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# Beyond Ideal Theory: Foundations for a Critical Rawlsian Theory of Climate Justice

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## ABSTRACT

Rawls's contractualist approach to justice is well known for its adoption of ideal theory. This approach starts by setting out the political goal or ideal and leaves it to non-ideal or partial compliance theory to map out how to get there. However, Rawls's use of ideal theory has been criticized by Sen from the right and by Mouffe from the left. We critically address these concerns in the context of developing a Rawlsian approach to climate justice. While the importance of non-ideal theory for climate justice is increasingly being understood, its strategic and institutional importance for a Rawlsian approach needs further elaboration. We focus on the role of the Kantian conception of the reasonable and rational powers of persons in Rawls's work and show how this helps us to develop a partial compliance theory that focuses on the importance of institutions and strategic political action for achieving climate justice.

Through his life's work, John Rawls drew on the social contract tradition to offer conceptions of justice, first for reasonably well-off constitutional democracies, and later, more briefly, for the international community of peoples. He characterized his task as ideal theory, identifying principles of justice for what he called the basic structure of society and then for a law of peoples to govern international relations. Ideal theory, he used to say, "always comes first." It offers a vision, a target to guide action; working out how to get there and what to prioritize falls to non-ideal theory, or to what Rawls sometimes called partial compliance theory.

As the leading political philosopher of the 20<sup>th</sup> century, Rawls's conception and use of ideal theory has inspired an enormous critical literature. One branch assesses, critiques, and defends the concept of ideal theory, its role within Rawls's project, its wider applications, and the non-ideal theory that complements it. For another branch, Rawls's configuration of his political philosophy as ideal theory serves as a basis for attacking his overall project, for example, by Sen from the right and by Mouffe from the left. In this paper we aim to deepen the conception of ideal theory by grounding it explicitly in the Kantian conception of moral personality that underlies much of Rawls's work, and, on this basis, to develop foundations for a more general critical yet still

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Rawlsian political theory that addresses some of the concerns of his more systematic critics. While the importance of non-ideal theory for climate justice is increasingly being understood,<sup>1</sup> its strategic and institutional importance for a Rawlsian approach needs further elaboration.

For Rawls, drawing on Kant, moral personality is based on two fundamental powers or capacities, described as the reasonable and the rational. The reasonable is associated with conceptions of right and is cognitively expressed in principles; and the rational involves conceptions of the good, expressed in interests.<sup>2</sup> For Kant, “personality” is limited to the capacity to regard oneself as subject to “pure practical laws given by his own reason,”<sup>3</sup> which is roughly equivalent to Rawls’s category of the reasonable. However, Kant’s broader conception of practical reason goes beyond the categorical imperatives of pure practical reason (*moral* rationality), to also include the rational principles of willing the means to one’s end (*instrumental* rationality), and the practical necessity of those ends that make up one’s conception of happiness (*prudential* rationality).<sup>4</sup> The last of these maps on to Rawls’s category of the rational. According to Rawls, moral doctrines and conceptions of justice can be divided between those that aim to maximize the good or to achieve a single highest good, including Plato, Aristotle, Augustine, Aquinas, and the classical utilitarians, Bentham, Edgeworth, and Sidgwick, and those that focus on rights, duties, and obligations, including Locke, Hume, Leibniz, and Kant.<sup>5</sup> Rawls and Kant (in his moral philosophy) are mostly engaged in ideal theory, that is, in trying to articulate, and so perhaps to help the reader to adopt, valid moral principles. Both place the right before the good, taking it that principles should constrain interests absolutely. The implication of this theory is that anyone’s moral personality can be described in terms of their principles and interests, regardless of how valid their principles may be (that is, whether they really come from their own pure practical reason or are instead the result of circumstances, ideology, or error) or how far those principles actually constrain their interests.

It is characteristic of Kant’s philosophy that he understands human experience to depend both on capacities of the mind and on a reality external to the person. He divides reason into two parts, practical and theoretical; as Rawls explains, “Following Kant’s way of making the distinction, we say: practical reason is concerned with the production of objects according to a conception of those objects – for example, the conception of a just constitutional regime taken as the aim of political endeavor – while theoretical reason is concerned with the knowledge of given objects.”<sup>6</sup> For Kant, practical reason, which informs his account of moral and political philosophy, starts from a conception of

<sup>1</sup>E.g., Eric Brandstedt, “Non-Ideal Climate Justice,” *Critical Review of International Social and Political Philosophy* 22, no. 2 (2017): 221–34. <https://doi.org/10.1080/13698230.2017.1334439>.

<sup>2</sup>John Rawls, *Political Liberalism* [PL] (New York: Columbia University Press, 1993), 48–54.

<sup>3</sup>KpV, 5:87; Kant’s works are cited by the volume and page number of the standard Academy edition. Title abbreviations for Kant’s work come the *Kant-Studien* list of sigla. English translations are from the *Cambridge Edition* of Kant’s works.

<sup>4</sup>Kant, GMS, 4:415–16; see Onora O’Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000).

<sup>5</sup>John Rawls, *Collected Papers*, ed. Samuel Freeman, (Cambridge, MA: Harvard University Press, 1999), 360; John Rawls, *Lectures on the History of Moral Philosophy*, ed. Barbara Harman, (Cambridge, MA: Harvard University Press, 2000), 1–9.

<sup>6</sup>Rawls, *Political Liberalism*, 93.

the mind which obligates us to make the world conform to its rational ideals, while theoretical reason, including, for example, the natural sciences, starts from the form that the mind imposes on one's experience of the external world beyond it.

To see the implications of this model of reason for critical social theory, we need to bring together two of its features. First, following from Rawls's conception of ideal theory, any critical social theory must include a conception of a social ideal, which for Kant can serve as an object of a person's practical reason. Second, the realization of this ideal and the challenges that must be overcome to achieve it normally depend largely on configurations of principles and interests of particular persons. Most simply put, the tasks for persons who aim to promote an ideal are to create conditions that cause persons who hold competing principles and interests to change their principles and adopt this ideal, or to replace them in relevant social positions with persons who hold the relevant ideal, or else to hope that self-interest will force them eventually toward the just solution (as Kant thinks it does with the problem of establishing a state).<sup>7</sup>

Theorists who aim to articulate ideals or to correct theoretical reason normally write in terms of a single, unified field of reason and truth, as though it is always shared by all persons. It is clear, however, that each person has their own instantiations of practical and theoretical reason that not only guide their actions but also condition their experience. Our concepts condition not only the aims and strategies we may adopt but also our perception of the external world. According to Kant, we tend to impose conceptions of causality onto experience to understand it, but we may well do so in ways that are inconsistent with better grounded, more valid exercises of theoretical or practical reason. Daily life can be characterized in terms of the ongoing construction of our social world, reaffirming or altering principles and interests, based in part on (modifiable) conceptions of the external world constructed by our theoretical reason.

The transition from moral theory to social analysis requires a theory of institutions. When principles are widely shared and acknowledged we call them norms, and some norms are codified into law. Centeno, Kohli and Yashar argue that the state is a form of domination that "can be used for all different kinds of ends (for good and for bad). Thus, politics is central to any explanation of state performance," determining collective imaginaries of what is, what is good, and what can be, shaping goals and strategies, interacting with structural constraints but not reducible to them.<sup>8</sup> A theory of institutions of course involves its own moral theory, for example, how hiring by merit tends to induce a desire to perform well while hiring by loyalty generates incentives to support the patron.

To see how the Rawlsian/Kantian conception of moral personality can serve a transition from Rawls's theory of justice to a general critical theory, we can employ it in developing foundations for a critical theory of climate justice. To generate an ideal of climate justice, we start from Rawls's original position (OP). A core issue to resolve when applying Rawls's theory of justice to climate change is who the parties to the relevant OP are understood to be. In the context of the state in *Theory of Justice*, Rawls's focus is on individuals within a state forming a contract (technically, "heads of families").<sup>9</sup> In the global context, where issues of climate change clearly belong, Rawls in *The Law of Peoples* takes the existence of

<sup>7</sup>Kant, Zef, 8:366.

<sup>8</sup>Miguel Angel Centeno, Atul Kohli, and Deborah J. Yashar, "Conclusion," in ed. Miguel Centeno, Atul Kohli, and Deborah J. Yashar with Dinsha Mistree, *States in the Developing World* (Cambridge: Cambridge University Press, 2017), 419–420.

<sup>9</sup>John Rawls, *A Theory of Justice [TJ]*, Revised Edition, (Cambridge, MA: Harvard University Press, 1971, 1999), 111.

nation states for granted as the basic unit of analysis and focuses on agreement between states (technically, between representatives of “liberal” and “decent” peoples). This has been criticized from a cosmopolitan perspective as failing to take into account individuals, especially those in “burdened societies” who are excluded from contract negotiations and minorities not represented well by their state.<sup>10</sup> As we have argued previously, and argue further below, in the context of climate justice the only way to properly take into account the interests of the victims of climate change is to adopt an OP constituted by “representatives of individuals,” not peoples. In such an OP, the individuals do not know “whether they are rich or poor, or male or female, they also do not know in what country they reside or ... in what period of time, from now through the indefinite future.”<sup>11</sup> Crucially, this approach prioritizes the interests of individuals in having a decent life and securing their basic rights and liberties over the interest of states (or peoples) in being left alone to govern themselves. Of course, there are also further issues that a more complete account of climate justice needs to consider, such as the role of population and the use of geoengineering. As they are tangential to our main concern here, we can leave these further issues aside.<sup>12</sup>

From the climate change OP, considering challenges presented by climate change allows us to generate a rough ideal of the social institutions needed to realize climate justice, as we illustrate below. A corollary, one could say, of the Kantian conception of moral personality, based on insights from Kant’s theory of history<sup>13</sup> prominently developed by Marx, is that present institutions are the outcome of prior social struggle or “antagonism in society,”<sup>14</sup> reflecting earlier configurations of principles and interests. A first step in developing a strategy for climate justice, therefore, is to map not only current institutions, but also configurations of principles and interests that they reflect among relevant populations in terms that clarify the distance from the present world to a world of climate justice. Strategy for climate justice, therefore, involves not simply the positive steps needed to build appropriate institutions, but also how to support transitions to appropriate principles and how to overcome opposition from people and institutions with competing principles and interests.

Climate change is due to emissions of carbon dioxide (CO<sub>2</sub>) and other greenhouse gasses that increase the heat that Earth’s atmosphere retains from the sun.<sup>15</sup> Anthropogenic CO<sub>2</sub> emissions have increased more or less continuously since the advent of the industrial revolution, and about half of the CO<sub>2</sub> remains in the atmosphere at least for hundreds of years. From an ethical perspective, CO<sub>2</sub> emissions are best understood as externalities from privately profitable activities. Firms and consumers benefit from the polluting activity, and most of the resulting harms are imposed on people in other countries and in future times. As effects of CO<sub>2</sub> emissions are global, the contemporary overall framework for managing climate change is worked out at the international level through negotiations among national governments at meetings of the United Nations Framework Convention on Climate Change (UNFCCC).

<sup>10</sup>E.g., Brian Barry, “Humanity and Justice in Global Perspective” in *Contemporary Political Philosophy: An Anthology*, ed. Robert E. Goodin and Philip Pettit, (Oxford: Blackwell, 2019), 525–539.

<sup>11</sup>Paul Clements, “Rawlsian Ethics of Climate Change,” *Critical Criminology* 23, no. 4 (2015): 461–471, 463.

<sup>12</sup>But for a general overview see Simon Caney, “Climate Justice” in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, (Summer 2020 Edition), <https://plato.stanford.edu/archives/sum2020/entries/justice-climate/>.

<sup>13</sup>E.g., Kant, *laG* 8:20–21.

<sup>14</sup>*Ibid.*, 20.

<sup>15</sup>For simplicity we subsequently refer only to CO<sub>2</sub> as including the other greenhouse gasses would not change the analysis.

Climate change justice, therefore, needs to address governments as well as individual persons, and besides addressing rights and obligations, it must also take into account governments' political interests and constraints.

As noted above, to develop a Rawlsian conception of climate justice, we first need to work out an appropriate formulation for the OP. In *TJ*, where Rawls proposes principles of justice for a liberal society, hypothetical agents in the OP represent persons in that society.<sup>16</sup> In *The Law of Peoples*, however, they represent entire liberal peoples, identifying principles to govern their relations with other, liberal and non-liberal peoples.<sup>17</sup> In both cases, consistent with justice as fairness (as Rawls calls his approach), the agents stand behind a "veil of ignorance," not knowing, in the first case, the person's class position or social status, their fortune in the distribution of natural assets and abilities, their intelligence and strength, and such.<sup>18</sup> In the second case the agents do not know the size of the people's territory, the extent of their natural resources, their level of economic development, or their military strength.<sup>19</sup> The first OP is designed to select "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association,"<sup>20</sup> and the second extends this approach to peoples.

One might think that since the overall framework for managing climate change is worked out between representatives of national governments, an OP for climate justice, like for the law of peoples, would be populated by representatives of peoples. This, as we note above, would be a mistake. In the community of peoples, each people is a corporate unit with respect to other peoples, with principles and interests bound together through common governance. While governments may indeed promote the interests of some citizens more strongly than others in international relations, this is an internal matter in relation to other states. The effective unit of cooperation for a people is the country bound by a constitution and body of law, not, say, the city or province, and as such this is also the appropriate unit for regulating relations among peoples. Only when a state goes to war other than for self-defense or severely violates the human rights of its own people may intervention by other states be justified.<sup>21</sup> When it comes to climate change, however, benefits and harms from CO<sub>2</sub> pollution are experienced first by individual persons and other agents (e.g., firms), as individual polluters impose harms on individual persons in other states. Most of the more extreme victims from climate change are likely to be relatively marginalized and powerless, and may even be members of what Rawls calls "burdened societies," and their governments cannot be relied upon to represent their interests effectively in international negotiations. While relations between polluters and victims are mediated by governments, and nation states and other corporate units are independently relevant, climate justice is fundamentally a matter of relations between persons. For this reason, agents in the OP for climate justice, similarly to those in the OP for a single society, must represent individual persons. Given that CO<sub>2</sub> pollution can harm persons decades and centuries hence, these future persons must also be fairly represented in the climate justice OP.

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<sup>16</sup>Rawls, *A Theory of Justice*, 11.

<sup>17</sup>John Rawls, *The Law of Peoples with "The Idea of Public Reason Revisited" [LP]* (Cambridge, MA: Harvard University Press, 1999), 30–33.

<sup>18</sup>Rawls, *A Theory of Justice*, 11.

<sup>19</sup>Rawls, *The Law of Peoples*, 32–33.

<sup>20</sup>Rawls, *A Theory of Justice*, 10.

<sup>21</sup>Rawls, *The Law of Peoples*, 37.

In *TJ* Rawls addresses the difficult problem of justice between generations by modeling agents in the OP as knowing that they represent heads of families who care about their immediate descendants, but not knowing the present stage of civilization of the society of the persons they represent. The agents select an approach to savings that can apply at any time, and where all prior generations will also have followed this approach. This leads them to support a level of savings that allows for some improvement in social conditions, until such time as “just institutions are firmly established and all the basic liberties [are] effectively realized.” At this point “the net accumulation asked for [as a matter of justice] falls to zero,”<sup>22</sup> although levels of “material” and “cultural” capital must be at least maintained going forward (while the extent to which this includes “natural” resources as well is a matter of debate, the “natural” world is clearly an essential foundation of the former).<sup>23</sup>

In the OP for climate justice, the agents are aware of threats that progress toward social justice may be reversed, such as from rising sea levels to the peoples of low-lying islands, from multiple dangers to the peoples of many low- and middle-income countries, and from potential breakdowns in institutions of international cooperation. As these threats are largely imposed by relatively wealthy people in advanced countries onto relatively poor people in developing countries, they lead to obligations for remediation and requirements for international governance not found in the OP of *TJ*. Following the procedure from *TJ*, the agents do not know the stage of civilization of the persons they represent, but if these persons happen to live in our time, at this stage of climate change, then these obligations and requirements obtain. Since threats from increasing atmospheric CO<sub>2</sub> face both present and future generations, the main significance of taking account of justice to future generations in the climate justice OP is to reinforce or strengthen overall imperatives to limit climate change and address its harms.

Rawls does not specify what exactly it is that his just savings principle requires to be saved beyond that these savings allow for continued advance toward or maintenance of social justice, which includes its cultural as well as material foundations. It is worth pointing out that besides threatening material well-being, climate change also threatens foundations for culture in a variety of ways, such as by changing habitats and increasing extinctions, and challenges the ongoing stability of just institutions insofar as these depend on a well-functioning environment that can support an adequate standard of living for all. Climate change also raises questions about justice to non-humans, given their essential role in maintaining and constituting a well-functioning environment, that *TJ* does not address.<sup>24</sup> Once again, these considerations reinforce already compelling obligations in the climate justice OP, and they may strengthen obligations to protect other beings in the natural world.

From the perspective of our OP, behind the veil of ignorance, the agents are to identify principles for allocating rights and duties associated with climate change. These include rights to generate CO<sub>2</sub> pollution and duties to reduce and to correct climate change’s

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<sup>22</sup>Rawls, *A Theory of Justice*, 255.

<sup>23</sup>For discussion see Ben Pontin, “The Role of ‘Previous Generations’ in the Just Savings Principle of John Rawls,” *Kantian Review* 24, no. 4 (2019): 555–71 and Stephen Gardiner, “Rawls and Climate Change” *Critical Review of International Social and Political Philosophy* 14, no. 2 (2011): 125–51.

<sup>24</sup>For critical discussion see, for example, Robert Garner, *A Theory of Justice for Animals* (Oxford: Oxford University Press, 2013).



harms. Since harms from climate change depend first on the total level of CO<sub>2</sub> in the atmosphere, and here national governments are the effective units of responsibility, agents in the OP need either to determine by themselves a global budget for CO<sub>2</sub> emissions and allocate it across countries, or to identify fair procedures for others to do so. Then they need to identify principles for achieving the required emission reductions and for generating adequate energy from non-carbon sources. In negotiations at the UNFCCC, the term used for CO<sub>2</sub> reductions is “mitigation,” and terms associated with reducing and correcting harms are “adaptation” and “loss and damage.”<sup>25</sup> This categorization, however, reflects the UNFCCC’s state-centric perspective. There are several ways in which the present, Westphalian system of nation states is problematic for climate justice, as we discuss below. While agents in the OP would want to limit deaths from climate change, beyond this the most significant harm they would aim to have actively managed would be from persons they might represent being displaced from their homes and/or livelihoods, such as due to droughts, excessive heat, or floods, and having to move and remake their lives in other locations. These agents must defend persons’ opportunities to fully exercise the basic liberties as they pursue their conceptions of the good, and while these opportunities are hardly threatened by reductions in CO<sub>2</sub> pollution (assuming these reductions are well managed), they are greatly threatened by the displacement of persons. UNFCCC negotiations, however, have generally neglected the specific needs of climate migrants. The Paris Agreement mentions migrants only once, in passing,<sup>26</sup> and the organization set up by the UNFCCC to address loss and damage, the Warsaw International Mechanism, aims largely to address overall risk management and sharing technology and information, with little direct attention to climate migrants.<sup>27</sup> If we take adaptation to involve both efforts to limit effects of climate change and efforts to limit harms other than displacements after they occur, the three main subjects that agents in our OP would address are mitigation, adaptation, and support for climate migrants.

Selecting a mitigation target involves weighing gains from activities that generate CO<sub>2</sub> pollution against harms from climate change, taking account of prospects for establishing nonpolluting energy sources. The dependence of practical on theoretical reason is particularly apparent as agents in the OP consider the uncertainty in projections of harms from climate change. Atmospheric CO<sub>2</sub> is increasing much faster than Earth has experienced in the last 800,000 years, and to a level far higher, from 280 parts per million (ppm) in 1800, at the dawn of the industrial revolution, already to 420 ppm at this writing. This compares to a range from 180 to 300 ppm in this earlier period, as Earth cycled from ice age to ice age over periods of roughly 100,000 years, interspersed with periods sometimes a degree or two Celsius warmer than the present,<sup>28,29</sup> Earth’s extremely complex climate system is already in uncharted territory, and CO<sub>2</sub> emissions continue to increase. Official projections of warming responses to rising levels of CO<sub>2</sub> from the

<sup>25</sup>United Nations, “Paris Agreement” (2015). Accessed 12 October 2021. [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf).

<sup>26</sup>Ibid., 2.

<sup>27</sup>United Nations Climate Change, “Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (WIM).” 12 October 2021. <https://unfccc.int/topics/adaptation-and-resilience/workstreams/loss-and-damage-ld/warsaw-international-mechanism-for-loss-and-damage-associated-with-climate-change-impacts-wim#eq-1>.

<sup>28</sup>National Oceanic and Atmospheric Administration. “Temperature Change and Carbon Dioxide.” Accessed 12 October 2021. <https://www.ncdc.noaa.gov/global-warming/temperature-change>.

<sup>29</sup>CO<sub>2</sub>.Earth. “Are we stabilizing yet?” Accessed 12 October 2021. <https://www.co2.earth/>.



Intergovernmental Panel on Climate Change (IPCC) come with wide confidence intervals,<sup>30</sup> and the computer models these projections are based on are unable to forecast reliably major components of the climate system, such as losses of Arctic sea ice or of Amazon rainforest.<sup>31</sup>

With the landmark Paris Agreement of 2015, the UNFCCC set a target to limit the increase in global temperature to “well below 2°C above pre-industrial levels” and to try to limit the increase to 1.5°C.<sup>32</sup> However, national commitments under the Paris Agreement and current (at this writing) government policies would lead to about 3°C warming by official estimates.<sup>33</sup> The media commonly use phrases like, “scientists believe that keeping warming below 2°C will avoid the worst effects of climate change,” but this is obviously a convenient fudge. Increases in droughts, heat waves, more intense storms, sea level rise, floods, and other changes in weather patterns that we have already observed will certainly accelerate. Even at 1°C warming, the number of people exposed to life threatening combinations of heat and humidity at least one day per year has increased from 97 million to 279 million. It is projected to rise to 508 million at 1.5°, 789 million at 2°, and 1.22 billion at 3°C.<sup>34</sup> The IPCC projects up to about a meter of sea level rise by 2100 depending on progress in limiting CO<sub>2</sub> emissions, but in perhaps the most sustained scientific critique of the IPCC, Hansen and his colleagues argue, based largely on evidence from the last interglacial period, that without rapid reductions in emissions sea levels could rise several meters in this century.<sup>35</sup>

Agents in the climate change OP acknowledge the possibility of devastating spirals of consequences in the natural world, for example, from accelerated sea level rise, a die-off of the Amazon Rainforest, or more rapid than expected release of natural carbon stores from permafrost, and in the social world, for example, if increasing heat, water shortages, and population movements exacerbate international conflicts or cause severe breakdowns in national and international institutions. Not knowing if they represent heavy polluters in advanced industrialized countries or people forced from their homes in marginalized communities of developing countries, but considering threats to the liberties of victims of climate change, they find rapid reductions in CO<sub>2</sub> emissions to be particularly urgent. From the UNFCCC’s establishment in 1992 it has recognized “common but differentiated responsibilities” between advanced countries with high current and cumulative emissions and developing countries with low emissions but that have yet to industrialize.<sup>36</sup> Agents in the OP, too, would recognize a right to development that

<sup>30</sup>IPCC, “Summary for Policymakers,” in *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, ed. T.F. Stocker (Cambridge: Cambridge University Press, 2013), 28.

<sup>31</sup>K. Pistone, I. Eisenman and V. Ramanathan, “Radiative Heating of an Ice-Free Arctic Ocean,” *Geophysical Research Letters* 46 no. 13 (2019): 7474–7480; T. E. Lovejoy and C. Nobre, “Amazon Tipping Point,” *Science Advances* 4, no. 2 (2018): 1; T. E. Lovejoy and C. Nobre, “Amazon Tipping Point: Last Chance for Action,” *Science Advances* 5, no. 12 (2019): 1–2.

<sup>32</sup>United Nations, Paris Agreement, 3.

<sup>33</sup>Joeri Rogelj et al., “Paris Agreement Climate Proposals Need a Boost to Keep Warming Well Below 2°C,” *Nature* 531 (2016): 631–639; Climate Action Tracker, “Climate Action Tracker,” Accessed 1 August 2021. <https://climateactiontracker.org/>.

<sup>34</sup>Dawei Li, Jiacan Yuan and Robert E. Copp, “Escalating Global Exposure to Compound Heat-Humidity Extremes with Warming,” *Environmental Research Letters* 15, no. 6 (2020), 1.

<sup>35</sup>James Hansen, et al., “Ice Melt, Sea Level Rise and Superstorms: Evidence from Paleoclimate Data, Climate Modeling and Modern Observations that 2°C Global Warming Could Be Dangerous,” *Atmospheric Chemistry and Physics* 16 (2016): 3761–3812.

<sup>36</sup>United Nations, *United Nations Framework Convention on Climate Change* (1992), Accessed 12 October 2021. <https://unfccc.int/resource/docs/convkp/conveng.pdf>.

conditions appropriate emissions pathways for developing countries and leads to obligations for assistance from advanced countries. Although this is a collective right, while the agents in the OP represent individual persons, in this case prospects for the individual's exercise of liberties depend on their people's collective advance toward social justice. As the Paris Agreement's 1.5 to 2°C target probably already represents the limit of technical and institutional feasibility, agents in the OP would endorse it as a starting point.

The UNFCCC originally aimed to stabilize greenhouse gas concentrations "at a level that would prevent dangerous anthropogenic interference with the climate system."<sup>37</sup> Its first attempt, however, the 1998 Kyoto Protocol only required emissions reductions from advanced countries, and due to its exclusion of developing countries the US Senate refused to consider it.<sup>38</sup> Without US participation, the Kyoto Protocol failed to slow the increase in atmospheric CO<sub>2</sub>. Throughout UNFCCC negotiations, advanced countries have resisted legal responsibility for their contributions to climate change, while developing countries have asserted a right to development and to assistance from advanced countries. By way of compromise, the Paris Agreement has each country submit its own Nationally Determined Contribution toward limiting global warming and advanced countries reaffirmed their commitment to provide developing countries with \$100 billion annual assistance for mitigation and adaptation by 2020. Although, as noted above, Nationally Determined Contributions collectively will lead to perhaps 3°C warming, this was then the strongest politically feasible agreement. As is not uncommon in the international arena, Parties to the Paris Agreement also agreed to strengthen their commitments over time.

Agents in the OP would seek the most fair and effective means to avoid exceeding the warming target. Clearly this involves advanced countries taking responsibility for their CO<sub>2</sub> pollution, however politically difficult this may be. The original round of Nationally Determined Contributions came with all kinds of units, timeframes, and provisos favorable to the committing government, and the Paris Agreement includes no sanctions for noncompliance or even mechanisms for consistent monitoring and reporting (although it sets plans for these in motion). It is clearly most effective for each country to have a CO<sub>2</sub> budget for which it can be held accountable, with national budgets summing to a global budget consistent with the warming target. In establishing budgets, agents in the OP would consider historic and current emissions, current capacity, and status toward an economy that can secure the well-being of the country's people. All the obligations arising from climate change, however, for mitigation, adaptation, and to support climate migrants, are functionally interrelated and need morally to be considered together.

While mitigation aims to limit climate change, obligations to support adaptation and to assist migrants aim to limit the great harms imposed by polluters. Agents in the OP would find protecting the agency and dignity of individual victims and defending the capacities of governments and their responsiveness to their citizens to be particular priorities. No one can escape harms from climate change, but how debilitating their consequences<sup>39</sup>

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<sup>37</sup>Ibid., 4.

<sup>38</sup>Congress.gov, "S.Res.98 – A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on greenhouse gas emissions under the United Nations Framework Convention on Climate Change." Accessed 12 October 2021. <https://www.congress.gov/bill/105th-congress/senate-resolution/98/text>.

<sup>39</sup>Hence much discussion of adaptation focuses on enhancing resilience.

are will depend on their severity and on the general capacities of the victim. While Rawls's law of peoples includes a duty "to assist other peoples living under unfavorable conditions that prevent their having a just or decent political or social regime,"<sup>40</sup> the duty to address harms from climate change is more binding than this as it arises not merely from the ability to limit harms but also from some degree of responsibility for these harms. Ongoing failures in mitigation increase these harms and hence the burden of responsibility. Natural disasters have often been attributed to fortune or to acts of God, but responsibility for climate change places unprecedented demands on international governance.

Institutions to support adaptation are already failing miserably, and while political backlashes against immigrants are increasing worldwide, responsibility for climate migrants is hardly recognized. The Global Commission on Adaptation, led by Ban Ki-moon, then Secretary General of the United Nations, Bill Gates of the Bill and Melinda Gates Foundation, and Kristalina Georgieva, then CEO of the World Bank, analyzes worldwide adaptation challenges in areas of food, the natural environment, water, cities, infrastructure, and disaster risk management. It finds that adaptation is not happening at "nearly the pace and scale required,"<sup>41</sup> and calls for revolutions in understanding, planning, and finance. Focusing specifically on strengthening early warning systems, making new resilient infrastructure, improving dryland agricultural crop production, protecting mangroves, and making water resources management more resilient, it finds that \$1.8 trillion invested in 2020–2030 could yield \$7.1 trillion in net benefits.<sup>42</sup> Global public finance for adaptation, however, was only \$22 billion per year as of 2015–16.<sup>43</sup>

From the OP it is clear that to fulfill adaptation obligations, besides raising finance, two institutional imperatives have to be reconciled. First, bureaucratic capacities need to be developed to allocate resources rationally in a context of diffuse and uncertain risks. Second, resource delivery needs to be detached from the political interests not only of "donor" countries but also of recipient governments and designed to enhance rather than undermine the agency of recipient populations. International resource allocation for adaptation is driven not just by the physical and financial scale of risks, but by residual risks after local resources and institutional capacities are also taken into account. The greatest investments are likely to be needed where institutional capacities, particularly of representative governments, may be weakest. Adaptation finance today, besides being quantitatively inadequate, is channeled through dozens of bilateral and multilateral institutions and hundreds of government agencies.<sup>44</sup> Demands for bureaucratic capacity, accountability, and popular participation that these organizations are already failing to meet will only grow stronger.

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<sup>40</sup>Rawls, *The Law of Peoples*, 37.

<sup>41</sup>Manish Bapna, Carter Brandon, Christina Chan, Anand Patwardhan and Barney Dickson, *Adapt Now: A Call for Global Leadership on Climate Resilience* (Rotterdam: Global Center on Adaptation and Washington: World Resources Institute, 2019), 4.

<sup>42</sup>*Ibid.*, 3.

<sup>43</sup>*Ibid.*, 54.

<sup>44</sup>Rachael Calleja, "How Do Development Agencies Support Climate Action?" *CGD Policy Paper 207* (Washington, DC: Center for Global Development, 2021).

According to UNHCR, the UN Refugee Agency, there were 79.5 million forcibly displaced persons worldwide at the end of 2019, more than ever in recorded history, including 26 million international refugees and 45.7 million persons displaced within their home countries, so called internally displaced people or IDPs.<sup>45</sup> The World Bank projects that up to 143 million people will be displaced by 2050 by slow-onset harms from climate change in sub-Saharan Africa, South Asia, and Latin America, depending on accomplishments in mitigation and adaptation.<sup>46</sup> Other assessments, while inevitably speculative, have often given 200 million climate migrants worldwide by 2050 as a best guess, due to rising sea level, increased droughts, and other extreme weather events. Institutions to support refugees and IDPs are already patently inadequate, and anti-immigrant sentiment has already contributed to populist nationalism that has shaken political systems in the United States, Europe, India, and Australia.

One of the first systematic comparisons of climate-induced and non-climate-induced migrants, carried out in the Korail slum in Dhaka, capital city of Bangladesh, finds climate-induced migrants living in relative squalor and extreme insecurity.<sup>47</sup> Although respondents from both groups arrived in Dhaka after 2006, 21% of climate-induced migrants were unemployed at the time of the survey compared to none of the non-climate-induced population, and the jobs of climate-induced migrants tended to be more menial.<sup>48</sup> Households of climate-induced migrants averaged 4.2 members earning US \$73.50 per month, compared to non-climate-induced migrant households at 3.25 members earning \$172 per month, or \$0.58 per person per day compared to \$1.76.<sup>49</sup> While based only on recall, pre-migration income was not significantly different between the two groups, and all the climate-induced migrants but only 40% of the comparison group aspired to return to their home village.<sup>50</sup> Adri and Simon attribute the climate-induced migrants' greater vulnerability to their having become destitute within hours when their assets were destroyed, such as by flood or cyclone, and to their relative lack of education and institutional access.<sup>51</sup> Conditions of migrants driven by slow-onset effects of climate change would likely fall between those of the two groups in this study.

In the OP, recognizing the responsibility of CO2 polluters for persons displaced by anthropogenic climate change, the importance of supporting climate migrants is clear. Means must be found to restore their agency and dignity, as far as possible, in their home countries. When this fails and they are forced to migrate internationally, they must not only be accommodated but adequately integrated. Although in 2020 the UN Human Rights Committee issued a landmark ruling against "forcibly returning a person to a place where their life would be at risk due to the adverse effects of climate change,"<sup>52</sup> at the

<sup>45</sup>UNHCR, "Figures at a Glance," Accessed 12 October 2021. <https://www.unhcr.org/en-us/figures-at-a-glance.html>

<sup>46</sup>Kanta Kumari Rigaud, et al., *Groundswell: Preparing for Internal Climate Migration*, (Washington DC: The World Bank, 2018). <https://openknowledge.worldbank.org/handle/10986/29461>.

<sup>47</sup>Neelopal Adri and David Simon, "A Tale of Two Groups: Focusing on the Differential Vulnerability of 'Climate-Induced' and 'Non-Climate-Induced' Migrants in Dhaka City," *Climate and Development* 10, no. 4 (2018): 321–336. <https://doi.org/10.1080/17565529.2017.1291402>.

<sup>48</sup>Ibid., 326.

<sup>49</sup>Ibid., 327.

<sup>50</sup>Ibid., 331–332.

<sup>51</sup>Ibid., 333.

<sup>52</sup>Adaena Sinclair-Blakemore, "Teitiota v New Zealand: A Step Forward on the Protection of Climate Refugees under International Human Rights Law?" *Oxford Human Rights Hub*, (January 28, 2020), Accessed 12 October 2021. <https://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/>.

time of writing international climate migrants are generally treated as economic migrants, lacking protections of refugee status. Clearly, a host of practical and political questions remain to be addressed for the imperative to support climate migrants to be fulfilled. These questions have not been high priorities for most governments that make up the UNFCCC.

It is difficult to grasp the magnitude of the organizational tasks pursuant to just mitigation, adaptation, and support for climate migrants. Although a substantial carbon tax could conceivably motivate largely decentralized reductions in CO<sub>2</sub> emissions, transitions to carbon neutral economies inevitably require enormous government management.<sup>53</sup> Low-income countries that need greatly increased energy for their economies to develop need substantial technical support to avoid fossil fuels. While demands of mitigation are driven by energy technologies and tend to be technically consistent, demands of adaptation tend to be issue- and site-specific, and technically much more demanding overall. Most climate migrants, as noted above, are likely to be found where institutions are already weak. Given the responsibility of citizens and firms in advanced countries for CO<sub>2</sub> pollution, in the OP these countries would be held responsible for much more than the \$100 billion annually that they have already committed (although not yet realized). Rational management of these funds would have to be centrally organized, with stronger institutions of international governance. Fair and effective implementation of mitigation, adaptation, and migrant support programs that enhance the agency of beneficiary populations would require both strong top-down management and strong local participation.<sup>54</sup> Funds would generally need to be channeled through developing country governments in ways that not only enhance their institutional capabilities, but also strengthen their accountability to their own people. The organization of program implementation would need to support both technical rationality and participatory governance.

The progress of UNFCCC negotiations reflects growing awareness of the risks from climate change and the evolving articulation of national interests. We have noted that advanced countries have resisted legal responsibility for their CO<sub>2</sub> pollution from the start. The original 1992 agreement states, “the developed country Parties should take the lead in combating climate change and the adverse effects thereof,” and suggests “the return by the end of the present decade [i.e., by 2000] to earlier levels of anthropogenic emissions of carbon dioxide,” and that the needs of developing countries that are “particularly vulnerable to the adverse effects of climate change . . . should be given full consideration.”<sup>55</sup> It does not, however, specify particular obligations, and emissions continued to increase from 1992 through 2019.<sup>56</sup> Khan et al. argue that it was not until 2007 that developing countries made funding for adaptation a central demand in negotiations.<sup>57</sup> Economic analyses of climate change from 1991 led by Nordhaus have indicated that burdens on future generations will generally be quite manageable, but

<sup>53</sup>See e.g., Chloe Revill and Victoria Harris, “2020 The Climate Turning Point,” Accessed 12 October 2021. <https://mission2020.global/wp-content/uploads/2021/04/2020-The-Climate-Turning-Point.pdf>.

<sup>54</sup>See e.g., Judith Tendler, *Good Government in the Tropics* (Baltimore, MD: Johns Hopkins University Press, 1997).

<sup>55</sup>United Nations, 1992, 4, 6.

<sup>56</sup>Statista, “Historical carbon dioxide emissions from global fossil fuel combustion and industrial processes from 1750 to 2020,” Accessed 12 October 2021. <https://www.statista.com/statistics/264699/worldwide-co2-emissions/>.

<sup>57</sup>Mizan Khan, et al., “Twenty-five Years of Adaptation Finance Through a Climate Justice Lens” *Climatic Change* 161 (2020), 254–255. <https://doi.org/10.1007/s10584-019-02563-x>.

from 2006 this has increasingly been contested by Stern. In 2008 Hansen et al. argued, “If humanity wishes to preserve a planet similar to that on which civilization developed and to which life on Earth is adapted, paleoclimate evidence and ongoing climate change suggest that CO<sub>2</sub> will need to be reduced from its current 385 ppm to at most 350 ppm, but likely less than that,”<sup>58</sup> but IPCC reports have generally indicated far less urgency.

Agents in the OP may represent people who are particularly vulnerable to climate change, such as members of future generations and marginal communities in developing countries. Considering the institutional momentum of CO<sub>2</sub> emissions, feedback loops, and risks that even if of low likelihood are already catastrophic, they would find the present status of CO<sub>2</sub> emissions already deeply unjust. Unsurprisingly, these interests are not well represented in UNFCCC negotiations. Moreover, principles stated, for example, in the 1992 Convention and the 2015 Paris Agreement, are better understood as aspirations of negotiating parties than as actual government commitments. Even formal commitments are subject to national politics, as evidenced by the US government’s failure to promote its Nationally Determined Contribution from 2016 to 2020 under President Trump. The neglect of climate migrants in UNFCCC negotiations is particular evidence of the injustice of the process, and that prospects for climate justice depend, unsurprisingly, on its being promoted by the people.

The OP for climate change allows us to articulate a rough ideal of institutions needed to fulfill responsibilities arising from CO<sub>2</sub> pollution. We have noted the prominent role of the US Senate in blocking early mitigation efforts, but, as the Kantian conception of moral personality would lead us to expect, the Senate was only the tip of the institutional iceberg of resistance. The US Senate’s rejection of the Kyoto Protocol was largely due to a multi-million dollar lobbying campaign by the fossil fuel industry and other prominent business interests, which was itself part of a systematic, decades-long campaign that succeeded greatly in promoting climate change denial among the American public and blocking climate change legislation by the US government. The lobbying campaign even managed to persuade US labor organizations to oppose the Kyoto treaty over concerns about job losses.<sup>59</sup> The climate change denial campaign drew on the US tobacco industry’s experience sowing misinformation on the carcinogenic properties of cigarettes and blocking regulation that would reduce their profits.<sup>60</sup> Opposition from labor to the Kyoto Protocol and the tobacco industry’s legacy both illustrate the bulwark of institutional commitments, arising from prior struggles, that the movement for climate justice confronts. Climate justice demands, as they say in economics, “nonmarginal” institutional changes that introduce a host of cross-cutting conflicts.

Kant insists that the authority of the moral law does not depend on our subjective acknowledgment of this law but on its rational force which originates in our own reason, even if this gets rationalized away by our self-interest.<sup>61</sup> Contributions to CO<sub>2</sub> pollution generate obligations to climate justice that we need to integrate with other obligations. The peculiar physics of climate change and the system of independent nation states

<sup>58</sup>James Hansen, et al., “Target Atmospheric CO<sub>2</sub>: Where Should Humanity Aim?” *The Open Atmospheric Science Journal* 2 (2008): 217.

<sup>59</sup>Ronald C. Kramer, *Carbon Criminals, Climate Crimes* (New Brunswick: Rutgers University Press, 2020), 114–115.

<sup>60</sup>Naomi Oreskes and Erik Conway, *Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco to Global Warming* (New York: Bloomsbury Press, 2010).

<sup>61</sup>Paul Formosa, *Kantian Ethics, Dignity and Perfection* (Cambridge: Cambridge University Press, 2017).

that we inhabit give these obligations a distinctive character and structure. Governments must be brought to support just global institutions for mitigation, adaptation, and climate migrants, but until such institutions are established, popular efforts also need to support just mitigation, adaptation, and care for climate migrants directly. This direct support can help to move governments toward upholding their responsibilities while also addressing immediate needs. The central task here, however, is not to give personal service, but to build institutional infrastructure that can contribute to the ideal theory goal. Here strategy falls under partial compliance theory, with the veil of ignorance removed. Of course, most people cannot devote their lives to climate justice, and it is supererogatory – beyond the requirements of duty – to do so, although climate justice cannot be achieved unless significant numbers of persons do. Kantian ontology provides, however, a means of analyzing the ethical character of pathways to climate justice, which, integrated with institutional analysis, can inform strategy for climate justice.

From this ontology, four kinds of strategies emerge. Where narrow interests in CO<sub>2</sub> pollution dominate over principles, the aim is to undo the promotion of the narrow interests of the few who benefit from this and increase the promotion of the broader interests we all have in a healthy environment. Where forms of theoretical and/or practical reason inhibit recognition of responsibility for climate change, (forms that for a Kantian doctrine must be in error and for other doctrines may be in error), the aim is to find ways to speak to the person that allow them to see their responsibility. For people who recognize responsibility but whose theoretical and practical reason does not adequately articulate imperatives of climate justice, the aim is to enhance understanding and to offer opportunities for more effective action. And finally, for persons in institutional positions with influence over aspects of climate justice, the aim is to appeal to their personal and/or institutional principles and/or to alter their incentives to increase the priority or enhance the strategic character of theirs and their institution's climate action, which may include enhancing understanding.

When reducing CO<sub>2</sub> pollution directly conflicts with someone's narrow interests, as, for example, with owners of petroleum firms, a person is likely, as Kant puts it, to "frame a morals to suit . . . [their] advantage,"<sup>62</sup> to thereby avoid acknowledging responsibility for harms from promoting their interests, and this is likely also to distort their theoretical reason. Moreover, strategies to promote their interests, such as promoting climate change denial, can undermine others' practical and/or theoretical reason. To the extent that the form of the modern corporation causes it to focus exclusively on profit-seeking, it is likely to contribute to institutionalizing such interests, such as via lobbying, until such time as the institutional environment shifts the balance of risk and reward sufficiently to vacate the interest. Since polluting interests are concentrated and well organized, they were able to gain early advantages in the struggle for climate justice, as illustrated by the transition by Exxon (later ExxonMobil), the world's largest private petroleum firm, from contributing to the science<sup>63</sup> of climate change in the 1970s to promoting climate change denial in the

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<sup>62</sup>Kant, *ZeF*, 8:372.

<sup>63</sup>Kramer, *Carbon Criminals, Climate Crimes*, 66–74.



1990s and 2000s. Strategy for climate justice needs to counter proactive strategies of CO<sub>2</sub> polluting interests to protect their profits and it needs to remove or counteract the harmful interest, such as with carbon taxes and by shifting public opinion.

Someone may have no unusual interest in carbon pollution, but their theoretical and/or practical reason may include commitments that make it difficult to engage with obligations to promote climate justice. Evidence suggests that climate change scepticism is “rooted in people’s core values and worldviews.”<sup>64</sup> For example, some Christians committed to the literal truth of the Bible do not accept the science of evolution. Some may believe that God’s promise to Noah, that “never again shall there be a flood to lay waste the earth,”<sup>65</sup> precludes significant sea level rise from climate change, or that God’s control of the climate system is not subject to significant human interference. Many Americans hold libertarian commitments and tend to consider government programs, particularly global government, generally harmful. In cases such as these it may be possible to introduce other, overriding commitments. As employees, for example, they may see following instructions for actions that in effect promote aspects of climate justice as their duty. If strategy requires their willing climate justice, one might present them with evidence of their responsibility for the matter in question, or the specific imperative for action, in terms consistent with some part of their practical reason, such as the obligation to care for God’s creation, as far as possible from within their worldview. Research suggests, for example, that challenging the perception that anti-climate change views are widely shared by others<sup>66</sup> and the use of targeted “value-congruent” information<sup>67</sup> can be effective in changing people’s views about climate change. Alternatively, a strategy might be devised that does not require their support.

It is perhaps particularly common in advanced countries for people to be aware of climate change as problematic, and to feel some obligation, but to focus too narrowly, to do too little, or to make broad appeals that remain ineffectual in the face of organized interests. Our interpretation of climate change as a “wicked problem” emphasizes normal limitations of theoretical and practical reason in the face of the complexity of climate change and corresponding organizational challenges in promoting climate justice.

As the scientific community has become increasingly dismayed at prospects from climate change it has become common for scientific studies to analyze a particular system – ocean acidification and changes in ocean chemistry, or particularly extreme changes in the polar climate system – and to call for “urgent action.” With his influential 1988 testimony to the US Congress and his significant support for the climate action group, 350.org, Hansen is among the most engaged of scientists. A 2017 paper aimed at non-scientists on which he is lead author, “Young people’s burden: requirement of negative CO<sub>2</sub> emission,” reiterates his call for reducing atmospheric CO<sub>2</sub> to 350 ppm, now requiring even more substantial CO<sub>2</sub> removal from the atmosphere. The paper

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<sup>64</sup>Wouter Poortinga, “Uncertain Climate: An Investigation into Public Scepticism about Anthropogenic Climate Change.” *Global Environmental Change* 21, no. 3 (2011): 1015. <https://doi.org/10.1016/j.gloenvcha.2011.03.001>.

<sup>65</sup>Bible Hub, “Genesis 9:11” Accessed 12 October 2021. <https://biblehub.com/genesis/9-11.htm>.

<sup>66</sup>Stephan Lewandowsky, John Cook, Nicolas Fay, and Gilles E. Gignac, “Science by Social Media: Attitudes towards Climate Change Are Mediated by Perceived Social Consensus,” *Memory & Cognition* 47, no. 8 (2019): 1445. <https://doi.org/10.3758/s13421-019-00948-y>.

<sup>67</sup>Thomas Graham and Wokje Abrahamse, “Communicating the Climate Impacts of Meat Consumption: The Effect of Values and Message Framing,” *Global Environmental Change* 44 (2017): 98. <https://doi.org/10.1016/j.gloenvcha.2017.03.004>.

analyzes the danger without such a reduction that “slow feedbacks are activated to a degree that continuing climate change will be out of humanity’s control.”<sup>68</sup> Finding that “the world has already overshoot appropriate [greenhouse gas] and global temperature,” it describes encouraging local efforts to reduce CO<sub>2</sub> emissions but notes that they are undermined “without effective global policies.” It argues that “[t]here is no time to delay ... if large fossil fuel emissions are allowed to continue ... the burden on young people and on future generations may become too heavy to bear,”<sup>69</sup> yet it warns that the “inertia of the climate system” may allow harms “to build up before broad public concern awakens.”<sup>70</sup>

The paper describes scientifically plausible means that could bring atmospheric CO<sub>2</sub> back down to 350 ppm, but from a political and organizational perspective these means are, as social scientists would say, highly implausible. The articulation of this goal can be seen as an instance of the propensity of practical reason to find solutions for the problems with which it presents itself from analytic materials at hand. Similarly, the climate change-aware public often finds solutions in actions to reduce their own carbon footprints, such as by recycling, buying an EV, or reducing meat consumption. They may join demonstrations or become members of environmental organizations, and of course all these actions tend to be helpful. But insofar as practical reason and the strategy it informs are not coherently grounded in ideal theory and partial compliance theory, action for climate justice is likely to be less effective. Many environmental organizations promote political reforms consistent with climate justice, but as membership-based organizations their strategic options tend to be constrained by limitations in their members’ practical reason and means of influence. Organization for climate justice in mitigation, adaptation, and support for climate migrants calls for international frames of reference quite beyond most environmental organizations’ present strategic plans.

When reforms are carried out in unjust social contexts, they are likely to be refracted by, and potentially to exacerbate, prior injustices. Indeed, it is often the least advantaged members of a society that bear the majority of the harms associated with poor environmental conditions.<sup>71</sup> In California, the first US state to legislate reductions in CO<sub>2</sub> emissions, as elsewhere, low-income communities of color already bore the brunt of prior pollution and were also disproportionately harmed by heat waves, droughts and wildfires exacerbated by climate change.<sup>72</sup> When the state government proposed a Global Warming Solutions Act centered on market-based approaches, a state-wide environmental justice coalition protested:

Carbon trading is undemocratic because it allows entrenched polluters, market designers, and commodity traders to determine whether and where to reduce greenhouse gasses and co-pollutant emissions without allowing impacted communities or governments to participate in those decisions.<sup>73</sup>

<sup>68</sup>James Hansen, et al., “Young People’s Burden: Requirement of Negative CO<sub>2</sub> Emissions,” *Earth System Dynamics*, 8 (2017): 578.

<sup>69</sup>*Ibid.*, 595–596.

<sup>70</sup>*Ibid.*, 594.

<sup>71</sup>Derek Bell, “Environmental Justice and Rawls’ Difference Principle” *Environmental Ethics* 26, no. 3 (2004). <https://doi.org/10.5840/enviroethics200426317>.

<sup>72</sup>Michael Méndez, *Climate Change from the Streets: How Conflict and Collaboration Strengthen the Environmental Justice Movement* (New Haven: Yale University Press, 2020), 59.

<sup>73</sup>*Ibid.*, 77.

Environmental justice groups based in the Latino community initially failed to build significant local participation into the Act. After four years of lobbying, however, they secured the establishment of the country's first Climate Change Community Benefits Fund. It invests some revenues from the state's cap-and-trade system in California's communities most affected by air pollution, supporting local solutions that reduce local pollution and increase local employment.<sup>74</sup> This case serves as a positive example of embedding social justice concerns in climate change policy while also illustrating limitations of a conception of environmental justice not grounded in an appropriate OP.

It is generally appropriate to understand government officials, managers of firms, and employees of other organizations as representing their organization's principles and interests with some scope for personal discretion. Representatives of advanced countries to the UNFCCC, for example, are not at liberty to commit their home country to welcoming climate migrants without authorization. This condition provides an obvious basis for designing strategy for climate justice; in this context the political weakness of future generations and of communities most vulnerable to climate change helps to explain the scale of popular participation needed to secure climate justice.

Strategy for climate justice, then, starts from ideal theory, from the perspective of the climate change OP, articulating overall institutional features of climate justice. This offers a vantage point from which the distance of present institutions from climate justice can be assessed by way of historical institutional analysis. Kantian moral ontology and its account of the various forms of rationality provides a framework for identifying the kinds of strategies that may be needed and sets the stage for strategic planning, including helping to identify and correct failures of reason. This can include failures of *theoretical* reason, such as noting unjustified false beliefs about climate change, its causes and effective solutions; failures of *instrumental* reason, such as the gap between people's or organization's stated ends and the insufficient means they have willed toward achieving those ends; failures of *prudential* reason, such as the failure to appreciate the negative impacts climate change will have on their own well-being and the well-being of those they care about; and failures of *moral* reason, such as the failure to recognize their moral and justice-based obligations in regards to climate change.

The present exercise helps to clarify the role and limits of ideal theory, and hence the tasks Rawls leaves to others, and this provides a basis for responding to some of Rawls's critics. Sen, for example, critiques Rawls as the leading contemporary proponent of a "transcendental institutionalist" approach to political philosophy that seeks to identify "just institutional arrangements for a society,"<sup>75</sup> an approach in which he includes Hobbes, Locke, Rousseau, and Kant, as well as Dworkin, Gauthier and Nozick. The approach is transcendental in trying "only to identify social characteristics that cannot be transcended in terms of justice," rather than considering how society could be made less unjust, and institutionalist in concentrating "primarily on getting the institutions right, and it is not directly focused on the actual societies that would ultimately emerge."<sup>76</sup> With Rawls, Sen argues, "[t]he characterization of perfectly just institutions has become the central exercise in the modern theories of justice," rather than

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<sup>74</sup>Ibid., 116.

<sup>75</sup>Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), 5.

<sup>76</sup>Ibid., 6.

investigating “realization-based comparisons that focus on the advancement or retreat of justice,” and this “balance of emphasis . . . will require a radical change in the formulation of the theory of justice.”<sup>77</sup>

Recognizing the limited role of ideal theory in *TJ*, to identify principles that define the fundamental terms of association free and rational persons would accept in an initial position of equality, allows an immediate concession to Sen. While Rawls notes the importance of partial compliance theory, he fails to place sufficient emphasis on the need to devise political strategy in a way that, as Sen proposes, takes account of likely realizations. We need to recognize that the OP of *TJ* is custom designed to identify principles of justice for the basic structure of a reasonably well-off constitutional democracy. This is the unit of cooperation that, for its citizens, is normally most significant to their life prospects. Rawls identifies maximizing equal liberties as his first principle of justice because freedoms of speech, religion, political participation, and so on, are so critical. The equal opportunity and economic democracy of his second principle are needed to ensure the fair value of the liberties. Together, the two principles secure as best we might the opportunity for citizens’ full exercise of their reasonable and rational powers, and hence the democratic tradition’s aspirations to freedom and equality. As with our OP for climate justice, the OP of *TJ* allows for the identification of a rough outline of a set of just institutions that could serve as the object of political strategy, an object that, although not very distinct, is distinct enough as a starting point, such as for a political party or movement. It does not address all the questions of justice that Sen raises, but it *does* provide a basis for ordering incremental improvements. For example, the equal opportunity principle clearly tells us that (in many nations) we are greatly underfunding the education of less privileged groups and this public funding needs to be increased to better ensure equal outcomes for similarly talented citizens. This gives us clear direction for enacting incremental justice improvements in this regard.

While Sen’s conception of justice is more cosmopolitan but less nationally ambitious than Rawls’s, Mouffe critiques Rawls on the way to articulating a basis for radical democratic citizenship. Like Sen, she argues that the selection of principles by agents in the OP of *TJ* is not as determinate as Rawls supposes<sup>78</sup> and, also like Sen, she fails to appreciate the limits of Rawls’s project. Mouffe’s central concern with Rawls is that his conception of moral personality, framed in abstract moral philosophy, is inadequately political, emphasizing rights but not obligations, and failing to engage the person in history. By using a mode of reasoning specific to moral discourse, “conflicts, antagonisms, relations of power, forms of subordination and repression simply disappear” . . . “as well as the values that can be realized in collective action.”<sup>79</sup> Mouffe’s conception of the political, drawn from Carl Schmitt, emphasizes “the constitutive role of antagonism in social life,” whereby political identity is always defined in a friend/enemy relation, in “the creation of a ‘we’ by the delimitation of a ‘them.’”<sup>80</sup> She argues for a radical democratic interpretation of liberty and equality that emphasizes

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<sup>77</sup>Ibid., 8–9.

<sup>78</sup>Chantal Mouffe, *The Return of the Political* (London: Verso, 1993), 52.

<sup>79</sup>Chantal Mouffe, “Rawls: Political Philosophy Without Politics,” *Philosophy & Social Criticism* 13, no. 2 (1987): 113, 120.

<sup>80</sup>Mouffe, *The Return of the Political*, 2.

the numerous social relations where relations of domination exist and must be challenged ... The creation of political identities as radical democratic citizens depends therefore on a collective form of identification among the democratic demands found in a variety of movements: women, workers, black, gay, ecological, as well as in several other 'new social movements'.<sup>81</sup>

Mouffe argues that Rawls "seems to believe that disagreements only concern religious and philosophical questions and that by avoiding [rival claims and conflicting interests] it is possible to reach a consensus on the way the basic institutions of society should be organized."<sup>82</sup>

Rawls can only be understood to imagine, however, that his principles of justice could be implemented in actual constitutions through the democratic process. The limited aim of his theory is to provide principles that could plausibly serve as the basis for a "well-ordered" society, a concept he recognizes to be "highly idealized."<sup>83</sup> Mouffe projects the constraints of deliberations in ideal theory onto the politics of non-ideal theory that Rawls seldom addresses but must be taken to assume. In order to satisfy his principles' demands for liberty and equality, the oppression of women, workers, Blacks, and gays, among others, and proper care for the environment must be addressed. Where Rawls approaches this by way of the institutions needed to fulfil his principles, Mouffe aims to identify conditions for solidarity among oppressed groups that can support a "radical democratic hegemony."<sup>84</sup> Their projects are organized around different materials: the shared principles that constitute institutions as ends for Rawls, and the individual principles that constitute identity (but that nevertheless are still socially constructed) as means for Mouffe. While Rawls does not address strategy, it seems that Mouffe's radical democratic politics could appear on a menu of options he might endorse. While Rawls acknowledges that the "problems of partial compliance theory are the pressing and urgent matter ... that we are faced with in everyday life,"<sup>85</sup> he fails to grapple with these problems and the practical means of solving them in enough detail, and only focuses on a theory of punishment and civil disobedience when discussing partial compliance theory.<sup>86</sup> He thereby fails to engage with (or, rather, leaves to others the work of) developing the more positive and organizational aspects of a partial compliance theory that his own theory calls for and that are needed to deal with the positive and incremental achievement of social and climate justice.

In conclusion, we have seen that a critical Rawlsian political theory that moves beyond his own cases, as we illustrate with climate justice, starts from an appropriately configured OP to analyze the problem at hand and to identify a rough political target of just institutions. Climate justice, for instance, requires much stronger international institutions for mitigation, adaptation, and to support climate migrants with defenses against political interference from "donor" and recipient governments. To move beyond ideal theory, however, we do not simply draw a line from the present to the just ideal. We also need to understand configurations of principles and interests that stand in the way, as we

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<sup>81</sup>Ibid., 70.

<sup>82</sup>Ibid., 50.

<sup>83</sup>Rawls, *Political Liberalism*, 35.

<sup>84</sup>Mouffe, *The Return of the Political*, 73.

<sup>85</sup>Rawls, *A Theory of Justice*, 8.

<sup>86</sup>E.g., *ibid.*, 309.

illustrate, through historical institutional analysis. We find that governments are not reliable representatives of individual persons (including future persons) who are the proper subjects of climate justice, which helps to explain both the inadequate progress of UNFCCC negotiations and their particular neglect of climate migrants. Rawlsian moral ontology, drawn from Kant, helps to identify the nature of the opposition and the kinds of strategies needed, in our case to overcome resistance from carbon interests, but also to address limitations of theoretical and practical reason that may not fit Mouffe's friend/enemy relation. Strategies may aim to help people acknowledge responsibilities that they have been unable to grasp, or to frame intentions in terms that can contribute to more effective action.

A complete partial compliance theory that supports political strategy requires a theory of institutions beyond the scope of the present paper. We can see that strategy for climate justice generally needs to be framed in relation to the international arena, a significant change for most environmental organizations. Considering the structural disempowerment of the more severe victims of the climate crisis, although empowerment of the oppressed remains significant, political organization needs to focus significantly on mobilizing more effective action by people who endorse the obligation to climate justice. The scale of popular effort and the degree of institutional sophistication that are needed are stunning, but the consequences of failure are too great to accept as inevitable.

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