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# WHO SHOULD PAY TO TACKLE POLLUTION?

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A COMMENTARY ON A. Zahar (2018), “The Contested Core of Climate Law,”  
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## ABSTRACT

In the efforts to combat climate change, there are a growing number of scholars who claim that the pollution costs should be paid by the polluters in what has become known as “the polluter pays principle.” Zahar defends this principle as the best way to tackle the associated harms that polluting creates. This comment raises questions about how this principle might work, and compares it with the alternative approaches of the beneficiary pays principle and the principle we should pay polluters to cease polluting. It is argued that none solve the problem even if some can be part of a future solution that pushes us to rethink how we can best achieve global justice.

THERE IS A CLEAR consensus that climate change is happening, that it is caused by human activity and its effects are profoundly damaging to both the sustainability of ourselves as well as the natural environment (IPCC 2019: 5). The main debates are not over the problem, but its solutions (Brooks 2020).

A growing number of scholars argue that polluters should pay for the greenhouse gas emission pollutions they create. One such scholar is Zahar (2018). In this commentary, I want to reflect on some of the core views he ascribes to “the polluter pays principle” and highlight that, for all its merits, it does not provide the solution required—even if it does help us address the problems of climate change.

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Zahar notes there is something different about the ways in which climate change generates harms. He claims the damage is not mediated, but cumulative (Zahar 2018: 249). For example, climate change is not an isolated event. A paradigmatic case of harm might be when an individual assaults another. However, climate change is not caused by a single instance of my driving a car or burning fossil fuels. It is a cumulative process of many such instances globally.

The unique nature of the harm means that it can be very difficult to specifically link any one cause to the climate change harms. Suppose if two factories produce carbon emissions, the first producing ten times the amount of the second factory where—when combined—their total production is slightly above a sustainable threshold. Both factories bear responsibilities for bringing out a particular outcome, but it is unclear whether they bear equal shares of responsibilities given their very different contributions. In law, it is often necessary to establish whether—but for the action of a country, factory, etc.—an outcome would have resulted. Climate change presents some murky ethical waters whereby it can be difficult quantifying different shares of cumulative contributions to climate change—and equally difficult to discern which more extreme weather happenings are a result of these contributions alone.

To address this challenge, Zahar and others claim that the main approach we should follow to address the problem of climate change is the polluter pays principle (2018: 258). Its core appeal is in its helping us have some means of distributing responsibility in a more quantifiable way (see Zahar 2018: 258–59). I agree with Zahar that approaches that do not view climate change as about a global commons rather than discrete relations between individuals are problematic (see Mayer 2018). But his acceptance of the polluter pays principle is too quick.

The principle typically amounts to a small tax on the price of a barrel of oil (Pogge 2008: 202–21). The idea is twofold. First, the increased price is meant to dissuade emissions by making their use more costly. Secondly, the income raised is to be used to fund mitigation and adaptation strategies to correct or compensate for any environmental damage created by the emissions. Thirdly, the combination of less use and more funds to support corrective efforts are meant to create a more sustainable ever-after.

There are problems with each of these claims. First, higher fuel prices of a few dollars does not depress consumption significantly, or at least substantially enough to a sustainable level. Nor does this cover the social costs of consumption – but even if they were it is unclear this would lead to any actual significant decrease in overall consumption. Secondly, it is unclear whether all environmental damage is something that has a price—once a species is extinct, it cannot be brought back—as some natural goods may be non-compensatory.

But even if these concerns could be addressed, the polluter pays principle does not go far enough—and by its own lights. Climate change is caused by a cumulative process of greenhouse gas emissions over decades. Some of those producing emissions many years ago – and still in our atmosphere today—are now dead. By restricting the paying for pollution to those alive today and polluting now, we limit the responsibility to a subset of all relevant polluters who have contributed to the problem and, according to this principle, should contribute to its solution. This limitation may be unavoidable, but it highlights the issue that making people pay now for their pollution does not adequately deal with the majority of the pollution causing a problem and which was produced decades earlier. So while a polluter pays principle might be part of a solution, it will not solve the problem of climate change by itself.

An alternative is to consider a beneficiary pays principle. This principle says that those who benefit from greenhouse gas emissions should pay. This would better address the issue of who pays by focusing on the here and now. However, it is no less difficult determining who should pay and how much should be paid. If everyone benefits from these emissions to some extent, then who decides who pays extra when filling up their car at the same petrol pump?

A further issue is whether all benefits are quantifiable in economic terms and whether they are a direct (or even indirect) result of producing greenhouse gas emissions. It is unclear that such benefits are purely related to the environment and not other factors, such as sociological matters. Even if we can determine such benefits relating to emissions, it is not clear how much this comes to—and so how much should be paid.

Another alternative view is that vulnerable states benefit from polluters not polluting—and so they should pay the polluters to stop.

The idea is that this would best motivate polluting states to accept such a treaty as they will economically be no worse off, with the outcome that vulnerable states will become less at risk from climate change effects. However, some note this principle is akin to extortion (Gardiner 2016). States under threat by others should not pay so they are not harmed further in the future by their wrongful activity. While I agree with the extortion argument, this twist on the beneficiary pays principle highlights the ambiguity around who is a “beneficiary.”

Zahar’s piece is focused, as its title indicates, on “the contested core.” Analogously, the main contested issue here is not whether a fee on the production of greenhouse gas emissions should play a part in climate change policy—there seems a near consensus that it will help decrease, even if modestly and not significantly enough, consumption and raise much needed resources for helping address problems arising.

So a polluter pays principle might be a helpful tool at raising funds, but it is not a principle that can be comprehensively implemented nor will it—by itself— “solve” the problem of climate change. While there is no doubt that climate change is happening, there is much contestation about what to do about it. Principles like making polluters pay is perhaps a good start, but only a part of any solution.

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