

# Whose Climate, which Ethics? On the Foundations of Climate Change Law

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## *Abstract*

In this article, it is argued that a critical analysis of three different discourses about the ethical meaning of climate change can contribute to more clarity about the foundations of climate change law. The ethical discourse mostly used is that of *justice*, in which issues of distribution, retribution and administrative fairness are emphasised to draw attention to various kinds of injustices suffered by the victims of climate change. A justice approach also emphasises the duty of behavioural change and providing compensation resting on those causing climate change. In an effort to overcome the difficulties of a language of justice, a discourse of *human rights* can be used in which climate change is depicted as a major threat to the human right to life, the human right to health, and the human right to subsistence. In this language, the focus falls on climate change as an assault on the autonomy of persons and human dignity, and what could be done about climate change to avoid such threats. The discourse of *human security* entails a novel approach to climate change ethics derived from development ethics. In the language of human security, interconnectivity, contextual embeddedness, communication, concrete experience, creative thinking and transformative narratives are emphasized to determine on a case-by-case basis what it means to be human, how climate change threatens that humanity, and which concrete measures should be put in place in a particular society to guarantee minimum conditions under which that humanity can be safeguarded.

## *A. Introduction*

Efforts to develop and implement climate change law in the national and international arena inevitably take place within the field of tension between law as an institution, on one hand, and justice as a normative ideal of society,

on the other. Often referred to as the tension between the letter and the spirit of the law, this polarity and ambiguity, but also the complexity involved in negotiating the two sides of what is actually a continuum, is felt by all law-makers, prosecutors and attorneys trying to prevent, hold accountable and compensate for harm caused in society. Many times the legal fraternity experiences that a transgression is not acknowledged or appropriately punished, or that the recognition, compensation or restitution of a victim fail because of inadequacies in the formulation or application of existing law.

As flaws in the letter of the law can lead to miscarriages of justice, help is often sought outside the law by appealing to the ethical principles that are supposed to inform and underlie the law. From this perspective, the ethical nature of the general problem that is addressed by the law is made explicit, the ethical principles at stake in that problem area are articulated, and possible resolutions to the problem are proposed in the format of policy guidelines, statements, or soft legal instruments such as declarations, conventions or treaties. Such efforts to overcome the problems created by inadequacies in the letter of the law can however only be successful if a relatively clear, stable and widely accepted consensus exists, or can be established, about the ethical issues related to the problem area, and how these ethical issues should be resolved.

A lack of consensus in this area, though, is usually counterproductive in the sense that different notions about the ethical nature of a problem, the principles that are at stake, and the guidelines that should be followed to resolve the problem can seriously hamper administration of existing law as an institution of society. Similarly, the lack of consensus creates problems of a different substance in efforts where that law still has to be developed: the process itself, as well as its outcomes, is continually challenged from numerous angles. A case in point is the negotiations taking place under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC), a body which is aiming to arrive at a legally binding international convention that is able to respond effectively to the many difficulties created by climate change. The converse of this argument is that progress in forming a common understanding of the ethical dimensions of climate change can be of tremendous help in developing climate change law in both national and international contexts.

The big question, however, is whether reasonable international consensus about the ethical dimensions of climate change exists; and, if not, whether there are reasonable prospects for such consensus to emerge in the near future? A short answer to this question is that such consensus indeed exists in

the realm of theoretical ethical reflection, even if some difficulties exist in formulating this theoretical consensus, and even if the very characteristics of climate change contribute to these difficulties.<sup>1</sup> However, such consensus definitely does not exist in the political context of international relations and negotiations that are characterised by the protection and promotion of the interests of nation states. In the latter context, deep divides exist in the understanding of climate change and its ethical implications: different ethical positions are assumed, and the prospects of an ethical consensus emerging seems to be slim. It is therefore to some extent ironical to note that climate change ethics in the abstract theoretical realm takes this lack of consensus in the political realm as a point of departure, and that much work done on theoretical climate change ethics amounts to efforts to address this lack of consensus about the ethical meaning of climate change in the international realm of realpolitik. A double irony becomes apparent in that these efforts in theoretical climate change ethics to address the lack of ethical consensus in the context of realpolitik are not generally accepted – they are accepted by some nations states and rejected by others, depending on the substance of and central arguments of these efforts, and the implications these have for national interests.

Thus, many of the disputes in international negotiations about climate change will be understood better if they can be related to the issues discussed in climate change ethics. Conversely, if what is discussed in climate change ethics is understood well, this can help to overcome at least some of the disputes in international negotiations about climate change – and thus help to advance the development of climate change law. Accordingly, this article will be devoted to an overview of the core issues discussed in theoretical climate change ethics.

In order to highlight the core issues of theoretical climate change ethics, this overview will cover the most prominent discourses (or languages) that have emerged in efforts to articulate the ethical meaning of the impact of climate change and efforts to mitigate these impacts or adapt to them. The most widely dispersed and commonly used language in this regard is that of

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1 Characteristics that can be highlighted here include the global dispersion of the causes and effects of climate change in space and time and over generations, as well as the fragmentation of agency in causing climate change, but also in responding to it, as is emphasized eloquently by Gardiner (2011). Scientific uncertainty about many aspects of climate change, its impacts and how to respond to them, also adds to the difficulties of responding appropriately to climate change.

*justice* – a concept closely related to the pragmatic language of politics and national interests – the core of which is aiming to make explicit and propose ways to address the injustices caused by climate change and efforts to respond to these. Another prominent discourse is that of *human rights*, in which climate change is interpreted as a major threat to basic human rights, while the threat posed by climate change to *human security*, broadly conceptualised from a development ethics approach, constitutes a third discourse that will be discussed.

The purpose of this article is not to give an exhaustive overview of the literature of climate change ethics,<sup>2</sup> but rather to provide insight into the substance and core arguments of the dominant discourses of climate change ethics by making use of a selection of representative publications. The *White Paper on Climate Change Ethics*<sup>3</sup> will serve as source for the discussion of the justice discourse in climate change ethics, while two seminal articles of Simon Caney<sup>4</sup> will serve as basis for the discussion of the human rights discourse. A review article by Des Gasper<sup>5</sup> provides a useful entry point into the discourse on *human security* in climate change ethics.

#### *B. Climate Change Ethics and the Language of Justice*

One of the most common, and perhaps also most widely dispersed languages in which the ethical dimensions of climate change are being articulated, is the language of justice. In this approach the problem of climate change is predominantly articulated as that of creating distributive issues, such as those concerning “justice between rich and poor and between present and future”.<sup>6</sup> On the basis of recognising issues of *distributive justice*, the challenge of *retributive justice* is added to the argument, so that the question of compensation for damages, including damages caused by historical emissions of greenhouse gasses (causing anthropogenic climate change), is also taken as central to this discourse. Issues of *procedural justice* also form part of this

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2 As was, for instance, done by Gardiner (2004).

3 White Paper on the Ethical Dimensions of Climate Change (hereafter referred to as the “White Paper”), Rock Ethics Institute, Penn State University (not dated), available at [http://newdirections.unt.edu/resources/climate\\_change\\_white\\_paper.pdf](http://newdirections.unt.edu/resources/climate_change_white_paper.pdf), last accessed 21 March 2013.

4 Caney (2010a and b).

5 Gasper (2010).

6 Shue (2001).

discourse, and focus on the principles of fair decision-making in the international context about the targets that should be pursued to mitigate or adapt to climate change, or the instruments and mechanisms that should be put in place to do so.

In what is presented as a preliminary ethical analysis,<sup>7</sup> all three of these justice issues are neatly summarised in the *White Paper on the Ethics of Climate Change*. The *White Paper* points to the following considerations about the effects of climate change, its causes and the variation in people's ability to respond to climate change in order to introduce the principle of distributional fairness:<sup>8</sup>

- a. Many of those who will be most harmed by climate change have contributed little to causing the problem;
- b. Many of those who emit the most GHGs are least threatened by adverse climate change impacts;
- c. Those that are most vulnerable to climate change harms are often least able to pay for adaptation measures needed to protect them from climate change impacts.

With formulations of this kind, the *White Paper* draws attention to the fact that nations and people do not contribute equally to the GHG (greenhouse gas) emissions that cause climate change, and, equally, that nations and people are “differentially vulnerable” to climate change impacts.<sup>9</sup> It also draws attention to the principle that nations and people should share equally in the harms of climate change and in the burdens and benefits of responding or adapting to it.<sup>10</sup> Since the impacts of climate change are not contained within the borders of a nation, this implies that some nations or people experience impacts that they themselves have not consented to, but are shifted onto them by others.<sup>11</sup> While this draws attention to distributive issues that are, or will be, experienced mostly by the poorer section of the world’s population, or by future generations, the *White Paper* also points out a further distributional issue that may be experienced mostly by the richer section of the world’s population:<sup>12</sup>

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7 White Paper:7.

8 (ibid.:10).

9 (ibid.:18).

10 (ibid.:31).

11 (ibid.:18).

12 (ibid.:10).

Emissions levels from human activity vary greatly around the world and therefore the huge emissions reductions that will be needed to prevent dangerous climate change will fall disproportionately [sic] on some[,] if equity is not taken seriously.

On an ethical level, questions arise from these citations. On a definitional level: what exactly is the meaning of “equity” in the context of responding to climate change? And, in particular: whose interests should receive precedence, those of the poorer part of the world’s population, or those of the more affluent part of the world’s population? While egalitarian philosophers such as Rawls<sup>13</sup> will argue that the interests of the weak and the vulnerable of the world’s population should receive precedence, libertarians such as Nozick<sup>14</sup> will argue that the more affluent part of the world’s population are entitled to maintain their emission levels if they have acquired these levels through freely initiated labour in which others are granted the same freedom to embark on their own initiatives. A question mark can, however, be placed behind the libertarian argument if it is realised that the freedom of some to emit GHG emissions actually restricts the freedom of others to do the same: there is just not enough ‘carbon space’ in the atmosphere for newcomers to emit as much as others did before them without significantly contributing to dangerous climate change.

The *White Paper* points out that distributive issues related to climate change do not only pertain to fairness in carrying the burdens of climate change, i.e. the burdens of its effects, adapting to it, or mitigating it by cutting emissions of GHGs, but also to enjoying the benefits of GHGs. There are some parts of the world’s population that claim entitlement to higher levels of greenhouse gas emissions than others, but this inequality will not be acceptable, or so the argument goes in this context, without a proper moral justification. The following formulation in the *White Paper* draws attention to this:<sup>15</sup>

According to relevant principles of justice, those who claim entitlement to use the atmosphere or other natural systems as a sink for their GHG emissions at levels proportionately greater than others have the burden of demonstrating that their claim for entitlement to unequal levels of emissions is based upon morally relevant criteria.

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13 Rawls (1999).

14 Nozick (1974).

15 White Paper:14.

The principle of equity, or equality, is thus evoked, which states in its simplest formulation that burdens and benefits should be distributed equally between people, unless an unequal distribution can be justified in terms of merit or need. In the context of responding to climate change, different needs and capacities of nations or people can be proposed as relevant criteria to justify differentiations in levels of emissions,<sup>16</sup> as the distinction between “luxury” emissions and “subsistence” or “alleviation of poverty” emissions illustrates.<sup>17</sup> While it will be difficult to argue for high levels of emissions to be maintained to sustain luxury life styles, the burden of proof seems to be much lower in the case of the poorer part of the world’s population to justify no cuts in their GHG emissions, or even to justify growth in their emissions on the basis of ensuring the subsistence of the nation, or the alleviation of poverty.

While it is clear in ethical terms that the satisfaction of vital needs usually trump the satisfaction of non-vital needs when choices have to be made, unless compelling arguments can be made to the contrary, it is clear from debates in the practical world of international politics that this obvious moral principle does not have much traction. To the chagrin of the poorer part of the world’s population, it rather seems to be a principle that is easily dismissed by the richer part of the world’s population – and this is arguably because the issues of retributive justice that are linked to the distributive issues brought about by climate change are fairly easy to articulate in the theoretical realm, but very difficult to respond to in practical terms.

In the *White Paper* the retributive issues related to climate change are introduced in the following general formulation:<sup>18</sup>

According to relevant principles of justice, when multiple parties have contributed to cause harm to others, parties harming others will be responsible in proportion to that proportion of harm that they have inflicted when it is possible to determine the relative contribution of the harming parties.

In order to address such retributive issues, two further questions need to be answered. First: what is the relative contribution of each harming party to the GHG emissions that has caused climate change over and above any natural levels that may have occurred anyway? And second: what are the damages that will have to be compensated to whom for the harms caused by

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16 (ibid.:21).

17 Shue (1993).

18 White Paper:14.

climate change? In the *White Paper*, the harming parties that should take responsibility for GHG emissions, and the climate change caused by them, are identified as nation states, and accordingly it is argued that it is fairly straightforward to determine the contribution of each nation to climate change.<sup>19</sup> The emission levels of individual nations are well-known and part of public knowledge. It is not so easy, though, the *White Paper* points out, to determine what the damages are that are caused by climate change,<sup>20</sup> and where they take place, since the causal links between emissions and extreme weather events such as droughts, floods or storms cannot be determined with certainty. Accordingly, it is also extremely difficult, if not impossible, because of this uncertainty, to determine which nation owes which other nations how much to compensate for damages directly or indirectly experienced because of climate change.

A third set of justice issues summarised in the *White Paper* prompts the question: what principles of procedural justice should be followed to ensure fair decision making about climate change?<sup>21</sup> The *White Paper* alludes to two broad spheres of decision making about climate change where these issues are relevant: one is determining atmospheric targets with the objective of mitigating climate change; the other is the allocation of GHG emission reductions to different nations with the objective of meeting these targets.<sup>22</sup> In both of these spheres the poorer and smaller nations of the world could effectively be excluded from decision making because of lack of power, knowledge, or even something as simple as the means to attend meetings where decisions are made. To counter these contingencies, it is pointed out in the *White Paper* that procedural justice at a minimum requires:<sup>23</sup>

- a. that like cases are treated alike and any distinctions be ethically justified;
- b. that the decision making and implementation treat people fairly and impartially;
- c. that those directly affected by the decisions have a voice and representation in the process; and
- d. that there be transparency in the decision making process.

Prior to decision making responding to climate change, however, there is a further and more fundamental procedural issue. This issue emanates from

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19 (ibid.:15).

20 (ibid.).

21 (ibid.:8).

22 (ibid.).

23 (ibid.:35).

the basic fact that the impacts of climate change are experienced by nations and people that did not contribute to it, or enjoyed the benefits of the GHG emissions that caused it. In the *White Paper* it is argued that the principles of procedural justice demand that victims of decision making should participate in that decision making to help determine which risks are unacceptable, which risks can be tolerated, and under which conditions these risks will be tolerated.<sup>24</sup> Within the broad context of the issue of effective access to decision making, two further questions are alluded to here: first, “whether victims that may be put at risk have exercised free informed consent to participate in decisions that will impose risk on them”; and second: “whether even such consent would legitimize actions by others that threaten their life, health, and security”<sup>25</sup>

Since no member of any future generation that will be affected by the future impacts of climate change, as there *definitely* will be, or by the future impacts of present-day decision making in response to climate change, participate in processes affecting their well-being, the conclusion is clear that procedural justice with regard to future generations is impossible.<sup>26</sup> It is pointed out in the *White Paper*, however, that it is possible in the present to know in principle that future generations will have an interest in a climate system that is not degraded by human activities,<sup>27</sup> and that this should be taken into account in present-day decision making as if future generations were participating in the process. It is also pointed out, though, that further research is required on “how to best assure that the interests of future generations are adequately represented in negotiations in climate change negotiations”<sup>28</sup>

From the argument discussed above it is clear that climate change ethics formulated in the language of the principles of justice is an ethics of duty. Like any other ethics of duty, the principles of justice serve as basis for the formulation of imperatives upon which nations and persons are expected to act. A prerequisite for such action in the context of climate change, however, is a certain level of certainty about the facts regarding climate change: facts about its causes and impacts. Growing certainty about these facts will thus

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24 (ibid.:18).

25 (ibid.).

26 The same applies in principle to members of the natural environment who in principle also cannot participate in decision making affecting them directly.

27 White Paper:32.

28 (ibid.:38).

certainly serve to strengthen the need to act on the principles of justice in the context of responding to climate change.<sup>29</sup> It will help to translate the theoretical articulation of these principles into concrete action.

One problem with an ethics of duty, however, is that – even if its principles may be formulated as clearly as one could wish for – these principles are not, in the final analysis, binding on anyone. They are only binding on people and nations if they are voluntarily adopted and acted upon. Another problem with an ethics of duty, in the format of an ethics of justice, is that an ethics of justice to a large extent can be seen as an ethics of victims. In such an ethics a clear articulation of the experiences of victims are captured, but these experiences are usually not recognised or acknowledged by those causing injustices. A third problem is that the issues of distributive justice are mainly discussed as they occur within the framework of states, while climate change and its impacts occur globally – raising the question whether the principles of distributive justice can be successfully transferred from the national to the global context.<sup>30</sup>

So, while climate change ethics in the language of justice significantly contributes to a clear articulation of the experiences of victims of climate change, and while it also significantly contributes to a clear understanding of the duties that are neglected by those causing the injustices, it seems to be lacking in providing us with a language that can compel those causing injustices in the global arena to act differently, and to compensate for the harm caused. Such a language is proposed in climate change ethics formulated in terms of human rights issues.

### *C. Climate Change Ethics and the Language of Human Rights*

Without claiming that a human rights approach captures all the morally relevant aspects of climate change, Caney argues that a human rights approach yields important insights into climate change ethics that has distinct advan-

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29 (ibid.:28).

30 Caney (2010b:123).

tages over other approaches that should not be ignored,<sup>31</sup> and has far reaching implications that could help to answer fundamental moral questions about climate change, for instance: What should be done about climate change? Who should bear the burdens of combating climate change?<sup>32</sup> Should it be those who caused the problem? Or should it be those best able to deal with the problem?<sup>33</sup>

As an exemplar of the use of human rights language to articulate the ethical meaning of climate change, Caney claims that three key human rights are jeopardised by climate change. They are the human right to life, the human right to health, and the human right to subsistence.<sup>34</sup> His discussion of the manner in which climate change undermines these rights is prefaced, on the one hand, by an orthodox<sup>35</sup> conception of human rights, and, on the other hand, by a careful conceptualisation of the rights to life, health and subsistence respectively. In his view of the nature of human rights, Caney emphasises in the first place that human rights are grounded in a person's humanity: he argues that we possess human rights by virtue of our humanity, and not because of the nation state we are born in, or by virtue of something we have achieved. Accordingly, human rights represent respect for a person's humanity.<sup>36</sup> In the second place, Caney states that human rights represent moral thresholds: they "designate the most fundamental moral requirements that individuals can claim of others".<sup>37</sup> In this context, Caney quotes Henry Shue who referred to basic rights as "the morality of the depths". By this Shue means that human rights define a line below which no one should be allowed to sink.<sup>38</sup>

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31 For example approaches in which trade-offs and cost-benefit analyses stands central (typical of instrumentalist or teleological approaches) to achieve greater social welfare. Another advantage is that a human rights approach can accommodate the scientific uncertainty typical of climate change science, that creates severe problems for cost-benefit analysis approaches. A third advantage is that a human rights approach can protect the most vulnerable in society, something that cost-benefit analysis approaches to climate change cannot do. Caney (2010a:169f.).

32 Caney (2010a:164 and 173).

33 Caney (2010b).

34 Caney (2010a:166).

35 See Beitz (2004); Beitz (2001).

36 Caney (2010a:164).

37 (ibid.:165).

38 Shue (1996:18). Quoted by Caney (2010a:164–165).

A third aspect of human rights emphasised by Caney is universal protection: human rights “represent the entitlements of each and every individual to certain minimal standards of treatment, and they generate obligations on all persons to respect these basic minimum standards”.<sup>39</sup> With reference to Article 1 of the Universal Declaration of Human Rights of 1948, Caney points out that a human rights approach will thus oppose any political morality that merely aggregates the interests of all to increase the total welfare of society. A human rights approach would rather protect the entitlements of all individuals, with a view to ensuring that no one is left below the minimum moral threshold because of some political or economical trade-off.<sup>40</sup> The fourth dimension of human rights to which Caney draws attention is the “lexical priority” of human rights. The term “lexical priority” is derived from John Rawls, and it indicates that human rights have a priority over other moral values. It means that a human right cannot be sacrificed in order to gain any other moral value. A human right thus functions as a constraint to limit the pursuit of other moral values such as efficiency or happiness, or any political ideal for that matter.<sup>41</sup>

Caney is also at pains to offer conceptions of key rights that are plausible and avoid controversy. Acknowledging that different conceptualisations of the right to life exists, he opts, for the two reasons mentioned above, for the following definition of the human right to life: “Every person has a human right not to be arbitrarily deprived of his life.”<sup>42</sup>

Given that climate change manifests itself in extreme weather events such as floods, heat waves and droughts that can, and in fact do kill people directly in their thousands, or sometimes in their tens of thousands, Caney is clearly justified by the numerous examples that can be quoted in this regard in claiming that anthropogenic climate change jeopardises the human right to life.

With regard to the human right to health, Caney criticises maximalist conceptions that call for the “highest attainable standard of physical and

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39 Caney (2010a:165).

40 (ibid.).

41 (ibid.).

42 Derived from the International Covenant on Civil and Political Rights, 1976, Article 6 (1). Caney (2010a:166).

mental health”<sup>43</sup> – since such formulations could be interpreted to mean that all resources should be directed to attaining the highest standards of health with no or very few resources left to pursue other important rights or values – and rather uses a more moderate definition, as follows: “All persons have a human right that other people do not act so as to create serious threats to their health.”<sup>44</sup>

Like the formulation of the right to life, the right to health is thus formulated as a negative right that requires others to acknowledge a moral duty to abstain from certain actions.<sup>45</sup> Caney also points out that both a deontological and a teleological approach to human rights would endorse this formulation of the right to health. From a deontological perspective, action that would expose others to dangerous diseases clearly does not represent respect for individuals as free and equal persons, and thus undermines their moral standing and their inherent dignity as persons.<sup>46</sup> From a teleological point of view, the argument would be that the capacity to lead a decent life requires one not to be exposed to serious threats to one’s health. Serious threats to one’s health would for instance compromise one’s capacity for agency, or one’s capacity to pursue one’s conception of the good<sup>47</sup> – which are all prerequisites for a decent life. Turning to climate change, Caney can then point to the mounting evidence from various sources about the serious health effects of climate change, including increases and shifts in the range of malaria, increases in the burden of diarrhoeal diseases, and increases of persons at risk of dengue.<sup>48</sup> Caney can therefore also justifiably claim that anthropogenic climate change jeopardises the human right to health.

According to Caney, it can also be demonstrated that a third fundamental human right is undermined by climate change: the human right to subsistence, which he formulates as follows: “All persons have a human right that other people do not act so as to deprive them of the means to subsistence.”<sup>49</sup> In this formulation, the human right to subsistence is also a negative right, in contrast to its interpretation as a positive right to food in certain

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43 As stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976, Article 12 (1), and in the Convention on the Rights of the Child (CRC) of 1990, Article 24 (1). See Caney (2010a:167).

44 Caney (2010a:167).

45 (ibid.:165 and 167).

46 (ibid.:167).

47 (ibid.:167f.).

48 (ibid.:167).

49 (ibid.:168).

human rights documents.<sup>50</sup> And as in the case of the human right to health, Caney also argues that both a deontological and a teleological approach would endorse the human right to subsistence. From a deontological approach, actions of certain people that deprive others of food or drinkable water clearly do so with no respect to those people as persons, and therefore also undermine their moral standing and dignity as persons. Similarly, from a teleological perspective, it is clear that actions and decisions that deprive people of food or drinkable water not only undermine their capacity to live a decent life, but also their capacity to pursue even the most minimal goals.<sup>51</sup> Since Caney can in this context also point to the destructive impacts of climate change on the subsistence of large numbers of people, in particular the impact of drought on food security, the impact of rising sea levels on the availability of land for agriculture, the impact of floods on crops, and the impact of freak weather on agriculture. What is particularly disturbing about the evidence that can be pointed to in this regard is that millions of people are already – or will be – affected by the impact of climate change on their means of subsistence.<sup>52</sup> Caney is therefore also justified in his argument that anthropogenic climate change jeopardises the human right to subsistence.

Therefore, since it is clear that climate change undermines the fundamental human rights of life, health and subsistence, Caney sharpens his argument by pointing out that these human rights only exist in so far as climate change is anthropogenic, i.e. caused by human beings. This means that climate change can only be seen as a threat to the human rights of life, health and subsistence if other people act in a manner that creates these threats. Since there is unequivocal evidence that present climate change – and future increases therein – is caused by human beings, Caney is justified in claiming that anthropogenic climate change jeopardises the fundamental human rights of life, health and subsistence, unless serious efforts to mitigate or adapt to climate change are put into place.<sup>53</sup>

Acknowledging that other human rights could also be jeopardised by anthropogenic climate change, for instance the human right to development, and the human right not to be forcibly evicted, and that grounds other than

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50 Such as the ICESCR, Article 11 (1), and the Universal Declaration of Human Rights of 1948, Article 25 (1).

51 (ibid.:168).

52 (ibid.).

53 (ibid.:169).

human rights can be used to condemn climate change in ethical terms,<sup>54</sup> the next step in Caney's analysis is to show what the implications are of establishing that anthropogenic climate change undermines fundamental human rights. What his argument boils down to is that *some people* impose grave risks on *others*. While it can be argued that it is acceptable if risk takers impose risks only on themselves and if the risk takers are well-informed and rational about their choices, the picture changes drastically if others are also exposed to these risks, particularly if such risks cause some people to fall below a certain moral threshold.<sup>55</sup> The argument continues as follows: if the enjoyment of a fundamental human right that someone has on the basis of his humanity, and which should receive precedence in consideration above other values or ideals, is put in jeopardy, it is imperative that amends should be made to rectify the situation – by demanding and making sure that the risk taker or violater desists from that violation and compensates the victim for harm suffered, regardless of the costs to the violater.

As such, a human rights approach to climate change suggests that mitigation and adaptation as the only two possible responses to climate change represents too narrow a framework to act in. Mitigation basically focuses only on making changes to the climate system, and adaptation basically focuses only on adapting to a changed climate system. However, a human rights approach, while insisting on duties to mitigate and duties to adapt to climate change, also calls for duties of compensation – in cases where mitigation and adaptation may prove to be inadequate and people are exposed to the detrimental impacts of anthropogenic climate change that violate their fundamental rights to life, health and subsistence. However, Caney strongly argues that the possibility and the capability to offer compensation does not legitimise actions to embark on or to continue with actions that violate the fundamental human rights of people. Formulated differently, a human rights approach does not permit a human right to become part of a calculation or trade-off between values that purport to increase social welfare. Social welfare cannot be increased at the cost of jeopardising fundamental human rights, even if these rights apply to a few.<sup>56</sup>

One of the strong points of such a human rights approach to anthropogenic climate change is the manner in which it protects the most vulnerable in society. This follows from the concept of human rights as it has been dis-

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54 (ibid.).

55 (ibid.:170).

56 (ibid.:171f.).

cussed above: a fundamental human right establishes a moral threshold below which no one should be allowed to fall. In Caney's argument, this has huge implications for the choice of measures put in place to mitigate and/or adapt to climate change: the doctrine of fundamental human rights require that such measures should not be implemented at the cost of the vulnerable in society. The measures put in place to respond to climate change should, in their nature and functioning, protect fundamental human rights to life, health and subsistence, and should not lead to an intensification or increase in their violation already caused by climate change in the first place. In short: "... the least advantaged – those whose human rights are most vulnerable – should not be required to bear the burden of combating climate change".<sup>57</sup>

Another strong point, implied in the argument above, is that a human rights approach to climate change can contribute substantively to debates about who should pay for the costs of mitigation and adaptation.<sup>58</sup> From a human rights perspective it is clear that these costs should fall on those who, by decision, action or default, contributed to the climate change that violates the fundamental human rights to life, health and subsistence of others. And it is fairly obvious who these people would be: those who have contributed to the emission of greenhouse gases that cause climate change. On this very point, however, there are a number of complicating questions that emerge, for instance the question of historical emissions and the fact that those who contributed to them are not alive any longer – which points in the direction of taking the nation state as the responsible agent that should bear these costs. Another complicating aspect stems from the fact that historical and current emissions will have impacts on the fundamental human rights of many generations to come, and the issue then is whether it would be rational and morally justifiable to expect of this generation also to bear all of these future costs now, in so far as these costs can be calculated. With regard to compensation for the violation of fundamental human rights by climate change that has already occurred and has already placed vast numbers of people below the moral threshold for which human rights make provision, further questions could be asked, for instance: who owes how much compensation to whom? It is questions like these that Caney addresses in his essay *Cosmopolitan Justice, Responsibility and Global Climate Change*, the substantive results of which do not concern us for the purposes of this paper, except

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57 (ibid.:172).

58 (ibid.).

to mention that the human rights approach indeed throws important light on the question about who should bear the costs of mitigating and adapting to climate change, and that a need is identified in this article for further work on the question of whether individuals or collectives should be held responsible for bearing the costs.<sup>59</sup>

A point of critique against the human rights approach to climate change, though, is that it is discriminatory and can only take seriously those impacts of climate change that threaten the enjoyment of fundamental human rights. While someone like Caney will argue that it is indeed legitimate for a human rights approach to take into account only those impacts of climate change that violate fundamental human rights,<sup>60</sup> it is clear that a human rights approach, although important in its own right to help us understand the ethical meaning of anthropogenic climate change, cannot serve as a basis for a complete ethics in response to climate change. Other considerations must also feature in climate change ethics, one example being the threat that climate change poses to human security.

#### *D. Climate Change Ethics and the Language of Human Security*

In a review paper published in 2010,<sup>61</sup> Des Gasper addressed the question of whether the language of human security can help to overcome some of the problems experienced in other approaches to delineate the ethical meaning of climate change, and whether this language can help us to articulate the changes that need to be made in political thinking and economic policies in order to ensure a sustainable future. Approaching the issue of human security from a broad development ethics perspective, Gasper distances himself from framing the issues of human security in economic terms only. He also does not frame the issue of climate change and human security in terms of military examples. An example of the latter can be found in the declaration with the title *Climate Change and International Security* that was issued by the High Representative and the European Commission to the European

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59 Caney (2010b:122–139).

60 Caney (2010a:171).

61 In this paper he continues a discussion that he has started in other publications on this topic, for instance: Gasper (2004); Gasper (2005); Gasper & Truong (2005); and Gasper & Truong (2010).

Council.<sup>62</sup> In this declaration, climate change is portrayed as a threat to the stability of international relationships because of tensions mounting between states to the level of conflicts over scarce resources, loss of land, border disputes, energy sources and migration. Conflict may also arise between those who have caused climate change and those who will suffer from it.<sup>63</sup>

For Caney this represents a very narrow and short-sighted approach, since it only expresses concern about climate change in so far as it is the cause of violent conflict, neglecting the impacts of climate change that can cause death, disease, malnutrition and starvation but do not lead to violent conflict.<sup>64</sup> The implication of such a restricted language of human security would be that resources are only mobilised to address climate change if it leads to conflict, while other issues, such as addressing the violation of basic human rights through climate change are ignored. Gasper refers to instances of violent conflict in his discussion and critique of a calculative, cost-benefit approach to the notion of human security, according to which such conflict is seen as another cost following from climate change – a cost that should be weighed against other costs and benefits in efforts to address the challenges of climate change.<sup>65</sup>

Gasper devotes a substantial part of his paper to criticising the economic language in which thinking about human security and climate change is conventionally framed. With reference to the “incisive and well-intentioned” book of Joseph Stiglitz, *Making Globalization Work*,<sup>66</sup> he expresses doubt whether a re-engineering of the world’s markets by the introduction of new incentives, new “carrots” and “sticks”, would be able to stimulate the policy changes that we need to address the impacts of climate change and a secure human future. Stiglitz restricts himself only to the transformation of markets, while he neglects the transformation of politics and culture, and hardly mentions the issue of human rights.<sup>67</sup>

Similarly, Gasper criticises the widely quoted statement of Nicholas Stern that climate change “is the greatest market failure the world has ever

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62 High Representative & European Commission (2008); see also Caney (2010a:163).

63 Caney (2010a:163).

64 (ibid.:170).

65 Gasper (2010:5, 6, 16, 17, and 18).

66 Stiglitz (2004).

67 Gasper (2010:7f.).

seen”,<sup>68</sup> as articulated in the *Stern Review* of 2007 and his book of 2010<sup>69</sup> based on the review. Gasper points out that in both of these publications an economic cost-benefit analysis is used to assess the different alternatives that could be used to mitigate climate change, and to compare these costs with doing nothing about climate change. While it is emphasised in both publications that the costs of not acting to reduce climate change will be far greater than the present costs of reducing climate change, Gasper’s problem with this approach is that it merely addresses short term, incremental measures that can be taken within a predominantly stable economic system to address climate change, neglecting the long-term measures that will be required to effect the incisive changes to the economic system that will be required to address climate change effectively.<sup>70</sup> Gasper also criticises the central position allocated in Stern’s approach to monetary values, which in principle favours the interests of those with greater purchasing power, with the implication that distributive issues become unimportant: “gains to the richer can (and typically do) outweigh costs counted for the poorer and can even (and often easily do) outweigh the deaths of the poor”.<sup>71</sup>

With this observation, Gasper underlines that the most important ethical decision about addressing climate change is made prior to applying a technique to analyse climate change. The choice of a technique of analysis, Gasper argues, determines what (or who) will be highlighted and foregrounded and given more weight in the analysis, and what (or who) will receive less attention and be backgrounded, or even discounted in the analysis. With regard to economic cost-benefit analysis, Gasper’s assessment, following Etzioni,<sup>72</sup> is that it in principle favours the interests of the rich, and discounts the interests of the poor, leading to trade-offs and policy proposals that require the poor to sacrifice what should not be sacrificed. Gasper formulated it as follows:<sup>73</sup>

So the poor, whose lives are already largely discounted through use of a monetary calculus in which their activities have little weight, are scientifically ‘written off’ when the loss of their ‘consumption streams’ is outweighed by the growth of consumption streams of the already rich.

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68 Stern (2007:Executive Summary xviii).

69 Stern (2010).

70 Gasper (2010:9f.).

71 (ibid.:10).

72 Etzioni (1991).

73 Gasper (2010:10).

Against the background of considerations like these, Gasper argues for an approach that goes beyond economic cost-benefit analysis, can take distributive, cultural, political and sustainability issues on board seriously, and can grip and inspire ordinary people, economists and politicians alike to embark on the transformations required to address the challenges of global climate change effectively. This approach he finds in the language of human security, broadly conceptualised in terms of development ethics.

Following the *Human Development Report* of 1994,<sup>74</sup> and building on earlier work done on basic human needs, Gasper summarises the human security framework as follows:<sup>75</sup>

A human security perspective ... involves a system of ideas: a focus on individual human persons and on stability in fulfilment of their basic needs; attention to causal interconnections regardless of conventional disciplinary boundaries; and emphasis on 'tipping points' and felt insecurities. It includes strong attention to the contents of individual person's lives and to human depth in understanding of security; a synthesis of features from the normative languages of human needs, human rights and human development; and a framework for situation-specific wide-ranging explanatory syntheses.

Gasper also points out that this approach emerged from a deep frustration with inhumane development strategies that focused on development in terms of having things in national aggregates, and tended to separate spheres like the economy, the environment, displacement, conflict, disease and migration from one another. The human security approach instead represents a focus on how individuals actually live in the context of the interconnections of spheres that are conventionally separated from one another. While neglecting these interconnections leads to inhumane development, Gasper argues, the human security approach requires that we think in concrete terms and details how the notion of "human" emerges from the different ways in which people seek "security" in different spheres, such as the physical, the economic and the psychological. At first glance this may appear to be a very narrow focus, but this narrow focus, Gasper emphasises, leads to a deeper and a broader understanding of what is distinctive to being human, and what is required to secure the enjoyment of basic human rights.<sup>76</sup>

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74 UNDP (1994).

75 Gasper (2009:14–18), quoted in Gasper (2010:17).

76 (ibid.:18).

Emphasising the value of such a human security approach, Gasper highlights the following:<sup>77</sup>

It leads us to close concern with the textures of everyday life and connects strongly to human subjectivity, thereby increasing both explanatory force and motivational power. To more individualistic human rights thinking it adds an emphasis on the human species as a whole and on our shared security, insecurity and vulnerability.

To this, however, it should be added that the human security approach predominantly and above all entails a concern with threats to the humanity of all individuals, what the contributing factors are that establish and maintain these threats, and what is required to remove these threats. With such a notion of human security, the emphasis falls on a whole set of different priority areas from what would be the case in conventional conceptualisations of security. The focus would not be on the state in general, but on individuals; it would not be on aggregates and averages, but on the concrete lives individuals have reason to value; it would not be on the general expansion of the economy, but on concrete minima that can be guaranteed for individual persons. The emphasis would not be on all valued areas, but on top priority areas; it would not be on rhetoric followed by sacrifices of the weak, but on guarantees and basic rights for all; it would not be on overall average fulfilment over time, but on the stability of society.<sup>78</sup>

Further aspects of the human security approach that Gasper highlights is an emphasis on interconnections, which involves “an awareness of fragility, possible ‘tipping points’ and even breaking points in social, physical and biological systems”.<sup>79</sup> Gasper argues that different sorts of insecurity – “physical, political, environmental, health, economic, military, psychological”<sup>80</sup> – can all affect one another, and that an understanding of the interconnectedness of all individuals can heighten not only our awareness of fragility, possible tipping points and breaking points, but also our sensitivity for the effects of our actions. Indeed, from the realization that our actions may have boomerang effects on ourselves and on others, our feelings of caution and actions of precaution may be stimulated.<sup>81</sup> As such, the human security approach represents what Gasper refers to as “joined-up” thinking,

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77 (ibid.).

78 (ibid.:18f.).

79 (ibid.:19).

80 (ibid.).

81 (ibid.).

reinforced by “joined-up” feeling. This is another way of saying that a human security approach, conceptualised in this manner, emphasises a strong notion of human solidarity, as well as a clear sense of the various guarantees for certain minimum conditions that we have to establish in society to maintain our humanity. According to Gasper: “the ‘human security’ language adds an orientation to the dangers of triggering fundamental damage when we lapse below or exceed certain thresholds...”.<sup>82</sup>

What Gasper is driving at in these observations is the important point that human security language, broadly conceptualised as suggested above, serves as a boundary discourse or a “boundary object” that “serves to open up, reorient and enliven attention to unconventional but fundamental problems such as climate change”.<sup>83</sup> What Gasper has in mind here is an insight into the sociology of science and policy communication that draws attention to the “boundary work” that needs to be done to establish communication between groups. Such boundary work can entail activities such as bridging, bonding and brokering, through which “boundary objects” are established that help to facilitate the communication. As such, a boundary object can be an idea, an organisation or a practice, and its meaning may not be the same for every participant in the communication. Its function, however, is to facilitate the circulation of meaning between groups, and thus can also function creatively in the stimulation of new meanings.<sup>84</sup>

In thinking and communicating about climate change, the function of the language of human security is thus to “generate an appropriate broad and flexible orientation, and an openness to *which are the priority threats* and *key linkages* in particular situations; it leaves their identification to be done case-by-case” (my emphases).<sup>85</sup> In substantive terms, Gasper argues that the language of human security in the context of climate change serves as a language of transition: it stimulates two essential qualities we as human beings need in order to make the transition towards a society in which we can effectively respond to the challenges of climate change. These are “the capacity of narrative imagination and the perception of an intensively interconnected global ecosystem which we share”.<sup>86</sup>

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82 (ibid.).

83 (ibid.:20).

84 (ibid.).

85 (ibid.:20f.).

86 (ibid.:22).

While the “perception of an intensely interconnected global ecosystem which we share” could be conceptualised as an awareness, in general terms, of the prerequisites not only of a human, but also of a sustainable life, the “capacity of narrative imagination” could be conceptualised as the capacity to imagine in contextually embedded and concrete terms how climate change threatens the minimum conditions under which a “human” and “sustainable” life can be lived, how these threats function, and how they can be creatively responded to. The converse of this insight is that a “capacity of narrative imagination” can help us to envision in concrete terms what human security could entail within the context of a concrete set of relationships, and what it would require to work towards realising that security under conditions of climate change.

The value of the language of human security in the context of climate change thus conceptualised is therefore not simply given; its value only emerges in the hard work of taking up this language in concrete contexts to create new meaning and insights that move beyond the conventional approaches to thinking and theorising about climate change. As it is summarised in the words of Gasper:<sup>87</sup>

Human security thinking adds emphases on the human species as a whole, our interdependence and the potential ramifying chains of threats, including through triggering of threshold effects, and on the subjective felt meanings that contribute to extend such chains when particular threats arise to what are understood as basic human rights. It gives us a more adequate basis for considering cross-sector interactions and dangers, and for responding to them. It may be a particularly helpful legacy from development ethics for the discussion of climate change.

With these considerations about human security in mind, Gasper thus argues for an approach to climate change ethics that goes far beyond the parochialism of conventional economic cost-benefit analyses (or utilitarian calculations) derived from business that economists and politicians have made use of for decades to analyse and respond to national and international problems. What Gasper argues for is a different type of relational and creative thinking that can take into account what is neglected, threatened and sacrificed by the conventional mode of thinking of “economic man” with his clever manipulation of carrots and sticks.<sup>88</sup>

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87 (ibid.:25).

88 (ibid.:11, 12 and 16).

### *E. Conclusion*

In this article, an overview has been given of three different discourses that may be discerned in climate change ethics, each one entailing a different vocabulary, language, strategy of analysis, and a nucleus of policy proposals that could be envisaged in response to the ethical challenges of climate change. In the justice discourse, issues of distribution, retribution and administrative fairness were emphasised to expose injustices suffered by victims of climate change with a view to addressing the conscience of that part of the world's population that not only continue to cause climate change, but also continue to enjoy the benefits brought about by these causes – often without regard for costs generated through climate change for the poorer part of the world's population.

In the discussion of a human rights discourse, the language changed to depict climate change as a major threat to the human right to life, the human right to health, and the human right to subsistence. As such, climate change emerges as an assault on the autonomy of a person and jeopardises his human dignity. This should, and can, be prevented by defining moral thresholds in society below which no one should be allowed to fall.

In the language of human security, it was shown that an ethics of inter-connectivity, contextual embeddedness, communication, concrete experience and transformation can be developed on a case-by-case basis to define "human", and the thresholds of many kinds of security that could safeguard the "human" in the lives of individuals and society. While climate change is depicted in this discourse as a major threat to human security, the human security approach in itself emerged as a "border object" that stimulates the narrative imagination and a possible language to move beyond the confines of conventional approaches to analysing and responding to climate change, as can be found in economic cost-benefit analysis.

While the language of justice and human rights may yield ethical insights that are clearly and directly relevant to the development of law on climate change, it may not be obvious how the discourse of human security, as depicted above, may be of relevance. The language of human security, however, may prove to be highly fruitful in the stimulation of new ideas worth pursuing in the development of climate change law – by helping to articulate what people experience as threats posed by climate to securing humanity for all in all of the particular contexts and societies where people live.

Similarly, the language of human security could steer climate change law into new avenues by exploring the concrete thresholds that would be re-

quired, and should be protected, in particular places and particular societies to secure humanity for all in the face of the threats posed by climate change. In fact, the language of human security could steer the development of law in general into new directions by contributing, within the context of having to deal with climate change, to a fundamental rethinking of the notions of justice and human rights, making these notions more concrete, and sharpening and adapting general formulations and definitions of justice and human rights to be applicable to specific contexts.

Indeed, it may just be that the concepts of justice, human rights and human security can help climate change law to better respond to the ethical meaning of climate change – about which there is currently still little, if any consensus. While a portion of the world’s population may be choosing for an ‘ethics’ of business as usual and inaction about climate change, with little regard for the effects that climate change may have on all of life on earth, currently and in the future, the majority of the world’s population is in fact beginning to ask ‘which interests are being served by whose climate?’, and ‘whose humanity is threatened by which climate?’. To be able to see the difference between these two questions may already be a huge step in the right direction.

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