technical Assistance to Negotiating Capacity Constraints." Written at the request of the Office of the G77 and China in New York for the G-77 and China High-Level Forum on Trade and Investment, Doha, Qatar, 5-6 December 2004.
- Stavins, R. (2012). "'Vast Potential Importance' of Durban Climate Talks." An Economic View of the Environment. Harvard Kennedy School. Belfer Centre for Science and International Affairs.
- Steffek, J. (2010). "Public Accountability and the Public Sphere of International Governance." Ethics & International Affairs. **24**(1). 45-68.
- Steffek, J., C. Kissling, et al. (2008). Civil Society Participation in European and Global Governance: a Cure for the Democratic Deficit? Basingstoke, Palgrave Macmillan.
- Steinacher, M., F. Joos, et al. (2013). "Allowable carbon emissions lowered by multiple climate targets." Nature. **499**. 197-201.
- Steinberg, R.H. (2002). "In the Shadow of Law or Power? Consensus-based Bargaining and Outcomes in the GATT/WTO." International Organization. **56**(2): 339–374.
- Stemplowska, Z. (2008). "What's Ideal About Ideal Theory?" Social Theory and Practice. **34**(3). 319-40.

- Stern, N.H. (2007). The Economics of Climate Change: the Stern Review. Cambridge, Cambridge University Press.
- Stevenson, H. (2011). "Representing "The Peoples"? Post-neoliberal States in the International Climate Negotiations." Centre for Deliberative Democracy & Global Governance. Working Paper (2011/1).
- Stiglitz, J. (1999). On Liberty, the Right to Know, and Public Disclosure: The Role of Transparency in Public Life. Paper read at Oxford Amnesty Lecture, 27 January. Oxford, UK.
- Stocker, T.F. (2013). "The Closing Door of Climate Targets." Science. **339**. 280-282
- Stokke, O.S. (2004). "Trade Measures and Climate Compliance: Institutional Interplay between WTO and the Marrakesh Accords." International Environment Agreements: Politics, Law and Economics. **4**: 339-357.
- Streck, C. (2008) "Forests, Carbon Markets, and Avoided Deforestation: Legal Implications" Carbon & Climate Law Review. **3**: pp. 239-247.
- Submission of the Plurilateral State of Bolivia. (2011). "Proposal for a Comprehensive Agenda for the AWG-LCA, in Fulfillment of the Mandate of the Bali Action Plan."
http://unfccc.int/files/meetings/ad_hoc_working_groups/lca/application/pdf/bolivia_-_proposed_agenda_for_bangkok.pdf
- Susskind, L. (1994). Environmental Diplomacy: Negotiating More Effective Global Agreements. New York; Oxford, Oxford University Press.
- Susskind, L. and C. Ozawa (1992). "Negotiating More Effective International Environmental Agreements". The International Politics of the Environment. B. Kingsbury and A. Hurrell (eds.). Oxford, Clarendon Press.
- Swift, A. (2008). "The Value of Philosophy in Nonideal Circumstances." Social Theory and Practice. **34**(3): 363-87.
- Tännsjö, T. (2005). "Future People, the All Affected Principle, and the Limits of the Aggregation Model of Democracy". Democracy Unbound. F. Tersman (ed.). Stockholm, Stockholm University.
- Thibaut, J. and L. Walker (1975). "Procedural Justice: A Psychological Analysis". New York: John Wiley & Sons.
- Thomas, D.S.G. and C. Twyman (2005). "Equity and Justice in Climate Change Adaptation Amongst Natural-resource-dependent Societies." Global Environmental Change. **15**: 115–124.
- Thompson, D.F. (1999). "Democratic Secrecy." Political Science Quarterly. **114**(2): 181-193.

Thomson, J.J. (1975). "The Right to Privacy." Philosophy & Public Affairs. 4(4): 295-314.

Torvanger, A. and L. Ringius (2002). "Burden Differentiation: Criteria for Evaluation of Burden-Sharing Rules in International Climate Policy." International Environmental Agreements: Politics; Law and Economics. 2(3): 221–235.

Toth, F.L. (1999). Fair Weather? Equity Concerns in Climate Change. London, Earthscan.

Toth, F.L., M.J. Mwandosya, et al. (2001). "Decision Making Frameworks". Climate Change 2001: Mitigation. Contribution of Working Group III to the Third Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge, Cambridge University Press.

Touval, S. (2010). "Negotiated Cooperation and its Alternatives". International Cooperation: the Extents and Limits of Multilateralism. I. Zartman and S. Touval (eds). New York; Cambridge, Cambridge University Press.

Traxler, M. (2002). "Fair Chore Division for Climate Change". Social Theory and Practice. 28: 101–34.

UN (1969). "Vienna Convention on the Law of Treaties." United Nations Treaty Series. 1155: 331.

UN (1998). "Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (The Aarhus Convention)." United Nations. 2161: 447.

UNCED (1992). "United Nations Conference on Environment and Development. Agenda 21". (The Rio Declaration). U.N. Conference on Environment and Development. Rio de Janeiro, Brazil, June 3–14, 1992.

Underdal, A. (1994). "Leadership Theory: Rediscovering the Arts of Management". International Multilateral Negotiation: Approaches to the Management of Complexity. I. Zartman (ed.). Jossey-Bass. University of Michigan.

UNDRIP (2007). "United Nations Declaration on the Rights of Indigenous Peoples." United Nations. http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

UNECE (1998). United Nations Economic Commission for Europe. Convention on Access to Information, Public Participation in Decision-Making And Access to Justice in Environmental Matters, 25 June 1998 (Aarhus Convention). Geneva: UNECE, 1998.

UNEP (2007). Multilateral Environmental Agreement: Negotiator's Handbook. University of Joensuu.

UNEP (2012) "All G8 Countries Back Action on Black Carbon, Methane and Other Short Lived Climate Pollutants". United Nations Environment Programme

Environment for Development News Centre. Press Release.
<http://www.unep.org/newscentre/Default.aspx?DocumentID=2683&ArticleID=9134&l=en>

UNfairplay (2011). "Leveling the Playing Field. A Report to the UNFCCC Secretariat on Negotiating Capacity."
http://unfccc.int/files/conference_programme/application/pdf/unfairplayreportapril2011-1.pdf.

UNFCCC (1992). "United Nations Framework Convention on Climate Change." Convention Text

UNFCCC (1996). "Organizational Matters: Adoption of Rules of Procedure." FCCC/CP/1996/2. Conference of the Parties Second session Geneva, 8 - 19 July 1996

UNFCCC (1997). "The Kyoto Protocol to the United Nations Framework Convention on Climate Change".

UNFCCC (2009). "The Copenhagen Accord". Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009.

UNFCCC (2010). "The Cancun Agreements". Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010

UNFCCC (2011). "The Durban Platform". Draft decision -/CP.17 Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action.

UNFCCC Climate Change Secretariat (2011). Press Release.
http://unfccc.int/files/press/press_releases_advisories/application/pdf/pr20110103tokyo.pdf

UNFCCC (2012). "Report of the Conference of the Parties on its eighteenth session, held in Doha from 26 November to 8 December 2012". UNFCCC/CP/2012/8.

UNFCCC Webpage (2013). Party Groupings.
http://unfccc.int/parties_and_observers/parties/negotiating_groups/items/2714.php

Unruh, G.C. (2000). "Understanding Carbon Lock-in." *Energy Policy*. **28**. 817-830.

Urpelainen, J. (2013). "A Model of Dynamic Climate Governance: Dream Big, Win Small." *International Environmental Agreements*. **13**: 107-125.

Van Houtven, L. (2002). *Governance of the IMF: Decision-making, Institutional Oversight, Transparency, and Accountability*. Washington, DC, International Monetary Fund.

Verba, S. (2003). "Would the Dream of Political Equality Turn out to Be a Nightmare?" *The American Political Science Association*. **1**(4). 663-679.

Verbruggen, A. (2010). "Preparing the Design of Robust Climate Policy Architectures." International Environment Agreements: Politics, Law and Economics. **10**(4): 275-295.

Victor, D. (2001). The Collapse of The Kyoto Protocol and the Struggle to Slow Global Warming. Princeton, N.J.; Oxford: Princeton University Press.

Victor, D. (2006). "Toward Effective International Cooperation on Climate Change: Numbers, Interests and Institutions." Global Environmental Politics. **6**(3): 90-103.

Victor, D. (2010). "Global Warming Policy After Copenhagen". Willard W. Cochrane Lecture in Public Policy. University of Minnesota.

Victor, D. (2013). "Making America Relevant to International Climate Diplomacy Again." MIT Technology Review. July 25 2013.

Vidal, J. (2009). "Secrecy Prevails at Bangkok Climate Talks". The Guardian. London.

Viguié, L. (2004). "A Proposal to Increase Developing Country Participation in International Climate Policy." Environmental Science & Policy. **7**: 195-204.

Vihma, A. and K. Kulovesi (2012). "Strengthening Global Climate Change Negotiations; Improving the Efficiency of the UNFCCC Process." Nordiske Arbejdsrapporter Nordic Working Papers. Nordic Council of Ministers.

van Vliet *et al.* (2012). "Copenhagen Accord Pledges Imply Higher Costs for Staying Below 2°C Warming". Climate Change. **113**:551–561.

Vogler, J. (2005). "In Defence of International Environmental Cooperation". The State and the Global Ecological Crisis. J. Barry and R. Eckersley (eds.). Cambridge, MA, MIT Press.

Voorhar, R. and L. Myllyvirta (2012). "Point of No Return: the Massive Climate Threats we Must Avoid." Greenpeace International.

Vormedal, I. (2008). "The Influence of Business and Industry NGOs in the Negotiation of the Kyoto Mechanisms: the Case of Carbon Capture and Storage in the CDM." Global Environmental Politics. **8**(4). 36-65.

Waldron, J. (1999). Law and Disagreement. Oxford and New York, Oxford University Press.

Walker, L., E.A. Lind, and J. Thibaut. (1979). The Relation between Procedural and Distributive Justice. Virginia Law Review. **65**(8). 1401-1420.

The Wall Street Journal (2013). "Climate of Uncertainty. A U.N. report can't explain the hiatus in global warming". The Wall Street Journal. Monday 30th September.

- Warren, M. E. (2002). "What Can Democratic Participation Mean Today?" Political Theory. **30**(5): 677-701.
- Weiler, F. (2013). Determinants of Bargaining Success in the Climate Change Negotiations. Climate Policy. **12**: 5. 552-574.
- Weitzman, M.L. (2009). "On Modeling and Interpreting the Economics of Catastrophic Climate Change." Review of Economics and Statistics. **91**(1): 1-19.
- Werksman, J. (1999). "Procedural and Institutional Aspects of the Emerging Climate Change Regime: Do Improvised Procedures Lead to Impoverished Rules?" Concluding Workshop for the Project to Enhance Policy-Making Capacity Under the Framework Convention on Climate Change and The Kyoto Protocol. Foundation for International Environmental Law and Development. London.
- Wertheimer, A. (1989). Coercion. Princeton, Princeton University Press.
- Wertheimer, A. (1996). Exploitation. Princeton, Princeton University Press.
- Wettestad, J. (1999). Designing Effective Environmental Regimes: the Key Conditions. Cheltenham, Edward Elgar.
- Whelan, F. (1983). "Prologue: Democratic Theory and the Boundary Problem". Nomos XXV: Liberal Democracy. J.R. Pennock and J.W. Chapman (eds.). New York and London, New York University Press.
- Wiener, J.B. (1999). "On the Political Economy of Global Environmental Regulation." Georgetown Law Journal. **87**: 749-794.
- Wiener, J.B. (2000). "Policy Design for International Greenhouse Gas Control." Climate Issues Brief. **No.6**. Resources for the Future (RFF). Washington, DC.
- Winkler, H. and J. Beaumont (2010). "Fair and Effective Multilateralism in the Post-Copenhagen Climate Negotiations." Climate Policy. **10**(6): 638-654.
- Winkler, H. and L. Rajamani (2013). "CBDR&RC in a Regime Applicable to All." Climate Policy. 1-20.
- World Bank. (2010). World Development Report 2010: Development and Climate Change. Washington D.C., World Bank.
- The World Mayors and Local Governments Climate Protection Agreement (2012). <http://www.globalclimateagreement.org/>.
- World Population Prospects (2010). World Population Prospects: The 2010 Revision. Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat. <http://esa.un.org/unpd/wpp/index.htm>
- Yamaguchi, M. and T. Sekine (2006). "A Proposal for the Post-Kyoto Framework." Keio Economic Studies. **43**: 85-112.

Yamin, F. (2000). "The Role of the EU in Climate Negotiations." Climate Change and European Leadership: A Sustainable Role for Europe? M. Grubb and J. Gupta (eds.). Dordrecht, Kluwer Academic Publishers.

Yamin, F. and J. Depledge (2004). The International Climate Change Regime: a Guide to Rules, Institutions and Procedures. Cambridge, Cambridge University Press.

Young, O.R. (1991). "Political Leadership and Regime Formation: on the Development of Institutions in International Society." International Organization. **45**: 281-308.

Young, O.R. (1994). International Governance: Protecting the Environment in a Stateless Society. Ithaca; London, Cornell University Press.

Ypi, L. (2010). "On the Confusion between Ideal and Non-ideal in Recent Debates on Global Justice." Political Studies. **58**: 536-555.

Zamora, S. (1980). "Voting in International Economic Organizations." American Journal of International Law. **74**: 588-599.

Zartman, I.W. and J.Z. Rubin (2000). Power and Negotiation. Ann Arbor. University of Michigan Press.

Zartman, I. and S. Touval (2010). International Cooperation: the Extents and Limits of Multilateralism. New York; Cambridge, Cambridge University Press.

Zürn, M. (2000). "Democratic Governance Beyond the Nation State." European Journal of International Relations. **6**(2): 183-221.

Zwolinski, M. (2007). "Sweatshops, Choice, and Exploitation." Business Ethics Quarterly. **17**(4). 689-727.