Global political processes and the Paris Agreement: a case of advancement or retreat of climate justice?

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Abstract

The paper examines the global political process and outcomes operating within the climate change regime and asks if the Paris Agreement leads to an advancement of, or a retreat from, climate justice concerns with a particular focus on the dimensions of procedural justice within the new voluntarist framework of Nationally Determined Contributions (NDCs). The paper begins by mapping the landscape of the negotiation process leading to the Paris Agreement and the patterns of interaction and engagement operating within this space that influenced the global political outcomes. It will explore how this represents a distinctive shift in content and approach with the global climate governance regime. Taking the UN Framework Convention for Climate Change (UNFCCC) and the Conference of Party (COP) as the primary spaces for global negotiation and decision making, and utilising methods of content and normative analysis, the paper will critically evaluate the Paris Conference of Parties (COP 21) negotiation process and Outcome Agreement (2016). Utilising a climate justice analytical lens, it will then examine the opportunities and barriers for advancing climate justice outcomes within the contemporary global political architecture of bottom-up NDCs. It will argue that the shift from top-down narrow government funded command and control approaches represents an unprecedented opportunity to mainstream the transition towards a sustainable future across states and communities. However, in the absence of appropriate institutional arrangements to secure participation, transparency, and fairness at multiple scales, it is also fraught with risks that could multiple unjust effects for the most vulnerable and marginalised populations. The inclusion of a Loss and Damage clause in the Paris Agreement marks an important advancement concerning recognition of harms that are already arising and will arise in the future. However, what this implies advancing just outcomes for affected populations is under-determined; adaptation measures remain insufficient and uncertain; and collective commitments to mitigation actions are incomplete, incoherent, and vague pointing to possible multiplier effects of emerging climate injustices.

Key words: *Climate justice; global political processes; climate change governance regime; the Paris Agreement*

Introduction

National pathways to the Paris Climate Change Agreement (2015), and the years of international negotiation leading up to this, are marked by patterns of acceptance and resistance, almost in equal measure. The scientific consensus regarding the anthropogenic impacts on the natural environment and the practical implications of this in the form of changing climates, disappearing eco-systems and species, and wide-scale human and non-human impacts to the planet (IPCC 2014) seem to have largely been accepted by the majority of leaders in political, industry and business, religious, and governance communities. However, what this implies for citizens of distinct states, industry and businesses, political and religious leaders is the subject of deep dispute, conflict, and resistance on multiple scales. Indeed, overarching – or underlying – normative questions related to who ought to do what for whom and when have been central to the negotiations within the international climate change regime, and rest at the heart of some of the tensions of the new framework for action outlined in the Paris Agreement.

Although these questions remain unresolved, - and indeed the Agreement has come under direct attack from political leaders in one of the largest emitting nations[i] - the Paris COP21 negotiation process and outcomes marks a distinct shift within the climate change governance regime. It has moved from a formal intergovernmental legally binding agreement (Kyoto Protocol) with prescribed targets for emissions reductions, rights and responsibilities allocations across states with the most highly industrialised developed states carrying the responsibility to drive mitigation and adaptation actions – including financial, technical and capacity building support to developing states -, to what has been called a 'bottom-up' innovative approach based on a system where all states (Parties) will voluntarily develop and oversee their individual nationally determined contributions (NDCs).

This is a shift that brings fresh opportunities. It offers the potential to mitigate deeply entrenched blockages to climate action concerning political and funding constraints, asymmetric ex-ante knowledge, and preference requirements of top-down narrow government funded approaches. However, it also generates a range of new risks for current and future generations and the non-human environment in the distinctly non-ideal circumstances of the global climate change governance regime. Responsibility for action has been disbursed across a much wider range of actors, but it remains unclear how the rights and interests of all those effected by changing climates can be respected and protected in this new landscape of voluntariness.

That climate change gives rise to considerations of justice is, as Henry Shue (2014) has said, 'unavoidable'. Hume's circumstances of justice (1978, 1975) that include conditions of moderate scarcity of resources (see, for example, Rockstrom et al 2009), limited altruism, and mutual disinterestedness, can be found to underpin the climate change negotiations. From the signing of the Kyoto Protocol in 1997 to the emergence of the Paris Agreement in December 2015, the most powerful and highest emitting state members of the United

Nations Framework Convention for Climate Change (UNFCCC) Conference of Parties (COP) had systematically failed to collectively demonstrate the required level of impartiality, magnanimity, and vision necessary to ensure that human and non-human development and well-being can be protected and respected in an age of climate change. The unrelenting use and abuse of the biological, physical and chemical components of the earth's environment by human beings without sufficient regard for the reach and consequences of such actions has left us with some of the most pressing problems ever faced by the human species (IPCC 2013). Further, there is disconnect between those who are at greatest risk of harm and those benefiting from this activity. Thus, justice – a distinctly relational and human concept and practice - is necessary to navigate and arbitrate between conflicting interests. In addition to altering emissions-dependent development paths and unsustainable production and consumption patterns, principles of justice, as scholars have argued for decades, (see for example Caney, 2014, Shue 2014, , Gardiner 2011, Jamieson 2008), are required to guide in the institutional arrangements to manage the distribution of the benefits and burdens, rights and responsibilities, fairly and equitably. Justice, very broadly speaking, refers to each person getting what s/he needs, deserves or is entitled to. Fairness, again broadly speaking, refers to judgements and evaluations based on some explicit and agreed criteria of impartiality (Murphy, 2011).

However, as decades of rigorous scholarship across disciplines from philosophy, to the humanities and the sciences can attest, conceptualisations of justice and fairness, and the most appropriate principles of justice to guide action in this space, are highly contested (Gardiner, Caney, Jamison and Shue 2010, Okereke and Coventry, 2016; Holland 2017). The realm of climate change is marked by distinctly non-ideal circumstances, and thus, or so I will argue, lends itself most appropriately to a non-idealised theorising about justice. The circumstances are described as non-ideal in the sense all parties will not and do not take responsibility for their actions and fulfil their duties (privatising their gains and socialising the externalities); there is a distinct lack of formal coercive institutions in place to enforce principles of justice at the international scale; the circumstances of climate change are marked by practical and scientific uncertainty regarding the temporal and spatial effects of climate change and the causal connections between particular emissions and particular events (IPCC, 2013); the outcomes of adaptation interventions aimed at local scale and sectoral level resilience building can be uncertain (Arndt and Tarp, 2017; Paavola and Adger, 2006); and the negotiations are marked by a plurality of reasonable (and sometimes unreasonable) values, justifications and motivations that are possibly irreconcilable and incompatible. This then points to the need for alternative, non-idealised approaches if progress is to be achieved.

By non-ideal theorising about justice, I will draw upon and expand the idea of justice articulated by Amartya Sen. Sen has developed what he describes as a comparative method which he claims allows for social comparisons between 'more' and 'less' just conditions within and between actual societies, giving adequate consideration to actual circumstances.

His task is 'to investigate realisation-based comparisons that focus on the advancement or retreat of justice' (Sen 2009: 8). This, he describes broadly, is the method of 'consequential evaluation' (Sen 2000). Sen argues that 'judgements about justice have to take on board the task of accommodating different kinds of reasons and evaluative concerns' (Sen 2009: 395). Thus, the outcomes do not aim towards ideal ends of full and complete justice, but to more modest ends that are more just, rather than less just. Such an approach, I suggest, offers a promising pathway to evaluating the processes employed at COP21 which culminated in the Paris Agreement, which, at the time of writing, has been ratified by 160 parties out of 187 Parties to the Convention (UNFCCC, 2017); and also the outcome from this process.

This paper addresses the following question: does the process and outcome of the Paris Agreement lead to an advancement of or a retreat from climate justice concerns. Scholarly contributions from the disciplines of political philosophy and social science have focused heavily, according to Simon Caney (2014), on the distributive - or burden-sharing - elements of climate justice over the last three decades. This is also evident in the practice-based advocacy space of Climate Justice where organisations such as the Mary Robinson Foundation-Climate Justice, have actively advocated for the equitable distribution of the benefits and burdens of climate change globally (2011). However, there are other important dimensions of justice that are relevant to explore in addressing this question, and indeed that have emerged through the process of negotiating a new climate agreement. Firstly, the processes of negotiation and agreement at the Paris COP21 marked a distinct shift away from traditional Climate Change regime treaty negotiations from top down, command-control model evident in the Kyoto Protocol to a bottom up approach whereby states determine their commitments for themselves and commit to reporting these back into the international climate governance architecture to be shared with all others. This prompts normative questions relating to procedural justice and principles that now guide the climate change governance regime. How is fairness secured, protected and progressed? Secondly, regarding the outcomes of COP21 there are normative questions related to the status and possibility of remedy and rectificatory justice in light of the recognition of Loss and Damage within the Paris Agreement. Thirdly, in relation to the distribution of responsibility for mitigation and adaptation measures, does the voluntary NDC framework of the Paris Agreement point to more of less just outcomes? Overall, with the introduction of new elements and instruments, what are the implications of the Paris Agreement for harm-avoidance (or forward looking) justice and burden sharing (or backward looking / historical claims) justice, both of which, according to Simon Caney (2014) are essential elements of a theory of justice in an age of climate change?

The following will begin with an overview of the Paris Agreement and how this represents a distinctive shift in content and approach. It will then examine the global political processes that informed COP21 and the Paris Agreement and ethically evaluate the process of negotiation and the outcomes of COP 21 and the Paris Agreement from a climate justice perspective with a particular focus on procedural justice. More specifically, it examines both

the process and institutional structures that supported the attainment of the Agreement and the framework that has emerged to guide action. It will utilise a blend of methods including content analysis and analytical methods of testing for clarity, coherence, consistency and logic drawn from the discipline of normative political theory to enable a comparative consequential evaluation of both the processes and outcomes.

Pathway to Paris

Political processes and activities that culminated in the Paris Agreement at COP21, in December 2015, were ongoing for many years before this event (Lyster, 2017). Following what many regarded as the failure to reach agreement on a legally binding protocol and instrument to replace the Kyoto Protocol at COP15 (Copenhagen, 2009), it seemed clear to those involved, and observers, that a new approach would be required to facilitate the development of an international agreement. At COP17 (2011) in Durban, South Africa, the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established with a mandate to develop 'A protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties, which is to be completed no later than 2015 in order for it to be adopted at the twenty-first session of the Conference of the Parties (COP) and for it to come into effect and be implemented from 2020.' (UNFCCC decision 1/CP.17). ADP invited submissions from all Parties and delivered a series of draft negotiating texts throughout 2015. Efforts were made to ensure that the process of negotiation was open, transparent and inclusive. The draft documents were made publically available through the UNFCCC open access website and a wide range of groups – state and non-state – were invited to provide input, review, comment, advise and engage with the early drafts of the key negotiating texts.

Entering into 2015 there was a strong division of positions between the negotiating parties. As Santos notes, there were 'normative deadlocks over responsibilities to be undertaken, the definition of the efforts to be made, the sharing of the massive costs to address the problem, the distribution of rights to emit, and types of agents that should bear the burdens' (Santos 2017: 1). A key area of conflict concerned the underlying equity principle of 'Common but differentiated responsibilities' (CBDR) as outlined in the Convention (1992) and activated through the Kyoto protocol. Negotiating teams divided mainly[ii] along traditional lines with developed states, representing highly industrialised high income states, emphasising the 'common responsibility' aspect of this principle and sought for all states to share in the division of responsibilities. Developing states, on the other hand, entered the negotiations with a strong focus on the 'differentiated responsibility' aspect of the principle and sought exemption from obligations that might interfere with their economic development pathways, and further sought bolder leadership and greater action from developed states in the form of emissions-reduction activity, financial supports for adaptation and mitigation, and increased delivery of technical and capacity building supports (Okereke and Coventry, 2016: 837). The issue of historical responsibility is widely

reported to have been one of the key sticking points leading to the failure to secure a Global Agreement at earlier Conference of Party summits. Thus, before the conference a shift was already evident whereby the language of negotiation moved from the principle of "Common but differentiated responsibility" to the language of "Common but differentiated responsibility and respective capabilities in the light of different national circumstances". This linguistic elaboration effectively disbursed and displaced responsibility from those historically responsible for emitting the highest amounts of Greenhouse Gases, to all Parties (Okereke and Coventry 2016). It also solidified future state-based justifications for inaction and behavioural change avoidance. However, it can be argued that this turn dissolved a key political blockage in the negotiations and enabled Parties to move forward to seek new grounds for consensus and agreement.

COP21 and the Negotiation Process.
The process of negotiation and compromise moved the ADP's Geneva negotiating text (February 2015) which included over 54,494 words and contained 103 points of consideration including numerous options, to the final agreement of 29 Articles expressed in 7380 words (December 2015), with the most substantive changes emerging in the final days and hours of the negotiating process in Paris (Dimitrov, 2016; Weisser and Muller-Mahn, 2017). The Agreement enshrines the principle of voluntary action (indeed the term 'voluntary' appears 5 times in the core text, (Articles 6 and 9) in relation to the content and ownership of the NDC approach, and financing – thus, applying to the core areas of mitigation, adaption, and financing the transition. It is also important to note that the Agreement should be read in conjunction with the accompanying Decision 1/CP.21 as there is additional critical information contained in this document that sheds important light on the implications and practical intent of the Agreement. For example, Article 8 of the Agreement addresses the matter of loss and damage, outlining how Parties will engage to deepen understandings, support and action on losses and damages arising as a consequence of climate change that have not been and will not – or indeed cannot - be addressed through adaptation measures. Recognition of such harms is a critical element to enable compensation and remedy. However, Paragraph 51 of the Decisions document clearly states that the Conference "agrees that Article 8 of the Agreement does not involve or provide a basis for any liability or compensation" (1/CP.21: 8). Thus, although the Agreement itself appears to represent an advancement of justice, it can be argued that the Decision document equally appears to counter and neutralise this advancement.

For some the negotiating process was evidence of advanced skills of diplomacy – 'a political success in climate negotiations and traditional state diplomacy' (Dimitrov, Radoslac S, 2016: 1). For others it represented a 'post-democratic turn' where reasoning and evaluation was privatised and hidden with public declarations of progress stage managed to mask the lack of democratic deliberation in the emerging agreement (Weisser and Muller-Mahn 2017: 802). Indeed according to Okereke and Conventry (2016:838) 'the emerging regime that saw

a new global agreement reached in Paris in 2015 remains dogged by a widely acknowledged lack of fair and effective participation by developing countries and non-state actors'. But how do we navigate and evaluate between these opposing accounts? How might we examine the justness of the institutional processes and procedures through which decisions were made?

In addressing this question it may be helpful to distinguish between the horizontal and vertical features of the institutional processes and procedures, as well as the agent-based and structural features of the process. This requires consideration of a range of matters including transparency and openness, fairness and public legitimacy[iii], inclusive participation and recognition[iv] and epistemic justice[v] as important dimensions of procedurally just processes.[vi]

Transparency and openness

Both advocates and critics of the Paris Agreement and the COP21negotiation process agree that firstly, the UNFCCC is often praised for its transparent and inclusive approach. Indeed, the work of the ADP over the years since its inception in 2011 points to a commitment to transparent and inclusive engagement. However, both also agree that the two weeks of the Paris Summit, and the most critical and contentious negotiations took place behind closed doors with select parties only. In their damning critique of the Paris Process, Weisser and Muller-Mahn (2017) argue that,

> "if the stages are the places where the international political economy of climate change is publically legitimised and defended, the backrooms constitute the spaces in which it is subject to heavy dispute. These disputes are often not solved by the better argument but by strategies and tactics that push vested interests. These interests are kept in the shadows on purpose as they would delegitimate a whole range of states and their agendas in environmental governance" (2017, 811).

For advocates of the summit and Agreement, these points are not disputed, and this particular strategy of intentionally privatising decision-making and reducing the space for public deliberation and democratic participation has been lauded by some as a master-class in diplomacy (Dimitrov 2016). Access for state and non-state actors was managed and restricted. In the second week governments were issued with a limited number of passes for enter into negotiating spaces and civil society actors excluded fully from these negotiating spaces, with selected sessions being televised over the course of the summit. Indeed the final days of the summit were completely given over to private consultation with no official negotiation taking place. Radolslav Dimitrov, a government representative in the process, argues that "the Paris outcome was made possible by the heavy use of secrecy….. secrecy is common in diplomacy, but the French finessed it to a new level…." (2016: 6).

Thus, the final negotiation and decision-making stages were clearly not transparent or open. Some will argue that this is a necessary element to enable agreement to emerge; others will argue that this marks a post-democratic turn that put politics and public deliberation aside in favour of private interest and technocratic management. From a normative perspective it would seem that the exclusive and exclusionary nature of the process, whereby those affected by the decisions and outcomes were not granted access to the deliberation process and debates, and thus would not meet the minimal requirements of a procedurally just process. Opportunities to engage in public reasoning and debate were intentionally closed and silenced; the interests of the negotiating partners were not made explicit – indeed the process itself seems to represent an example of the complete opposite of ideal conditions to reach a fair and legitimate Agreement[vii]; it is unclear if those affected by the decisions were included or excluded from the negotiating chambers, and if and how their positions and interests were considered. Rather than attempting to seek some level of impartiality and distance from vested interests, it appears as though self-interest (states interests and corporate interests) were central to the process.

However, the infrastructure and procedures established to oversee the development, delivery and sharing of the NDCs does at least provide some indication that the framework now in place to guide climate action and decision making can facilitate greater transparency and openness. The majority of Parties submitted intentional nationally determined contributions before the event and continued to submit these after the conference. The Agreement requires Parties to commit to review NDCs on a recurring basis and to seek to "progress" their ambition over time. Thus, each Party has an opportunity to view what others are (or are not) doing and achieving over the coming years. The data that should emerge from this process, assuming this is sufficiently robust, can thus be utilised to inform future negotiations and actions.

Fairness and public legitimacy

In spite of the findings of opaqueness and exclusion in the process of negotiation outlined above, it is also important to reflect on whether the content of Agreement has produced an institutional approach can advance justice and lead to improved outcomes for all concerned. It seems clear that the Paris Agreement reflects and reinforces national sovereignty and the state as the locus of all action and decision making within the climate change governance regime. Rather than moving towards a more globalised institutional architecture to enforce legally binding actions and arbitrate between competing national interests, the Nationally Determined Contributions framework on the basis of voluntary cooperation repositions the role of the state and unilateral action as the most appropriate framework for decision making and action.

From the perspective of public legitimacy, it seems reasonable to assume that states are then expected to justify their plans to their local population and manage the implementation of projects and programmes at the local level. Rather than a post-

democratic turn, it could be argued that the new approach creates the conditions for significantly more, rather than less, democratic deliberation and input from a wider range of actors and agents within each state. Further, it can be argued that this approach recognises the problem-solving capacities of states and supports states in navigating their situated contexts to make the most appropriate and decisions on a range of national issues. Depending on how state sovereignty is defined (Ronzoni, 2012) and actualised, this may not necessary lead to less justice outcomes. Thus, it can be argued that although the initial process was exclusive and non-democratic, the outcome Agreement creates the conditions for states to take a wider, expansive, inclusionary approach to resolve problems with and for its populations. Rather than operating towards a set of externally prescribed rules, goals and targets, a bottom up and voluntary approach allows flexibility to respond to problems as they arise. It can create the possibilities of setting more ambitious and far reaching targets, and include a whole-of-society approach to planning and development. It can be argued that this is the most appropriate approach in non-ideal complex circumstances marked by a high degree of uncertainty and unwillingness to act on the part of some member states.

However, for many, this shift to reinforcing national sovereignty and state-centred deliberation will be a cause of concern. In the absence of mechanisms for enforcement, it is not clear that this approach can protect fairness and promote just outcomes either within individual states or between states. The retreat to voluntariness implies that states cannot be sanctioned for failing to deliver on their commitments. States cannot be forced (rather, they will be encouraged) to increase their commitments to reflect their responsibilities for the outcomes of their action. They cannot be held accountable for the effects of their actions over temporal and spatial distances. States cannot be coerced into a rights-based approach to their development planning and practices (De Shutter, 2011), thus hiding the multiscalar dimensions of climate justice and injustices that already evident in relation to land rights and indigenous communities for example (Fairhead, Leech and Scoones, 2012; Leech, Fairhead and Fraser 2012). These are real-world practical concerns for already vulnerable and historically marginalised communities and populations. Finally, this framework does not reflect and include the range of relevant state, non-state, and trans-state actors. From a normative perspective, it is not clear that appropriate and sufficiently just institutions are currently in place to respect, protect and fulfil the rights of all, not to oversee the fair distribution of benefits and burdens across populations and borders. Indeed, given contemporary levels of inequality not only between states but within states (both developed and developing), it seems unlikely that this new approach will lead to 'more just' rather than 'less just' outcomes. The Agreement does nothing to address the unequal starting positions of the Parties and there is no commit to take actions to level the international playing field, or address the structural features that produce and sustainable the contemporay global political economy. Further, given the absence of clear justice and/or equity indicators in the monitoring mechanisms (see for example Article 6 and 15)

proposed, there is no certainty that some vulnerable and marginalised communities will not be worse off under the new arrangements.

Inclusive participation: recognition, epistemic and remedial justice

In the opening paragraphs of the Agreement (2016), it is stated that all Parties acknowledge

> 'that climate change is a common concern of humankind, Parties ***should***, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity' [emphasis added by the author].

Thus, the acknowledgement that climate change is a common concern of all humankind would then suggest a whole-of-society approach to participation in climate action planning for mitigation and adaptation is instrumentally necessary to secure successful outcomes and intrinsically essential in democratic and consent-based contexts. However, as the term 'should' rather than 'shall' is used in this acknowledgement, it is not clear if States are obliged to extend consideration to all in their actions, or are merely encouraged to do so. Further, a cursory glance at the specific Articles entailed in the Agreement does not point to encouraging signs of inclusive participation. For example, the term gender is mentioned only twice (Article 7, in relation to adaptation, and Article 11, in relation to capacity building); indigenous populations are only mentioned once (Article 7); and human rights and justice do not feature in any of the substantive articles of the text. Indeed, reference to 'Climate Justice' is noted as an important concept 'for some' when taking action on climate change. Earlier drafts of the negotiating texts included substantially stronger commitments to justice, rights, and the protection and promotion of the interests of marginalised populations. However, these were not selected for inclusion in the final text.

Further, during the process of negotiating the text, it would seem fair to suggest that the interests of all those affected by climate change should feature in considerations on climate action and planning. Although all states were represented and had a vote on the final Agreement, counting the number of those with voting rights is not a sufficient indicator of participation. Rather, recognition of all agents as agents in equal standing; evidence that voices have not only been raised, but actually listened to and heard is also a necessary element of an epistemically inclusive process, in particular in non-ideal circumstances that lack a clear framework and enforcement mechanisms for addressing conflict and non-or-mal performance. Further, the voices of non-state and transnational actors were distinctly missing from the negotiations and are absent in the Agreement.

The evolution of the Article on 'Loss and Damage', which can be examined through an analysis of the draft documents from February 2016 through to the final agreement, provides an interesting example of voices being raised, but not being heard. The language of 'Loss and Damage' was first given institutional status and recognition at COP 19 (2013) when the Warsaw International Mechanism on Loss and Damage was established. Loss and damage is defined as 'the actual and/or potential manifestation of impacts associated with climate change in developing countries that negatively affect human and natural systems' (UNFCCC, 2012, para 2).The purpose of this mechanism is share information on risk management; determine ways in which loss and damage can be measured; and examine financial implications and technical support needs (McShane, 2017).

On entering into negotiations, there seemed to be consensus within developed states that they would not accept any basis for liability and compensation for historical responsibilities (Lyster 2017; Okereke, C. and Coventry, 2016). Numerous options were examined through the negotiating stages, including an option not to reference loss and damage at all. However, developing countries and the most vulnerable states, including low-income least developed and small island developing states, insisted that 'loss and damage' must be recognised within the agreement. Thus, Article 8 emerged as part of the final Agreement. However, as mentioned above, the accompanying Decisions document (1.CP/17) removed the possibility of using this as a basis for remedial justice, the attribution of liability, or the possibility of compensation. The voices of the most vulnerable populations were raised, but it is not at all clear that they were understood, accepted or listened to in any substantive sense.

A similar argument can be made in the case of the Scientific Community. In spite of rigorous research, multiple scenario testing, and rich sets of recommendations, the final Agreement does not contain mandatory targets for global average temperature increases. Article two "aims to strengthen the global response to climate change" (Art. 2.1). Actions will include efforts to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial" (Article 2.1.(a)). It seems to be clear that the scientific findings, and key recommendations are acknowledged, but binding mandatory action has not followed.

Although both of these examples point to a low commitment to the advancement of just outcomes, in both of these cases it is important to note that the inclusion of a 'loss and damage' clause, and the inclusion of the objective to take action to hold the increase in temperatures to below 2°C (albeit through voluntary NDCs), are both important advancements in the lexicon of the climate governance regime. Both of these clauses, if given serious attention and action, could lead to more just outcomes for affected populations. As such, I suggest these developments are to be welcomed as advances in climate justice.

Conclusion

Overall, this analysis finds that the process of developing the Paris Agreement represents some advancements in broadening the basis of participation and engagement with the possibility for a whole-of society bottom up engagement thus recognising the agency and autonomy of all those affect by changing climates. However, absence of transparent and open deliberation and public reasoning during the negotiating sessions, and the intentional and repetitive use of secrecy and exclusion during the final decision making stages during the Paris Conerence point to a retreat from basic principles for procedural fairness. The agreement that emerged also represents both advances in some areas, but a significant retreat in other areas that on balance, indicate a long path ahead for seeking institutions and principles of distributive and remedial justice. Further, without principles of procedural justice to guide in public deliberations, reasoning and evaluation, the framework that has emerged from Paris risks introducing new forms of injustice in the form of epistemic exclusion of those most exposed to the harmful effects of climate change – internationally and intergenerationally. However, In spite of these concerns, the paper argues that the Paris Agreement represents a small step towards more just rather than less just outcomes, albeit imperfect and incomplete. This is to be welcomed and protected in the contemporary non-ideal circumstances of the global climate change regime.

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[i] I refer here to the US President Trump's decision to withdraw the US from the Paris Agreement, 2017. (https://www.theguardian.com/us-news/video/2017/jun/01/donald-trump-us-will-withdraw-from-paris-agreement-video)

[ii] For a wider overview of the negotiating positions see Dimitrov, Radoslav S. (2016), and Okereke, C. and Coventry, 2016

[iii] See Sen 2009 and O'Neill 2000, 2001, on public and practical reasoning and methods of evaluation and justification

[iv] See Irish Marion Young's work on recognition, justice and difference

[v] See Miranda Fricker, 2007, on the demands of epistemic justice

[vi] See contributions on different accounts of procedural justice in the climate change space in Holland, 2017; Paavola and Adger, 2006; Schlosberg et al. 2017.

[vii] see for example, Rawls's Original Position and the use of the Veil of Ignorance; or Habermas's Ideal Speech Situation