

Reply to my Critics: Justifying the Fair Share Argument

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Abstract

In an earlier article I argued that individuals are obligated not to exceed their fair share of emissions entitlements, that many exceed their fair share at present and thus ought to reduce emissions in their responsibility as far as can reasonably be demanded. The peer commentators raised various insightful and pressing concerns, but the following objections are particularly important: It was argued that the fair share argument is insufficiently justified, that it is incoherent, that it would result in more far-reaching duties than acknowledged by me, that it is unable to provide a clear account of individual duties, and that duties to reduce individual emissions are not Kantian imperfect duties. This reply aims at clarifying the fair share argument and at addressing the major challenges.

Introduction

Together with eight peer comments, *Ethics, Policy & Environment* published an article in which I argue that individuals have moral duties to reduce GHG emissions in their responsibility (vol. 17, issue 1). I am very thankful for the numerous important issues raised by the commentators and for their profound thoughts on how to challenge and/or improve my arguments. In this reply, I cannot deal with all of them. Rather, I will focus on major critique and on important points that I did not state with sufficient clarity.

A few clarifying remarks

By way of starting, I would like to clarify two issues. First, Raymond Anthony says that my fair share argument (FSA) “underappreciates systemic ‘moral corruption’ at the heart of climate change”, that “[j]ustice requires collective action” and that “state and federal governments have duties to rein in ‘intergenerational buck-passing’”, i.e. duties to implement policies that safeguard far-reaching

mitigation (2014, p. 43). Similarly, Patrick Frierson argues that “taking Kant’s political theory even more seriously (particularly 6:350), one might reasonably argue that in addition to imperfect personal duties to reduce emissions, one has a duty to promote a political end, a just international political order within which improper levels of GHG emissions would be a clear and enforceable perfect duty” (2014, p. 37). I explicitly endorse both positions (Baatz, 2014, pp. 1, 14, 15). Moreover, I am quite concerned about moral corruption myself. Elsewhere, I argue that investing substantial resources into researching Solar Radiation Management (SRM) might well increase moral corruption and that this is a worrying conclusion (Baatz, 2016).

In the article, I argue that individuals must reduce emissions “as far as can reasonably be demanded” and further say that this at minimum includes all emission generating activities “that bear no moral weight” (Baatz, 2014, p. 15). I assumed that from the way I reason in the article it is clear that my approach is *not* based on a subjectivist account of what can reasonably be demanded. I acknowledge that it was not clear (cf. Duus-Otterström, 2014, p. 29) and given that my stance on this issue substantially influences what individuals are obliged to do, I will briefly highlight some background assumptions without defending them.

I endorse the view that moral norms are *intersubjectively valid*. This view is based on a discursivist theory of ethics (Habermas, 1994) and justice (Forst, 2012) respectively, among others. What morality can reasonably demand from a person is to be determined in an intersubjective process of reasoning. Ideally, the outcome of this process are intersubjectively justified entitlements of individuals. The view denies that moral truth exists in the sense of empirical truth. Still, it agrees with those presupposing the existence of moral truth that it makes sense to refer to morally right and wrong action in an objective and rational way. The view implies that it will be much harder to justify the sunny Sunday joy ride than a car trip that is required to see close relatives or friends. Some claims concerning the hardship of certain mitigation actions will turn out to be exaggerated or these actions will prove to be less burdensome on closer scrutiny (in detail cf. Raterman, 2012, p. 433). Still, the view takes into account that a given action might be (much) more demanding for some than for

others: getting rid of one's car will be less costly (in a broad sense) for the urban single than for the rural family.

In the article, I do not say more on what can reasonably be demanded for, on the one hand, the details of the situation an individual is in matter and, on the other hand, determining this on a general level of analysis requires a theory of its own, I suspect.¹

The Fair Share Argument

Paul Bowman argues that I fail to justify the FSA (2014, p. 25). I agree and will offer a more elaborated defense in the following. There are two modifications compared to the article and these should be explicitly mentioned at the outset: First, rather than arguing that exceeding one's fair share is wrong *because* it contributes to a harmful activity, I now say that emitting is wrong if exceeding one's fair share *and* contributing to a harmful activity. This modification implies a second one, namely that one's fair share characterizes the emissions one is entitled to *all things considered*. In the EPE paper I argued that dependence on carbon-intensive structures might mean that one is entitled to emit more than one's fair share. I now argue that such dependence might mean that one's fair share increases compared to a more ideal situation in which it is possible, say, to realize one's entitlements with less emissions.

The FSA stipulates that an individual A's GHG emissions are morally wrong if:

- 1) A exceeds her fair share of emissions entitlements, and
- 2) by emitting, A contributes to a harmful activity.

I will, first, briefly explain each criterion (each being a necessary condition for emissions to be wrong), and, second, argue why meeting the criteria is sufficient for emissions to be wrong.²

¹ My general view on this is close to Ty Raterman's who also underlines the importance of routine: "much of what once seemed to me quite taxing is now practically second nature. I have settled into a routine, and my obligation is to strive further and challenge myself anew. I am not failing egregiously, but there is more I can do without sacrificing my well-being" (2012, p. 433–433). Unfortunately, I came across his excellent article only after the publication of mine.

Criterion 1) implies that every individual is entitled to a fair share of the emissions budget. This should include all those emissions that are required to live a decent life. As said above, this can mean that fair shares a quite large for some, making the emissions budget larger than it should be with respect to avoiding dangerous climate change. I will return to this issue below.

Criterion 2) refers to taking part in an activity the *aggregate consequences* of which are harmful, irrespective of whether or not *my individual contribution* causes any harm. If A contributes to X this seems to imply that A's action has some causal role in bringing X about. At the same time, though, A's action may not change the outcome. This thought can be backed up by the so called NESS-Theory (necessary element of a sufficient set) saying that "C is a causal condition for E, if C is a necessary element of a sufficient set of conditions for E" (Braham & van Hees, 2012, p. 613). Sabine Hohl illustrates this in the following way: three factories A, B, and C face the choice of emitting two units of poison into a river and four units or more will lead to a poisoning (2013, pp. 116–117). In this case, two emitting factories form a sufficient set of conditions for a poisoning of the river. A single factory is a necessary element of two sufficient sets, A for example is a necessary element of the sufficient set 'A and B each emit two units' and of the sufficient set 'A and C each emit two units'. In an overdetermination case (all three factories emit two units), no factory is a necessary element of the actually realized poisoning, for two factories would have been sufficient to realize the outcome. In order to make a causal contribution, however, it suffices for each factory to be a necessary element of a set of conditions that on its own would have been sufficient (ibid.). NESS is able to explain the intuition that each factory has a moral reason to reduce its emissions even though viewed in isolation none of them causes harm. It does so by stipulating that the emissions of each factory are causally relevant for the harmful consequences of aggregate emissions. Put differently, each factory contributes to a harmful activity.³

² For a more detailed explanation and justification cf. Voget-Kleschin and Baatz (2016).

³ Note that climate change is not analogous to an overdetermination case. The simple example is used to illustrate NESS and the claim that an action makes a causal contribution without necessarily changing the outcome.

The explanations so far may provoke the question why both criteria are needed. In a nutshell, criterion 1) is needed to ensure that individuals are morally entitled to some emissions even if they thereby contribute to a harmful activity (under present conditions, all emissions contribute to a harmful activity because all GHG molecules contribute to rising atmospheric GHG concentrations making climate change worse). And criterion 2) is needed in order to exclude cases in which the total budget is not exceeded because exceedance of fair shares by some is countered by a (voluntary) shortfall of others. As long as the total emissions budget is not exceeded, emitting more than one's fair share is unproblematic for no negative consequences occur.⁴

Intuitively, each criterion identifies morally problematic behavior. Exceeding one's fair share (criterion 1) means that one uses more of a scarce resource than one is entitled to. On the one hand, the fact that many use more than their fair share causes harm. On the other hand, this overuse also means that one "uses up what others need" (Shue 2014, p. 331); that is to say, by exceeding one's fair share one might deprive others of legitimate emission entitlements they would otherwise have got. This is a likely consequence if a cap on emissions is introduced or lowered due to past and/or present overuse of the atmospheric sink capacity for GHG. The lower emissions cap implies that some will get fewer emissions entitlements than they would otherwise, i.e. without past/present overuse, have got. And regarding criterion 2, contributing to an activity which leads to serious harm seems to be something that is at least *pro tanto* wrong, especially if it is assumed that the contribution can be avoided (see also Raterman 2012, 424).

In sum, then, just exceeding one's fair share or just contributing to a harmful activity is justifiable in certain situations. However, if both criteria are met, emitting is morally wrong. Therefore, under present circumstances, one ought to reduce emissions to one's fair share.

⁴ This is based on the assumption that the exceedance of fair shares does not cause the shortfall (for such a case, cf. below). It might also be legitimate to exceed my fair share if others' shortfall is forced; for instance, if I cannot do anything about the coercive shortfall or try to end it.

Specified in this way, the FSA is able to respond to different challenges raised by Bowman (2014). First, he asked why staying within one's fair share is not morally objectionable given that it still contributes to a harmful activity (ibid., p. 26)? In the article, I argued that in the current non-ideal situation I ought to minimize my contribution to a harmful activity and, therefore, it might very well be morally objectionable to not lower emissions below what would be my fair share in an ideal situation if this "can reasonably be demanded". Given that I do not argue anymore that exceeding one's fair share is wrong *because* it contributes to a harmful activity, the challenge is avoided anyway. Bowman further argued that "in order to determine whether and the extent to which emitting is wrong, we need to know whether a person's emissions do or might make a difference to the extent of climate change-related harm" (2014, p. 26). As just said, we do not need to know whether individual emissions actually make a difference.⁵ Finally, Bowman criticizes that I fail "to show that the principles [contained in the FSA], when applied to a person's exceeding her fair allocation of emissions, entail both that (1) it is *prima facie* wrong to emit more than one's fair share, and also that (2) exceeding one's fair share is not so wrong as to outweigh one's interest in having a decent life" (ibid., p. 25). The challenge is avoided by incorporating the emissions required in order to lead a decent life into one's fair share (cf. above). This allows for saying that, once aggregate emissions cause harm, one never ought to exceed one's fair share. Although I believe that the modified and specified FSA also addresses this last challenge, it nevertheless raises the more general issue why one's interest in a decent live should outweigh others' entitlements not to be harmed by climate change. Adequately treating this and related challenges requires a few remarks on the distinction between ideal and non-ideal justice to which I now turn.

⁵ Although not required in order to defend the FSA, one can also challenge the claim that individual emissions, viewed in isolation, do not change the outcome in a morally relevant way; and successfully doing so would further support the argument for individual duties to cut GHG emissions. Mark Budolfson points out that my argument questioning the moral negligibility of an individual's emissions based on John Nolt's calculation (2011) moves too quick (2014, p. 33). I agree – and offer a more elaborated line of reasoning in Baatz & Voegt-Kleschin (2015).

Ideal vs. non-ideal justice

If there is a general awareness what individual fair shares are and if everyone were to comply with the duty not to exceed one's fair share (for reasons of brevity, in the following I will refer to the 'fair share duty'), or – more realistically – if institutions are in place that limit total emissions output, overall emissions would not exceed the earth's GHG sink capacity. In this *ideal situation*, individuals are duty-bound to stick to their fair share or to comply with existing institutions if these are in place. If neither do individuals voluntarily stick to their fair share nor do enforcing institutions exist, we are faced with a *non-ideal situation*. At present, this non-ideal situation is characterized by high atmospheric GHG levels already causing climatic changes and by societal structures that often make low-carbon lifestyles difficult to achieve. In order to change this, individuals are obligated to promote yet non-existing institutions – as is widely agreed upon in the discourse on individual duties. In addition, however, they are also obligated to reduce emissions to their fair share. The reason is that institutions that set fair share duties aside by appropriately limiting total emissions do not (yet) exist. Also note that individual fair shares and corresponding duties are epistemologically prior to institutions in that they constitute a pre-condition to assess the fairness of institutional settings.⁶

Due to the current highly non-ideal situation, current emissions would have to fall radically in order to not exceed the earth's absorptive capacity anymore, which implies very low fair shares. In the article, I argued that emissions reductions can become unreasonably burdensome (the same claim can be found in Raterman, 2012, p. 432). The flipside of this thought is that individuals are entitled to a certain amount of emissions as expressed by the FSA.

I do not take this view to be controversial, but it might be controversial how I spelled out this idea by (superficially) arguing that individuals must not be asked to give up a decent life. In particular, faced

⁶ For a more detailed argument why duties to promote institutions and fair share duties are complementary cf. Baatz & Voget-Kleschin (2016). There, we distinguish between four different levels of ideality/non-ideality located on an 'ideal/non-ideal continuum'. The endpoints of this continuum are marked by a very ideal situation in which there is wide-spread compliance with fair share duties (and thus no need for institutions), and a very non-ideal situation in which there is wide-spread non-compliance with fair share duties and no institutions in place. Here, I omit the less ideal and the less non-ideal level in order to avoid unnecessary complexity.

with the possibility of very dangerous climate change, I might have given too much weight to the interest of GHG-emitters in a decent life. If societal structures do not allow for low carbon lifestyles, the important question is raised “where this leaves the overarching aim of avoiding dangerous climate change” (Duus-Otterström, 2014, p. 28)? This non-ideal situation causes an *entitlement trade-off* between the decent life of emitters of GHG and potential victims of climate change, as correctly identified by Duus-Otterström: “From an objective point of view, the interests in not being killed or severely harmed as a result of climate change seem weightier than the interests in engaging in inessential activities that drive climate change; and so morality should demand that the latter interests be frustrated, and not the former. Recall that the natural response against this conclusion—that people should not be expected to take a huge personal burden to deliver a benefit that does not matter—is not the response Baatz wants to make. His general view is that over-emitting is quite immoral. But then one wonders why it demands so little” (Duus-Otterström, 2014, pp. 29).

The modification and specification introduced above hopefully provide a clearer account. I now say that over-emitting is quite immoral indeed, but that one does not exceed one’s fair share as long as these emissions are required to life a decent life. The FSA does not commit me to the position that individuals must give up everything until the point where their level of well-being is on par with the victims of climate change. But, fair shares might be defined too generously given that the interest in survival seems weightier than the interest in a decent life as highlighted by Duus-Otterström. I will make three remarks on this.

First, although it is perhaps wrong for a third person to sacrifice A’s life rather sacrificing B’s decent life (assuming that both would survive in the latter case), this is different from claiming that B ought to give up her decent life in order to rescue A from death. Clearly, from the moral point of view B’s sacrifice would be a good thing and we would have to thank B for her courage but this does not necessarily imply that this sacrifice is a moral duty and that B acts blameworthy if not acting accordingly. I think that there are limits to what people ought to do even if there is wide-spread suffering around them (cf. also Cripps, 2013, pp. 155–157). In the background of my approach

operates a rights-based view according to which there are only few extraordinary circumstances in which sacrificing one's key entitlements is a moral demand – and contributing to dangerous climate change is not sufficient to do so. This is different from a utilitarian perspective that demands making sacrifices as long as the benefits created in this way outweigh the sacrifice.

It might also be worth reiterating that emitting GHG is not equal to killing someone. Emitting GHG means contributing to an overall very harmful activity to which billions contribute as well. I agree with Budolfson that what can be asked of individuals in highly non-ideal situations should be based on some proportionality constraint (2014, p. 32).⁷ I do not see that using such a proportionality constraint in order to specify the limits of demandingness and fair shares respectively is alien to or contradicts some parts of the FSA.

Second, my article aimed at making a convincing case that duties to reduce individual GHG emissions exist and that these duties are present under certain ideal as well as non-ideal situations (contra Sinnott-Armstrong, 2005; Aufrecht, 2011; Maltais, 2013, and others). The focus of my paper was on justifying that, at minimum, many present day individuals have these duties *despite* societal structures making far-reaching mitigation difficult to achieve. If it is shown that my approach results in more far-reaching duties I have no problem to endorse this position.

Third, although Duus-Otterström might be right in that taking seriously the core convictions on which my approach rests will result in more far-reaching duties than suggested in the article, I disagree that these suggestions “demand so little”. It is important to stress that in a real-world sense they ask for quite a lot. There are many different ways in which wealthy individuals around the world could realize important entitlements, such as working, seeing relatives and friends, travelling, etc., in less carbon-intensive ways. Doing so would be inconvenient in most cases rather than being unreasonably burdensome. That is, as far as I can judge, even on my permissive account many

⁷ Naturally, much more could be said on this. I cannot provide a convincing defense of this particular threshold conception within the space available here. My brief remarks solely aim at making clear the logic and result of my overall approach.

individuals blatantly fail to live up to their moral responsibilities, perhaps including myself and others contributing to this debate. For those who take morality seriously this is a devastating judgment.

Moreover, I would like to stress that although I argue that duties to reduce emissions might be less far-reaching in our non-ideal world (cf. also Budolfson, 2014) this does not mean that an individual's duties are less burdensome. In contrast, even moderate reductions may turn out to be very demanding due to carbon-intensive structures. In addition, individuals have substantial duties to promote institutions. Actually doing all of this goes far beyond what most individuals I know achieve.

What an individual's fair share is, all things considered, thus is very hard to determine and heavily depends on circumstances. This brings me to a further point of critique. Stijn Neuteleers argued that my "lifestyle-oriented approach" is inferior to an "institution-oriented approach"⁸ for the latter provides a comparatively clear picture of individual environmental duties by avoiding the many problems that one encounters when trying to specify fair shares (2014, pp. 22–23). His claim is unconvincing though. First, I do not endorse a lifestyle-oriented instead of an institution-oriented approach. I agree with Neuteleers concerning the institution-oriented duties he identifies in his excellent article on the topic (2010). My argument is supposed to demonstrate that in a non-ideal situation there is an additional type of duty (in detail cf. Baatz & Voget-Kleschin 2015). I thus think that the distinction between an institution-oriented and a lifestyle-oriented approach suggests an implausible dichotomy.

Second, and more important perhaps, in our current non-ideal situation an institution-oriented approach faces similar problems of determining the limits of demandingness. Neuteleers agrees that individuals must promote institutions if missing and it is widely agreed that in the case of climate change institutions are urgently needed. If so, individuals must invest a lot in promotional activities in order to end this highly unjust situation. To what extent they must do so is not clear at all. Neuteleers argument gains plausibility from comparing 'fair share duties' in the absence of proper institutions

⁸ Within an "institution-oriented approach" individual duties are limited to promoting and complying with institutions (Neuteleers, 2010, p. 503).

with 'institutional duties' when these are established. In the latter situation, however, there are no fair share duties and in the former situation (no proper institutions) there are possibly far-reaching promotional duties and determining their limit is beset by all those problems Neuteleers correctly identifies with respect to fair share duties (cf. *ibid.*).

Kantian imperfect duties?

Christian Seidel (2014) and Patrick Frierson (2014) criticize my argument that duties to reduce individual GHG emissions can be characterized as Kantian imperfect duties. Their criticism is warranted. What I probably should have said is that duties to reduce emission are imperfect (or: less perfect) in the sense that from an external perspective it is impossible to say when the duty has been discharged (cf. Baatz 2014, p. 11), rather than being *Kantian* imperfect duties. In the remainder of this reply, I will provide some brief clarifications based on Seidel's and Frierson's comments.

Seidel notes three dissimilarities between duties to reduce emissions and "the prime example for an imperfect duty, the duty of beneficence" (Seidel, p. 14) and Frierson points out that imperfect duties are duties to adopt a maxim (or an end) rather than to perform specific acts (Frierson, p. 36). According to Hill, the latter is the key criterion in distinguishing imperfect from perfect duties (1971; also Baron, 1987).

Hill argues that, to varying degrees, moral principles allow latitude in the following senses: "(a) room for judgment in deciding whether or not a given principle is relevant to a particular situation, and (b) freedom to choose various ways of satisfying a principle in a particular situation [...] [and] (c) freedom to choose to do x or not on a given occasion, as one pleases, even though one knows that x is the sort of act that falls under the principle, provided that one is ready to perform acts of that sort on some other occasions" (1971, p. 61). Wide imperfect duties, as the duty of beneficence, allow for all three kinds of latitude. There are, however, more narrow imperfect duties that allow for considerable latitude concerning (a) and (b) but not concerning (c), such as the duty to respect others (6: 449-450). Given that every principle allows for some latitude of the sorts (a) and (b), Hill argues that imperfect

duties differ from perfect duties in that, first, imperfect duties grant (much) more latitude concerning (a) and (b) and, second, perfect duties are not duties to adopt a maxim but duties to always (or never) act in certain ways (1971, p. 62).

Given this, one might argue that individual emissions reductions *follow* from the narrow imperfect duty to adopt a certain maxim. A suitable one might be ‘to reduce one’s contribution to an activity that harms others’. This maxim requires different actions, among others to reduce one’s emissions. In contrast to a perfect duty always to (not) act in certain ways, there is latitude in deciding whether the maxim is relevant and how to satisfy it in a given situation. In our current highly non-ideal world it might conflict with other maxims on many occasions and the difficult task is to figure out which of the maxims ought to be adopted from the moral point of view. Also, the maxim may be overruled by a perfect duty or demand actions that conflict with reducing emissions. However, this maxim only emerges under non-ideal circumstances for, ideally, one ought not to contribute to a harmful activity – rather than just reducing one’s contribution. Kant’s moral theory is an ideal theory; it is thus debatable whether there is such a thing as non-ideal maxims.

Anyway, if changing the focus from general duties ‘to reduce one’s emissions’ to duties ‘not to exceed one’s fair share of emissions entitlements’ these might be perfect duties *sensu* Kant. Given that fair shares encompass all emissions that one is entitled to all things considered (cf. the modification introduced above), one never ought to exceed one’s fair share. The duty leaves less room regarding a) and b) compared to the above maxim and no room regarding c). Therefore, if it makes sense within Kant’s moral theory to refer to duties not to exceed one’s fair share, these are *Kantian* perfect duties. If it does not, these duties are perfect in the simple sense that one never ought to act otherwise.

Note that although these remarks considerably modify my original claim regarding Kantian imperfect duties, they do not change the normative conclusion what individuals ought to do. To me, what matters is the latter, not the former.

By way of concluding, I would like to mention that Neuteleers rightly notes that I leave aside the important issue of offsetting (2014, p. 23). Given the nature of the problem, offsetting is, in principle, legitimate in order to reduce one's net emissions (Broome 2012). However, the devil is in the details. To arrive at meaningful conclusion whether off-setting is legitimate indeed, one has to discuss a host of complicated empirical and normative questions, e.g. concerning the verification of actual emissions reductions (Caney, 2010), concerning the so called 'low-hanging fruits', and so forth. Since addressing these issues requires a paper of its own, the topic was left out deliberately.

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