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Climate Justice, Climate Change Discourse, and the Failure of the Elite-Driven Democracy: A Think Piece

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Introduction

Communities across the globe experience, and will continue to experience, climate change impacts unevenly. The most vulnerable—the ‘climate vulnerable’ in the U.S. and abroad—are set to suffer first and worst. Public concern in the United States at the collapse in livelihood of the vulnerable is, however, absent. Instead, the belated climate discourse has been dominated by talk of “caps,” “trades,” and “costs to the average consumer.” This is the result of who has had the power to frame the content and pace of the climate change discourse. Indeed, in the context of the climate crisis, two kinds of American elites emerge: (i) the powerful industry leaders that have been a relentless obstacle to addressing climate impacts, particularly vis-à-vis the most endangered; and, (ii) leadership within the traditional environmental movement that fail to emphasize within the discourse the grave and disproportionate human impacts.

Because of this active and passive obfuscation of the underlying crisis, the deep challenges to our democratic processes and the ethical framework that undergirds them become clear. At present, the United States and its elites celebrate a notion of justice and fairness in its democratic processes of law and governance. Yet the invisible plight of the ‘climate vulnerable’ exposes an obvious failure. Emergent *climate justice* theory addresses the issues and concerns that arise from the intersection of climate change with race, poverty and pre-existing environmental risks. Climate justice, as I will demonstrate, provides a means to understand the ethical dilemma at the base of the climate crisis and helps craft sound methods of repair for the climate vulnerable—all the while aiding in the (re)construction of a true democracy.

I . The Climate Vulnerable

The “climate vulnerable” describes those communities that have a particularly acute vulnerability to present and forecasted climatic changes. In the United States and abroad, the most vulnerable are generally low-income, indigenous, and/or of-color. Evidence of climate change’s disproportionate impacts is well documented and becoming increasingly prevalent. As Rajendra Pachauri stated at the release of the April 2007 Intergovernmental Panel on Climate Change (hereafter, IPCC) report on impacts, adaptation, and vulnerability, “[t]he poorest of the poor in the world—and *this includes poor people in prosperous societies*—are going to be the worst hit.”¹⁾ North

1) Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts,*

America is set to experience more severe storms, hurricanes, floods, droughts, heat waves, and wildfires.²⁾ The coasts, similar to those worldwide, will be inundated by rising sea levels.³⁾ There are, consequently, many serious public health and welfare implications for environmental justice (EJ) communities due to global warming.

While all risks will affect the low-income earners more acutely, risks that will undoubtedly yield disproportionate adverse impact are the consequences of heat extremes, increased pollution-related illnesses, and, for native communities in particular, loss of land and livelihood

Adaptation and Vulnerability (2007), 21 (italics mine). See also Maxine Burkett, "Just Solutions to Climate Change," *Buffalo Law Review* 56 (2008); Arthur Max, "Climate Report: Poor Will Suffer Most," *Global Policy Forum*, April 6, 2007, <http://www.globalpolicy.org/soecon/envronmt/climate/2007/0406climatereport.htm>. While Africa will be hardest hit, with up to 250 million people likely exposed to water shortages in just nine years and food production in some countries potentially falling by half, North America will experience more severe storms with human and economic loss, and cultural and social disruptions. See Max, "Climate Report." For discussion of climate change impacts on African Americans, see Congressional Black Caucus Foundation, *African Americans and Climate Change: An Unequal Burden*, 2004, http://www.rprogress.org/publications/2004/CBCF_REPORT_F.pdf. The three basic findings of the report are as follows:

(1) African Americans are already *disproportionately burdened* by the health effects of climate change, including deaths during heat waves and from worsened air pollution ...

(2) African Americans are *less responsible* for climate change than other Americans ... historically and at present ... [and,]

(3) [p]olicies intended to mitigate climate change can generate large health and economic benefits or costs for African Americans, depending on how they are structured. (Ibid., 2).

I address the third finding in Parts III and IV, *infra*.

2) See IPCC, *Impacts Report*. Indeed, the continent "has already experienced substantial ecosystem, social and cultural disruption from recent climate extremes," such as hurricanes and wildfires. Ibid.

3) See Max, "Climate Report."

d.⁴⁾ The EJ communities will also, of course, be subject to the more general and commonly cited negative effects of climate change; and, further aggravating these outcomes, EJ communities will feel more acutely the dire economic forecasts for the globe.⁵⁾ These factors, according to the IPCC, are critically important as education, health care, prevention initiatives, and infrastructure and economic development directly shape the health of populations.⁶⁾

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- 4) Average temperatures are expected to increase 3.2 to 7.2 degrees Fahrenheit by 2100. Diane Carman, "The Scary Truth About The Climate," *Denver Post*, February 4, 2007. In its most recent report, the IPCC has found that "[p]rojected climate change-related exposures are likely to affect the health status of millions of people, particularly those with low adaptive capacity, through, among other things, increased deaths, disease and injury due to heat waves, floods, storms, fires and droughts ... [and] the increased frequency of cardio-respiratory diseases due to higher concentrations of ground-level ozone related to climate change." IPCC, *Impacts Report*, 12. Increased temperatures with the attendant extreme weather events are widely accepted consequences of global warming. See, for example, *Brief of Amici Curiae Climate Scientists David Battisti et al. in support of Petitioners*, Mass. v. EPA, 127 S. Ct. 1438 (2007) (No. 05-1120), at 2.
- 5) Thomas Wagner, "Global Warming Could Devastate Economy," *Live Sciences*, October 30, 2006, 2006, http://www.livescience.com/environment/061030_ap_gw_economy.html; see also Sir Nicholas Stern, "The Global Climate Imperative," *BusinessWeek*, April 16, 2007, 90. This is particularly relevant to EJ communities, as the first and most severe effects of economic downturn are borne by the poor. This is true on a global as well as domestic scale. For example, projected decreases in GDP for Africa and India increase existing climate change vulnerabilities. "It is not just that Africa and India are already hot; being poor, they are also more dependent on agriculture than the rest of the world; and agriculture is more vulnerable to climate change than are investment banking or car assembly." Emma Duncan, "Dismal Calculations: The Economics of Living with Climate Change—or Mitigating It," *Economist*, Sept. 9, 2006, 14. Domestically, impacts will also be great. See, CBC, *African Americans and Climate Change*, 45-52.
- 6) See IPCC, *Impacts Report*, 8.

Compounding these vulnerabilities is the exclusion of EJ communities in the crafting of climate change policy.

II. Power and Industry

Power is a multifaceted yet concordant term in the climate change discourse. It describes the degree of influence business elites enjoy over the decision making process in the local, national and international arena. In the climate context, power also describes the source of America's runaway and disproportionate greenhouse gas emissions. Early in the international negotiations on climate change, President George H.W. Bush declared, "The American way of life is not negotiable."⁷⁾ Indeed, our use of *power* was not to be questioned at any scale.

The industry elites, consistent with President Bush's declaration, have successfully utilized obstinacy and the status quo to stymie meaningful action on climate change. They have primarily done so in three ways: by blocking domestic climate policy, by misleading the American public about the threats of climate change, and, to the extent that some have yielded to the inevitability of a low-carbon future, they have lobbied for an emissions reduction approach that is less aggressive in its carbon-cutting capability while potentially lucrative for many of the industry elites as well as major financial institutions.

7) J. Timmons Roberts and Bradley C. Parks, *A Climate of Injustice* (London: MIT Press, 2006), 3.

1. Industry Opposition to Climate Policy

The resistance of industry elites, particularly those working in fossil fuels, to embrace meaningful emissions reduction strategies has been long standing. The most recent and discrete manifestation of that resistance has been exemplified by the action of the U.S. Chamber of Commerce. The Chamber, defining itself as the world's largest business federation representing more than three million businesses and organizations of every size, has gained recent notoriety for very public defections due to its stance on climate change legislation. It has, consistent with the desire of many of its members, staunchly opposed efforts to acknowledge and combat the threats of climate change, much less aggressively address the crisis.

A handful of high profile members of the Chamber—including Apple, Inc. and Nike, Inc.—have left the Chamber or significantly altered their relationship with it because of its unyielding opposition to emissions reductions. The defections were somewhat effective, and resulted in Thomas J. Donohue, President and CEO of the Chamber, issuing the following statement: “The U.S. Chamber of Commerce continues to support strong federal legislation and a binding international agreement to reduce carbon emissions and address climate change.”⁸⁾ This statement does not, however, reflect the Chamber's past and present conduct vis-à-vis climate-related policy. Indeed, along with its active lobbying against national climate policy, the Chamber has employed a very familiar red-herring; that is, making meaningful U.S. participation in climate policy contingent upon actions of the “developing world.” The concern is that if the

8) Tom Donohue, “On Climate Change,” *The Chamber Post*,
<http://www.chamberpost.com/2009/09/on-climate-change.html>.

emissions of the major emerging economies of countries like China, India, and Brazil are not similarly curbed, these developing countries will gain a competitive advantage over the United States. The developing world comprises many that are not members of or benefiting from the boon of emerging economies, however, and most (including those within the emerging, developing economies) are truly set to suffer first and worst as the changes in climate progress.

2. Conspiracy

The historical actions of many of the industry elite make the Chamber's present conduct predictable. Industry elites have allegedly halted progress on climate change mitigation by employing purposeful obfuscation and mistruths and through collusion.⁹⁾ There were obvious examples of this conduct amongst members of the George W. Bush administration, Philip Cooney's story is telling.¹⁰⁾ Cooney, as the "climate team leader" and lobbyist for the American Petroleum Institute, the largest trade group that represents all aspects of the U.S. petroleum and natural gas industry, fought against limits on greenhouse gas emissions. He joined the Bush Administration in 2001, serving as the Chief of Staff of the White House Council on Environmental Quality for the entirety of President Bush's first term. Cooney left his post in 2005 after extensive edits made to U.S. government climate reports surfaced. Specifically, Cooney's editing of several reports on climate science and global warming impacts produced an air of doubt about findings that climate experts deemed robust.¹¹⁾

9) See *Native Village of Kivalina v. ExxonMobil Corp.*, Complaint for Damages.

10) See Andrew C. Revkin, "Bush Aide Softened Greenhouse Gas Links to Global Warming," *New York Times*, June 8, 2005.

Indeed, reports contained a number Cooney's edits despite government scientists' and supervisors' (including other senior administration officials) approval of the scientific statements made. The effect of this effort to emphasize or, in some cases, fabricate the uncertainties of climate forecasting was to delay prompt and meaningful action to curb greenhouse gas emissions. It also had the twin effect of significantly impairing public understanding and perception of the risks associated with climate change. Cooney's actions, like that of other Bush Administration officials, laid a foundation for the glaring U.S. inaction during the early part of this century.

Novel legal claims of conspiracy carefully document elaborate, concerted, and ongoing efforts of groups of industry elite to mislead the public and decision makers. In their complaint for damages, the plaintiffs in *Kivalina v. ExxonMobil Corporation* detail the tactics used by industry leaders to create uncertainty around the science of climate change.¹²⁾ Citing a number of reports and newspaper articles, the complaint details the campaign by power, coal, and oil companies to mislead the public about the science of climate change—first by attempting to show that global warming is not occurring and then by declaring a lack of scientific certainty to warrant action. The industries have waged this campaign in many ways, including the employment of trade associations charged with “reposition[ing] global warming as theory”¹³⁾ instead of fact. The repositioning has occurred through misleading advertising that denies the scientific consensus on warming and the funding of climate change critics, among other tactics.

11) Ibid.

12) See *Kivalina v. ExxonMobil Corp.*, at 47–62.

13) Ibid. at 48 (revealed in internal documents from the industry “front group” Information Council of the Environment).

These activities have so muddied the climate change discourse that popular perceptions of the severity of climate change have not tracked the well-researched and documented science on the topic. Polls have shown a decline in the public's perception of the dangers of climate change.¹⁴⁾ This demonstrates the power of these elites over consensus science. The industry campaign has directly hampered the ability for the polity to be well informed about the climate crisis and make sound decisions regarding effective climate policy.

3. The Market and Ethics

Finally, to the extent that the industry elite has positively engaged in crafting climate policy, they have ensured that only certain kinds of policy prevail. They advocate for market mechanisms exclusively, cap-and-trade in particular, irrespective of the market's ineffectiveness in aggressively reducing emissions or the fact that these policies may negatively impact the climate vulnerable.

Congress has initiated policy solutions in fits and starts, all of them to date based on a cap and trade mechanism for reducing emissions.¹⁵⁾ From the environmental and climate justice perspective, elaborated on below, market mechanisms often suffer fundamental flaws. The most significant, perhaps, is their inconsonance with principles of rights and equity. The market is at best unmoved by the differential experience of

14) See, for example, "Fewer Americans Believe in Climate Change: Poll," *Point Carbon*, October 22, 2009 <http://www.pointcarbon.com/news/1.1261964>.

15) See discussion in Burkett, *Just Solutions*, 169. A cap-and-trade approach, called for by business and other institutions as well as Congress, would create a fixed number of permits for emitting greenhouse gases (cap) and then distribute or auction these permits to businesses that can then buy, sell, or bank credits (trade) consistent with their ability to reduce emissions.

the poor and of-color. At worst, cap-and-trade systems distract from more effective regulatory measures. In short, aggressive action to mitigate the disastrous effects of climate change is clearly warranted in order to avoid the most severe outcomes predicted—and cap-and-trade systems fall well below these preferred actions.

At base, cap-and-trade provides a profit-making means for complying with a preexisting ethical duty not to pollute.¹⁶⁾ In other words, rights and duties theory, “[w]hen applied to emissions trading, ... demands that because a right to a clean environment exists as a statement of positive law, a corresponding duty exists among others not to pollute.”¹⁷⁾ The argument becomes even more poignant from the perspective of the poor and of-color. As carbon trading is currently constructed, those that stand to benefit from that trading in the United States are those that are already in the business of producing large greenhouse gas emissions.¹⁸⁾ Few would argue that a market system in which extreme wealth disparities are exacerbated—particularly in light of disparate climate effects—is ethically neutral.¹⁹⁾ Yet the expectation vis-à-vis emissions trading is that all should accept the outcomes of processes such as markets,

16) See, for example, Kirk W. Junker, “Ethical Emissions Trading and the Law,” *NYU Environmental Law Journal* 14 (2006): 152–53, 160–70.

17) *Ibid.*, 170.

18) The elite in the financial sector may also benefit greatly from cap-and-trade. See Kirsten E. Gillibrand, “Cap and Trade Could Be a Boon to New York” *Wall Street Journal*, Oct 21, 2009.

19) For greater elaboration on this ethical argument, see Stephen H. Schneider & Janica Lane, “Dangers and Thresholds in Climate Change and the Implications for Justice,” in *Fairness in Adaptation to Climate Change*, eds., Adger, et. al. (London: MIT Press, 2006), 23. Schneider and Lane argue: “Very few would view a market valuation of impacts in which the rich get richer and the poor get poorer as ethically neutral.” *Ibid.*, 32.

which many assume are procedurally just, even if they produce unequal results. Jouni Paavola et al., however, argue convincingly that this expectation is problematic because it denies the significance of “unequal starting points, postulate[s] the legitimacy of [the powerful’s] favorite procedures, and end[s] up affirming the fairness of *status quo*.”²⁰⁾ With the interplay of race and poverty, particularly when viewed on a global scale, the market is wholly inadequate.

III. Environmental Elites

A number of elites in the environmental movement have impaired the ability of the climate crisis to represent adequately all whom change will affect. This is not new. In fact, the environmental justice movement emerged partly out of dissatisfaction with the way that the “environment” was defined and to whom significant investment in a “good” environment was owed. Whereas the green elite has traditionally defined the “environment” as removed, wild and untouched, those in the environmental justice movement (EJ) define “environment” more democratically as the place where all live, work, and play. It was realigned and made relevant to the human environment for all races and classes, without being anthropocentric. In other words, people were on par with the natural world and their “environment” was deserving of as much attention, remediation, and protection. Environmental justice advocates demanded that the mainstream environmental movement dedicate as much energy and resources to counter the

20) Jouni Paavola, et al., “Multifaceted Justice in Adaptation to Climate Change,” in *Fairness in Adaptation to Climate Change*, eds., Adger, et. al. (London: MIT Press, 2006), 267.

pollution-load of the inner city, for example, as for the compromised habitat of the polar bear.

III. A. The Polar Bear and Cap-and-Trade

A continuing tension exists between EJ and the environmental elite. Climate change, largely through the imagery used by the green elite, has been defined by impacts to charismatic mega fauna and remote places, and less so by the poor, communities of color, and native communities that are literally crumbling under the current and projected climate impacts. This has done a disservice both to these communities and to the potential for climate change to be a populist and widely held call to action. Indeed, the use of the polar bear has led most “average Americans” to feel viscerally that a warming globe is at worst inconvenient for humans, even if threatening the polar bear’s habitat. This muddies awareness of the very real impacts on the human environment and the polar bear’s own-human-neighbors in the Arctic. Native communities deserve at least as much attention.

What is perhaps a more insidious harm is that the most powerful of the green elite, the large advocacy organizations, are also advocating for a market-based, cap-and-trade approach to climate policy. Political feasibility is often the refrain, if there is not explicit support for the claimed virtues of cap-and-trade. In an attempt to coalition-build for progress on climate change policy, the green elite has abandoned other natural allies who demand aggressive mitigation of greenhouse gases in a manner that is consistent with the most vulnerable communities, and consistent with climate science.

IV. Ethics and Climate Justice²¹⁾

From the environmental justice perspective, geography is destiny, and the right to a flourishing environment is a basic human right. Depressed spaces, both rural and urban, will determine the educational attainment and economic prosperity of their citizens.²²⁾ As they lag behind the rest of the nation in these public welfare indicators, they will also lag in their access to environmental health and amenities. In other words, the limits inherent in population growth, industrialization, pollution, and resource depletion are borne unequally by the poor.

“Climate justice” takes, as a basic and proven premise, that the disadvantaged in the United States stand to suffer the risks of warming more severely than others, as do their counterparts in the global South. Climate justice also recognizes the direct kinship between social inequality and environmental degradation, which is not isolated to the global south. The most obvious example is the relatively ubiquitous siting of industrial power plants in environmental justice communities, negatively affecting the public health and welfare of those who live in proximity to the plants while greatly contributing to global warming.²³⁾

As an ethical matter, an aggressive mitigation approach is virtually

21) This section is drawn primarily from Burkett, *Just Solutions*.

22) See Karin Fischer & Sara Hebel, “The Geographic Have-Nots: Urban Centers and Rural Regions,” *Chronicle of Higher Education*, November 3, 2006.

23) See Bunyan Bryant & Elaine Hockman, “A Brief Comparison of the Civil Rights Movement and the Environmental Justice Movement,” in *Power, Justice, and the Environment: A Critical Appraisal of the Environmental Justice Movement*, eds. David Naguib Pellow and Robert Brulle (London: MIT Press, 2005); Julie Sze, “Race and Power: An Introduction to Environmental Justice Energy Activism,” in *Power, Justice, and the Environment*, 107–08.

mandatory in light of the existing and predicted effects of climate change. Extensive greenhouse gas emissions are a result of industrialization, and the byproduct of such emissions is great social, economic, and ecological destruction, unevenly distributed. The response of the industrialized world, however, suggests blindness to the moral imperative at base.²⁴⁾ That it is wrong to harm others, or risk harming others, for one's own gain is a universal ethical principle.²⁵⁾ Paul Baer argues that the immorality of such action is justified by many moral frameworks, "from divine revelation to deontological ethics to social contract theory," if not common(sense) morality.²⁶⁾ Further, the tenets of distributive justice make similar demands regarding immediate and aggressive mitigation. Donald Brown argues, "[b]ecause distributive justice demands that the burdens of reducing a problem either be shared equally or based upon merit or deservedness, there is no conceivable equitably based formula that would allow the United States to continue to emit at existing levels once it is understood that steep reductions are called for."²⁷⁾

24) For the ethical framework, see generally Paul G. Harris, "The European Union and Environmental Change: Sharing the Burdens of Global Warming," *Colorado Journal of International Environmental Law and Policy* 17 (2006): 310–23. Convincing arguments range from the more simply stated to the more forthright. For the former, see Lisa Heinzerling, "Knowing Killing and Environmental Law," *NYU Environmental Law Journal* 14 (2006): 534; for the latter, see Simon Caney, "Cosmopolitan Justice, Rights and Global Climate Change," *Canadian Journal of Law & Jurisprudence* 19 (2006): 278.

25) Paul Baer, "Adaptation: Who Pays Whom?," in *Fairness in Adaptation to Climate Change*, eds. Adger, et. al. (London: MIT Press, 2006), 134.

26) *Ibid.*

27) Donald A. Brown, "The U.S. Performance in Achieving Its 1992 Earth Summit Global Warming Commitments," *Environmental Law Report* 32 (2002): 10762.

There is no plausible argument that merit and deservedness should favor the United States. Instead, the historical impacts of the lifestyle of the wealthy on the less well off militate in favor of distribution bending steeply in favor of the poor.

U.S. patterns of consumption historically, and certainly today, introduce a particularly strong obligation for aggressively confronting climate change domestically. It is difficult to overstate the utterly unsustainable nature of American consumption.²⁸⁾ Presidents to oilmen have straightforwardly articulated the excesses of American lifestyle. In 1997, President Clinton noted that the United States had less than five percent of the world's population, while having twenty-two percent of the world's wealth and emitting more than twenty-five percent of the world's greenhouse gases.²⁹⁾ In 2006, Shell Oil Company President John Hofmeister cited a similar statistic and followed with: "there needs to be a cultural or 'behavioral change' toward the use of energy."³⁰⁾ That this is a result of lifestyle excesses, relative to our global counterparts, is undeniable.

The appropriate response to global climate change is to cut back on

28) The incredible impact of the burning of coal and the promises of long-term use, for example, are powerfully described by Bob Gough, "Indigenous Peoples and Renewable Energy: Thinking Locally, Acting Globally ~A Modest Native Proposal for Climate Justice from the Northern Great Plains," Second National People of Color Environmental Leadership Summit-Summit II, Resource Paper Series, Oct. 23, 2002. He explains that conventional utility assurances of 400 to 500 years of coal reserves in the U.S. are less reassuring when burning will accelerate the undoing of 200,000,000 years of carbon sequestration. Further, all of our conventional energy industries rely on the presumed abundance of fresh water for steam generation for cooling, according to Gough. *Ibid.*, 7.

29) Brown, "U.S. Performance," 10760.

30) Lynn Garner, "Shell Oil President Expresses Support for Greenhouse Gas Reduction Program," *Chemical Regulator (BNA)*, October 26, 2006.

fossil fuels. Cutting back on energy-inefficient cars, reducing the volume of air travel, eliminating poor building insulation, decreasing transportation of goods, and using renewable energy sources are a compromise of interests that seem insignificant in light of the fundamental interests at stake for most.³¹⁾ Even if, theoretically, the United States determined that the danger posed by existing climate change trends was acceptable to it, Donald Brown persuasively insists that “the question remains what right exists to unilaterally impose dangerous threats on the most vulnerable.”³²⁾ The United States, and its elites in particular, must give the most vulnerable an opportunity to concur with their interpretations of acceptable dangers.³³⁾ Even putting this opportunity aside, severely compromising the fundamental interests of the poor and EJ communities should carry its own significant obligation.

One might argue in response that the resulting liability must apply to all Americans, even the poor, and the distributive justice argument is more appropriate when assessing relative distributions between nations. It is true that the discrepancies between nations is quite astonishing, with the entire continent of Africa contributing only three percent of total greenhouse gas emissions since 1900 as compared to two-thirds of total emissions generated by the United States and Western Europe.³⁴⁾ As Paul Baer convincingly argues, however, the

31) See Caney, *Cosmopolitan Justice*, 263. According to Caney, supporting oneself in reality only involves keeping warm, growing crops, and other essential activities.

32) Brown, *U.S. Performance*, 10757.

33) See *ibid*; Mark Sagoff, “On Markets For Risks,” *Maryland Law Review*, 41 (1982):764.

34) Andrew C. Revkin, “Poorest Nations Will Bear Brunt As World Warms,” *New York Times*, April 1, 2007.

“same distributional principles that apply between nations should apply within nations, with increased liability for those who are more responsible.”³⁵⁾ Liability is, as Baer argues, unequally divided between classes in both the North and the South.³⁶⁾ While acknowledging the scarcity of information on intra-national distribution of emissions, he maintains that “there is a strong correlation between income and emissions, and between present income and past income.”³⁷⁾ With that correlation established, Baer uses current income distributions as a proxy for historical emissions and attempts to calculate what is owed from the U.S. wealthy to the U.S. poor.³⁸⁾

Ultimately, the adequacy of U.S. policy initiatives, or inaction, has existential implications.³⁹⁾ Irrespective of the elites’ perception of the climate crisis, for many—from Shishmaref, Alaska to New Orleans, Louisiana—a “*dangerous interference* with the climate system” is already occurring.⁴⁰⁾

35) Baer, “Adaptation,” 146.

36) *Ibid.*, 149.

37) *Ibid.*, 146.

38) While the final calculation is based on a great deal of conjecture in Baer’s project, the underlying correlation between wealth and emissions—and conversely poverty and decreased liability—is well established. There has been, for example, substantial research detailing the significantly lower contribution by African Americans, specifically. See Congressional Black Caucus, “African Americans and Climate Change.”

39) According to the drafters of *Climate Change Science*, see Nat’l Acad. of Sci./Nat’l Res. Council, *Climate Change Science: An Analysis of Some Key Questions* (2001), “national policy decisions made now and in the longer-term future will influence the extent of any damage suffered by vulnerable human populations and ecosystems later in this century.” Qtd. in *Brief of Amici Curiae Climate Scientists*, 19.

40) Brown, “U.S. Performance,” 10757 (*italics mine*).

Conclusion

Climate forecasts, coupled with the ethical groundwork laid out by climate change ethicists and described above, demand nothing short of the immediate cessation of fossil fuel combustion at present levels. It is clear, however, that the political will to implement even moderate mandatory emissions reductions measures is absent. There are no current indications that aggressive reductions are a viable part of any policy package proffered today. In fact, even the more tepid cap-and-trade solutions proposed have failed.

This bleak political outlook is due in no small part to the actions of industry and, to a slightly lesser degree, the environmental elites. Consequently, due to successfully stunted political will, the popular groundswell for climate action is nascent, while most Americans tend to balk at the prospect of generalized lifestyle inconveniences. Undoubtedly, the more modest task of stabilizing greenhouse gas emissions will require huge changes in behavior. There are few signs that the majority is willing to undertake the necessary sacrifices required to slow global warming.

Further, there is little space in the contemporary discourse on climate law and policy for meaningful discussion of rights and equity. This is, of course, an unacceptable reality; the discourse must shift away from efficiency, which benefits elites, to ethics and, in this case, climate justice. Climate justice principles demand that local communities and indigenous peoples are active crafters and beneficiaries of solutions; yet the favored cap-and-trade approach does not inherently provide either group fair access to the political discourse.

This is a direct challenge to our claims of a healthy democracy.

Our democratic discourse, with its current power imbalances, has proven ill equipped to meet what is proving to be the greatest challenge to humanity. Until the protection of minority rights and the most vulnerable in our democracy ceases to buckle under the economic weight of the elite, our hopes for a true democracy may be, to date, the most poignant casualty of climate change.

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Abstract

Climate Justice, Climate Change Discourse, and the Failure of the Elite-Driven Democracy: A Think Piece

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Communities across the globe experience, and will continue to experience, climate change impacts unevenly. The most vulnerable—the ‘climate vulnerable’ in the U.S. and abroad—are set to suffer first and worst. Public concern in the United States at the collapse in livelihood of the vulnerable is, however, absent. Instead, the belated climate discourse has been dominated by talk of “caps,” “trades,” and “costs to the average consumer.” This is the result of who has had the power to frame the content and pace of the climate change discourse. Indeed, in the context of the climate crisis, two kinds of American elites emerge: (i) the powerful industry leaders who have been a continuing obstacle to addressing climate impacts, particularly vis-à-vis the most endangered; and, (ii) those within the environmental movement who fail to emphasize within the discourse the grave and inequitably distributed human impacts. Because of this active and passive obfuscation of the underlying crisis, the deep challenges to our democratic processes and the ethical framework that undergirds them become clear. At present, the United States and its elites endorse a notion of justice and fairness in its democratic processes of law and governance. Yet the invisible plight of the ‘climate vulnerable’ exposes an obvious failure. Emergent climate justice theory addresses the issues and concerns that arise from the intersection of climate change with race, poverty and pre-existing environmental risks. Climate justice, as I will demonstrate, provides a means to understand the moral dilemma at the

base of the climate crisis and helps craft sound methods of repair for the climate vulnerable—all the while aiding in the (re)construction of a true democracy.

Key Words

Climate Change, Climate Justice, Climate Vulnerable, Industry Elites, Cap-and-Trade, Climate Ethics