

# Libertarianism and Climate Ethics

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## Libertarianism and Climate Ethics

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**This is an excerpt from *Global Climate Justice: Theory and Practice*. You can download the book free of charge from E-International Relations.**

Libertarians defend a minimal state that is only allowed to raise taxes in order to secure and enforce individual rights. Any redistributive aim is regarded as illegitimate. Therefore, it is not common to apply a libertarian political theory to justify policies to mitigate or adapt to climate change, since they require large-scale redistribution and taxation. Nevertheless, my aim in this chapter is to outline a libertarian framework for reflecting on the moral problem of human-caused climate change. I distinguish between two potential libertarian arguments. First, climate change can be said to threaten many rights of currently living and future individuals. The libertarian argument of rights- infringements defends governmental actions to prevent and to exact compensation for conduct that leads to a violation of individual rights. I discuss the conditions under which this line of reasoning justifies governmental actions to mitigate climate change. I conclude, however, that the argument is based on highly restrictive assumptions. Second, the use of the atmosphere can be considered an appropriation of a commonly owned resource. Applying a Lockean theory of just appropriation, libertarianism allows for climate action by showing that the excessive use of the atmosphere is unjust. Therefore, there is a case for justified redistribution. I defend this latter argument as more promising alternative to justify duties of climate change prevention. I will outline the normative implications by distinguishing them from those of more common accounts to climate justice.

### Introduction

Commonly, libertarians are defendants of a minimal state that is only allowed to impose taxes in order to secure basic rights from interference. The primary purpose of the state is to protect and enforce strong property rights. Any redistributive aim, e.g., social insurance or the provision of public goods is considered illegitimate. The outcome of free markets based on decentralized, voluntary interactions is defended as a just allocation of income and capital among members of society. Yet, the transition from a fossil-fuel-based economy to a carbon-neutral economy cannot be achieved without enormous governmental investments in infrastructure, subsidies of sustainable energy use, and legal interventions in the free market, such as taxes, regulations and prohibitions. Thus, a libertarian political theory seems incapable of justifying policies to combat climate change.

As I will show, however, libertarian political philosophy does provide a highly interesting approach to thinking about the problem of climate change. It has two potential arguments that may support climate action. The first argument is based on an understanding of excessive greenhouse gas (GHG) emissions and the causation of global warming as a transgression of rights (Zwolinski 2014; Torpman 2021). The rights of those negatively affected by climate change are violated by those who emit too much. According to libertarian thought, rights-encroachments can only be justified if rights-holders consent to them. However, climate change leads to severe rights-violations of individuals who cannot possibly consent – such as children and future generations. Thus, a libertarian might argue that polluters have a duty to either drastically reduce emissions or to pay compensation for their rights- infringements.

The second argument draws on the idea of justified acquisition of property, which is a core element of any libertarian defence of strong property rights. Libertarians often refer to John Locke's (1980, chap. V) account of just appropriation, which maintains that property is generated not only by the use of one's labour and just transfer, but

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also the use and acquisition of external goods that, originally, do not belong to any individual. Worldly resources, Locke assumes, belong to everyone alike. He therefore introduces restrictions to the legitimate appropriation of these resources (the so-called 'provisos'). People, he concedes, are only allowed to use resources up to a point at which there is still 'enough, and as good, left' for others to use. Now, climate change can be construed as a problem of unjust acquisition of property. The atmosphere can be considered a finite resource and the current overuse of it as a sink does not seem to leave 'enough, or as good' for our children and future generations. Therefore, the Lockean proviso provides a powerful argument for the restriction of the use of the atmosphere and for duties of climate change mitigation.

Because libertarianism may conceptualize climate change as a problem of illegitimate property and because it asks the question of historically unjust use of commonly owned worldly resources it offers a unique rights-based account on climate justice that allocates duties of omission and of compensation according to legitimate claims. In this chapter, my aim is to elucidate and discuss these two arguments and to outline the conditions under which libertarianism accepts restrictions on individual liberties and property in order to combat climate change. I argue that, to justify duties of climate change mitigation, the second argument is more promising than the first.

The next section introduces the libertarian argument of individual rights- infringements and critically reflects its assumptions and implications. The third section distinguishes different possible views on just acquisition of natural resources according to the Lockean proviso. I introduce Robert Nozick's (1974, 167–174) 'weak interpretation' of the proviso and contrast it with stronger versions, such as left-libertarian accounts (Steiner 1994, 234–236; Otsuka 1998; Vallentyne 2007). Depending on the strength of the interpretation of the proviso, different normative conclusions can be drawn from the libertarian account. Furthermore, I compare the implications of the libertarian argument from unjust acquisition of property with common accounts of climate justice. The last section outlines some conclusions.

## 1. The Argument of Rights-Infringement

Although most libertarians are against redistribution, they do not oppose the existence of the state as such. A minimal state that secures individuals' rights to life, liberty and property is generally accepted as justified (Brennan 2012, 57–59). Justified governmental institutions can restrict rights-infringements by means of a system of sanctions, law enforcement, and legal courts. If individual rights are infringed upon, the state determines the amount of compensation, exacts it from the wrongdoers and allocates it to the victims. Climate change can be said to threaten some of the most fundamental rights of individuals. Natural catastrophes threaten lives, water scarcity causes severe health problems, and sea-level rise and desertification force people to migrate (IPCC 2021, 15–31). Herein lies the libertarian argument for climate action (Singer 2004, ch. 2). Causing climate change can be seen as an act of illegitimate rights-infringement and the perpetrators should either be prohibited from causing it or owe compensation to affected individuals.

A few clarifications are required to understand this argument. First, the responsibility for climate change is different from paradigm cases of rights- infringements, such as theft, bodily injuries and homicide. Not every CO<sub>2</sub>- emitting activity ultimately results in the violation of other people's rights. The concentration of GHGs in the atmosphere can cause a problem to humans only if emission levels exceed the earth's absorptive capacity. And even if that is the case, the overuse of the atmosphere could still be so small that humans have enough time to adapt without having their life, health or liberty threatened. It is, therefore, wrong to think about the problem in terms of categorical prohibitions (as with theft or killing). But I will come to that later.

Second, an individual's action alone cannot be said to effectuate a rights- infringement. Climate change is an outcome of collective action – the aggregate of a large number of individual excess emissions. Nevertheless, even if through 'miniscule' and 'imperceptible' actions, individuals cause harm to other people by causing global warming (Broome 2012, 56). The low magnitude of one's contribution does not preclude legitimate restrictions on her actions (Vallentyne and van der Vossen 2014, Sect. 3; cf. Railton 2003, 191).

Third, rights-infringements do not necessarily occur even if CO<sub>2</sub> emissions exceed some critical level. Environmental

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problems may occur in one way or another. There is no certainty as to how people will be affected by climate change or even whether they will be affected at all. Thus, the joint causation of an increase in global temperatures is not necessarily a direct violation of rights. It is an imposition of risk upon those potentially affected (cf. Nozick 1974, 73–77; Railton 2003, 193). The negative effect of risk can be conceptualized as a so-called ‘expectation value’ – the negative value of an outcome multiplied by the probability of its incidence. The worse the outcome and/or the higher the probability, the greater the harm for the individual.

Even if bad outcomes do not ultimately occur, imposing risk is an action that libertarians agree must be prohibited or compensated for (e.g., Shahar 2009, 228). Let me show this with an example. If a person is speeding, she is unjustifiably increasing the risk of harm to other road users. Even if the potential harm does not materialise, driving too fast has a negative effect on other individuals. They enjoy fewer freedoms because they have to be more careful on the road, or they have to pay more to insure themselves against harm. Thus, risk has an undesired effect on the potential enjoyment of individual rights. Libertarian approaches consider this negative effect an unjustified curtailment of rights and, thus (under certain circumstances) a prohibition of the risk-increasing action as justified (Nozick 1974, 65–71, 73–74).

## *Duties of Compensation or Duties of Prevention?*

What exactly does the argument of rights-infringement justify? Which governmental actions are justified to combat climate change? To answer these questions, we need to understand the libertarian argument for the state. As mentioned above, libertarians regard a minimal state as justified to secure individual rights. The first five chapters of Robert Nozick’s *Anarchy, State and Utopia* outline why and how people would hypothetically consent to a centralised institution that restricts conduct that violates or endangers individual rights and that implements legal procedures to exact compensation in cases of rights-infringement.

The starting point of the argument is a conception of a state of nature in which people find themselves without governmental institutions. Individuals in the state of nature, Nozick assumes, possess rights to life, liberty, physical integrity and property. However, since some people would frequently infringe upon the rights of others, people face a constant risk. Individuals are, therefore, ready to partially abandon some of their rights and authorise a state to take measures to protect and enforce some of their other rights. Nozick and other libertarians thus assume that individuals would hypothetically consent to restrictions on their liberties and the authorisation of a minimal state.

A similar hypothetical history can be imagined in order to justify restrictions on CO<sub>2</sub> emissions. Present and future individuals hold rights that might potentially be infringed upon as a result of climate change. This expectation leads them to accept taxes, laws, and regulations in order to protect their rights in the future. Policies to prevent or adapt to climate change can be justified if individuals are willing to abandon some of their rights in order to reduce the risk of being killed or suffering severe impairments to their health and property.

However, Nozick (1974, 58–59, 71–73) and other libertarians would not argue that every rights-infringement justifies a prohibition of certain conduct. Rights can be protected either with prohibitions or with compensation for their violation. For example, if a person cannot or will not fulfil her contractual obligations, then she usually owes damages to the infringed party. Breach of contract is not prohibited, but the loss must be compensated. If rights-infringements can also be compensated for, one must ask, why ever prohibit conduct? In the context of climate ethics, this question translates into the question of how we should react to the challenges of climate change: should high-emitting countries set up funds to cover adaptation costs (i.e., compensate) or should they reduce CO<sub>2</sub> emissions and thus increase our effort to mitigate global warming (i.e., prohibit) or both?

Libertarians can easily argue for compensation for risks imposed on those potentially affected by climate change – that is compensation for the negative expectation value. Every person’s excessive emissions increase the likelihood of people suffering from global warming. Within a country whose carbon footprint is above a sustainable level, everyone is partly responsible for increased risk. The state could, therefore, exact compensation for that risk from all excessively emitting individuals by taxing them. The raised funds in turn would be used to cover the adaptation costs of present and future people who are negatively affected by climate change.

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It should be noted, however, that such a tax is not justified with reference to distributive justice. The redistribution that results from a duty of compensation does not infringe strong property rights. Rather it is a rectificatory means to reinstall justice in reaction to a prior injustice. Thus, there is a libertarian argument in favour of compensatory measures to cover adaptation costs that is compatible with the libertarian rejection of distributive justice. With regard to climate change mitigation, however, the libertarian argument is more intricate.

## *Intergenerational Compensation for Prevention*

Nozick is concerned with the question of how a minimal state can be justified given that it restricts certain conduct. Some individuals, he admits, do not benefit from such restrictions (such as mitigation efforts) and, therefore, in a hypothetical state of nature, would be unwilling to subject to a legal system that restricts their liberties. He asks why these people would accept being restricted by the state (Nozick 1974, 51) and he introduces what he calls a 'principle of compensation' (Nozick 1974, 78): individuals that do not benefit from being subjected to restrictions should be compensated for the restriction of their liberties.

This principle does not apply to cases of classical rights-infringements. Everybody can be assumed to benefit from the restriction of theft, violence, and killing since all members of society are potential victims. Presumably everyone would voluntarily subject herself to the legal system that restricts this conduct and would restrain herself from engaging in it, without claiming amends. However, not all risks of rights-violations apply to all equally. A state that prevents excessive emissions only benefits some while others carry the burden without ever being at risk of suffering from hazardous effects of climate change. In order to ensure anonymous, hypothetical consent, libertarians therefore need to argue for a principle of compensation for those who are not at risk but nevertheless urged to reduce emissions.

The major difference in the risk distribution exists between the living people and the future generations. The latter face far greater risks of severe impairments on their quality of life. Thus, reducing CO<sub>2</sub> emissions benefits them more than present generations. Moreover, measures to prevent climate change must be taken now. So, the costs of reducing emissions are borne by individuals in the present. From this perspective, living people would most probably agree to prevent climate change only if they were compensated for their costs of doing so since they only benefit little and bear all the costs.

At first glance, this line of thought seems to run contrary to any conception of climate justice. It seems to imply that we are allowed to charge the potential victims for the omission of our wrongdoing. Intuitively, it is not future people who owe something to us. Rather, we owe them. Nevertheless, a highly interesting proposal made by John Broome (2012, 43–48) goes in the same direction. It is not based on reflections of justice, but rather applies efficiency as a normative standard. He argues that an efficient hypothetical bargain between present and future people would result in the commitment to emissions reduction policies (cf. Posner and Sunstein 2008, 169–70). But he maintains that the future people would have to compensate us by paying public debts our generation has to take on to finance the restructuring of the economy. Broome argues for the legitimacy of charging future generations with the costs of mitigation with pragmatic reasons. In a state of crisis, we should not 'encumber the task of fixing climate change with the much broader task of improving the distribution of resource' (Broome 2012, 47). However, for libertarians, compensation is not something that is instrumentally reasonable. It is something that is indeed required by justice.

This libertarian proposal of an 'intergenerational contract' based on a Nozickian principle of compensation might be appropriate from the perspective of rectificatory justice, but it would have dramatic consequences from the perspective of distributive justice. An imbalance of burdens and benefits (risk reduction) of climate action exists not only between generations, but also between different countries. Certain states are fortunate to be relatively unaffected by the negative consequences of climate change, whereas for others it will have a catastrophic impact. As a matter of fact, wealthy regions of the world, such as the United States, will be less affected by climate change, while poorer countries, such as India, will be affected significantly (Sunstein 2007, 10–17).

The libertarian proposal would thus imply that the poor compensate the rich for preventing climate change. Hence, the libertarian argument for climate change mitigation yields distributive consequences that few scholars in climate

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ethics would be willing to accept. The argument, therefore, leads to a *reductio ad absurdum*. But not only are the conclusions of the argument susceptible to criticism. There are also critical assumptions behind it.

## *Critical Assumptions behind the Argument*

To justify climate action either as prevention of or compensation for rights- infringements only allows for very little governmental interference if it is assumed that future people cannot possess rights. The hazardous effects of climate change, such as sea-level rise, desertification and natural catastrophes will, of course, affect living people. But the true extent of the crisis, with all its detrimental effects to quality of life, will mostly affect future generations. In order to be a viable argument in climate ethics, the rights- based libertarian claim therefore needs to assume that future human beings have claims vis-à-vis present people to prevent or compensate for the harm caused by excessive emissions. The assumption that future people possess rights, however, is restrictive and philosophically challenging.

First, it is restrictive in the sense that it excludes a conception of rights that is defended by adherents of the 'will theory of rights' (Hart 1982, 183–185; Steiner 1994, 55–107). According to this conception, a rights-holder is necessarily vested with control over enforcement, the possibility of waiving the right and forgoing a claim to compensation in the case of rights-violations. Thus, rights grant the individuals moral and legal powers to exercise their will. Yet, future people cannot possibly possess powers to demand enforcement or waive their rights. Therefore, a will theorist cannot, without contradiction, conceive of future people holding rights (Steiner 1994, 249–261).

In particular, with respect to the powers of waiver, libertarians are usually sympathetic with the will theory of rights (e.g., Steiner 1994). Their non- paternalistic stance is supported by a conception of rights that ensures the possibility of a rights-holder's consent to encroachments (cf. Nozick 1974, 58). I do not believe that libertarians are necessarily committed to a will theory of rights (Steiner and Vallentyne 2009, 57). The rights of future people might also be conceptualised within an 'interest theory' (Lyons 1969, 176; Raz 1986, 165–186; Kramer 1998, 60–100) that conceives of the core function of rights as the protection of individual interests, such as satisfaction of needs, attainment of well-being or development of capabilities. Nevertheless, the assumption of rights of future people is restrictive in that it excludes certain ideas of the notion of rights.

Second, the assumption that future people possess rights is philosophically challenging because harms created by excessive GHG emissions are not imposed on a specific individual. The actions we take today, may influence whether future people exist or not. Also, the actions we take today may have an effect on the circumstances under which future people will grow up and live and therefore may have an impact on people's identities. Lastly, they may have an effect on the number of people that will live in the future. If we decide not to reduce GHG emissions today, this changes the way people will live in the future. The people living in a world that is significantly warmer would not be the same people as those living in a world that has more or less the same temperature as ours. Hence, we cannot say that we made someone in particular worse off (than that person would have been otherwise). This problem is discussed under the term 'non-identity problem' (Parfit 1984, 351– 377).

Concerning the question of whether excessive CO<sub>2</sub> emissions violate the rights of future people, the non-identity problem is significant. In a 'strict sense', rights imply duties directed to specific rights-holders (Hohfeld 2001, 13). If the duties to prevent climate change constitute rights in the strict sense, they need to be owed to a particular person or group of people. In the case of actions affecting future people, however, a person's compliance or non-compliance with a duty might make the right holder non-existent. The libertarian argument therefore has to abandon this strong 'person-affecting' conception of rights-infringements (Meyer 2021, Sect. 2).

Actions that constitute a transgression do not cause a specific person to have her rights infringed upon. In a future that occurs when we take no climate action, there would be no person that could possibly claim she would have her rights better realized if previous generations had taken climate action. But if no person is worse off than she would have been otherwise, how can this constitute a rights-infringement? One possible answer is to introduce a certain threshold of well-being, such as, for example, some basic needs that must be satisfied (Meyer 2003, 147–149). Whenever a person is born and finds herself below that level, her rights are infringed upon. Thus, those living today must ensure that people born in the future will not be worse off than they ought to be according to a critical threshold.

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Now, both of these conceptual understandings of rights are themselves not uncontroversial and require further investigation, which I cannot accomplish within the scope of this chapter. It should be noted that the exclusion of particular theories of rights as well as the weak person-affecting conception of rights-infringements render the libertarian argument less 'robust'. On the one hand, libertarians who do not accept either of these assumptions might conclude that the only thing that needs to be prevented or compensated for are the hazardous effects of climate change on living people. With this restriction in mind, the problem of climate change as rights-infringement is similar to a case of, for example, air pollution (Rothbard 1973, 301–321; Nozick 1974, 77). But the moral challenge of climate change is not sufficiently described as a problem between contemporaries. Action is required to secure the liveability of the planet for future generations. On the other hand, non-libertarians who are not convinced that the libertarian account can accept either of these two implications, tend to refrain from endorsing a libertarian account of climate ethics altogether. Thus, the argument so far is based on a weak footing. In the next section, I discuss a more promising approach to justifying climate action from a libertarian perspective.

## 2. The Argument of Unjust Appropriation

Libertarianism places a strong emphasis on the moral significance of property rights. In principle, the state and society have no authority to take away and redistribute something an individual has rightfully acquired, were it for social welfare, health insurance, pension funds or the provision of public goods – except, of course, for the maintenance of a minimal state; e.g., law enforcement institutions and courts. Nozick's (1974, 151) 'entitlement theory of justice' captures this core idea: If a person acquires property either through her own labour or through voluntary transaction, she is entitled to dispose of it. Others (the state included) have no claim to deprive her of this property. Redistribution is justified only when either property was unjustly acquired, or transactions were coercive or involuntary.

The claim for strong ownership rights can be grounded in a Kantian principle of respect for persons (Nozick 1974, 33; Kymlicka 2002, 107–108). One should treat other individuals as an end in themselves and not as means to other ends. Libertarians believe the fruits of a person's labour originates in the self and, therefore, everything a person produces belongs to herself exclusively (van der Vossen 2010, Sect. 1). Depriving someone of her property is an infringement of individuals rights and, consequently, a violation of the principle of a Kantian ideal of self-ownership.

### *Lockean Justification of Property*

Individuals can create legitimate property through their labour – that is, the activities that belong to the individual herself. However, their acquisition of property at some point necessarily includes the use of goods external to the self – that is, worldly resources. In order to produce something of economic value, individuals have to take land and plant crops, mine ore and forge tools, etc. Libertarians therefore have to employ a theory that explains how people can legitimately appropriate these natural resources in the first place. Commonly, they do so by referring to John Locke's (1980, chap. V) theory of just appropriation. According to him, individuals can legitimately acquire private ownership over commonly owned worldly resources. By exerting effort to increase the economic value of natural goods, individuals are able to appropriate them. He describes this process as 'mixing oneself' with external resources. Locke, however, concedes that there are limits to the legitimate acquisition of property. For example, a single person cannot simply claim all the natural resources for herself. He thus introduces restrictions – the two Lockean provisos. First, private ownership can only be justified as long as there is 'enough, and as good, left' for others to use. Second, a person should only have a legitimate claim on ownership as long as she does not waste it (Locke 1980, Sect. 7, 33).

The first proviso is of particular importance when it comes to the libertarian argument for climate action. The atmosphere can be conceived of as a commonly owned resource. It is a sink we use when we emit CO<sub>2</sub> to produce goods and create economic value. Now, ownership over this economic value is, according to the Lockean theory of just acquisition, only legitimate if the atmosphere is not overused – in his words, there is 'enough, and as good, left' for others. So, the starting point of the libertarian argument for climate action is the understanding of the atmosphere as a common resource. This resource is only renewable to a certain extent – the planet's flora is capable of absorbing only a certain amount of CO<sub>2</sub>. Emissions above the level of the earth's absorptive capacity lead to global warming

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and therefore potentially infringe the second Lockean proviso.

For simplicity, philosophers who conceptualise emissions from a perspective of Locke's theory often speak of acquiring partial 'ownership of the atmosphere' (e.g., Bovens 2011, 132). This expression is somewhat misleading. The atmosphere, as a sink, is a resource but no property is acquired by using it. Simply put, you do not gain ownership of a trash can by dumping waste into it. By using the atmosphere, the resource emitter generates economic value, which she produces with the help of the commonly owned sink. Hence, the idea of original appropriation in the case of GHG emissions is different from, e.g., appropriation of land (where not only the harvest but also the very piece of land belongs to the owner). Thus, to address the issue of climate change and the overuse of the atmosphere, Locke's proviso must be interpreted as a constraint on the use of resources rather than a constraint on appropriation (Mack 1995, 216–218).

Now, if the use of resource is and has been beyond the Lockean limits, the acquisition of property of the produced economic value is invalid. This leads to the conclusion that the material wealth generated with the help of excessive GHG emissions cannot be considered a libertarian property right that is worthy of protection against governmental interference. Thus, from the libertarian point of view, there is an argument for redistribution of the economic gains that have been created with unjustly high emissions.

This libertarian argument from unjust overuse of the atmosphere is backward-looking. Since property has been unjustly acquired, it must be returned to those people who do not have enough, and as good, resources left at their avail. Historically high-emitting countries should give reimbursement of adaptation costs as compensation for their overuse of the atmosphere. But there is also a forward-looking argument. Since future overuse of the atmosphere would imply an unjustified generation of property rights, the state is entitled to take preventive measures. It can impose restrictions as a mitigation strategy just as it is justified in preventing other forms of unjust appropriation such as theft, fraud, or robbery.

### *Different Degrees of the Proviso*

Some problems with this argument occur when we need to define the particular point at which the atmosphere can be said to be overused. Unlike fishing grounds or forests, there is no specific threshold at which a clearly identifiable maximum is reached. On the one hand, the state of overexploitation does not occur only when one can no longer live on the earth. On the other hand, it is debatable whether even a minimal increase in the CO<sub>2</sub> concentration in the atmosphere, which leads to a slow, continuous global warming, is already a problem. Most scholars share the (empirically informed) moral conviction that today the atmosphere is being overused. The overall 'climate budget' is significantly smaller than the one our current standard of living requires. But when was the specific point in time, henceforth called  $t^*$ , at which the use of the atmosphere was so high that the economic value generated was no longer legitimately appropriated?

Libertarian philosophers disagree over the strength of the Lockean proviso and, therefore, over  $t^*$ . Some argue that the proviso only restricts the legitimate use of resources in case rights of non-owners are violated (Nozick 1974, 174–181; Mack 1990; Narveson 1999), whereas others believe that the Lockean condition is by far more demanding. They claim that the proviso involves egalitarian principles of original distribution of resources (Steiner 1994, 235; cf. Steiner 1987, 64–68; Otsuka 1998; Vallentyne 2007, 200). So, there is a continuum of different interpretations of Locke's theory (cf. Wendt 2017, 169). Weak interpretations regard much of the use of resources as justified, whereas strong versions demand a more equal distribution of resources. This strength relates to the potential libertarian case for governmental action to exact compensation for and prevention of illegitimate appropriation.

### *Right-libertarian proviso*

All libertarians would subscribe to the view that the use of resources should not threaten the individual rights to life, liberty, or property of non-users. If, e.g., a chemical factory uses a nearby river as a sink for toxic waste, which causes health problems to the inhabitants of the adjacent village, libertarians agree that both the chemical factory infringes the rights to bodily integrity and that the Lockean proviso is violated. The normative requirement of the

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proviso is, thus understood, already included in the libertarian case for the protection of individuals from non-consensual rights-infringements. So-called 'right-libertarian' thinkers state that the Lockean proviso amounts to little more than the restriction of rights-violations by appropriating resources.

However, the libertarian claim for climate action arising out of illegitimate appropriation goes beyond the argument from rights-infringement (Torpman 2016, 33–34). Even if no rights are infringed upon, appropriation may violate the Lockean proviso. Nozick states that a person's appropriation of resources should not put anyone else in a worse-off position than she would have been had the resource not been appropriated (Nozick 1974, 177). Like Locke and many libertarians, Nozick believes that a property rights regime generally has beneficial effects on society. The fact that people can appropriate something enables them to create great economic value. Compared to the *status quo ante* (e.g., in a hunter-gatherer society), living in a property-owning society is better for all members in almost all respects. So, arguably, Nozick's right-libertarian proviso is rarely unfulfilled. However, it is subject to interpretation as to what it means not to be worse off and where the baseline is drawn between people benefiting and people being made worse off by other people's appropriation (Wündisch 2013, 206–207).

In a world economy where all individuals emit CO<sub>2</sub> below the earth's absorptive capacity, individuals do not infringe the proviso. Only above this threshold, the excessive use of the atmosphere becomes an issue. There are two potential interpretations of the weak proviso here. On the one hand, it could be claimed that, whenever GHG emissions are above the sustainable level, the global temperature rises, and this could be said to make people worse off *ceteris paribus* than if the atmosphere were not overused. On the other hand, one needs to concede that by overusing the atmosphere the world economy creates economic value. Considering per capita growth in gross domestic product (GDP) over the last two centuries, it is clear that past and present generations have vastly benefited from past emissions. This economic gain may outweigh the negative impact of global warming such that no one is actually worse off. The weak proviso, therefore, would come into play only when current or future generations suffer so much from the negative effects of global warming that material wealth cannot compensate for the damage. The distinction made here dovetails with the distinction between weak and strong conceptions of 'sustainability' (Beckerman 1995; Neumayer 2010): 'strong sustainability' demands that the same basic stock of natural resources should be available to future generations; 'weak sustainability', on the other hand, simply demands that future generations should have sufficient resources to achieve a similar level of prosperity as the people living today, whereby the loss of resources can be compensated for by man-made capital.

Drawing on Locke, Nozick and other libertarians would rather follow the second interpretation of the weak proviso: The benefits of economic growth can, to a large extent, outweigh the harm caused by climate change and even an overuse of the atmosphere does not make anyone worse off. A weak interpretation of the Lockean proviso therefore leaves open the space for a right-libertarian argument against government action to foster climate change mitigation. A more demanding understanding of 'making someone worse off' would have to be taken as a basis for arguing for justified state intervention and taxation.

### *Left-libertarian proviso*

At the other end of the spectrum, the so-called left-libertarians harbour a strong notion of the Lockean proviso. Such an account is, e.g., provided by Michael Otsuka (1998, 79) who proposes that if an appropriator (user) creates value from the use of commonly shared resources, she should leave enough to enable other people to acquire the same level of well-being. The legitimate use and appropriation of common resources is only ensured if everyone has an equal opportunity to obtain welfare. If a person uses more than that, she becomes subject to redistributive claims against her. Others may legitimately demand compensation up to the point at which they enjoy the possibility of attaining the same level of well-being (this account can also be called an 'egalitarian proviso'; cf. Steiner and Vallentyne 2009).

The left-libertarian account is a reaction to the problem raised above – namely, that in order to consider a specific person worse off than before the appropriation (use) of a resource, one must define a specific baseline (Otsuka 1998, 78). Any proviso, Otsuka correctly observes, needs to refer to some standard below which a person can be said to experience a disadvantage. He criticises the Nozickian proviso because it allows that a single person to



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consume the entire atmosphere without having to share more than what is necessary for others to survive. The proviso, thus conceived, legitimises a monopolistic assumption of all resources by a single appropriator.

A weak proviso that defines legitimate constraints merely in terms of potential rights-infringements is insufficient. As a baseline, left-libertarians therefore propose an egalitarian distribution of claims to commonly owned resources. When using external resources, a person should leave enough of them, such that others may acquire the same amount and quality of resources (Steiner 1987; 1994) or opportunities to acquire well-being (Otsuka 1998; Vallentyne

2007). Invoking such a left-libertarian proviso in an argument for climate action has strong policy implications. On the one hand, this argument demonstrates that there is no legitimate ownership over the wealth accumulated through past overuse of the atmosphere; whereas 'overuse' is already present when future generations do not have the same opportunities to obtain welfare. On the other hand, this argument authorises the state to take preventive measures against future excessive use and to forestall illegitimate appropriation.

However, there is a broad spectrum of possibilities for interpreting the proviso that lies between a weak and an egalitarian proviso (for a so-called 'sufficiency proviso' see, e.g., Wendt 2017). In this enquiry, I do not intend to give precedence to or defend any specific interpretation. What is important to see is that, once one moves away from a right-libertarian weak constraint, libertarian political theory provides its own argument justifying redistribution to cover adaptation and mitigation costs. The following subsection aims to explain some of the most important aspects of this libertarian argument for climate action. I will show how the libertarian approach differs from other conceptions of climate justice.

## *Relation to Accounts of Climate Justice*

Based on the argument of unjust appropriation, libertarians may claim that rich industrialised countries unjustly inherited their wealth because their ancestors strained the atmosphere well beyond their legitimate share. In order to reinstate a just state of affairs, rich countries, on the one hand, have a duty to redistribute the portion of their wealth that has been accumulated as a result of excessive emissions. Call this the *backward-looking aspect* of the argument of unjust appropriation. On the other hand, if they want to possess legitimate property in the economic value that is produced with GHG emissions, they have a duty to stop overusing the atmosphere as a sink. Hence, they have to re-establish a state in which emissions are down to a point at which the disadvantaged have 'enough, and as good left' for them to use. Call this the *forward-looking aspect* of the argument of unjust appropriation.

## *Congruence with 'Polluter Pays Principle'*

One principle that is vividly discussed in the debate on climate justice is the so-called 'polluter pays principle' (PPP) (cf. Shue 1999; Caney 2006). It states that the actors responsible for the largest amount of CO<sub>2</sub> in the atmosphere should also bear the largest share of the costs for adaptation and mitigation. The principle grounds its normative force in the idea of rectificatory justice.

Those who cause the problem should also pay for the damage. The normative implications of the principle are mostly congruent with those of the libertarian argument of unjust appropriation. The forward-looking argument from unjust appropriation requires today's excessive polluters to reduce their carbon footprint to a sustainable level. Whereas the libertarian argument sees this as a precondition for justified acquisition of property in the future, the PPP demands a reduction in emissions because, as long as the footprint is above the sustainable level, the emitter is considered the originator of the problem and therefore the holder of duties of mitigation.

There is a difference, however, between the argument of unjust appropriation and the PPP with respect to the backward-looking argument. The libertarian argument for owing compensation for unjust appropriation is immune from the 'objection of excusable ignorance'. This objection holds that, before there was a scientifically and politically established consensus behind the existence of human-caused climate change, excessive GHG emitters did not knowingly commit a wrong (Gosseries 2004, 39–41; Caney 2006; Page 2008; Meyer and Roser 2010). Thus, high-emitters before that time (e.g., before the first IPCC report in 1990 or the Rio Summit in 1992) cannot be held *morally*

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*responsible* for the hazardous effects of their activities on climate. So, the PPP has no normative foundation to claim that earlier emissions also need to be compensated for.

The libertarian claim for redistribution, however, does not rely on an idea of rectificatory justice. It is not based on the assumption that past actions have caused morally blameworthy damage. Thus, a possible excuse for causing a negative state of affairs does not exempt actors from redistributive duties. In fact, an excuse is not needed. Previously high-emitting states do not owe compensation for imposing harm on others. Redistribution of wealth in favour of climate action is justified because the ownership of the economic gains produced by high emissions was unjustly acquired. Historically high-emitting countries have claimed property they could not legitimately have acquired. Such unjust enrichment needs to be remedied irrespective of the fact that it has been produced unknowingly or unwillingly.

To explain this, one can draw an analogy to receiving stolen goods. Imagine you ignorantly buy a painting from an art thief. Although you are not morally culpable, you must return the painting to its rightful owner, since you never acquired legitimate ownership of it. Here, a principle of corrective justice comes into play that is independent of retributive justice. The argument of unjust appropriation has the same structure. It is valid regardless of the guilt of the appropriators.

## *Difference from the 'Beneficiary Pays Principle'*

Another prominent proposal in climate justice is the so-called 'beneficiary pays principle' (BPP). It holds that states that benefited from excess emissions in the past have a duty to compensate other states for adaptation and mitigation (Caney 2006; Butt 2007; Meyer and Roser 2013). It is a plain fact that today's rich countries are historically responsible for the lion's share of excess CO<sub>2</sub> in the atmosphere and that these countries are financially capable of bearing the costs of both adaptation to and mitigation of climate change. The BPP is, therefore, an interesting proposal that combines principles of rectificatory and distributive justice. Those responsible for the problem are mostly those that have benefitted from causing it; and they are also those in an economically privileged position to solve it.

The argument of unjust acquisition yields a normative conclusion similar to the implications of BPP. If we assume that the Lockean proviso (the requirement that there is enough and as good left) has been infringed upon by today's wealthy countries in that they have used too big a share of the atmosphere, some portion of the accumulated wealth has been unjustly acquired. The libertarian would thus demand compensation for the unjustified enrichment.

But the coincidence of normative conclusions from the libertarian argument with those from the BPP does not necessarily prevail. An original acquisition and transfer may be unjust even if no one benefits from it. Not all of the historically high-emitting countries happen to be rich. Consider, e.g., former members of the Soviet Union. Because of their industrialisation in the twentieth century, these states are responsible for a large portion of the GHG concentration in the atmosphere. But they lag far behind western countries with respect to per capita GDP. Since the citizens of these states are not as well off as those of other countries, they can be considered less of a beneficiary and, thus according to BPP, owe less adaptation and mitigation repayment to the rest of the world. In contrast, the libertarian argument of unjust acquisition is insensitive to any difference in wealth distribution among countries today. The fact that the atmosphere has been overused is sufficient to justify duties of redistribution of unjustly acquired property.

## *Defence of 'Grandfathering'?*

By referring to Locke's theory of appropriation, the libertarian account defends the principle of distribution of emission rights that is discussed under the infamous term 'grandfathering'. Grandfathering involves a policy that distributes rights, power, or material benefits in proportion to a state of distribution before the implementation of the policy. With respect to climate justice, a grandfathering principle of distribution of burdens to adapt and mitigate climate change grants greater rights to emit to those countries that previously emitted at a higher level. In turn, states with historically low emissions would receive fewer emission rights.

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To some extent, such a principle would unjustly reinforce the *status quo ante* by the distribution of rights. Among moral philosophers, grandfathering principles are, therefore, rarely defended (Caney 2009, 128). Following the Lockean account, however, Luc Bovens (2011) defends grandfathering. He argues that making excessive use of the atmosphere as a sink today is not justified anymore since it does not leave enough and as good for others. However, if one believes that the use of the atmosphere is subject to the Lockean conception of just appropriation, there must have been some point in time at which states and individuals were justified to make use of the resource. Now, according to those shares in the legitimate use of the atmosphere before  $t^*$ , states should be able to continue to use the atmosphere.

Thus, Bovens defends a preservation of claims before  $t^*$ . Such a conception of legitimate use of resources, he argues, correlates with the convictions of justice we have concerning the legal regimes regulating the use of other commons, such as fishing grounds or forests. Existing users receive a state-guaranteed quota for further use, which is larger than that of other potential users. Thus, a grandfathering principle for the distribution of mitigation and adaptation costs might be considered compatible with common-sense morality. For simplicity, I do not discuss Bovens' limitations of the normative conclusion from the Lockean account, such as redistribution of emissions rights for humanitarian reasons or in emergency cases.

In applying the Lockean theory of appropriation, the libertarian is inclined to come to the same conclusion. However, one needs to keep in mind that a historical emitter of GHGs did not acquire property of the atmosphere. She only acquired property in the economic value that resulted from the just use of the resource. So, a forward-looking principle that assigns emission rights does not follow from the principle of just appropriation (Schuessler 2017, 148–149). The atmosphere differs from, e.g., a piece of land. By emitting, no property is acquired in the atmosphere, and therefore, future emission rights cannot be legitimised by past emissions with the help of the Lockean theory of just appropriation. According to the argument of unjust appropriation, however, rich countries with past records of high emissions do not owe compensation for their making use of the atmosphere before  $t^*$ . Therefore, rather than defending a principle of grandfathering, the libertarian account may provide a backward-looking excuse. But a forward-looking justification for excessive emissions by rich countries is not implied by the libertarian argument.

## Conclusion

This chapter aimed to show that libertarian political theory provides an interesting approach to climate justice. This is the case even though libertarian theories are decidedly against claims of distributive justice.

One starting point for libertarian theories to justify state intervention to combat climate change lies in the argument that climate change is responsible for a variety of rights-infringements of currently living and future people. On the basis of this argument, obligations to compensate for the damage caused by excessive emissions can be justified. However, when it comes to duties to prevent climate change, the argument has undesirable distributive consequences. Furthermore, it presupposes the existence of rights of future generations. A libertarian theory can make such an assumption without contradiction, but the assumption renders the theory less attractive. If one is unwilling to accept it, the libertarian argument only provides reasons to justifiably compensate those affected by climate change today, but no reasons to reduce global warming for future generations.

A more promising libertarian argument refers to a Lockean theory of just appropriation of commonly owned resources to generate property. It is based on the claim that, depending on the interpretation of the restrictions on the justified use of resources, there is no legitimate ownership over the economic gains created by excessive use of the atmosphere. So redistribution for the purpose of covering adaptation and mitigation costs is justified. The normative implications of the argument are distinct from those of the more familiar approaches to climate justice, the 'polluter pays principle' and the 'beneficiary pays principle.' Thus, libertarian political theory provides an original approach to thinking about the moral problem of anthropogenic climate change.

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