

THESIS

CLIMATE JUSTICE AND FEASIBILITY

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Taylor Hunter

Department of Philosophy

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Master's Committee:

Advisor: Ken Shockley

Katie McShane
Michael Carolan

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ABSTRACT

CLIMATE JUSTICE AND FEASIBILITY

The primary motivation for this Thesis is to understand whether it is in fact feasible for rich countries, like the United States, to fulfill their humanitarian obligations through an international climate treaty. And if this is infeasible, why? Alongside this motivation, is a motivation to bring to light another important dimension to climate justice that is often lost within the scale and the urgency of climate change, namely the misrecognition of Indigenous peoples.

My task in Chapter One is to explain how Eric Posner's and David Weisbach's employment of the political feasibility constraint of International Paretianism functions in international climate policy discourse. I work to show how climate policy outcomes solely constrained by International Paretianism will predictably violate basic humanitarian constraints. Posner and Weisbach defend a Two-Track Approach to climate policy, where the ends of justice are best achieved through policy means independent of a climate treaty. Their view entails that climate policies should not be designed with regard to constraints of justice. Rather than satisfy constraints of justice, a climate treaty need only satisfy the political feasibility constraint of International Paretianism. I work to show the policy outcomes that follow from the feasibility constraint of International Paretianism, which are morally unacceptable because they violate basic humanitarian obligations. Posner and Weisbach justify these moral costs by appealing to what is and what is not politically feasible, per International Paretianism. I will work investigate the legitimacy of this feasibility constraint in Chapter Two.

My task in Chapter Two is to investigate the political legitimacy of International Paretianism. I begin by clarifying how feasibility constraints function in normative theorizing and I defend what I consider to be an appropriate function for International Paretianism. There are two general functions that feasibility constraints can serve in policy decision making. Hard feasibility constraints function to rule out policy outcomes that are in principle impossible due to invariant conditions, while soft feasibility function inform our practical deliberations about what we can do given our contingent circumstances. Soft constraints allow us to acknowledge that there are limits on what we can realistically accomplish, while also acknowledging that we can work to change these limits. In this Chapter, I will argue that we should not make the mistake of using International Paretianism as a hard constraint. I will argue that it is conceptually possible for states to act for reasons other than the common interest of their citizenry. As such, International Paretianism is a soft feasibility constraint. I conclude with an analysis of why it is that International Paretianism is a soft feasibility constraint for the United States.

My task Chapter Three is to present one possible way that institutions can govern themselves towards an interdependent collective continuance, and to identify a soft feasibility constraint that is relevant to the ability of US federal agencies to integrating such institutional capacities. Indigenous people have an epistemic advantage on how to respond to climate change, and in an ameliorative way. Yet, they are not procedurally or culturally recognized for their knowledge. I consider this to be a constraint on our ability to appropriately respond to climate change. In this Chapter, I will present the way in which the Potawatomi Nation, members of the Anishinaabe Intellectual Tradition, have and continue to interdependently

govern themselves toward collective continuance. I will argue that Indigenous peoples in fact have an epistemic advantage in this particular subject matter, which is due to a long history of colonially-induced ecological displacement and relocation. I will conclude by identifying and defending what I believe to be a “soft” cultural feasibility constraint on the ability of federal agencies to work in reciprocal relations of knowledge exchange with Indigenous peoples at the procedural level of climate policy decision-making.

The normative upshots of this Thesis are that (1) the citizens of the United States have a responsibility to change their government institutions such that they can be responsive to humanitarian constraints, as well as ecological limits. And (2) one way in which this responsibility may be realized is through members of the United States correcting for an identity prejudice that would preempt the United States government from instituting reciprocal relations of knowledge exchange with Indigenous people.

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CHAPTER 1: CLIMATE JUSTICE AND INTERNATIONAL PARETIANISM

Climate change negotiations have been characterized by the ability of nation-states to use their bargaining power to negotiate policy outcomes that they deem justifiable. The problem with this approach to climate policy discourse is that the most powerful nation-states, like the United States, do not see policy outcomes which respect humanitarian obligations as justifiable. Consequently, less powerful nation-states, and future generations, are rendered highly vulnerable to both climate change and international mitigation efforts toward climate change abatement. The impetus of this Thesis is to understand why it is the case that the world's most powerful nation-states have refused to agree to just terms for climate abatement protocols. In this Chapter, I will primarily be concerned with articulating the political and moral conundrum that we have found ourselves in today at international climate negotiations.

Section 1

In this section, I will present the approach to climate policy that is defended by Eric Posner and David Weisbach. I will begin with a general account how their policy prescriptions are informed by the feasibility constraint of International Paretianism and market-based ideals. Then, I will present the empirical support that Posner and Weisbach use to justify their approach to climate policy. Following this, in the next Section, I will analyze the moral upshots that follow from Posner and Weisbach's approach to climate policy.

Section 1.1

Eric Posner and David Weisbach argue that the ends of justice are best achieved though policy means independent of a climate treaty. They do not deny obligations to distributive justice, but they do deny that a climate treaty is the appropriate means for fulfilling those

obligations (2010: 73-4). For this reason, they defend what is referred to as a 'Two-Track Approach', where the promotion of justice and climate abatement are independent policy goals that should be pursued independently of one another. Although it is 'theoretically possible' that a climate treaty could provide the best vehicle for promoting distributive justice, they believe this 'theoretical possibility is just that': it seems unlikely that projects that will not have a 'significant effect' for many decades are the best way to help the poor living today (ibid., 88). Foreign aid treaties, on the other hand, are the best vehicle for promoting distributive justice, since their goal is to redistribute global wealth (ibid., 96). If a climate treaty were to implement distributive justice prescriptions, then it would just be two treaties in one: a climate treaty and a foreign aid treaty. The climate portion of the treaty would provide policies stating the 'optimal when, where, and how' of emission reductions; and the foreign aid portion would 'send money from rich states to poor states.' (ibid., 85-86) To assume that climate policy is the tool we need to use to fulfill our obligations to distributive justice is to wear, what they call, "climate change blinders". Instead, it is better to consider the entire set of policy tools at our disposal and choose the tool, or set of tools, that is most efficient at promoting distributive justice (e.g., unconditional cash donations, in-kind donations of particular goods, trade policies, intellectual property rules, immigration policy, and others). It's just not the case, they argue, that a climate treaty is the most efficient means for rich nations to fulfill their obligations to poor nations. This is because the goal of a climate treaty is to a 'great extent' a separate issue (ibid., 73).

The goal of a climate treaty is to *solve the problem of climate change*, and the problem of climate change is the result of a 'failure of international cooperation to create a public good.'

(ibid., 96) By this they mean, we have failed to market an externality, namely the “good” of emission reductions. John Broome explains (2018: 226):

Emitters of greenhouse gas would be willing to reduce their emissions for a small price, but they are offered nothing for doing so. They emit freely at no cost. On the other hand, people around the world would be willing to pay them to reduce their emissions. Unfortunately, they have no means of making the payment.

So long as people around the world are unable to make this payment, the market system will be *inefficient*. Since emitting entities are *willing* to reduce their emission for a (small) price, and since there are people who are *willing* to pay for these reductions, there exists an opportunity for a Pareto-improving trade. Once the necessary means have been established, market transactions—*à la* cap-and-trade permits—and government taxes—*à la* carbon tax—will be able to Pareto-improve the situation until no more Pareto-improvements are possible (ibid.). At which point, the market system will be *efficient*: the price the public is willing to pay for emission reductions will be the same price emitting entities are willing to accept for producing these reductions (ibid., 226). These represent ideal market conditions, and it is the goal of a climate treaty to bring them about. As such, the “optimal” climate treaty will reduce ‘emissions to the extent that the cost of reducing emission a little bit more is equal to the benefit of reducing emission a little bit more’ (Posner and Weisbach 2010: 55). Assuming no other inefficiencies arise, an optimal climate treaty will facilitate international cooperation that generates the *maximum total benefit*. In the event that some nations undergo more costs than others, surplus benefit will be redistributed until every nation has been benefited by the

treaty.¹ So long as every nation perceives themselves to be made better off by the treaty, the treaty will be politically feasible. They refer to this feasibility constraint as *International Paretianism* (ibid., 93-4). Posner and Weisbach believe that if a climate treaty works to address both climate change abatement *and* global inequity, then it will be too *costly* for the world 's major emitting countries, and thus violate the constraint of International Paretianism.² In order to secure the participation of these countries, we must ensure that the treaty is in their interests. What is more, a climate treaty crafted in this way is not only more likely to be ratified, but also to 'survive pressures to cheat and last through time.' (ibid., 98)

Before I go on to present empirical support for Posner's and Weisbach's approach, there are a few things to note about how respective costs and benefits of a climate treaty are determined. First, Posner and Weisbach consider the *whole* world in their harm-benefit calculations. They want 'to find the lowest cost emissions reductions wherever they may be' and to account for *all* the harms from climate change—including economic and environmental irreversibilities (ibid., 56). Second, they do not distributionally weight costs and benefits based on the *prior* benefit level because they consider distributional issues to be a separate issue (ibid.). And third, they are adamant about including the 'full valuation of the environment,' whatever that may be (ibid., 57). They assume that the environment *can* be properly valued, and they seek to base their policy prescriptions on this value (ibid., 58).

¹ Posner and Weisbach think that principles of justice will 'at best' affect a small portion of the distributed surplus. The most likely scenario is that the surplus will be distributed according to bargaining power. Although, they believe that all parties to the treaty have bargaining power, and thus all parties will be offered a share of the surplus (ibid., 188).

² They also think that nations would fail to agree on a climate treaty because they would fail to agree on the foreign aid portion of the treaty. States have never agreed to a multilateral foreign aid treaty—and likely won't make an exemption for a climate treaty—primarily because there is little consensus on the allocation of, and responsibility for, foreign aid (ibid., 86-7).

Section 1.2

Posner and Weisbach present strong empirical arguments for their Two-Track approach to climate policy, with the Kyoto Protocol being ready to hand. The Kyoto Protocol is ‘two treaties in one’ as it tried to achieve emission reductions goals in a way that respected constraints of justice. According to Posner and Weisbach, the Kyoto Protocol has been unsuccessful at achieving these reduction goals because it is a politically infeasible treaty, *per* International Paretianism. To make a case for this point, I will take a brief detour through the history and background of international climate policy.

The Kyoto Protocol was the first international climate treaty that imposed specific obligations on countries to reduce GHG emissions. Although, it was itself an implementation of the principles that were agreed to at the 1992 United Nations Framework Convention on Climate Change (UNFCCC). The Framework Convention established a framework of principles that were to structure all climate negotiations thereafter. The first principle adopted into the Framework is:

The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.³

In this principle we can identify language that clearly demonstrates a commitment to justice.

The term ‘equity’ invokes the idea of *fairness*, and the language of ‘common but differentiated responsibilities’ helps to inform what is meant by ‘equity’. In addition, the first principle

³ Framework Convention (1992), Article 3, paragraph 1, p.4.

explicitly addresses ‘developed countries’ as the primary burden-bearers, which was interpreted in the Berlin Mandate (1995) as establishing a *dichotomous distinction* between Annex 1 (developed) and non-Annex 1 (undeveloped) countries. The dichotomous distinction was then formally adopted in the 1997 Kyoto Protocol, under which Annex 1 countries were to agree to binding obligations to specific emission targets, while non-Annex 1 countries were free of such obligations (Weisbach 2016: 156-59).⁴

As *fair* as it is, the Kyoto Protocol has been unsuccessful at securing the participation of major emitting countries. Most basically, this constitutes a policy failure because a successful climate treaty will require the participation of these countries. Yet, the Kyoto Protocol has and continues to be perceived as incompatible with the national self-interest of major emitting countries. Much of the resistance from these countries is explained by the dichotomous distinction, which would effectively allow developing countries to free-ride off of the abatement efforts of the developed world. That is to say, if major emitting countries did agree to the Kyoto Protocol, they would not only sacrifice greatly to comply with their emission caps, but they would do so *in addition* to suffering the emission effects from the “carbon leakage” occurring in developing countries. Carbon leakage is particularly a problem in climate policy because emissions anywhere threaten to undermine climate abatement.⁵

⁴ Annex 1 countries include Western Europe, the United States, Canada, Australia, and most of the countries in Eastern Europe. Non-Annex 1 countries include China, India, Brazil, South Korea, and many other undeveloped countries. In the Kyoto Protocol Annex 1 countries are referred to as Annex B countries, which is the same list of countries (with minor exceptions).

⁵ This largely explains why the Kyoto Protocol was itself a conditional treaty: it would only come into effect if at least 55 countries in the UNFCCC signed on, and if 55% of 1990 emissions were covered (Helms 2015:166). If it wasn’t for the European Union, the Kyoto Protocol would have never taken effect (ibid., 169).

Since developing countries have been free of emission reduction obligations, the world's leaders have been able to witness just how great the potential is for carbon leakage in these countries. To get a rough idea of this potential, we can look at emission increases from China and India, both listed as non-Annex 1 countries: China's emission flows increased 179% from 1992 to 2010, and India's emissions doubled during that time. By 2010, non-Annexed 1 countries accounted for 62% of the global emission flow (Weisbach 2016: 162-64). Furthermore, many of these countries heavily rely on coal which is the dirtiest and most abundant fossil fuel. More than 80% of China's emissions come from coal, and 70% of India's electricity is sourced from coal (ibid., 188-90). Because coal-based emissions in countries like China and India have gone unchecked, these countries have greatly invested in the installation of new coal-fired power plants. The installation of these facilities *increases the costs that these countries will accrue from participating in a climate treaty*. Thus, once built, it will be in their interest to continue emitting from these facilities expire. As Weisbach explains (ibid., 188):

It is, of course, possible to build a new coal-fired plant and then shut it down after ten years even though it has forty or fifty years of remaining use, but it is extremely unlikely this would happen. How do leaders of a country explain that they are shutting down a plant that was built at a considerable cost, works perfectly well, and is providing inexpensive and reliable energy to people who need it?

Given that long-lived fossil-fuel infrastructure lasts anywhere from 50 to 100 years, this is a dangerous consequence, especially in light of the fact that China has installed the equivalent of two coal power plants *per week* in the past decade (ibid., 184, 190). In short, if we continue to allow exemptions for developing countries, then we will be practically committing ourselves to

another 50 to 100 years of emissions in those countries, which is strictly incompatible with our emission reductions targets.⁶

The United States Senate Bryd-Hagel Resolution (1997) provides convincing evidence for thinking that International Paretianism is a *real* constraint for the United States, and that the Kyoto Protocol violates it. The Bryd-Hagel Resolution stated that the United States would not comply with a treaty that provides exemptions to non-Annex 1 countries, and it explicitly states that “the United States should not be a signatory to any protocol... which would... result in serious harm to the economy of the United States.” Furthermore, that “the exemption for Developing Country Parties is *inconsistent* with the need for global action on climate change” (emphasis mine).⁷ The United States was particularly resistant to accepting an emission cap unless China did so as well. However, China’s refusal to agree to an emission cap was backed by strong moral arguments: their income per head was relatively lower and so was their emissions per head. Consequently, China’s best offer was to agree to an emission cap *after* 2030. Absent a commitment from the Chinese, the United States did not ratify (Helms 2015: 62-63, 167).

This attitude carried over into the Durban negotiations in 2011. The initial period of the Kyoto Protocol expired in 2012, so Durban represented the last chance to gain signatories and establish ambitious targets before the second commitment period began. By the time of the Durban negotiations, though, it was clear that any treaty which allowed for carbon leakage *anywhere* was going to be too costly. In light of this, the negotiations in Durban entertained an

⁶ Committing to another 50-100 years of coal-burning is in fact a live option given that we have about 100-year supply left of coal in global reserves. It is estimated that if all the coal in our reserves were burned (assuming a climate sensitivity of 3°C), temperatures would increase to 8°C above preindustrial levels (ibid., 189). Considering that anything about 4°C is predicted to be an utter climate disaster, it is clear that we should not tempt ourselves with the possibility of burning coal for another 100 years.

⁷ <https://www.congress.gov/bill/105th-congress/senate-resolution/98/text>

interpretation of ‘common but differentiated responsibilities’ that deviated from that of the Berlin Mandate. Under this interpretation, *all* Parties to the Convention would be required to adopt emission targets. If the Durban approach were translated into actual emission targets for the second commitment period, there would no longer be a sharp distinction between developed and developing countries (Weisbach 2016: 162, 212).

However, no such emissions targets were agreed to. The only agreement made was merely an agreement to reach an agreement by 2015, which itself would not take effect until 2020 (Helms 2016: 173). This deflationary outcome was not only the result of the US pointing its finger at China, who refused to agree to an emission cap, but also Japan, Canada, and Russia were less willing participants by this time. Japan, with its recent nuclear disaster at Fukushima, was desperate to compensate for their loss of a promising nuclear future (*ibid.*, 172). Canada, one of the world's largest oil reserves, saw a climate treaty to be very expensive, especially now that warming temperatures were increasing the accessibility of Arctic reserves. While Russia, too, benefited in similar ways as Canada from refusing to sign onto binding obligations (*ibid.*). All three countries did not sign on to a second commitment period—in addition to the US and China—leaving the EU to continue their abatement efforts unallied (*ibid.*, 173). If anything was signified by the negotiations in Durban it is was that a climate treaty that looked anything like Kyoto wasn’t not going to get ratified.

In conclusion, the resistance from developed countries to signing the Kyoto Protocol is explained by the dichotomous distinction between Annex 1 and non-Annex 1 countries. Because this distinction is grounded in notions of what is *fair*, as determined in the Berlin Mandate, it supports Posner’s and Weisbach’s claim that a climate treaty grounded on notions

of justice is an infeasible treaty, *per* International Paretianism. A feasible climate treaty will be one that is in the interests of the world's major emitting countries. Notions about what is fair have not, and likely will not, yield feasible policy prescriptions.

Section 2

Now that we have reviewed some of the pragmatic points in favor of the Two-Track approach to climate policy, I want to spend some time making apparent to some of the ethical issues that follow. In this section, I will present two upshots of treating the ends of justice as independent of climate abatement. My intention is to show what exactly we are agreeing to when we reject constraints of justice and merely rely on self-interest in climate negotiations. The first upshot follows from a theoretical framing where states are the relevant actors. On this view, International Paretianism entails that poor countries will have to compensate rich countries for abatement efforts that exceed what is in their self-interest. The second upshot follows from a theoretical framing where the relevant actors are generations. On this view, the outcome is either intergenerational extortion or unsuccessful climate change abatement. I consider both theoretical framings to entail policy outcomes that are morally unacceptable because they violate basic humanitarian obligations.

Section 2.1

The problem of climate change is often framed as a *prisoner's dilemma* or a *tragedy of the commons*. The tragedy of the commons is just another way to understand the prisoner's dilemma when applied to a common resource. Since the climate's ability to absorb carbon dioxide is a common resource, and since the emission reductions are considered a "public

good”, I will briefly sketch the tragedy of the commons scenario. Then I will show how this framing applies to international state actors and climate change.

Originally articulated by Garret Hardin (1968), the tragedy of the commons involves a group of herdsman whose cattle graze on a common pasture. Since each herdsman must make a living as a herdsman, it is in each herdsman’s self-interest to continue to add additional cattle to his herd. That is to say, it is *individually rational* for each herdsman to add more cattle to his herd. Nonetheless, when each herdsman adds more cattle to their herd, it leads to the overgrazing of the pasture and the destruction of the common resource. Thus, by each herdsman acting on their self-interest, they collectively undermine their individual self-interests (ibid., 1244-45). In this scenario, the actors that contribute to the depletion of the common resource could transform their situation by agreeing to coordinate their actions (e.g., limiting the number of cattle in their herds, by agreeing to grazing rotations, etc.), and thereby prevent the depletion of the common resource. Given this, it is *collectively rational* for herdsman to coordinate their use of the commons (ibid.). Although each herdsman will lose some of their ‘freedom’ and accrue some costs by agreeing to moderate their use of the common resource, their agreeing to do so will prevent ‘universal ruin.’ (ibid., 1248) According to Hardin, the solution to the tragedy of the commons is ‘mutual coercion’: it is just not the case that the herdsman will exercise restraint of the common resource by relying on their own ‘conscience’ (ibid., 1246-47).

Now we can apply this scenario to international state actors who each benefit from the atmosphere’s capacity to absorb emission without causing harmful effects. Given that the atmosphere’s capacity to safely absorb emissions is limited, each state benefits from emission

reductions. However, the costs associated with reducing emissions are high, and they primarily come in the form of lost economic activity or expensive abatement projects. For example, one plausible abatement project is making a clean energy transition. Making this transition will require that long-lived fossil fuel infrastructure be replaced with clean energy infrastructure. As discussed earlier, developing countries like China and India have greatly invested in the installation of new coal power plants. To get a rough idea of how much it might cost to replace fossil fuel infrastructure, it is predicted that it will cost the United States \$6 trillion to replace theirs (Weisbach 2016: 182). Given these costs, it is not in the United States' self-interest to replace this infrastructure *if* this replacement will be inconsequential in reducing their climate vulnerability. If we assume that all countries will undergo a similar level of (severe) impact from climate change, then it would be *collectively rational* for all of the countries to invest in a clean energy transition. That is, each country would consider the outcome of successful climate change abatement to be in their self-interest. However, since emission reductions made by one country benefit all countries, in order for it to be *individually rational* for each country to implement a clean energy transition, it must be in their self-interest to *not* free-ride upon the abatement efforts of others. Otherwise, there is the tragic possibility that other countries will reason accordingly. What is needed is an incentive structure that would increase the costs of not entering a treaty. The needed incentivization may take the form of trade sanctions or other coercive mechanisms (Gardiner 2016: 28).

The unwelcome result that poor countries should compensate rich countries for reducing emissions follows from the predictions that not all countries will equally benefit from emission reductions. Some countries possess particular geographic features—such as being

land locked or being in a colder climate—that make them *indifferent* to emission reductions.

Others will view emission reductions as *incompatible* with their self-interest because they have greatly invested in coal-fired powerplants or because they possess valuable fossil-fuel deposits (Posner and Weisbach 2010: 84-5). Generally speaking, though, it is predicted that poor countries will suffer more severe impacts from climate change and thus will benefit the most from abatement. This prediction follows for a few reasons.

First, poor countries tend to be located in warmer parts of the world where climate impacts are predicted to be almost entirely negative (e.g., extreme heat and drought). Second, poor countries tend to be more economically reliant on agriculture, which is a climate-sensitive livelihood (ibid., 21). This compounds with the fact that poor countries will not be able to *adapt* to a changing climate as easily as rich countries (ibid., 22). For instance, poor countries would not be able to invest in drought tolerant crop technologies as easily. Finally, and most importantly, poor countries are expected to suffer severe impacts, *regardless* of how sensitive the climate turns out to be to emissions. In a scenario in which the climate turns out to be quite *insensitive* to emissions,⁸ Africa, central and eastern Asia, central and southern South America, and parts of the Middle East and Eastern Europe will suffer the most severe impacts. In a scenario in which the climate turns out to be *relatively sensitive* to emissions,⁹ then only a very few countries will come out as ‘moderately affected’—including the United States, Russia and Canada—while nearly all of Africa and Asia will suffer severe climate impacts (Yohe et. al. 2006; as cited in Posner and Weisbach 2010: 22-25).¹⁰ It is only in a scenario where the climate turns

⁸ Climate Sensitivity equal to 1.5°C mean temperature increase given 550 ppm of CO_2e at year 2100.

⁹ Climate Sensitivity equal to 5.5°C mean temperature increase given 550 ppm of CO_2e at year 2100.

¹⁰ Data available at <http://ciesin.columbia.edu/?data?climate/>.

out to be *extremely sensitive* to emissions that rich countries will suffer impacts akin to those predicted for poor countries (ibid., 27). But even in such a scenario, rich countries would have a greater ability to adapt to climate harms, e.g., build a sea wall, manage malaria risk, implement technological solutions to crop-variation, etc.

Posner and Weisbach interpret these predictions to mean that poor countries will be the ones who will benefit the most from abatement, and this consequence changes the standard tragedy of the commons scenario previously sketched. Initially, it was assumed that all countries were equally threatened by climate change, and so each country would equally be benefited from avoiding universal ruin. The fact that the United States is only “moderately” vulnerable to climate change makes free-riding, even more tempting for the United States: modest emission reductions elsewhere would substantially decrease their overall climate vulnerability (ibid.).¹¹ Alternatively, if the United States did agree to enter a treaty, it would only consider modest reductions—that is, reductions great enough to reduce *their* climate vulnerability—to be in their self-interest. To secure the United States’ participation in a treaty that required aggressive emission reductions, they would need to receive ‘side payments’ from those countries whom aggressive reductions benefit, namely poor countries (ibid., 85). So, not only is it in the self-interest of poor countries to agree to a treaty that rejects the dichotomous distinction outright—i.e., the harms associated with their climate vulnerability are more severe than the costs of abatement—but also to agree to a treaty which asks them to *pay* rich countries for their aggressive reductions. What is more, poor countries are being asked to pay

¹¹ I put scare quote on the term ‘moderately’ because this is likely only the case for those most privileged in the United States. But perhaps it is even more accurate to say that the United States’ policy valuation procedures register it to be the case that their climate vulnerability is only moderate.

more for a climate treaty *because* they are disadvantaged. Indeed, this seems to get things quite backwards: increased vulnerability should not justify poor countries paying *more*, but rather them paying *less*.

Even on a very modest account of global equity, one based on humanitarian obligations, International Paretianism is too strong. To illustrate that this is the case, we can consider the following equity principle of a *guaranteed minimum*. Henry Shue argues that the principle of a guaranteed minimum applies to the case of climate change¹² (1999: 541):

When some people have less than enough for a decent human life, other people have far more than enough, and the total resources available are so great that everyone could have at least enough without preventing some people from still retaining considerably more than others have, it is unfair not to guarantee everyone at least an adequate minimum.

Here, Shue is appealing to a very modest ‘minimum’ of a humanely decent life, one with a “decent chance for a reasonably healthy and active life... barring tragic accidents and intervention.” Similarly, ‘enough’ means something like “the essentials for at least a bit more than mere physical survival.” (ibid., 540-41) Given that this is a very conservative principle of equity, it represents a minimal constraint of justice.¹³ Furthermore, the principle can be interpreted in either of two ways: a weaker reading (*i*) to *not interfere* with the ability of others to maintain a minimum for themselves; and a stronger reading (*ii*) to *support* the ability of others to maintain a minimum for themselves (ibid., 542). International Paretianism doesn’t just violate the stronger reading, but also the weaker one: requiring poor countries to pay rich

¹² At the very least, the principle applies to the distribution of a treaty’s surplus benefit. See footnote 1.

¹³ Thomas Nagel (2005) argues that principles of justice do not apply to the international realm because obligations of justice are *associative obligations* that arise between the sort of relation that exist between a state and its citizens. Because Posner and Weisbach do not deny that constraints of justice apply to the international realm, I do not address this objection here.

countries will *interfere* with their ability to maintain (or secure) a minimum for themselves. To be clear, Shue doesn't use the guaranteed minimum to argue that poor countries should not cooperate with a climate treaty, but that they should not have to 'bear the costs' of their cooperation (ibid.) Perhaps, then, if it is the case that non-Annex 1 countries must agree to emission reduction obligations, they should (at the very least) not be made *worse off* for complying with their obligations. It is likely the case that to satisfy the weaker version of a guaranteed minimum, side-payments—or substantial in-kind aid—would have to go from rich to poor countries. Thus, even on a very minimal notion of justice, one grounded in humanitarian obligations, International Paretianism is too strong. It follows, then, that the "optimal" climate treaty will require that basic humanitarian obligations be violated, so as to ensure that rich countries will agree to reduce their emissions.

One reasonable response to the outcome that poor countries *must* pay rich countries for their aggressive reductions, is to suggest that states can be altruistic, and their perceived self-interest need not be narrow. In other words, we can avoid these outcomes by correcting the unrealistic assumption that states are isolated individuals whose interests are insulated from the interests of others. Given the pervasive reality of globalization, it seems only obvious that national benefits are not confined to their borders. Although I agree with this suggestion, according to Posner and Weisbach, International Paretianism *in practice* requires that 'all states that participate in the treaty are *economically* better off...' (Posner and Weisbach 2010: 179, emphasis mine). This follows because of the current inefficiencies associated with foreign aid and the unwillingness of the public to pay for foreign aid, which is usually amounts no more than 1% or 2% of GDP (ibid.). Thus, in practice, International Paretianism functions on a narrow

notion of self-interest. However, Posner and Weisbach concede that International Paretianism *in theory* doesn't not exclude altruistic concerns from informing perceived self-interest (ibid.).

Section 2.2

I will now consider what outcomes follow if we adopt the theoretical framing defended by Stephen Gardiner. Again, my intention is merely to show what exactly we are agreeing to when we reject constraints of justice and merely rely on self-interest to constrain climate policy. Gardiner's framing of the issue makes apparent another set of ethical concerns, which are obscured by the tragedy of the commons framing, namely intergenerational extortion. I'll begin by presenting the justificatory basis of Gardiner's framework.

Rather than construing the problem as a tragedy of the commons, Gardiner argues that the problem is best understood as *a tyranny of the contemporary*, where the relevant actors are generations. Gardiner argues that climate change is fundamentally an intergenerational problem because there is great temporal dispersion between the *causes* and the *effects* (of climate change). A significant proportion of emissions occurring today will cause climatic effects for upwards of ten thousand years. This is to say that we will not be the ones who realize the full effects of these emissions. Likewise, the effects of the emissions produced by our predecessors have yet to be fully realize (Gardiner 2016: 24-5). Given this, we face serious incentivization and agency challenges in our efforts to combat climate change (ibid., 26).

When we factor in the temporal dispersion of causes and effects it turns out that *it is in the self-interest of those living today to continue to emit*.¹⁴ This follows from a basic cost-

¹⁴ Perhaps in poor countries, where climate threats are impending, it is in the current generation's self-interest to act urgently. But as we saw, this would only make today's poor *more willing* to compensate today's rich for their aggressive reductions, and thus justify them paying more.

benefit analysis: the costs of continuing to emit will disproportionately fall upon future generations and the benefits of continuing to emit will be enjoyed primarily by the present generation.¹⁵ As a result, the current generation either has to resist the temptation to ‘pass the buck’ on to the next generation, or it will have to make a *sacrifice*. That is, either this generation will continue to rely upon fossil fuels, or it will invest in a clean energy transition, even though it will not gain any *additional* benefits from beginning this transition.

What distinguishes tyranny of the contemporary from the tragedy of the commons is that in the latter scenario, it is (at some minimal level) *collectively* rational for all of the parties to agree to reduce emissions. In the former, the transition is only rational for the generations *after the first* (ibid., 27-8). This is because the first generation is not receiving any benefits from previous generations, and they will likely not receive any additional benefits from their sacrifices. Thus, it will be the first generation that sacrifices the *most*. Yet, it is also the first generation that will determine whether it is rational for the subsequent generation to reduce their emissions: if the first generation acts on mere self-interest and passes the buck, then they will position the next generation so that it is rational for them to pass the buck, and so on (ibid.). After enough iterations of buck passing, eventually a generation will come along in which it is not merely in their self-interest to pass the buck, but it is entailed by their fundamental right to self-defense (ibid., 26, 30). If, on the other hand, the current generation decides to sacrifice—that is, to investing in clean energy infrastructure while not receiving the returns on those investments—then they could not be said to be acting on mere self-interest.

¹⁵ Here, the costs of continuing to emit would be the economic costs associated with spread of disease, sea-level rise and flooding, extreme crop variation and crop shortage, etc. The benefits of continuing to emit would be the economic value of cheap energy, sustained economic activity, the ability to develop, etc.

Yet, this is precisely what is needed to avoid the iteration of buck passing and prevent universal ruin.

It might be suggested that in order to avoid the self-undermining consequences of intergenerational buck passing, the first generation could accept compensation from future generations for abatement costs. According to John Broome, one practical way of conducting this market exchange would be to have those who pay for abatement be compensated out of a ‘public debt’ which can then be transferred to future generations (2018: 230). Given such an exchange, and other things being equal, intergenerational buck passing would cease to be the only option that yields a net benefit for the first generation. Thus, a climate treaty which required future generations to pay for current emissions reductions would satisfy a constraint of “*Intergenerational Paretianism*”—where climate change abatement is in each generations’ self-interest.

Gardiner responds to this suggestion and makes explicit the ethical concerns that accompany it. First, the proposal is in effect a *polluted pay* principle, according to which, *polluters get paid*: future generations will suffer the most from GHG pollution, and they should pay off the current generation to stop polluting (2017: 377). Not only is this in stark contrast to the ethically grounded *polluter pays* principle, but polluters have a ‘background responsibility not to expose the polluted to such threats.’ (ibid.) Further, the underlying rationale seems to be something like a *vulnerable pay principle* (VPP), according to which the future should pay for abatement *because* they are so vulnerable (ibid.).¹⁶ This not only seems to get things entirely

¹⁶ Gardiner also applies these arguments to the policy outcomes that follow from the tragedy of the commons framing.

backwards, but also opens the door for intergenerational extortion. The threat of intergenerational extortion is an unprecedented one, and Gardiner goes through great lengths to articulate it. In simplest terms, the threat arises because the baseline against which future generations must see an “improvement” is extremely low, namely climate catastrophe. Thus, ‘there is effectively no limit’ on what the current generation may demand. If all that is required is that the future generation is left better off than ‘violent catastrophe’ then all the future has is ‘up for grabs.’ (ibid., 383) What is more, if we allow ourselves to develop the institutional capacities to facilitate such transactions, we will open the door to more opportunities to extort the future (ibid., 382). Whether or not this does in fact open the door to more extortion of future generations, the “optimal” climate treaty will be one that predictably *interferes* with the ability of future people to maintain a minimum for themselves. As such, this approach to climate policy will predictably violate basic humanitarian obligations to future generations.

At this point, one might reasonably call into question some of Gardiner’s theoretical assumptions. Specifically, the tyranny of the contemporary assumes that generations are narrowly self-interested, and thus that they wouldn’t sacrifice greatly for their decedents. Simply put, we *care* about the future of humanity, and I assume that this is actually the case. The problem, however, is that the threat of the tyranny of the contemporary can persist even when people really do care about their descendants. The threat of the tyranny of the contemporary, according to Gardiner, can arise when ‘contemporary institutions are *structured* so that generation-relative interests dominate concern for the future’ (ibid., 29, emphasis mine). In such an event, the problem would then be a Generational Relative Institutional

Problem (GRIP), where the long-term values of present people are expressed in a generation relative way.

It seems that we at least one reason to think the Posner and Weisbach defend an approach to climate policy that instantiates GRIP. As stated earlier, Posner and Weisbach think that an “optimal” climate treaty is one that reduces emissions to the extent that the marginal costs equal the marginal benefits. Thus, what constitutes an optimal climate treaty will be determined by a cost-benefit-analysis (CBA). The standard view is to attach a *discount rate* on the CBA for the project under consideration (e.g., clean energy infrastructure), so that the ‘opportunity costs’ of the investment are accounted for (Posner and Weisbach 2010: 144).

Assuming standard practice, a climate treaty that satisfies International Paretianism would have to pass a discounted CBA for each country (ibid., 150-51). Regardless of the rate applied, any discounted CBA will give greater weight to short-term investments over long-term investments.

When we factor in that we are dealing with a *very long* investment period, even a small discount rate would discount future pay offs substantially. Of course, a lot will turn on the discount rate employed, but Posner and Weisbach are clear that a discount rate should be employed (ibid., 149, 168).¹⁷ Thus, as a *formal* constraint on climate policy, International Paretianism will constrain substantive outcomes so that they favor shorter-term pay-offs. At the *substantive* level, people may greatly value longer-term investments that will benefit their decedents, but their willingness to invest will be discounted such that the longer the term, the

¹⁷ Posner and Weisbach argue that the appropriate discount rate is one based on the market rate of return, which accounts for the inevitable opportunity cost of making any investment. To get an idea how of much a discount rate influences policy decision making, we can consider the policy suggestions that follow from the Stern Review and from the cost-benefit-analysis conducted by William Nordhaus. The Stern Review applied a discount rate of 1.4%, while Nordhaus applied a discount rate of 5.5%. The latter recommended *modest* climate change abatement, while the former recommended *aggressive* climate change abatement (ibid., 148).

lesser the value of the pay-off. With that said, Posner and Weisbach's approach to climate policy will register national self-interest in a generation-relative way, and thus imposes the threat of the tyranny of the contemporary. Although it might be *in principle* possible for generations to act altruistically, it appears that *in practice* this is not the case—at least given our current institutional practices.

It follows, then, that the “optimal” climate treaty will either: (a) be one that leads to the reiteration of intergenerational buck passing and ultimately universal ruin; or (b) one that extorts the future by requiring them to accept an expensive deal under extreme duress, having everything to lose. In both cases, the “optimal” policy outcome will violate *basic* humanitarian obligations to future people, and thus violates minimal constraints of intergenerational justice. As with obligations to distributive justice, Posner and Weisbach justify these policy outcomes by arguing that obligations to intergenerational justice should be fulfilled through the most cost-effective means. Although, they argue that climate abatement is an ineffective (and thus inappropriate) means to promote distributive justice, they are agnostic about whether climate abatement investments are the best means to promote intergenerational justice (2010: 168). Nonetheless, they endorse a principle of intergenerational neutrality *when* considering our legacy to our descendants as a ‘set of investments.’ (ibid., 157)¹⁸

Section 3

As I hoped to have shown through the preceding discussion, if we only require the climate policy to satisfy the constraint of International Paretianism, then we will be left with

¹⁸ Posner and Weisbach think that modest investments in climate abatement are *ethically justifiable* if ‘accompanied by other projects’ which collectively ensure ‘the proper intergenerational distribution of welfare.’ (ibid., 161)

policy outcomes that violate basic humanitarian obligations to both the world's impoverished and future generations. Posner and Weisbach justify these outcomes by appealing to what *is* and what *is not* politically feasible. Simply put, a climate treaty works to fulfill our obligations to distributive justice will not be ratified by the world's major emitting countries. Thus, it is out of pragmatic necessity that we ensue these moral costs in case we are to have major emitting countries like the United States ratify a climate treaty. Given that successful climate change abatement will require the world's major emitting countries to ratify a climate treaty, we seem to have no choice but to craft a climate treaty that the world's major emitting countries will ratify. According to Posner and Weisbach, this inevitably entails not asking developed countries to bear the burden of paying for climate abatement in developing countries, and not asking current generations to pay for the mitigation benefits that will accrue to future generations. In the next Chapter, I investigate the legitimacy of the political feasibility constraint of International Paretianism. I will do so by taking seriously the idea that states cannot but act on their own self-interests in international climate negotiations. However, as I will argue, Posner and Weisbach's application of International Paretianism in climate change political discourse is based on a confusion between the different functions that feasibility constraints can play in normative theorizing.

CHAPTER 2: DECONSTRUCTING INTERNATIONAL PARETIANISM AS A HARD FEASIBILITY CONSTRAINT

As we saw in the last Chapter, International Paretianism is a feasibility constraint employed by Eric Posner and David Weisbach in climate change political discourse. Posner and Weisbach assume, without argument, that International Paretianism excuses the inability of nation-states to respect humanitarian obligations. In order for something along these lines to be *prima facie* plausible, it must be the case that International Paretianism is a “hard” feasibility constraint that rules out policy ideals and policy outcomes as being in principle *impossible*. Here, in this Chapter, I do not take for granted that it is in principle *possible* for nation-states to respond to humanitarian obligations in international climate negotiations. Half of my time will be spent articulating what is in fact a “hard” feasibility constraint on the political actions of nation-states, which does not amount to International Paretianism. The other half of my time will be spent explaining why it is the case that International Paretianism is a “soft” feasibility constraint for nation- states, such as the United States. In order to make this case, I will make a distinction by using an Aristotelian account of the state, one between states *qua* communities and states *qua* constitutional forms. I will argue that that states *qua* communities are subject to hard feasibility constraints, while states *qua* constitutional forms are not.

Section 1

In this section, I will primarily rely upon the work of Holly Lawford-Smith and Pablo Gilabert in an effort to clarify the relationship between justice and feasibility. I will begin by drawing a couple of distinctions. First, I will distinguish between *evaluative* and *prescriptive* judgements, showing how both respond to feasibility considerations differently. Then, I will

distinguish between two notions of feasibility, *binary* feasibility and *scalar* feasibility, and show how they serve different functions in normative theorizing. After clarifying the discussion in this way, I will then work to show that International Paretianism is not a hard feasibility constraint, and as such it should not be used to rule out policy outcome as being impossible due to invariant constraints.

Section 1.1

Both *evaluative* and *prescriptive* judgments make claims about what ought to be done, but they differ in regard to how they handle feasibility constraints (Gilbert 2017: 10). This is because they answer different questions: evaluative judgments answer the question, ‘Ought I bring about outcome, O, *if* O is feasible?’; whereas prescriptive judgments answer the question, ‘Ought I bring about O *given* the feasibility constraints I face?’ (ibid.). We can use evaluative judgments to compare the ‘intrinsic desirability’ of various outcomes, by *assuming* that we have the ability to bring them about (ibid., 11). Prescriptive judgments on the other hand, make claims about what we should do *once* we have factored in contingent feasibility considerations (ibid.).

In order to arrive at an *evaluative* judgment, we first need to identify the ‘relevant ideals’ from which our judgment will be based. If we are, for example, concerned with the *moral* desirability of policy outcomes, the relevant ideal will involve a *moral* conception of persons, e.g., beings who are ‘free and equal, rational and reasonable cooperators.’ (Gilbert and Lawford-Smith 2012: 820) Because a moral conception of persons is responsive to *actual*

features about humans, a moral conception of persons will issue *pro tanto*¹⁹ obligations that are feasible *given* our best understanding of human nature. That is, our moral obligations will be constrained by what is biologically and psychologically possible for humans, which we may generalize as what is *nomologically* possible for humans. In addition, our moral obligations will be constrained by what is *conceptually* and *logically* possible.²⁰ Since these determinations do not change (for the most part), these constraints are referred to as “hard constraints” (ibid., 813). Hard constraints delimit the range of possible action, and if we want our evaluative judgments to be *action guiding*, then they must be compatible with hard constraints.²¹ Similarly, if we want our political ideals to be action guiding, then they, too, should be compatible with what is nomologically, conceptually and logically possible for political communities. Since evaluative judgements neutralize contingent feasibility constraints, evaluative judgements will issue hypothetical *pro tanto* obligations, i.e., obligations that agents would have *if* they could fulfill them (Gilabert and Lawford-Smith 2012: 818). Soft constraints will function to determine whether a *pro tanto* obligation is in fact feasible to fulfill.

¹⁹ “When someone *pro tanto* ought to do something, one really ought to do it. Such an ‘ought’ may be overridden, but that doesn’t make it go away completely. It’s possible to describe *pro tanto* oughts in terms of moral reasons or moral obligations. In reasons terms, when someone *pro tanto* ought to do something, one has genuine moral reason to do it. On the second, when one *pro tanto* ought to do something, one has a genuine moral obligation to do it. This obligation may be overridden, but does not thereby lose its obligatoriness or its binding quality.” (King 2019: 5)

²⁰ I will assume here that conceptual and logical possibility are coextensive constraints (Carnap 1959), and their determinations presuppose nomological possibility (Quine 1969).

²¹ Moral theorizing in general is pretheoretically constrained by the Ought Implies Can principle for this reason, as well as others. According to Alex King, a pretheoretical commitment to *fairness* often motivates the Ought Implies Can principle. Simply put, it would be *unfair* to ‘hold people responsible for wrongs that they couldn’t have done anything to prevent.’ (2019: 42) Similarly, we do not want moral imperatives to be too *demanding* on agents, where demandingness can be understood as either ‘too costly’ or ‘too difficult’ (ibid., 43-45). As it concerns political theorizing, the Ought Implies Can principle also applies to collectives, such as political communities (Lawford-Smith 2012).

When we consider both the relevant *pro tanto* obligations and the current limitations of our particular circumstances to determine what it is we ought to do, we make a *prescriptive* judgment. The aim of prescriptive judgments is to *guide action* in ways that will ‘maximize expected normative value.’ (ibid., 819) This requires taking in into account the relevant *pro tanto* obligations (that arise given the relevant ideals) and balancing them with contingent feasibility constraints (given our current circumstances). As such, prescriptive judgments are *all-things-considered* judgements about what we *ultima facie*²² ought to do (Gilbert 2017: 13). Because prescriptive judgements are (in part) informed by the relevant normative ideals, prescriptive judgements will invariably be constrained by what is nomologically, conceptually and logically possible, while also taking into account contingent feasibility conditions.

Given this distinction between evaluative and prescriptive judgements, we can clarify two roles that feasibility constraints play in normative theorizing. As in the case of evaluative judgements, “hard” feasibility constraints can serve to *rule out* ideals as being irrelevant to practical deliberation. Similarly, hard feasibility constraints can rule out *actions* from being a part of agents’ option sets, as well as *outcomes* from being accessible to agents. Again, hard constraints refer to what is nomologically, conceptually, and logically possible. Since hard constraints function to “rule out” ideals, actions, and outcomes, hard constraints inform feasibility assessments in a *binary* sense (Lawford-Smith 2013: 252). Because binary feasibility assessments imply that we can do a great many things, they aren’t very useful at informing our

²² “This ‘ought’ is by definition never overridden.” (King 2019: 6). This is because one cannot excuse the obligation in virtue of an inability, one’s abilities have already been taken into account.

deliberations about what we ought to do in our particular circumstances.²³ To help inform our prescriptive judgments, i.e., what we *ultima facie* ought to do, we can compare the actions that are not ruled out by hard constraints in terms of their respective probabilities of bringing about the desired outcome. For this, Holly Lawford-Smith (2013) has developed a notion of *scalar* feasibility, which allows agents to rank actions and outcomes in terms of their ‘positive probabilities’ of being brought about, which can then be considered in conjunction with their intrinsic desirability, in order to make an *all-things-considered* prescriptive judgement. The scalar feasibility of an outcome is determined by contingent feasibility conditions, what are referred to as “soft” constraints. In political theorizing, soft constraints usually consist of empirical facts about institutions, economics and culture; and they help to inform all-things-considered *political judgements* (Gilbert and Lawford-Smith 2012: 818-820). Because our institutional environment and our cultural norms are socially constructed, soft constraints are changeable, but in a *diachronic* sense. As such, soft constraints allow us to acknowledge certain limits on what we can realistically accomplish, while also acknowledging that we can work to change these limits (Lawford-Smith 2013: 255).

In summary, feasibility constraints can serve two different functions in normative theorizing. Hard feasibility constraints rule out ideals, actions, and outcomes as being in principle impossible. Soft feasibility constraints allow us to compare different actions in terms of their respective probabilities of bringing about the desired outcome. What constitutes the desired outcome(s) will be determined by an *evaluative* judgement that will be informed by the

²³ Hard constraints give rise to an *inclusive* notion of ‘can’, and consequently, a *narrow* notion of ‘cannot’ (King 2019: 9).

relevant normative ideals, which are *in themselves* is nomologically, conceptually, and logically possible. Since the hard constraints of what is logically, nomologically, and conceptually possible are not very helpful in guiding our actions, we can use soft constraints to help inform an all-things-considered *prescriptive* judgment about what it is that we ought to do given our particular circumstances.

Section 2

As elucidated in the previous section, there are two general functions that feasibility constraints can serve in policy decision making. Hard constraints determine which actions, and thereby which outcomes, are in principle impossible. As such, hard constraints serve to *rule out* policy outcomes from being accessible to agents. By contrast, soft constraints help to inform our practical deliberations about what it is we ought to do because they allow us to *compare* the actions available to us in terms of their respective probabilities of bringing about the desired outcome. Given this distinction, we are now in a better position to determine which sort of feasibility constraint International Paretianism is. It might seem at first blush that International Paretianism falls out of our conception of what it *means* to be a state, and as such, International Paretianism is a *hard* constraint. In this section, I will investigate whether this is so by way of Aristotle. I will primarily be concerned with Aristotle's conception of a state form of community, and his explanatory account of the different constitutional forms. I will argue that states *qua* communities are subject to hard feasibility constraints, while states *qua* constitutional forms are not. I will also conclude that International Paretianism is not a hard but a soft constraint, and as such, will function to constrain a state's behavior in a *scalar* sense.

Section 2.1

Before I begin, I would like to make a note of clarification. Although I will make reference to Aristotle's substantive account of the common interest, and his substantive account of justice, my purpose for doing so is to explain *how* different conceptions of the common interest give rise to different substantive judgements of what is just, which in turn give rise to different constitutional forms. So, as I make mention of Aristotle's substantive accounts, it will be helpful to keep in mind that these are only mentioned for the purpose of articulating the way in which these different substantive accounts relate to one another at a more abstract level of analysis.

In the *Politics*,²⁴ Aristotle says that a state is "a body of citizens sufficing for the purposes of life." (Politics 3.1) In the strict sense, a citizen is someone who shares 'in the administration of justice' (ibid.), and in the advantages of the state (ibid., 3.7). Although the state is a 'composite' of citizens, Aristotle thought that a state exists over and above the citizens that compose it (ibid.). In a similar way that rivers remain while the water in them is always 'flowing away and coming again,' the state remains even while its inhabitants are always 'dying and being born.' (ibid., 3.3) It is only when the 'form' of the state changes that a state is said to be a different state (ibid.). The form of the state, which Aristotle refers to as the *constitution*, is the arrangement of public offices and the distribution of political authority (ibid., 3.6). Public offices may be arranged such that political authority is in the hands of one, the few, or the many. In their 'true' forms, these are royalty, aristocracy and polity, respectively (ibid., 3.7). But a

²⁴ Jowett, B. (Trans.). (2009). *The Internet Classics Archive: Politics by Aristotle*. The Internet Classics Archive | Politics by Aristotle. <http://classics.mit.edu/Aristotle/politics.html>.

constitution may combine elements of these true forms in various ways at various levels of government (ibid., 4.4, 4.9, 4.14). As such, there are as many forms of government as there are modes of arranging public offices (ibid., 4.3). But in order to be a 'true' form of government, those who rule must rule with a 'view to the common interest.' If a state governs toward the 'private' interest of the rulers, then it is classified as a 'perversion' and not a true form of government (ibid.).²⁵

The distinction between true and perverse forms of government follows from Aristotle's conception of the state as a type of *community*. Aristotle thought that every community must be 'established with a view to some good', because individuals always act for the sake of 'that which they think good' (ibid., 1.1). As such, the act of individuals collectivizing to form a political community, too, must be for the sake of some common good, or some 'common interest'. The state's constitution is established as the institutional *means* to obtaining what is in the common interest of the political community, and so it is for the sake of the common interest that a constitution is constructed (ibid., 1.2). Thus, to the extent that a constitution functions as a means to obtaining what is in the common interest of the political community, and to the extent that governing bodies govern toward the common interest, a government is by definition a 'state' truly so-called.

Although Aristotle thought that members of a state ought to unite for the sake of the 'perfect and self-sufficing life', he acknowledges as legitimate political communities that unite for different reasons (ibid., 3.6, 3.9). Because the common interest may be defined differently

²⁵ True and perverse forms of government come in degrees, as all perversions technically 'fall short of the most perfect form of government,' which is aristocracy according to Aristotle (ibid., 4.8).

for different political communities, the state's constitution—as the institutional means to promoting the common interest—will be responsive to the chosen conception. Hence, different constitutional forms arise (ibid., 7.8). To illustrate this point, I will present the primary way in which Aristotle's constitutional forms differ with respect to the chosen conception of the common interest. Specifically, I will discuss the way in which the common interest informs substantive judgements of distributive justice, which then *justify* and thus *explain* a state's constitutional form.

Aristotle defines 'constitutional rule' as a 'government of freemen and equals' (ibid., 1.7). As such, all of the constitutional forms define 'justice' in terms of what is *equal*. However, where they differ is in their chosen sense of equality (ibid., 3.13). Different constitutions judge that equals should be treated equally in different senses, and these different senses correspond to differing conceptions of the common interest. Aristotle defines distributive justice in the *Ethics*²⁶ as an *equal* distribution—'of things to be divided among those whose share in the constitution' (Ethics 5.2)—in proportion to *merit* (ibid., 5.3). As it concerns the distribution of political authority, a just constitution is one that distributes shares in government in proportion to merit. What explains the differences in constitutional forms is their chosen conception of merit: the 'democrats identify it with the status of freeman, supporters of oligarchy with wealth... and supporters of aristocracy with excellence.' (ibid.)²⁷ These different conceptions of

²⁶ Ross, W. D. (Trans.). (2009). *The Internet Classics Archive: Nicomachean Ethics by Aristotle*. The Internet Classics Archive | Nicomachean Ethics by Aristotle. <http://classics.mit.edu/Aristotle/nicomachaen.html>.

²⁷ Although, there are different modes of each of these forms, which arise from a complex notion of merit. For instance, some aristocratic governments judge what is just in terms of other elements in addition to virtue, e.g., virtue *and* wealth (ibid., 4.7). Similarly, a polity is a combination of democratic and oligarchical constitutions, since it judges what is just in terms of freedom *and* wealth (ibid., 4.8). It is helpful to think of the 'true forms' as *types* of states that *token* states may resemble, purely or in combination.

merit give rise to different claims to office, and thus to different distributions of shares in government (Politics 3.13). For example, Aristotle prefers the conception of distributive justice that is based on merit *as* virtue (ibid., 3.9). As such, Aristotle's conception of a just state is one that distributes shares in government equally in proportion to virtue. Likewise, Aristotle defines just laws as those that promote the practice of virtue and prohibit the practice of vice (Ethics 5.2). But the reason *why* Aristotle judges what is merit in terms of virtue is because Aristotle's substantive account of the 'common interest' *is* the promotion of virtue in the citizenry. The state, then, as a means to the common interest, should be governed by those most apt to govern toward virtue, namely the virtuous. Aristotle makes this point by way of an analogy with the arts (Politics 3.12):

When a number of flute players are equal in their art, there is no reason why those of them who are better born should have better flutes given to them; for they will not play any better on the flute, and the superior instrument should be reserved for him who is the superior artist.

So, in a similar way, in politics 'men do not ground their claim to office on every sort of inequality any more than in the arts.' (ibid.) Shares in government should be awarded to those who are most apt to be productive in the purpose of the state. In this way, then, the common interest of the political community, serves to *justify* a particular arrangement of political authority, one that is compatible with the chosen conception of the common interest. And since there are different conceptions of the common interest, there are different forms of government: "for different men seek after happiness in different ways" and therefore "make for themselves different modes of life and forms of government." (ibid., 7.8) Thus, those that seek happiness in terms of wealth will seek for themselves a mode of government that is relative to this end (ibid., 3.9):

if men met and associated out of regard to wealth only, their share in the state would be proportioned to their property, and the oligarchical doctrine would then seem to carry the day.

Although Aristotle's analysis of the constitutional forms primarily concerns the distribution of shares in government (because he views these as amongst the greatest of honors), the ends of the political community also serves to justify the population size (ibid., 7.4), the quantity and quality of territory (ibid., 7.5), the distribution of occupation and trade (ibid., 7.9), as well as the designation of citizenship (ibid., 7.10).²⁸ Aristotle states the underlying rationale when he says (ibid., 3.13):

Now what is just or right is to be interpreted in the sense of 'what is equal'; and that which is right in the sense of being equal is to be considered with reference to the advantage of the state, and the common good of the citizens.

The chosen conception of the common interest informs what is 'just' and what is 'right' for a state. As such, the common interest serves to justify claims to office, and thus the arrangement and distribution of shares in government. Thus, a state's constitution, if it is to be a 'true' form, must be *responsive to* the adopted ends of the political community.

Aristotle's analysis of the constitutional forms as differing with respect to their notions of distributive justice elucidates but one mechanism by which a state may be responsive to the ends political community. For there are other conceptions of justice that go beyond distributional concerns, and which include procedural and recognitional measures (Schlosberg 2007). Perhaps, then, to the extent that a state organizes itself on principles of distributive

²⁸ E.g., a state's population must be large enough that it is 'sufficient for a good life' but small enough that the citizens are able to 'know each other's characters' so that the 'election to offices and the decision of lawsuits' can be determined in accordance with virtue (ibid., 7.4).

justice, the ends of the political community will help to inform what constitutes a just distribution of the state's advantages. Generally speaking, though, the organization and behavior of a state will be explainable in terms of the common interest, as the common interest gives rise to notions of 'just' and 'right' which then function to justify political arrangements. Depending on the constitutional form, unjust governance will be tolerable to a varying extent. But strictly speaking, there are limits on how much unlawful behavior governing bodies can perform in case they are to keep a political community *stably* intact. Given enough unjust governance, a state will disintegrate through a revolution or outside intervention (ibid., 5.1). We may say, then, formal notions of 'just' and 'right' function to constrain the behavior of states in a *hard* sense, as the behaviors of the community must be responsive to the common interest. However, political communities may unite for different ends, and thus may determine justifiable actions differently. Thus, insofar as substantive accounts of these notions function to constrain the behavior of states, it will do so in a *scalar* sense because these are contingently determined.

Section 2.2

Aristotle's conception of a state furnishes us with the conceptual resources needed to clarify a "hard" and "soft" feasibility constraints for states. In this section, I will argue that insofar as a state is a form of *community*, it must be responsive to the *common* interest of the political community. This is a conceptual hard constraint on states *qua* communities. On the other hand, the chosen conception of the common interest is a rather contingent matter, as different political communities may define their shared interests differently. Given this, and the fact that a state's constitution is a (contingent) institutional means to promoting what is in the

common interest of the political community, states *qua* constitutional forms will be subject to “soft” feasibility constraints. In this section, though, I will primarily be concerned with articulating a hard feasibility constraint on states *qua* communities.

Insofar as a state is a community, there must be a unifying element present which serves to explain why the members of a state are unified in some significant sense. Without some common pursuit, or some shared interest, an aggregate of individuals cannot meaningfully be called a community. The common interest of the political community is the unifying element of a state, as it is for the sake of the common interest that individuals collectivize to form a political community. Aristotle’s analysis provides us with some examples of possible political ends, e.g., liberty, wealth, well-being, or any combination of thereof. However, it is not sufficient for a community to merely ‘share a view’ towards some common ends. It must be the case that the community’s shared view unifies the community’s members in some perceptible sense. If their union is not *itself* perceptible, we may still maintain that they are in fact a community if their union functions to explain perceptible explananda.²⁹ For example, insofar as the *behaviors* of a state’s members are *coordinated* and *organized* towards their shared ends, and not accidentally productive of them, we may reasonably say that they are unified in some perceptible sense.³⁰ Aristotle’s analysis of the constitutional forms, as differing in respect to their determinations of ‘just’ and ‘right’, provides us with a mechanism by

²⁹ In case we are to avoid antirealism about states, there must be some perceptible sense in which the members of the political community are united. Along these lines, Gilbert Harman thought that we shouldn’t posit the existence of moral facts if they are ‘completely irrelevant’ to the explanation of non-moral facts, and because Harman concludes that moral facts are immune to observational testing, he is an antirealist about moral facts (1977: 7, 9; as cited in Brink 1989: 182-83). Similarly, if we are to posit that an aggregate of individuals is in fact a state, then there must be some perceptible sense in which its members are *united* as a political community.

³⁰ I borrow the requirements of *coordination* and *organization* from Ronald Sandler (2007: 77). He uses them as necessary conditions on collective teleology.

which a state's members can be coordinated and organized towards the ends of the political community. Since different conceptions of the common interest give rise to different notions of 'just' and 'right', which are then institutionalized and recursively enacted by the community's members, the common interest of the political community functions in the explanation of its members' behavior. And because the behavior of the political community *consists in* the coordinated behaviors of its members, we may generalize by saying that the behavior of the community *per se* is also afforded an explanation in virtue of the community's common interest.³¹ In this way, then, the ends of the political community help to explain perceptible explananda, and thus, the common interest serves to unify the political community in some meaningful sense.

To encapsulate, a state, as a form of community, must be *responsive* to the common interest of the political community in some meaningful sense. All that is required for the appropriate amount of responsiveness is that the intelligibility of the state's behavior be dependent upon the common interest. Though, this is not to say that the intelligibility of a state's actions must be *entirely* dependent upon the common interest. Given that states do not exist in a void, they must also be responsive to features which are external to them, such as the natural environment and neighboring political societies. It is an inevitable consequence that the intelligibility of a state's actions will also depend upon features external to the political community.³² Given this, we may formulate the following hard constraint on states:

The explanation of a state's behavior must make reference to the common interest of its citizenry.

³¹ For more on how collectives get their abilities from their members see Lawford-Smith (2012: 463).

³² In addition, a state must be responsive to the *private* interests of its members, which may or may not coincide with the common interest of the political community.

This constraint conceptually follows insofar as a state is a form of political 'community' which must be unified in some meaningful sense. In case we are to avoid reducing states to their members, the unifying element of the community, i.e., the common interest, must possess some amount of explanatory power over a state's behavior. Notably, this is merely a formal constraint on state actions, since there is nothing substantively entailed about the content of the common interest.³³ It is only once the ends of the political community have been substantively defined, that substantive constraints begin to appear. Since substantive determinations of the common interest are contingent upon the judgements the community, constraints that arise out of the chosen conception of the common interest are soft feasibility constraints. *Per* Aristotle's analysis, these will most likely include political notions of 'just' and 'right'. It is worth noting that to the extent that the common interest of the citizenry is narrowly defined, it will be able to explain a proportionally narrow set of state behaviors. Thus, a narrow conception of the common interest will give rise to a narrow set of possible state actions. If the common interest is broadly defined, then there will be broader set of possible state actions, as more types of behavior will be afforded an explanation in virtue of the common interest.

Although the common interest of the political community serves to inform notions of 'just' and 'right' which then function internally to justify state actions, it is important to keep in mind that these justificatory notions are *relative* to the conceived ends of the political community. The common interest of a political community, formally speaking, does not

³³ Being responsive to the common interest will require that governing bodies govern impartially, as opposed to governing partially toward their own private interests. But this, too, is a formal feature, as different substantive ends will give rise to different substantive principles, according to which governing bodies can impartially govern.

necessarily gives rise to *objective* justificatory notions that extend beyond the bounds of the state. To make this point, I will apply a distinction that is used in moral theorizing between internalism about *explanatory* reasons for action, and internalism about *justificatory* reasons for action. In moral theorizing the distinction is used to clarify whether moral judgements necessarily give rise to explanatory or justificatory reasons for action. Explanatory reasons for action merely *explain* an agent's action, similar to how motivations do, whereas justificatory reasons *justify* an agent's action (Brink 1989: 40). If we think of the political community as a collective agent, and if we think of judgements about the common interest as being analogous to moral judgments, then we can analyze in similar terms whether the common interest of the political community necessarily gives rise to explanatory or justificatory reasons for state actions.

Given what has been said, it seems that the common interest of the political community must at least give rise to explanatory reasons for state actions, as the common interest must perform a perceptible amount of explanatory work, and the behavior of the community is the relevant perceptible explananda. But should we think that judgments about the common interest give rise to justificatory reasons? If all political communities were necessarily composed of completely rational moral saints, then perhaps the shared ends of the political community would necessarily give rise to justificatory reasons for state actions. But it is *possible* that a political community choose a conception of the common interest that is unjustified for reasons which arise independently of the beliefs and attitudes of the community's members. Similarly, it is possible that at time₁ a community decide upon ends that are reasonable, but later at time₂, their context renders these ends no longer reasonable. In other words, there is

nothing conceptually entailed about states *qua* communities that requires them to be united for justifiable reasons. All that is required is that a state's members be united, and in order to be united in some meaningful sense, their common interest must possess a sufficient amount of explanatory power in the explanation their behaviors. Given this, the common interest of the political community should be understood as merely providing explanatory reasons for state actions.³⁴

However, once internal notions of what is 'just' and 'right' have been intersubjectively conferred a status of political authority, they then function to *justify* state behaviors. Specifically, we may say that such internal notions of 'just' and 'right' give rise to evaluative judgements, and that these are based on an ideal of *political justice*. Evaluative judgments based on the ideal of political justice will give rise to corresponding *pro tanto* obligations to political justice.³⁵ As previously discussed, *all-things-considered* prescriptive judgements are made by balancing the relevant *pro tanto* obligations that bear on the action under consideration. Thus, *pro tanto* obligations to political justice will be relevant to making *all-*

³⁴ There are weak and strong versions internalism about reasons. Weak versions maintain that moral judgments necessarily give rise to *a* reason for action, while strong versions maintain that moral judgments necessarily give rise to *sufficient* reason for action (Brink 1989: 48). Here, I am applying a *weak* reading for internalism about justificatory reasons, and a *strong* reading of internalism about explanatory reasons. My reasons are as follows. In order for a community to be meaningfully united, the common interest of the community must perform a perceptible amount of explanatory work. The actions of a community's members are the relevant perceptible explananda, and their intelligibility must depend on the common interest of the political community. Thus, the common interest must give rise to *sufficient* explanatory reasons for action. However, there is nothing conceptually entailed about states *qua* communities that requires the common interest to elicit *a* justificatory reason for action. Given this, I am claiming that the common interest of the political community, formally speaking, must give rise to sufficient explanatory reasons for action, *and* that the common interest of the political community does not necessarily give rise to *any* justificatory reasons for action.

³⁵ This is not to say that obligations to political justice are not overridable. For instance, Hardimon (2004: 350) argues that institutional obligations are overridable if they are not 'reflectively acceptable'. Also, I am remaining neutral on whether obligations to political justice are moral or non-moral obligations. Nonetheless, they are non-natural obligations, as they arise out of socially constructed associations (King 2019: 71-72).

things-considered political judgments about which policy outcomes to bring about. However, states do not exist in a void, but rather in a larger context of the natural environment and neighboring political societies. Insofar as a state interacts with their external environment in ways that are normatively significant, they are obliged to respond to external *pro tanto* obligations that bear on their actions. For instance, insofar as the actions of the United States will predictably interfere with the ability of others to maintain a humanely decent minimum for themselves, they are subject to *pro tanto* obligations of *humanitarian justice*. States are not absolved of these obligations *a priori* because it is conceptually possible for states to be responsive to external constraints, so long as the common interest of the citizenry functions to explain their particular response. To suggest that this is possible is consistent with the fact that states always act in within a context, and so the intelligibility of their actions will always *partially* depend on their context. Given this, there is no “hard” feasibility constraint on states *qua* communities that preempts them from acting on humanitarian obligations to non-citizens. Thus, Posner’s and Weisbach’s claim that states *cannot* act for reasons other than their self-interest should be understood as “soft” feasibility constraint on states, which applies to states *qua* constitutional forms.

In conclusion, a state cannot act in ways that are explanatorily independent of the common interest of its citizenry, but it also cannot act in ways that are *entirely* explanatorily dependent on the common interest of its citizenry. To assume the latter, would be to assume that states exist in void, with no meaningful interaction with external world. The upshot of all this is that International Paretianism is *not* a hard feasibility constraint for states that have constitutional governments similar to what has been assumed here. If understood as a hard

constraint, Posner's and Weisbach's claim that it is politically infeasible for states to act for reasons other than their own interests, would be tantamount to saying that a state's actions must *only* depend on the common interest of their citizens for their intelligibility. As I have argued, insofar as a state interacts with features external to it, the intelligibility of its behavior *cannot* be entirely dependent upon the common interest of its citizenry. However, to the extent that the common interest is narrowly defined, there will be a relatively narrower set of possible state actions, as few behaviors will be afforded an explanation in virtue of the common interest. Thus, even though it is *in principle* possible for states to respond to external humanitarian obligations, it might be the case that they have institutionalized a *narrow* conception of the common interest, which renders them incapable of doing so. But since the substantive determinations of political ends, and the institutional means to their promotion, are both contingencies, a state's inability to respond to external humanitarian obligations should be understood as a soft feasibility constraint.

Section 3

As I hoped to make apparent through Aristotle's analysis, the constitutional forms differ with respect to their chosen conception of the common interest. Aristotle's analysis was primarily concerned with how different conceptions of the common interest give rise to different distributions of state advantages, with the most care taken towards the arrangement of public offices and distribution of political authority. Generally speaking, though, different conceptions of the common interest will give rise to different substantive notions of what is 'just' and 'right'. Once these notions are institutionalized and conferred a status of legal authority, they function as soft feasibility constraints. That is, they function to determine the

scalar feasibility of substantive policy outcomes: policy outcomes that are politically ‘just’ are more feasible than policy outcomes that are politically ‘unjust’.

Although it is not impossible for citizens to break the law, it is more likely than not that citizens will be law abiding, as they are liable to suffer penalizing consequences otherwise. Governing bodies, too, *can* govern contrary to the laws, and thus act in ways that are deemed ‘unjust’. Different constitutional forms will be more or less tolerable to unjust governance,³⁶ but generally speaking, there are conceptual limits on how much ‘unjust’ governance a state can undergo before the behaviors of its members are no longer depends on the common interest for their intelligibility. Perhaps their disintegration is expressed as a revolution or outside intervention from neighboring political societies. At which point, we would not refer to an aggregate of individuals as a political *community*. Thus, there are strict limits on how much unlawful behavior governing bodies can perform in case they are to keep a political community *stably* intact.³⁷ Insofar as substantive notions of ‘just’ and ‘right’—which are responding to the chosen conception of the common interest—have been institutionalized as laws, they function to determine the *scalar* feasibility of substantive policy outcomes. In this section, I would like to illustrate this point by applying it the United States’ notions of ‘just’ and ‘right’ and how they function to give rise to the soft feasibility constraint of International Paretianism.

³⁶ E.g., in democratic states, elected officials may be more likely to be lawful, as elected officials can be removed from office more easily in democratic states.

³⁷ Aristotle makes this point, and consequently holds that “the only stable principle of government is equality according to proportion.” (Politics 5.1).

Section 3.1

As noted in Chapter One, Posner and Weisbach maintain that in practice International Paretianism requires ‘all states that participate in the treaty are economically better off...’ (Posner and Weisbach 2010:179). The United States Senate Bryd-Hagel Resolution (1997) stated that the United States would not sign any treaty which resulted in a “harm to the economy of the United States.”³⁸ Thus, we have convincing evidence for thinking that the International Paretianism is a feasibility constraint that *actually* applies to the United States. However, given what I have argued in this Chapter, International Paretianism is not a hard feasibility constraint: conceptually speaking, states can act for reasons besides their own self-interest. Thus, it is in principle *possible* for the United States *qua* political community to be responsive to humanitarian constraints to poor countries, as well as humanitarian constraints to future generations. But although it is possible *in principle*, it is not possible *in practice* for the United States. As I will now argue, this is due to the fact that the United States has institutionalized a market-based notion of ‘just’, which renders them incapable of acting for reasons other than their narrowly defined self-interest.

According to Breena Holland, standard practices for policy valuation in the United States take the form of cost-benefit-analysis (CBA), which defines the value of environmental goods in terms of the prices people are “willing to pay” for these goods, in *real* or *hypothetical* markets (2014: 31).³⁹ When policy analysts value environmental goods in real markets, they use the

³⁸ <https://www.congress.gov/bill/105th-congress/senate-resolution/98/text>

³⁹ ‘Beginning with Jimmy Carter, presidents in United States have issued and or upheld executive orders requiring CBA as part of the “regulatory impact assessments” (RIA) that the president's Office of Management and Budget requires federal agencies to complete when they plan to from promulgate new an expensive environmental rules.’ (Holland 2014:30, f.n. 6)

actual market behavior of individuals to determine the value of the environmental good (ibid., 31). For example, to determine the value of clean air, a policy analyst might consider the differences in price that people pay for properties that have different levels of air pollution, but that are otherwise very similar (ibid.). To determine the value of a natural parks, a policy analysis might consider how much people pay in travel costs to visit these parks. When policy analysts value environmental goods in hypothetical markets, they use hypothetical market choices to determine an individual's "willingness to pay" for the environmental good (ibid.). Hypothetical market techniques are used to capture the *use* value of an environmental good, as well as the *nonuse* value (ibid., 32) The use value is what someone is willing to pay to use a resource, now or at a later date in the future. The nonuse value, or *existence* value, is what someone would be willing to pay to *preserve* that resource, without any intent of use, perhaps for future generations (ibid.).⁴⁰ All that is needed to determine the 'social value' of an environmental policy that would protect an environmental resource is a CBA: an aggregation of each individual's "willingness to pay", minus the policy's aggregate costs. The costs of an environmental policy typically refer to 'the amount of money it will cost the regulated industries to comply with the policy.' (ibid., 32-33) The 'political legitimacy' of this form of policy valuation hinges on its "success in relating the value of the environmental protections to justifiable political goals." (ibid., 27) Thus, underlying this form of policy valuation is a form of

⁴⁰ Survey questionnaires are a common method used to register both the use and nonuse value of environmental goods. For example, a survey questionnaire may presents different hypothetical prices for clean air, from which the surveyor can select the one that best represents what they would be willing to pay to *use* that resource, now or at a later day; or what they would be willing to pay to *preserve* that resource for future generations (ibid.).

policy justification that says the United States government is fulfilling its obligations (of political justice) to its citizens so long as its actions *mimic* the efficiency of the private market (ibid., 30).

I will now argue that such forms of policy valuation and policy justification are apt to register only a *narrow* set of people's values, and thus are apt to *narrowly* define the self-interest of the United States. And to the extent that the common interest is narrowly defined, there will be a relatively narrower set of possible state actions, as few behaviors will be afforded an explanation, and thus political justification, in virtue of the common interest. Consequently, I will argue, the ability of the United States to respond to external constraints is infeasible, though in a *scalar* sense.

Section 3.2

According to Steve Vogel, when members of a society communicate and cooperate through market signals and transactions, as they do in the private market, they are 'forced by the logic of their situation' into acting *strategically* (2015:221). This is because the market is a place where social relations are mediated through the 'guise' of material relations, i.e., costs of labor, prices of goods, etc., which are *beyond the control* of individual actors (ibid., 87, 93). People may be practically limited to market behaviors that they know will produce suboptimal results when aggregated with the behaviors of others, but that will nevertheless help them secure their personal ends. As Vogel explains (ibid., 203):

Each morning I make an implicit decision about whether to drive to work or not: driving generates a certain amount of carbon dioxide in therefore helps to increase the future temperature of the planet. Not driving would cause me to lose my job. I might be willing to sacrifice my job if that would end global warming, but simply quitting now because of my carbon footprint will be quixotic at best. The amount of warming would in fact remain the same whether I stop driving to work or not, but quitting my job would produce significant loss to me both financially and in terms of happiness.

If Vogel knew he could quit driving to work to reduce his emissions *and* avoid ‘significant’ losses to his finances and his well-being, then he would be willing to quit driving to work. But this is not the case, so he strategically acts so as to secure the means for his personal ends, and in the process, he contributes to outcomes that run counter to his *wider* set of values. The context of the market forces us into a mode of strategic action because it is beyond our control.⁴¹ We cannot negotiate a deal with the market to so as to *guarantee* that our personal ends will be met. But perhaps if we could, then that would enable us to act on reasons other than our *narrowly defined* self-interest. Given that the conditions of the market enable actors to act strategically, market-based policy valuation methods are apt register the values of people *qua* self-interested and strategically engaged. Thus, when aggregated, market-based methods are apt to register a narrowly defined notion of national self-interest.⁴²

Although, I do not mean to suggest that it is *impossible* for individuals to overcome strategic action in the marketplace and act for the sake of their wider values, but that is *unlikely*. For example, Marion Hourdequin (2010) argues that individuals are not ‘rational economic actors’, who merely seek the most efficient means to their personal ends (ibid., 452). She cites research where owners of hybrid vehicles were surveyed about their choice to purchase a hybrid vehicle. Survey respondents did not indicate that their purchase was based

⁴¹ Individuals do not have control over the prices of goods and costs of labor under ideal market conditions because efficiency requires that there be a ‘single price’ for each good, which will be determined by the totality of market trading (Broome 2018:227).

⁴² Vogel’s assessment here of individual market behavior seems to find some support in the psychological literature on well-being. Self-Determination Theory claims that individuals are not likely to act on their wider-societal values unless they perceive themselves to be *autonomous* and *related* to others (Deci and Ryan 2000: 229). Given that individuals do not have control over the market and given that social relations are being mediated through the guise of material relations, we can reasonably speculate that individuals would not be so inclined to express their wider-societal values in their market behaviors.

off of strategic action, namely on a means-end calculation of fuel efficiency. Rather, people expressed that they chose to purchase a hybrid vehicle “to make a statement, to express their commitment to the environment.” (Turrentine and Kurani 2003, as cited in Hourdequin 2010: 455) However, the ability to make such statements is conditional on having a certain level of material success. It seems plausible that many people who share a similar commitment to the environment cannot express this commitment in their market behavior; they simply lack the material basis necessary to purchase a hybrid vehicle. Assuming standard practice in the United States, a policy analyst might consider people’s willingness to pay for hybrid vehicles as an indication of their willingness to pay for emission reductions. But herein lies the problem: not everyone has the *ability* to express their willingness pay for a hybrid vehicle. It seems more than plausible that something along these lines functions to explain why the willingness of the public to pay for a climate treaty is low enough that the United States needs to receive side payments from poor countries.

Furthermore, according to Vogel, the way in which people act in the market is precisely how Hardin’s herdsmen brought about the tragedy of the commons (ibid., 201-02, 220-21). Leading up to the tragedy of the commons, each herdsman acted strategically in private to secure the means to their personal ends. Yet, when the effects of each herdsman’s actions aggregated, the consequence was universal ruin. For Hardin, it was coordinated action through ‘mutual coercion’ that *transformed the conditions of their acting* so that they weren’t forced into a strategic mode of engagement with each other. As Vogel puts it, mutual coercion served as a *guarantee*: if each herdsman agreed to practice restraint in their use of the commons, then they would each be guaranteed sustained access to the commons (ibid., 203). Without the

guarantee that others will do the same, personal sacrifices from one herdsman would just be capitalized upon by another. The herdsmen might really care about the conservation of the commons. But since they have not agreed to coordinate their behaviors, it is not rational for each herdsman to make personal sacrifices that will be inconsequential to the conservation of the commons. Because the context of the marketplace similarly offers us no such guarantee, it forces us into a mode of strategic action, where personal sacrifices for greater causes are not rational. E.g., it would not be rational for Vogel to quit his job *and* suffer the consequences of climate change. As such, the market-based policy valuation methods are insufficient for guarding against the tragedy of the commons because they are not apt to register the restraints that people would *respect* if they reasonably could.

Perhaps by this point we are beginning to see a theme. Vogel cannot reasonably practice restraint in his carbon emissions by biking to work because doing so would cost him his job. Hardin's herdsmen could not reasonably practice restraint of the common resource because doing so would cost an inconsequential sacrifice. So, both reasonably act for the sake of their personal ends without responding to external constraints. Thus, it should come as no surprise that the United States is incapable of responding to external constraints. Insofar as the United States evaluates its policy outcomes on their ability to mimic the private market, it's government will act in ways the mimic strategic action. If the United States had a constitutional form, it would be one of strategic action, which is a practical orientation toward the world, not of being *responsive*, but of merely pursuing one's own self-interest.

John Dryzek (1995) criticizes institutionalized forms of strategic action, specifically as expressed towards the natural environment. Although we cannot verbally communicate with

the environment, so as to establish a guarantee, we can be rationally communicative with the signals that result from our interaction with the natural world (ibid., 18, 21). Insofar as we are able to monitor and measure ecological processes, we can be responsive to them in ways that *respect* their limits, and in doing so, we can work to *ensure* the persistence of ecological processes. Such a political ability will require that institutions be designed so that they can be ‘sensitive to ecological signals’ (ibid., 24). Which means that our institutions need to render us as capable of *responding* to our environmental signals in a way that recognizes them as justifiable constraints. One reason, according to Val Plumwood, that market-based forms of policy justification cannot be responsive to environmental constraints is because those privileged with policy decision-making are epistemically ‘remote’ from environmental disturbances (1998: 621). This is because the market, as an ‘information system’, does not register the interests of a citizenry *equally* but according to “market power” (ibid.). Yet, materially marginalized groups are disproportionately affected by environmental harms and are often the first to be affected (ibid., 617, 620).⁴³ Thus, so long as the United States registers the interests of its citizens *à la* market behavior, it will not be able to *know* where these ecological constraints lie, much less respond to them.

In conclusion, market-based notions of ‘just’ and ‘right’ are constraining the United States’ ability to be responsive to external constraints, of *any* kind. Fulfilling humanitarian obligations is just as infeasible as appropriately responding to the climate crisis. This is because market-based forms of policy justification are apt to favor policy outcomes that reflect people’s

⁴³ For more on how vulnerability to environmental harms is intimately connected to classism and racism, see Schlosberg (2007).

private ends, and not their *wider* and *longer-term* values. Consequently, market-based forms of policy justification are apt to favor policy outcomes to promote the private interests of its citizenry, rendering *other-regarding* policy outcomes near to impossible.

Section 4

I hoped to have shown how market-based notion of ‘just’ and ‘right’ function as soft feasibility constraints on the actions of the United States. However, these notions are merely a contingent institutional mechanism for being responsive to the common interest of the citizenry. As such, they should be properly held in their place as constraints that we can work to change. Insofar as the chosen conception of the common interest, or the institutional means to its promotion, render a state incapable of respecting humanitarian constraints, they should be changed.⁴⁴ That is, even if the United States *qua* constitutional form cannot respond to humanitarian obligations, the United States *qua* political community *can* and *should*. The members of the United States are obliged to collectively work together to redefine the political ends that compose their common interest, and in doing so, they can change which substantive policy outcomes are justifiable. Because, again, it’s not necessarily the case that states already be united for justifiable reasons. In case we are to design our institutions so that they are able to adapt to their external environments, and thus be able to persist through time, there must be room for critical reflection.

⁴⁴ I am setting aside the issue of whether a well-functioning economy is a political end in *itself* for the United States, or whether a well-functioning economy serves as a proxy for the promotion of other political ends.

CHAPTER 3: POSSIBLE SOLUTIONS FOR ADAPTIVE INSTITUTIONAL DESIGN AND CULTURAL FEASIBILITY

One of the upshots of Chapter Two's analysis is that, conceptually speaking, a state's functions and behaviors cannot be entirely *independent*, nor entirely *dependent*, for its intelligibility on the common interest of its citizenry. I argued that this necessarily follows because states do not exist in a void, but rather within a context. Indigenous peoples have self-governed themselves on the precepts of *interdependency*, as we shall see below. Given this, and the apparent consistencies between Indigenous conceptions of institutions and my application of Aristotle's constitutional forms (as varying with respect to the chosen conception of the common interest), I would like to incorporate the political insights of indigenous knowledge which are relevant for understanding institutional adaptive capacities. As I will show in this Chapter, the Potawatomi Nation orients itself as a political community toward political ends which are, in themselves, interdependent. As such, the Potawatomi Nation has cultivated an adaptive institutional capacity to be responsive to their environment—which includes the ability to be responsive to ecological and social external constraints. Given this, and the fact that the United States lacks this capacity, there is an important opportunity for the United States government to forage reciprocal relations of knowledge exchange with Indigenous peoples. Yet, as we will see there are cultural feasibility constraints the are relevant to the success of such institutional forms of recognition.

Section 1

In this section, I will be concerned with making apparent the epistemic advantage that Indigenous peoples have in regards to forming judgments about how to respond quickly to

acute ecological changes. I'll begin by noting a brief history of the Indigenous social position, and then work to show how this position connects with epistemic advantages and disadvantages concerning adaptive management to climate change. The remainder of this section will be dedicated to expressing the Traditional Ecological Knowledge of the Potawatomi Nation, specifically as it concerns institutional capacities for collective continuance.

Section 1.1

Indigenous peoples occupy a particular social and ecological situation in the world, that is characterized by a relationship with a particular set of lands, which has persisted through many generations (Whyte 2020: 266; Tsosie 2010: 13). Societies identify *as* indigenous specifically with the intention of expressing their political and cultural self-determination (Whyte 2020: 266). A fundamental aspect of Indigenous peoples' political and cultural self-determination is their knowledge systems for protecting and adaptively managing the ecosystems that make possible their health, economy, and cultural vitality (ibid., 268). Indigenous peoples, at least in the area occupied by the United States today, have been practicing self-governance for centuries, and their governments predate the settlement of United States in 1776 by many generations (ibid., 267).

The colonial⁴⁵ invasion that began centuries ago in North America caused anthropogenic environmental changes that 'rapidly disrupted' the ecological conditions that were integral to the self-determination of Indigenous peoples, e.g., deforestation, pollution, modification of

⁴⁵ "Colonialism refers to a form of domination in which at least one society seeks to exploit some set of benefits believed to be found in the territory of one or more other societies, from farmland to precious minerals to labor. [...] Colonialism often paved the way for the expansion of capitalism, or an economic ideology based on wage labor that prioritizes growth in monetary profits for the owners of assets as the underlying focus, incentive, and purpose of major human social endeavors." (Whyte 2017: 154)

hydraulic cycles, extinction of species etc. (Whyte 2017: 154). Like any society, Indigenous peoples have historically had to adapt to changing conditions, but colonially-induced environmental harms altered the environment at such a 'rapid pace' that many Indigenous peoples became extremely vulnerable to harms that they were not acquainted with prior to colonization (ibid.). Given that part of the history of colonially-induced environmental harms includes swift displacement and relocation, Indigenous peoples comprehend their experience as "climate refugees" to be one of *déjà vu* (ibid., 155). That is to say, colonizers today, are just now beginning to be affected by the 'seismic waves of massive ecosystem transformation' that started over 500 years ago (ibid., 159). Indigenous studies understand climate change as 'intensified episode of colonialism', and as such, Indigenous peoples see their knowledge as holding important insights for 'successful adaption planning' in response to climate change (ibid., 157).

Lorraine Code has developed an epistemology that recognizes that knowers are always situated *somewhere*, and that complicated processes of judgement bring to bear a knower's 'specific history of experience.' (Alcoff 2007: 40) Given that most of our knowledge is produced through judgement calls, and less so from deductive reasoning, the 'specificity of situatedness' is relevant to a knower's ability to make judgments calls concerning coherency, consistency, relevance, plausibility, and credibility (ibid., 42). For Code, social situations are not necessarily epistemically advantageous or disadvantageous *per se*, but only in relation to specific subject matters. Thus, depending on the object of inquiry, a knower's epistemic situation may be advantageous or disadvantageous for coming to make accurate judgment calls (ibid., 43). Sarah Harding's epistemology expands upon Code's account by adding that 'epistemic situations are

correlated with group identity.’ (ibid., 47). Group identity makes an ‘epistemically relevant’ difference because group identity ‘marks a reliable pattern of difference in experience’ within specific communities (ibid., 45). Harding’s view is that members of oppressed groups have fewer reasons (on balance) to deceive themselves into believing that their social situation is the ‘best of all possible worlds’. Instead, members of oppressed groups have strong motivations to gain a ‘clear-eyed assessment’ of their position within society, e.g., the ability to accurately judge one’s potential allies and enemies (ibid., 44). Just as one’s general social situation does not necessarily confer an epistemic advantage, neither does one’s group identity. Rather, it is something that group identities tracks, which are patterns of experience and starting beliefs sets. More succinctly, it is one’s *core* beliefs that arise out of one’s group-based situatedness that serve to determine what sorts of epistemic advantages and disadvantages one will have when making judgement calls. As what we *already* know has a ‘privileged place’ in our determinations of coherency, consistency, plausibility, etc. Of course, most of our ‘epistemic commitments’ will be due to the accidents of birth, but our judgment calls in ‘no small part’ depend upon our core beliefs, which reflect our particular stand-point in society (ibid., 45).

What we can take from Code and Harding, here, is that Indigenous peoples have core beliefs and systematized patterns of life experience that are conducive to them making accurate judgment calls concerning what a community ought to do when ecological conditions rapidly change and thus threaten a community’s collective continuance. Given this, I would like to present the way in which Indigenous peoples of the Anishinaabe Intellectual Traditions understand their ability for collective continuance. I will be pulling primarily from the work of Kyle White, a citizens of the Potawatomi Nation, whom is also a Potawatomi scholar-activist

working on issues that Indigenous peoples face with regard to the United States government. What I hope to convey through Whyte's account of collective continuance is that the political community of the Potawatomi Nation is oriented toward a dynamic set of *interdependent* political ends, which make possible an *adaptive* and *persisting* collective continuance. I will not take it as my primary task to highlight the similarities between Aristotle's constitutional forms and the Potawatomi understanding of institutions, although it is worth noting that Whyte's account (as I've understood it) suggests that there are similarities between the two. Specifically, as it concerns the way in which political institutions are structured in accordance with the adopted ends, or *responsibilities*, of the community. A close analysis of these connections would be worth exploring at a later date.

Section 1.2

According to Kyle Whyte, *collective continuance* refers to a community's capacity to be *adaptive* in ways "sufficient for the livelihoods of its members", and to do so in ways that "avoid reasonably preventable harms", now and into the future (Whyte 2013: 518; Whyte 2018: 131) A community's ability for collective continuance is *consists* in an orientation of the many *relationships* that exist within a single community, as well as between neighboring communities (Whyte 2013: 519). These relationships are understood *through* the reciprocal responsibilities that are constitutive of being in a relationship. That is, one cannot be in a relationship without sharing in reciprocal responsibilities with the other party in the relationship (ibid.). Responsibilities are understood as "the reciprocal (though not necessarily equal) attitudes and patterns of behavior that are expected by and of various parties by virtue of the different roles that each may be understood to play in a relationship." (ibid.). Collective

continuance, then, is about maintaining the capacity to be *adaptive* with respect to “all those relationships and their corresponding responsibilities that facilitate the future flourishing of tribal livelihoods.” (Whyte 2013: 519)

A community’s adaptive capacity for collective continuance is facilitated by the way in which responsibilities are interdependently organized into a system (Whyte 2018: 131). Put another way, a community’s capacity for collective continuance consists in a ‘system of responsibilities’, which is a particular scheme of relationships and their corresponding role responsibilities (Whyte 2013: 519) The ecological challenges associated with climate change infringe upon the abilities of a community’s members to “perform the systems of responsibilities that are constitutive of collective continuance,” in addition to changing the context in which these responsibilities have their meaning (ibid., 520). In order for a community’s capacity for collective continuance to persist, the systems of responsibilities must be *adaptable*, while also ‘maintaining critical persisting responsibilities.’ (Whyte 2018: 132) In response to new issues, perhaps occurring because of displacement and relocation, an indigenous community will create new ‘emerging responsibilities’ that are innovative and adaptable (ibid.). Whyte argues that systems of responsibilities can only be both adaptable *and* persisting if the responsibilities are arranged in ways that foster interdependence (ibid.). The concept of ‘interdependence’ includes a sense of having *both* an identity with, and a responsibility for, the environment (ibid., 127). *Respect* is integral to taking responsibility for the environment, which is an acknowledgement of the agency and intelligence of nonhuman animals, as expressed in their own ‘ways of knowing’ (ibid.).

Traditional Ecological Knowledge (TEK), according to Whyte, ‘best refers’ to a persisting and adaptable system of responsibilities (Whyte 2013: 527). Particular ‘Kinship qualities’ of responsibilities have been developed over time to facilitate interdependence, and thereby promote collective continuance (Whyte 2018: 132). Kinship qualities are ‘dimensions of relationships’ like *trust, consentuality, transparency, reciprocity, and accountability*. A relationship is a Kinship relationship in virtue of having a Kinship quality (Whyte 2020: 267-68). The Kinship qualities of relationships and responsibilities that make up collective continuance *are what make possible* the interdependency between human institutions and ecosystems (Whyte 2018: 133). More specifically, they make possible a persisting and adaptive interdependency that facilitates both the emerging and persisting responsibilities (ibid.). Because these qualities support an adaptive capacity for self-determination, they can help societies make it through severe hardship (ibid.). For instance, Kincentric relationship qualities are understood by indigenous peoples to be ‘necessary for taking urgent action that is just’ within and across societies (Whyte 2009: 2). Not only this, but without these qualities, ‘swift responses to urgent problems’ like climate change will eventually become *impossible* to carry out (ibid., 3).

An important Kinship quality that facilitates interdependency is *reciprocity*. A relationship is said to have a quality of reciprocity when each party to the relationship, i.e., relative or friend, “believes the others to be in a long-term gift-receiving and gift-giving relationship.” (Whyte 2020: 268) Indigenous peoples share in reciprocal relations with nonhuman animals, as species and ecological processes provide many ‘gifts’ to humans, e.g., supplies, food, clean water, forest health, and cultural identity; and “Indigenous persons feel

compelled to honor these gifts and take actions that, in turn, give gifts back to those species in terms of habitat protection.” (ibid., 272) The sharing of nutrients and energy is a *vital* mutual responsibility, by which the members of an ecosystem are reciprocally giving and receiving gifts in a way that facilitates an interdependent collective continuance (ibid., 268).

Institutions have a vital role to play in facilitating the persisting and emerging systems of responsibilities that constitute collective continuance (Whyte 2013: 525). The activities performed by an institution are referred to as the *position*, and the goal of an institutional activity is referred to as the *function* (ibid.). For instance, there are various activities, such as ‘integrative planning’ and ‘general partnership’, which compose the position or posture of the institution, but the function of these activities is to support an *interdependent* collective continuance (ibid.). This means, then, that institutional activities must foster and protect the systems of responsibilities, and the qualities that facilitate their interdependence. When institutions amend existing responsibilities, they do so to improve the adaptability and persistence of the system (ibid.). Crucial to the amending process is a reflection on the “appropriateness of certain aspects of a system of responsibilities in light of how the environment is changing,” which includes changes in the interactions with other societies (ibid.)

In conclusion, collective continuances, as being composed of a system of responsibilities, which are each, by definition, *reciprocal*, are apt to be responsive to ecological disruptions, and act in ways that are other-regarding. The ends of the Potawatomi Nation are *themselves* relational, and other-regarding. As such, their chosen conception of the common interest allows for a high degree of flexibility and responsiveness to external constraints. This is a capacity that is *both* lacking in the United States government *and* crucial to responding to

external constraints, whether they be humanitarian obligations or ecological limits. Thus, the United States government should use this as an opportunity to engage with Indigenous peoples, and to *learn* something from them that is essential to the collective continuance of the United States, as well as the rest of the global community.

Section 2

Indigenous peoples have core beliefs and systematized patterns of life experience that are conducive to making accurate judgment calls concerning what a community ought to do when ecological conditions rapidly change and thus threaten a community's collective continuance. Not only this, but Indigenous peoples are willing to share their knowledge with their colonizers (Whyte 2020: 267). Unfortunately, federal agencies have yet to develop the institutional capacity to facilitate a reciprocal relation of knowledge exchange with Indigenous peoples. This is particularly the case at the international level. I consider this to be a constraint on our ability to appropriately respond to climate change. Though, as I will argue, cultural motivations for the psychological misrecognition of Indigenous peoples are intimately connected with their lack of institutional recognition. Specifically, I will argue that forms of psychological recognition are *soft* feasibility constraints to procedural recognition of Indigenous knowledge, and thus soft feasibility constraints to solving the problem of climate change in an ameliorative fashion.

Section 2.1

According to Rebecca Tsosie, Indigenous peoples are not procedurally *recognized* in international climate negotiations *as* separate governments, with their own interests. Instead, native people must assert their interests and their claims through nongovernmental

organizations (2010: 11-12). Consequently, when Brazil exercises its “right to develop” it may do so and consistently grant mining and timber operations in the ancestral lands of Indigenous peoples of the Amazon Rainforest (ibid. 13). Indigenous peoples’ interests are ‘largely subsumed’ within the aggregated cost-benefit-analysis of the nation-state. Tsosie speaks to the costs that such methods of policy valuation are apt to miss (ibid. 11):

The costs that we are missing include the countless examples of ongoing and wholesale destruction of people's cultural groups including the destruction of their traditional lifeways and the knowledge that comes from living on those lands in a particular way over so many generations.

These are the costs that market signals are not sensitive to because, as mentioned, marginalized groups possess relatively less “market power” and thus are not likely to have their interests registered (Plumwood 1998: 621). Given that the United States and Canada already recognize indigenous peoples through a government-to-government relation, Tsosie identifies them as better positioned to take international leadership in an effort to respect the interests of Indigenous peoples in international climate negotiations (ibid.). But this effort should not, and *cannot*, be successfully undertaken if done in isolation from cultural and psychological forms of misrecognition.

According to David Schlosberg, the state is usually seen as the ‘neutral arbiter’ for distributive justice arrangements, but a state cannot distribute recognition as it does other goods (ibid.,23). Simply put, recognition is a *relational* quality between members of a society, not a fungible and finite good to be shared equally. As such, a state can set an *example* of recognizing a socially misrecognized group through institutional means (e.g., the right to vote, antidiscrimination laws, etc.), but recognition crucially depends on the relationships and social norms that are embedded in cultural and symbolic realms of society (ibid.). Schlosberg suggests

that an appropriate point of focus is on the “direct link between a lack of respect and recognition, and a decline in a person’s membership and participation in the greater community including the political institutional order.” (ibid., 26) If you are not recognized as an equal, then you will not be given an opportunity to participate as one; and if you do not participate, then your interests and your knowledge cannot be recognized (ibid.). Racism and classism are forms of misrecognition and they create real ‘structural obstacles to political participation.’ (ibid., 65) In an effort to alleviate both social oppression and distributional inequity, institutional forms of procedural recognition must work alongside ameliorative efforts in cultural and psychological realms (ibid., 27).

Demands for procedural *and* psychological recognition have surely been made by Indigenous communities. According to Steve Vanderheiden (2016: 323-24), such calls were made at the National People of Color Environmental Leadership Summit (1991). There, participants codified *Seventeen Principles of Environmental Justice*. These principles went well beyond issues of equitable distribution of environmental hazards. They also demanded the “right to *participate* as equal partners at every level of decision-making,” and that environmental policies “be based on *mutual respect* and justice for all peoples” (emphasis mine). In response to such calls, there have been a number of protocols that have been instrumental for environmental justice groups at achieving their recognition goals (Schlosberg 2007: 68). In addition to being included in traditional policy decision-making processes, there have been an increasing amount of participatory research collaborations, by which scientists and members of marginalized groups work together through “all the phases of research, from the inception of the research questions and the study design, to the collection of the data,

monitoring of ethical concerns, and the interpretation of the study results.” (Shepard et. al 2002; as cited in Schlosberg 2007: 70) But undergirding these protocols is a request for fully informed *consent* to political determinations that will have an effect on marginalized communities. This requires that information be fully disclosed, or *transparent*, especially in regard to potential and predictable harms and risks resulting from proposed policies (Schlosberg 2007: 69). Thus, an interpersonal form of *respect* is part-and-parcel-to the practices and protocols that work to achieve institutional forms of recognition.

Crucially, the protocols just mentioned are making possible an important exchange of epistemic resources between federal and indigenous governments. Which is a good thing insofar as Indigenous studies are well-equipped to inform accurate judgement calls about how to quickly adapt, in both a sustainable and ameliorative fashion, to climate change. But this is only good *for* Indigenous peoples if this is a reciprocal relationship of gift-giving and gift-receiving. Insofar as we cannot make possible this sort of political arrangement—where Indigenous peoples are recognized as equals, yet also acknowledged for their epistemic advantage on understanding these issues—then that should be regarded as a feasibility constraint on solving the problem to climate change. Namely, a *cultural* feasibility constraint, consisting in the beliefs and positive moralities of a society (Gilabert and Lawford-Smith 2012: 818-820).

Section 3

In what remains of this Chapter, I will work to identify and defend a cultural feasibility constraint that is inhibiting the procedural recognition of Indigenous peoples, and thus the ability of federal agencies to form reciprocal relations of knowledge exchange with Indigenous

people in climate policy decision-making. In order to make this case, I will pull from the work of Charles Mills, Miranda Fricker and Gaile Pohlhaus. Where I see these accounts converging is on an inability of dominantly situated knowers to correct for an identity prejudice that preempts them from conferring an appropriate amount of epistemic credibility onto the testimony of marginalized situated knowers.

Section 3.1

The cognitive phenomena that Charles Mills is interested in is what he terms *white ignorance*, and it is caused by social-structural, and not physico-biological, mechanisms. One of Charles Mills' aims is to revise social epistemology by incorporating the historicity of racism and showing *how* this historical context has important normative implications for social epistemology.⁴⁶ One of these implications is that white people have a vested interest in the continued domination of non-white people, and this group-interest motivates a cognitive dysfunction, namely a group-based irrationality and self-deception (ibid., 34-35). Mills is specifically responding to Alvin Goldman's social epistemology, which he criticizes for assuming that society is 'inclusive and harmonious', and that cases of racism and sexism are anomalies (ibid., 16). Mills thinks that racism and sexism are the norm, and so Goldman's social epistemology is not able to account for group-based motivations for cognitive irrationality (ibid., 17). White ignorance, then, is a cognitive dysfunction that arises out of vested interest in white-domination; and it manifests as an inability to critically reflect and perceive systemic discrimination, the tendency to forget race subjugation and discrimination that occurred in the

⁴⁶ Historical contexts are relevant to the justification requirement on knowledge. The justification requirement is precisely what makes knowledge production a normative practice (Kim 1988: 383)

past, and a hostility toward non-white testimony (ibid., 24). Thus, white ignorance “is best thought of as a cognitive tendency—an inclination, a doxastic disposition—which is *not* insuperable.” (ibid., 23, emphasis mine)

Mills also thought that if society was structured by relations of domination and subordination, then our conceptual resources would reflect the biases of the dominant groups (ibid., 25). He explains how the concepts, categories and language, that we use to express and store our perceptions, are *socially* mediated, and thus reflect society’s structural patterns and processes. Specifically, we ‘interpret’ data through a ‘grid of the concepts’ (ibid., 25), and these concepts inherit their meaning from the collective memory and collective narrative (ibid., 24).⁴⁷ Perceptual inference, then, involves a ‘tacit appeal’ to social memory, which is founded on the testimony of others (ibid.). For instance, the meaning of the word ‘savage’, historically includes a notion of inequality, and it has and continues to be used to justify imperialism (ibid., 27). When one attributes the concept ‘savage’ one is conceptually committed to attributing the status of *inequality*, since one’s placement in this category analytically indicates one’s inequality. As Mills explains (ibid.):

Even a cognizer with no antipathy or prejudice toward Native Americans will be cognitively disabled trying to establish truths about them insofar as such a category and its associated presuppositions will tend to force his conclusions in a certain direction... insofar as “savage” already has embedded in it a narrative, a set of assumptions about innate inferiority, which will preclude certain possibilities.

What is more, insofar as one’s position in an oppressed category is the *reason* for conferring a ‘credibility deficit’ toward their testimony, then the speaker experiences, what Miranda Fricker

⁴⁷ For a congenial account of social-semantic externalism see Burge (1986).

calls, *testimonial injustice* (2007: 28) The primary harm of testimonial injustice is being limited in one's 'capacity as a knower' and in being excluded from participating in the 'spread of knowledge' (ibid., 15, 28, 162). Fricker maintains that one's capacity as a knower and ability to disseminate knowledge is constitutive of human value, and thus testimonial injustice constitutes an intrinsic moral harm (ibid., 4).⁴⁸ We can actively work to correct for identity prejudices by being reflective of the *possibility* of identity prejudice when assessing a speaker's epistemic credibility (ibid., 17).

Gaile Pohlhaus argues that cases of epistemic harm, which Fricker identifies as being due to a testimonial injustice, are also due to a *willful hermeneutical ignorance*, whereby dominantly situated knowers dismiss or refuse to 'learn to use the epistemic resources developed from marginalized situatedness.' (2012: 722) That is, part of the reason *why* certain groups are afforded a credibility deficit, owing to an identity prejudice, is because of dominantly situated knowers' repeated failure to take serious interest in the experienced world of marginalized knowers (ibid., 725, 731). One's lack of understanding of marginalized situatedness plays a role in one's ability to judge the coherency and plausibility of the claims made by marginalized knowers. Pohlhaus argues that, although one's 'situatedness cannot be transcended,' dominantly situated knowers can 'calibrate dialectically' with members of marginalized groups (ibid. 721, 729), and she states the prerequisite conditions for establishing a cooperative interdependence between differently situated knowers. These are: 1) epistemic resources must be developed by marginalized knowers; 2) dominated knowers must 'trust

⁴⁸ For an account on how knowledge might function integrally in the promotion of human value, see (Haslanger 1999).

those persons' who have developed these resources; and 3) dominated knowers must take 'interest in learning to use those resources.' (ibid., 731) The second requirement suggests a point at which a credibility deficit, due to *identity prejudice*, may preempt the ability of dominantly situated knowers from forming a collaborative dialectic with marginalized knowers.⁴⁹

Pohlhaus claims that it is *in principle* possible for dominantly situated knowers to learn to use the epistemic resources developed by marginalized groups (ibid., 721-722). However, if it is *not possible* for dominantly situated knowers to do this through *perceptual inference*, then they will have to rely on the *testimony* of marginalized situated knowers. In which case, it will be through the testimony of marginalized knowers that dominantly situated knowers are able to calibrate their conceptual resources with the experiences of marginalized situatedness. Consequently, in order for dominantly situated knowers to develop a "truly cooperative interdependent relation with marginalized knowers" (ibid., 733), they would have to *first* correct for an identity prejudice. If they fail to correct for this prejudice, then they will not be able to learn to use the epistemic resources developed by marginalized knowers, and thus will be more inclined to confer a credibility deficit to the testimony of marginalized knowers.

Perhaps, though, it is more reasonable to suggest that dominantly situated knowers can, in a *diachronic* sense, come to perceptually infer the phenomena available to marginalized

⁴⁹ Contextually speaking, this means that I am disagreeing with Pohlhaus, and defending Fricker: Fricker argues that testimonial injustice is due to an identity prejudice, whereas Pohlhaus thinks that there is more to cases of testimonial injustice, namely a willful hermeneutical ignorance; whereby dominantly situated knowers fail to take serious interest in the experience of marginalized situatedness. On Pohlhaus' account, testimonial injustice is secondary to a willful hermeneutical ignorance: testimonial injustice is a consequence of a willful hermeneutical ignorance. But, here, I am saying that Pohlhaus' explanatory account of testimonial injustice doesn't explain more than Fricker's because ultimately testimonial injustice is due to a credibility deficit owing to an epistemically arbitrary identity prejudice.

knowers, but they need to rely upon the testimony of marginalized knowers to get them to this point. This suggestion is consistent with Mills' account of perceptual inferences (2007:24):

Inference from perception involves as overt or tacit appeal to memory, which will not be merely individual but social. As such, it will be founded on testimony *and ultimately on the perceptions and conceptions of others*.⁵⁰

Thus, the concepts *with which* dominantly situated knowers draw such inferences, will favor certain conclusions which are biased against the experiences of marginalized situatedness. That is, insofar as the meaning of these concepts reflects the history of social suppression and domination of marginalized knowers, dominantly situated knowers are apt to draw perceptual inferences that are constrained by a history of testimonial injustice. Marginalized knowers were not given an equal opportunity to contribute to the conceptual repertoire of their cultural milieu, and thus the conceptual framework through which a collaborative dialectic will be mediated, must be scrutinized and reflected upon prior to such dialectics occurring. The very possibility of marginalized situated knowers to transmit their perceptions *through* testimony, and thus contribute to the collective enterprise of conceptual resources, will be preempted if dominantly situated knowers do not *first* correct for an identity prejudice. Because it is possible for dominantly situated knowers to critically reflect and correct for an identity prejudice when listening to the testimony of marginalized knowers, it is at least *diachronically* possible for the meaning of our concepts to reflect the perceptions and conceptions of marginalized knowers, and thus for dominantly situated knowers to come to perceptually infer the same phenomena available to marginalized knowers.

⁵⁰ Emphasis mine

In conclusion, we can see how even the *capacity* to develop and share epistemic resources across domains of epistemic situatedness relies crucially on agents taking it upon themselves to critically reflect and *correct for* potential testimonial injustice. Although Pohlhaus' account does highlight another important and culpable dimension of willful ignorance—namely a refusal to take serious interest in the experiences of marginalized situated knowers—this culpability seems to depend on the inability of dominantly situated knowers to correct for an identity prejudice. Given this, a crucial dimension of any putative effort to incorporate marginalized situated knowers into the traditional policy decision-making process will require that dominantly situated knowers take it upon themselves to correct for an identity prejudice that may preempt them from dialectically calibrating their pool of epistemic resources with those of marginalized knowers. This is what I understand to be a “soft” cultural feasibility constraint on our ability to form reciprocal relations of knowledge exchange with Indigenous peoples, and thus to appropriately respond to the problem of climate change. But it is one that we can work to overcome on an interpersonal level.

Section 4

I hope that we have arrived at a better position in terms of understanding why it is the case that the world's most powerful nation-states have refused to agree to just terms for climate change mitigation protocols. As I worked to show in Chapter One, if nation-states do not develop the institutional capacities to appropriately respond to external constraints, namely obligations to humanitarian justice, then we will likely settle on policy outcomes that render less powerful nation-states, and future generations, highly vulnerable to both climate change and international mitigation efforts toward climate change abatement. Much of my

focus in Chapter Two was dedicated to understanding why it is the case that International Paretianism is a soft feasibility constraint for the United States. Insofar as the political community of the United States can work to change this feasibility constraint, they are obliged to do so. In other words, International Paretianism does *not* excuse the inability of nation-states to respect humanitarian obligations. To assume otherwise, would (at the very least) require making an unfounded assumption that International Paretianism is a hard feasibility constraint. In case my conceptual argument in Chapter Two did not suffice for sufficient reason to think this assumption is wrong, I hope that my exegesis of the Potawatomi Nation's self-governance served as sufficient evidence for thinking so. Indigenous peoples and Traditional Ecological Knowledge represent invaluable tools at this time, which can assist us in developing institutional capacities that are responsive to external constraints, and thus that are other-regarding. While there are cultural and psychological barriers to creating reciprocal relations of knowledge exchange with Indigenous peoples at the procedural level of policy decision-making, these are barriers that we can overcome. The removal of these cultural feasibility constraints will require that *individuals* critically reflect on their own tendencies for perpetuating epistemically and morally arbitrary identity prejudices against Indigenous peoples.

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