



# Is the beneficiary pays principle essential in climate justice?

## Er «beneficiary-pays»-prinsippet essensielt i klimarettferdighet?

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Heyward er forsker i klimarettferdighet med over femten års erfaring. Hun interesserer seg i spørsmål knyttet til hvordan vi fordeler ansvaret for å håndtere klimaendringer, våre plikter overfor framtidens generasjoner, og global rettferdighet.

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### Abstract

The United Nations Framework Convention on Climate Change principle of ‘common but differentiated responsibility’ admits many interpretations. In the philosophical literature on climate justice, it has typically been cashed out in terms of the following three principles: the ability to pay principle (APP), the beneficiary pays principle (BPP), and the contribution to problem principle (CPP). Many of these accounts have given prominence to the CPP and APP, but there are some who argue that the BPP deserves greater consideration. In this paper, I want to ask whether the BPP *must* feature in any plausible account of remedial responsibility for climate change. I examine this question by looking at three different ways in which the BPP has been incorporated into accounts of climate burden-sharing. In each case, there are questions about the particular role that the BPP is assigned and it looks like either the BPP must be given equal prominence to the CPP, or the BPP might be redundant when it comes to specific task of remedying the injustices of climate change. I suggest in the conclusion one possible reason to maintain the BPP.

### Keywords

Climate change, responsibility, ability to pay principle, beneficiary pays principle, contribution to problem principle

### Sammendrag

Prinsippet om «felles, men differensiert ansvar» i FNs klimakonvensjon åpner for ulike tolkninger. I den filosofiske litteraturen om klimarettferdighet har prinsippet typisk blitt spesifisert på tre måter: at man bør fordele byrden basert på betalingsevne (ability to pay principle, APP), på i hvor stor grad noen har bidratt til klimaproblemene (contribution to problem principle, CPP), og på i hvor stor grad noen har nytt fordeler som kan knyttes til klimaproblemene (beneficiary pays principle, BPP). Mange av deltakerne i debatten har fremhevet de to første prinsippene, men noen mener at det er grunn til å gi BPP større oppmerksomhet. Denne artikkelen tar opp spørsmålet om BPP inngår som en nødvendig del av en rettferdig fordeling av klimabyrden. Spørsmålet blir undersøkt gjennom en analyse av tre forskjellige måter å inkorporere BPP på. Artikkelen kommer til en «kvitt eller dobbelt»-konklusjon. BPP er overflødig hvis det kun har som rolle å supplere eller begrense APP og CPP. Artikkelen åpner likevel for å at BPP kan ha en rolle, men da som et frittstående prinsipp, på lik linje med de to andre prinsippene.

### Nøkkelord

Klimaendringer, ansvarlighet, ability to pay principle, beneficiary pays principle, contribution to problem principle

It is widely accepted that unchecked climate change will be a disaster for the world, and particularly for the most socio-economically vulnerable persons. Questions of *climate justice* ask what can, and what should, be done in light of this. One of the more difficult issues posed in discussions about climate justice is that of responsibility for climate change. There is general agreement that wealthy industrialised countries – such as Norway, with its high GDP and involvement in the oil industry – are the ones who are primarily responsible for addressing climate change. However, the grounds for holding such countries responsible might vary and is thus the focus of this article. The United Nations Framework Convention on Climate Change (UNFCCC) endorses the principle of ‘common but differentiated responsibility’, according to which:

[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities (UNFCCC, 1992, Article 3.1).

This principle can be interpreted in several ways. In the philosophical literature on climate justice, it has typically been cashed out in terms of the following three principles: the ability to pay principle (APP), the beneficiary pays principle (BPP), and the contribution to problem principle (CPP). The CPP is broadly a principle of historic responsibility – sometimes also called the ‘polluter pays principle’ (PPP).<sup>1</sup> These principles have dominated the question of climatic ‘burden-sharing’ since the start of the philosophical debate. The various merits and disadvantages of each of these principles have been discussed and several different accounts of ‘remedial responsibility’ (Miller, 2007) – the duty to act to remedy an injustice brought about or exacerbated by climate change – have been offered. Some accounts invoke single principles (e.g. Moellendorf 2014), but most defend a combination of one or more principles (e.g. Caney, 2005; 2010; Bell, 2011, Page, 2011; Baatz, 2013).

The majority of these accounts give prominence to the CPP and APP, but some have argued that the BPP has a distinctive role to play (e.g. Page 2011). I disagree. I wish to argue that the prevailing accounts of responsibility for climate change that invoke the BPP do not have good reasons for preferring it to the CPP, the APP, or a combination thereof. The discussion is limited to the precise role of the BPP in the prevailing accounts of climate justice; the general idea that benefitting from injustice can in some cases beget remedial duties is not to be challenged (for a review of this issue in connection to climate change, see Barry & Kirby, 2017; for a rejection of it, see Karnein, 2017).

Before we commence, it would be helpful to list some distinctions relevant to the arguments below. First, there are two elements of remedial responsibility: responsibility to act and responsibility to bear the costs associated with any remedial action. These two elements might be separated and different principles assigned for each. Here I am concerned with remedial responsibility for bearing the overall costs of redressing climatic injustice. Second, I shall also make no differentiation here between duties to bear the costs of mitigation, duties to bear the costs of adaptation and duties to bear the costs of compensation or other rectification, but take what Simon Caney calls a “holist view” (Caney, 2013, p. 258).

Third, each principle can be taken to apply to a variety of different agents: individuals or collectives. It is commonly assumed that states are the relevant duty-bearers (see for example Baer et al., 2008; Vanderheiden, 2008; Page, 2013). However, Baatz (2013) explicitly discusses remedial responsibilities of individuals, as they are the “of ultimate moral concern”

1. The CPP is often called the ‘polluter pays principle’ (PPP). However, some understandings of the polluter pays principle regard it as exclusively forward-looking. I use a different term to avoid any potential confusion.

(2013, p. 95), and Caney also offers an individualist account whilst conceding that “the issue require a much fuller analysis” (2005, p. 774).

Fourth: each of the three principles can serve one of two different functions in the construction of a burden-sharing account (Heyward, 2010; Page, 2011). One way is to *identify* a set of duty-bearers. The CPP identifies ‘high emitters’ as the relevant set of duty-bearers; the BPP holds that beneficiaries of high emissions are the duty-bearers. With respect to the APP, one interpretation of it is that those who are over a certain threshold of well-being can be assigned remedial duties. The other function a principle may have is to *determine the extent of the duties to be borne among a pre-identified set*.<sup>2</sup> The CPP holds that agents bear duties in proportion to their record of greenhouse gas (GHG) emissions. The BPP holds that benefits arising from a high GHG emissions record should be either surrendered or compensated for. Thus, the greater the benefit received, the greater the amount owed. The APP says that duties vary with ability, so that the more able (e.g. the wealthier agents) have greater duties than less able agents. There is an overlap between the identification function and the determination of extent function in that to assign zero duties speaks both to the question of extent and of identification. However, the two can be separated without much difficulty, as some accounts to be discussed (e.g. Caney, 2010; Bell, 2011) demonstrate.

Finally, there are various analytically distinct ways of combining the principles. One way of combining is to take the chosen principles as sufficient conditions or necessary for identifying duty-bearers. Consider the statement that the BPP and the APP should be used to identify duty-bearers. This could mean that both the BPP and APP are sufficient conditions: any agent who is either a beneficiary of GHG-emitting activities or above a given threshold can be assigned duties. Alternatively it could mean that the set of duty-bearers is those agents who have both benefitted from GHG-emitting activities and who also are above a designated threshold of well-being. Another way of combining the principles is by assigning lexical priority. For example, the CPP might be the preferred principle, but in view of some of its shortcomings, the BPP (e.g. Baatz, 2013) or the APP (Caney, 2005) might be invoked as a secondary principle. In that case, should distributing duties according to the CPP mean that some injustices still remain (e.g. because the polluting agent no longer exists, or because requiring them to pay would push them under a poverty line), beneficiaries (or those able) are required to address this remainder. Finally, a third way to combine the principles is to weight them. For example, the Greenhouse Development Rights proposal (Baer et al., 2008) assigns remedial responsibility according to a weighted function of contribution and ability.<sup>3</sup>

With these preliminary remarks made, we can proceed to the argument that the BPP is effectively redundant in the prevailing rectificatory accounts of climate justice. The next three sections will discuss some accounts of climate burden-sharing which accord some role to the BPP. There are three different ways in which the BPP has been deployed. The BPP might be given a *duty-limiting role*. For example Simon Caney (2010) and Derek Bell (2011) use it to limit the extent of duties to be assigned to excusably ignorant polluters. Its use here is to overcome one particular objection to the CPP without abandoning the idea that it is correct to assign responsibility to polluters. This role is discussed in section 2. Section 3 discusses the *secondary role*: where the BPP is used to assign duties to agents, but only

2. Page makes a similar distinction, calling it “the scope question” and “the liability question” (2011, p. 427). He adds to this what he calls “mitigation/aggravation question”, but the latter is not necessary for the forthcoming discussion.

3. The Greenhouse Development Rights project now offers a calculator where people can input various variables, including targets and weighting. See <https://calculator.climateequityreference.org/>

when the CPP has been exhausted and injustices remain (primarily Baatz, 2013). Section 4 discusses accounts where the BPP is awarded the *primary role* (most notably Page, 2012, but see also Gosseries, 2004).

### 1. A duty-limiting role for the BPP.

Simon Caney defends a hybrid account of what he calls a “poverty-sensitive polluter pays principle”, supplemented with an “historically-sensitive ability to pay principle” (2010, p. 218). In his defence of the poverty-sensitive polluter pays principle (which uses a combination of the CPP and APP to identify the duty-bearers), Caney considers the problem of *excusable ignorance*. A common objection to the CPP, the excusable ignorance objection holds that agents should not have to bear costs of actions when they could not have been reasonably expected to know the consequences of those actions. For at least some period in the past, the fact that greenhouse gas emissions resulted in climate change was not known – not even imagined. After this possibility was raised, it took some time for this fact to be confirmed. Hence at least some emissions were caused under conditions of excusable ignorance.<sup>4</sup> He argues that the appropriate response is to adopt what he calls a principle of modified strict liability (2010, p. 210). Polluters are not exempt from bearing remedial duties due to their excusable ignorance, but neither are they to be held liable for *all* the harms caused by their emissions. That is, the CPP (together with the APP) continues to identify the set of duty-bearers. However, in the case of excusable ignorance, those duty-bearers do not bear duties in proportion to their emissions records. Instead, Caney says that “if people engage in activities which jeopardize other people’s fundamental interests by emitting excessive amounts of greenhouse gases then (i) they should bear the costs of their actions even if they were excusably ignorant of the effects of their actions if *they have benefitted from those harmful activities* and (ii) *their costs should correspond to the benefits they have derived*” (Caney, 2010, p. 210, his italics). The BPP thus appears in Caney’s ‘poverty-sensitive polluter pays principle’. It determines the extent of duties of able polluters, but *only* in the case of excusable ignorance.

Derek Bell (2011) similarly argues that the CPP in combination with the APP should identify the set of duty-bearers, but in the case of excusable ignorance, the BPP should distribute the duties amongst that set. This is the only function that Bell assigns to the BPP. To explain its use, Bell argues that “we can recognise ourselves as ‘dual standpoint’ moral agents who care about acting rightly but who are also temporally located, and, therefore, bound by the limits that imperfect information places on our capacity to act rightly” (2011, p. 402-3). A dual-standpoint agent aims to act rightly, but knows that she might fail to do so, despite her best efforts. If she comes to learn that in the past she acted wrongly (albeit excusably) then she will regret the fact that her actions harmed others and will “accept that benefits of this act be transferred to the victims” (2011, p. 403). The limitation of liability to a requirement to surrender benefit, or the value of those benefits, acknowledges that she is a fallible moral agent who has to make decisions based on partial and imperfect information (2011, p. 403).

Caney and Bell use the BPP in this limited way in order to balance two morally salient facts: (1) people are worse off because of the actions of certain agents, but (2) these agents’

4. It is common to take 1990 as the cut-off point for excusable ignorance as that is the year of the first Intergovernmental Panel on Climate Change report. However, the link between carbon dioxide emissions and increased temperature was demonstrated in 1896 and the US government was warned about the possibility of climate change from GHG emissions in the 1960s.

conduct was not blameworthy. As the emitting agents are not morally culpable, it seems unfair to hold them liable for the full costs of their actions. However, it is not unfair to ask them to bear a part of the costs. Being free of fault does not automatically exclude a causally responsible agent from *any* moral response. Many of us would think ill of people who think that saying “it was an accident” absolves them any duty to help someone who has been hurt by their action, if the accident did not result from negligence. Thus I agree that lack of fault need not completely absolve an agent from remedial duties, but those duties must be distributed in a way which takes into account the absence of fault. This cannot be the CPP, because that would hold excusably ignorant polluters liable to the same degree as those who emitted GHGs knowing that it would – or even could – harm others. So both Caney and Bell choose the BPP instead: excusably ignorant polluters must surrender the benefits gained from their emissions.

The question to be asked here is whether the BPP is the best principle to choose in this particular situation. I believe that it is not. The APP should be chosen for this role instead. Agents who were excusably ignorant of the effects of their GHG emissions should bear duties according to their ability. To see this, let us take another look at Bell’s idea of the dual-standpoint moral agent. Stipulating that benefits is a simple and straightforward way of limiting the extent of duties, but it is not the only one. An alternative account invokes the APP. Instead of surrendering benefits, excusably ignorant polluters should bear duties according to their relative ability. They should do what they reasonably can to ameliorate the harm that they caused. What would be the consequences of adopting this alternative? Three are immediately apparent: (1) excusably ignorant polluters would still be liable for duties of partial redress even if they had not ultimately benefitted from their GHG emissions. We can say, more generally that (2) adopting this principle would mean that whenever ability exceeded the benefits gained, the excusably ignorant polluter would be bear greater duties under my proposed alternative than they would be according to Bell or Caney’s accounts. Finally (3) if the excusably ignorant polluter were much poorer than other excusably ignorant polluters, but had benefitted to the same (or even a greater degree), then due to their relative disadvantage, their remedial duties would be less extensive. None of these seem obviously problematic. Moreover, using the APP instead of the BPP better reflects Bell’s dual-standpoint moral agent. As noted above, Bell argues that we are agents who care about acting rightly but are also fallible. In particular, imperfect information hinders us in our aim and capacity to act rightly. Thus, Bell argues that if a dual standpoint agent unwittingly causes someone else to be harmed/rights to be violated, she will wish to make a response. Bell’s thinking is that:

[l]imiting her liability to the value of the benefits derived from her wrongful [in the sense that they resulted in a rights violation/infringement] acts ensures that she is neither benefitted nor burdened as a consequence of her nature as a permanently fallible moral agent. (Bell, 2011, p. 403)

However, an appropriately motivated dual standpoint moral agent would care less about whether she has benefitted from an action, but the fact that she (albeit unwittingly) *caused harm*. The appropriate moral response would be primarily directed at others, not at oneself. If the dual standpoint moral agent truly cares about acting rightly, her reaction to having faultlessly harmed or wronged another should be concerning for the victim. An appropriately motivated moral agent would, I suggest, do what she reasonably could to rectify the situation. She would not first consider whether she has benefitted in any way from harming or wronging them and act only as if she had benefitted. In cases of excusable ignorance,

then, the APP should be chosen to limit the duties of excusably ignorant able polluters. Hence, the stipulation that excusably ignorant polluters should surrender the benefits of their GHG emissions-generating activities should be replaced by the requirement that they do what they reasonably can to make up for the harm that they have albeit unwittingly caused. In short, this particular case, the BPP should be replaced by the APP.

Having argued that the accounts that use the BPP in the duty-limiting role in the case of excusable ignorance should use the APP for that role instead, let us turn to the supplementary role of the BPP.

## 2. A supplementary role for the BPP

Christian Baatz proposes the ‘Qualified Beneficiary Pays Principle’:

In case agent A performs action X that harms agent C, agent B is under an obligation to compensate C if:

- (i) C’s harm cannot be (fully) addressed by the responsibilities of A\*
- (ii) B receives a net benefit from [A’s performance of] X

B has to compensate until: (a) further payments would make B fall below a sufficiency threshold; (b) B has delivered all her net-benefit; (c) C’s harm is fully compensated.

\* A might be dead, or below the poverty line. (Baatz, 2013, p. 99)

Baatz’s QBPP can best be understood as a combination of the CPP, APP and BPP. The CPP has lexical priority (2013: 99); the BPP element comes into play only when the duties of the perpetrating agent cannot be performed, or when the harm can be attributed to something other than a responsible moral agent. When the BPP does feature, it is used to identify duty-bearers and to determine the extent of the duties of those identified parties. As Baatz writes, “when asking who should provide remedy to those suffering, the BPP gives a plausible answer because it answers why those wealthy [agents] are not entitled to their wealth” Baatz (2013, p. 98).

The fact that many agents are not entitled to their current holdings also comes into play in Simon Caney’s historically sensitive ability to pay principle. Caney argues that the ability-sensitive polluter pays principle might not be sufficient to cover all instances of climate-change related harms. Those that remain are therefore to be covered by the historically-sensitive ability to pay principle. The historical sensitivity is introduced via the consideration that agents who gained wealth because of others’ actions that caused climate change, or because of other historic injustices, cannot be said to be entitled to that wealth.

These agents, whom Caney labels “group (i)” have “one less reason for refusing to provide remedy to victims of climate change than agents who are entitled to their current holdings (group ii).” However, Caney does not specify any particular duty to them, but simply writes “we should apportion *greater responsibility to (i) than to (ii)*” and acknowledges that what this “greater responsibility” entails needs to be developed (Caney, 2010, p. 218, my italics).

However, Caney does not consider the historically sensitive ability to pay principle to be a version of the BPP. Indeed, Caney argues against the ‘beneficiary account’ in previous work (2006), because “currently alive people have not benefitted from industrialisation” (2006, p. 478). Caney bases his view on a particular understanding of the implications of the non-identity problem and insisting that ‘to benefit’ must be understood in a counterfactual sense and apply to individual persons (2006, p. 474-476). If one takes a different view on these issues (e.g. Page, 2011, p. 423-424; Baatz, 2013, p. 101) then Caney’s historically sen-

sitive ability to pay principle might be regarded, in Page's words, as "absorbing" a version of the BPP (see Page, 2011, p. 425). Given this ambiguity, I will focus primarily on Baatz's account. The objection here is not that this justification of the BPP is wrong, but that it does not motivate the use of the BPP *as a supplementary principle*.

Baatz holds that the surrendering of unjustly gained wealth occurs *only* after polluters have exhausted their remedial duties. Why should this be the case? If agents are not entitled to their current holdings, this is an injustice that ought to be corrected independently of whether polluters have performed their duties. Indeed, Caney makes this exact point. He writes "if the receipt of benefits can generate an obligation (when the perpetrator of the injustice that led to this benefit is no longer alive), then why does the receipt of benefits not generate an obligation (even when the perpetrator is still alive) ... One would think that if receipt of a benefit is obligation generating at all, then it would apply even if the causer is still available" (2006, p. 473).

The point here is that if receiving benefits from an injustice means that that agent incurs duties, it does so regardless of the presence of other agents who have duties assigned on different grounds. There is no obvious reason to wait until the polluters have done what was required of them before calling upon the beneficiaries to take the next step in remedying the injustices of climate change. Instead, it seems that both the polluters and the beneficiaries of injustices can be called upon *simultaneously* to contribute to climatic injustices.

Should Caney's historically sensitive ability to pay principle be taken as incorporating a version of the BPP, a similar argument can be made. The problem is perhaps not as serious for Caney, as Caney does not insist that those who acquired their wealth unjustly *must* surrender it, but have one less reason to refuse redistribution than those who gained their wealth through entirely just means. Ultimately, it depends on how exactly Caney conceives the 'greater responsibility' that group (i) have compared to group (ii). However, on one reasonable interpretation – that group (i) can be called upon for climate duties before group (ii), this objection stands against Caney's account. We can ask: if group (i) are not entitled to their holdings, why not ask them to bear costs at the same time as the 'able polluters', rather than wait to see if there is any remaining injustice after the duties of the latter have been exhausted?

The upshot of this discussion is that the BPP should not be a supplement to the CPP but it might be a *joint primary principle*. Before we draw that conclusion, however, we have to ask whether the BPP can in fact function as a primary principle. We thus turn to Edward Page's defence of the 'unjust enrichment' BPP.

### 3. A primary role for the BPP.

Page explicitly makes the 'unjust enrichment' BPP the primary principle for burden-sharing.<sup>5</sup> Taking states as the relevant moral agents, Page argues that many of them bear remedial duties to address climate-change associated harms on the grounds that they have profited from the production of a vast range of benefits that were created in processes which involved the intense use of fossil fuels (and/or deforestation) and which accordingly have contributed to the advent of anthropogenic climate change. Admittedly, in many cases, the states that emitted the GHGs did so in order to gain benefits. However, those states bear duties not in virtue of the fact that they emitted, but because of the benefits they received in

5. The argument in this section is developed from Heyward (2014), which argues that the unjust enrichment BPP relies to some extent on the CPP.

doing so. It is sufficient that there is an ‘unjust factor’ resulting in the situation that one agent has benefitted from actions (of its own or another agent) that have resulted in harm to another party. Page suggests three such factors: (1) benefits were obtained via accidental but profitable trespass on the Earth’s carbon dioxide sink capacity, which is a global common resource; (2) the past use of global sink capacity which was beneficial to some has meant that some countries now face the dilemma of constraining their industrial development or inflicting injustices on future generations (in most cases including their own citizens); (3) beneficiaries are placed in the position of condoning “wrongless harmdoing [sic]”, i.e. the setbacks of interest suffered by the victims of climate change (2012, p. 315). Where these factors obtain, agents must surrender the benefits they gained, provided that doing so will not cause great hardship or jeopardise the survival of just institutions. Page calls this the “no debilitating cost” proviso (Page, 2012, p. 318). Bringing in this proviso means that Page’s unjust enrichment BPP is a combination of the BPP and APP.<sup>6</sup>

The BPP is also used to determine the extent of each state’s duties. A state is required only to surrender the benefits that accrued to it as a result of the harmful action, up to the point either all the benefits have been surrendered or to the point that harm is rectified. The motivating ideal behind the BPP is that an agent should not profit from an action or event that harms another. Therefore, once the benefits are surrendered, just relations are restored, even if the surrender is insufficient to make up for the full extent of the harm. Nor is it necessary to surrender all the benefits if doing so would exceed the amount of harm suffered.

Page distinguishes between the unjust enrichment BPP and the ‘wrongful enrichment BPP’. The wrongful enrichment BPP holds that beneficiaries of injustices that were culpably caused are liable for remedial duties. By contrast the unjust enrichment BPP does not stipulate that injustices in question must have been brought about as a result of a culpable agents’ actions. It thus has a greater catchment area: beneficiaries of any injustices, regardless of the blameworthiness of the agent, can be liable to bear remedial duties.

Page gives three objections to the wrongful enrichment BPP, all of which are also made against the CPP in Page (2011). The first is the familiar problem of excusable ignorance (Page, 2011, p. 416; 2012, p. 313). The second is that GHGs are stock pollutants, i.e. it is their accumulation, not their release per se, that causes problems. Moreover, they are well-mixed: one tonne of GHG emitted anywhere results in the same amount of climate-changing potential exerted everywhere. This means there is no sufficiently obvious relationship between harm to the victim and the actions of the perpetrator to ascribe remedial responsibility to the perpetrator (Page, 2011, p. 416) or to claim that any state has profited “at the expense of” any other state (Page, 2012, p. 312). The third is that there is a level at which GHG emissions could have been sustained without a chance of causing average temperature rises of above 2°C (Page, 2011, p. 417; 2012, p. 312).<sup>7</sup> Therefore, Page claims, prior to this point, it is difficult to claim that there is any wrongful exploitation of the global sink capacity, and so enrichments have not been gained wrongfully (Page, 2012, p. 313). Nor can

6. In theoretical terms at least. Page does point out that there are practical difficulties for implementing his unjust enrichment BPP account and that both the CPP and the APP appear to have significant advantages when it comes to operationalisation (2012, p. 321-322). Page does, however, go onto address some of practical difficulties (2012, p. 322-326).

7. In his 2011 piece, Page appeals to an Oxfam International report which says that emissions levels of 2 tonnes CO<sub>2</sub><sup>e</sup> per capita could be sustained indefinitely without causing the 2°C threshold to be crossed. In the 2012 piece, he argues that accumulated CO<sub>2</sub> from 1750-1950 was roughly 62 billion tonnes compared to 1271 billion tonnes for the 1750-2008 and “a back of the envelope calculation reveals that it would have taken 174 years for the actual amount of CO<sub>2</sub> emitted in the 1750-2008 period to have been surpassed had human emissions of CO<sub>2</sub> from 1950 onwards been sustained at the 1950 level” (Page, 2012, p. 313). I am not qualified to assess this calculation, but assume for the sake of argument that it is correct.



we claim that these emissions caused harm (2011, p. 417).

Page takes these objections to have sufficient force to support the unjust BPP over the wrongful enrichment BPP. On further investigation, however, these objections do not justify choosing the unjust enrichment BPP over either the wrongful enrichment BPP or over the CPP. Accordingly, either Page's positive case for the unjust enrichment BPP is undermined, or his case against the wrongful BPP and the CPP is not as forceful as he thinks. We shall focus on rescuing the CPP from Page's criticisms.<sup>8</sup>

Take, for example, the issue that GHGs are 'stock pollutants' and 'well mixed'. Page argues that this causes a problem for both the CPP and the wrongful enrichment BPP because there is no clearly traceable link between the harm suffered by the victims of climate change and the actions that caused it in the case of the CPP (2011, p. 415), and, consequently, no clear link between benefits, cause and harms. Page writes: "the claim that any state has profited at the expense of any other state as a result of a profligate national emissions profile resists development in terms of standard normative or legal treatments of wrongful enrichment" (2012, p. 312). However, when it comes to defending the unjust enrichment BPP, Page holds that "*benefits* [of early industrialisation characterised by unfettered GHG emissions] *have been created at the expense of states* facing this dilemma" and that this "constrained development" could count as a morally relevant unjust factor (Page, 2012, p. 315).

So, when discussing the wrongful enrichment BPP and CPP, Page believes the claim that any state has profited at the expense of any other is problematic. When discussing the unjust enrichment BPP, however, Page suggests that the fact that benefits held by some states have been created at the expense of other states *is* a suitable candidate for an unjust factor and a reason why beneficiaries should disgorge the benefits. Here is an apparent contradiction.

The explanation for it is that Page equivocates on the meaning of "benefitting at the expense of others". When Page talks about the wrongful enrichment BPP and CPP, he is making the point that any adverse environmental impacts that any state suffers cannot be easily traced. So, in the context of discussing the wrongful enrichment BPP and the CPP, "profiting at the expense of any other state", the expense to the other state is conceived in terms of *environmental impacts brought about by climate change*. By contrast, when discussing the unjust enrichment BPP and the suggestion of "constrained development" as a possible unjust factor, cost to the other state is conceptualised in terms of *reduced economic opportunities* for "guilt-free" or "harmless" GHG-led development that were enjoyed by the early industrialising states. Here, then, is an unacknowledged shift in our understanding of what is the problem to be remedied. Page moves from talking about manifest adverse environmental effects (when discussing the CPP and wrongful enrichment BPP) to lost opportunities to develop in a GHG-intensive way (when discussing the unjust enrichment BPP).

What happens if the understanding of "at the expense to others" is kept consistent across the discussions of the unjust enrichment BPP and wrongful enrichment BPP/CPP? First, if "at the expense of others" is understood as suffering of adverse environmental impacts, unjust enrichment BPP seems just as vulnerable to much of the problem of linking the benefits, harms and the actions that created them.

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8. It is worth nothing, however, that Page's suggestion that according to the unjust enrichment BPP, beneficiaries are placed in the position of "condoning wrongless harmdoing" seems to be partly undermined by the third objection he makes against the wrongful enrichment BPP and CPP. If it is the case that some level of emissions could be sustained without crossing the 2°C threshold, then that will mean that at the very least, beneficiaries of *those* emissions are not placed in the position of condoning wrongless harmdoing as – according to Page, when discussing this objection in regard to the CPP – there is no harm done.

Second, what happens if we take “at the expense of other states” to mean “lost opportunities to develop”? Then there is no obvious reason why the CPP cannot be brought into play. In terms of causing loss of opportunities, for every tonne of GHGs emitted by an early-industrialising state, there is a developing state who must either emit a tonne less or emit in the knowledge that they are contributing to climate change. The CPP seems well placed to deal with this situation: it holds that states who have taken up more than their “fair share” of global sink capacity should either free up this space, compensate for it, or a mixture of both.

The relative plausibility of the unjust enrichment BPP, wrongful enrichment BPP and CPP thus depends on a prior understanding of “at the expense of others” – how exactly to conceptualise the injustice. Because he has not kept that consistent, Page has here failed to make a case for preferring the unjust enrichment BPP to the CPP.

There is another way of conceptualising the injustice at stake, as seen when Page introduces the third unjust factor. According to the ‘common ownership account’, the beneficiaries have benefitted from acts of “accidental but nevertheless profitable trespass on the atmospheric commons” (Page, 2012, p. 316). The injustice to be remedied here is that *property ownership rights have been transgressed*. As the transgression was accidental, the wrongful enrichment BPP does not apply here, but the unjust enrichment BPP can.

However, reconceiving the injustice in these terms makes the CPP more viable than Page believes. It can be argued that each early industrialising state can be said to have accidentally trespassed on developing states’ property rights to global sink capacity, by emitting high levels of GHGs. To trace the link between actions and injustice, all we need to know is states’ relative emissions records: some states have exceeded their fair share of the global “carbon budget” and encroached on the capacity to which others are entitled. Here, then, we do have “(i) the existence of identifiable harmful acts or events which (ii) befall identifiable agents such that (iii) those harms can be traced back to the behaviour or specific agent who are thereby held outcome responsible” (Page, 2011, p. 415-6). Page’s case against the CPP thus fails, and with it, the motivation for adopting the BPP in favour of the CPP is lost.

#### 4. Conclusion.

This paper has examined three roles commonly given to the BPP in accounts of climatic burden-sharing. I should emphasise that I have not objected to the general idea that beneficiaries of injustices can bear duties to disgorge those benefits. I have simply argued that the leading accounts of climate burden-sharing to date do not adequately justify their decision to invoke the BPP in whatever role they themselves assign it.

What, then, is the proper role of the BPP in climate justice? It seems to be a ‘double or quits’ situation. Initially it seems that it might be unnecessary to invoke the BPP here if a combination of the APP and CPP could provide a morally plausible answer to the question of how to remedy the injustices caused or exacerbated by climate change. Such an APP/CPP combination could, for example, take Caney’s ability-sensitive polluter pays principle and, as suggested above, stipulate that the APP should limit the duties of polluters who could claim to be excusably ignorant. This would then be supplemented by a general ability to pay principle. Such an account seems *prima facie* plausible, which means that the BPP might be redundant in accounts of remedial responsibility for climate change.

Those such as Page who hold that the APP, BPP and CPP “each have value that cannot be ranked or mutually offset” (2011, p. 427) should make the BPP a joint primary principle alongside the CPP (both should also be ‘ability-sensitive’ in Caney’s sense). To my know-

ledge, this has not been suggested before. However, perhaps it should be because despite the arguments of this article, there remains one distinctive role for the BPP. The accounts discussed above have two things in common. First, they have all allocated a *backwards-looking* role to the BPP and they have employed it in relation to past GHG emissions. Second, the benefits that beget remedial duties are understood as the benefits of fossil fuel-driven industrialisation. However, there is another type of benefit which has been almost entirely overlooked in the climate justice literature: the benefits gained by some agents from the (limited) impacts of climate change.<sup>9</sup> An account based only on the APP/PPP might be able to deal with the question of responsibility for past emissions, but would ignore the fact that some agents will have been unjustly enriched not (only) by the benefits of fossil fuel consumption, but by the benefits of limited climate change. The scope of the BPP could potentially be expanded to identify all kinds of climate change-related benefits and adjudicate on whether and how they should be redistributed. By doing so, the BPP would indeed retain a distinctive role in a theory of responsibility for climate change.

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9. At the time of writing and submission of this article, benefits of impacts of climate change had almost entirely been ignored by scholars of climate justice, save for a brief acknowledgement of them by Laura Garcia-Portela in her doctoral thesis (Garcia-Portela 2021). After the article was accepted, I became aware of one published discussion of this subject (Mintz-Woo & Leroux, 2021).

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