

Impure procedural justice in climate governance systems

Marco Grasso, Simona Sacchi

1. Introduction

Because there are no supranational authorities capable of enforcing cooperative behaviour, ethical arguments are fundamental to fostering international collaboration (Nardin, 2006; Parks and Roberts, 2010). Ethical arguments are central to the governance systems¹ of the global environment for a number of reasons. Indeed, concerns over the prevention of environmental harm, the exploitation or preservation of finite and scarce resources, and the allocation of the burdens of environmental protection raise controversial questions regarding the consumption of and access to environmental assets. Because these issues cannot be objectively and scientifically determined, normative analysis is required for dealing with socio-ecological problems (Barry *et al.*, 2013). In particular, normative moral/ethical analysis requires i) justifying the source of power and authority of the relevant governance systems and evaluating the acceptability of such power and authority to the affected parties; ii) fairly involving all interested parties in the schemes of social cooperation proposed by the governance systems; and iii) equitably distributing the benefits and burdens produced by such schemes of social cooperation among the parties affected.

Point i) refers to the normative concept of the political (or democratic) legitimacy of governance systems, i.e. their ‘right to rule’ (Buchanan and Keohane, 2006: 405). Points ii)

¹ In light of the normative approach and topic of the article, we use the expression ‘(climate) governance systems’ in the broadest possible way. Because such systems are articulated beyond the state (Jagers and Striiple 2003) and in different institutionalized arenas (Pattberg and Striiple 2008), we hold that climate governance systems consist of the norms, procedures, processes, institutions, structures and instruments of the United Nations Framework Convention on Climate Change (UNFCCC) regime and outside of it.

and iii) describe the dimensions of justice related to the fairness of governance systems and the outcomes that they bring about, respectively. The ethical dimension denoted by point ii) is known as procedural justice, and it constitutes the ethical focus of this article. Point iii) can be defined as outcome justice, a comprehensive ethical dimension that includes both the distributive and corrective aspects of justice (Miller, 1999: 93-110).

We argue, in line with Ceva (2012: 188), for the conceptual distinction between normative legitimacy, which is focused on the ‘ownership and exercise of political authority’, and justice, which is concerned with ‘the subject matter over which legitimate authority can be exercised’. The consequent tenability of the normative cogency of procedural justice alone is due to this distinction. Specifically, we contend that governance systems provide a *locus* for procedural justice-relevant scrutiny that is independent of considerations of legitimacy (and independent of the outcomes determined by these systems). Therefore, despite the close relationship between political legitimacy and procedural justice (Peter, 2010; Page, 2011) and the growing role that the former is assuming in international environmental (e.g. Bodansky, 1999) and climate (e.g. Eckersley, 2007; Page, 2012) governance, we concentrate only on procedural justice.

Procedural justice can be applied to disparate contexts of analysis and can be understood in different ways. For instance, procedural justice in climate governance systems may refer to the conditions and constraints under which governance systems develop (Albin, 2003) or to ‘people’s perceptions of the fairness of the procedures and processes used to arrive at outcomes’ (Welsh, 2006: 169). Procedural justice is usually juxtaposed with outcome justice. The main difference between procedural and outcome justice lies in the *locus* of justice. While the former seeks justice mostly in governance systems to achieve specific outcomes (i.e. states of affairs), the latter primarily seeks justice in the outcomes themselves (Ceva, 2012). Accordingly, the most salient traits of procedural justice are its open-endedness, i.e. its

non-consideration of outcomes whose justness is both beyond its scope and left to the judgment of the subjects involved, and its exclusive focus on the properties of governance systems. In contrast, outcome justice is mostly focused on the justness of states of affairs. This is a crude simplification; procedural justice is not completely unconcerned with the outcomes, and similarly, outcome justice is not disinterested in the properties of governance systems (Cohen, 1994: 594-597; Ceva, 2009: 222). Such distinctions are nevertheless useful for developing normative ethical arguments.

In practice, current international environmental governance is not procedurally just because the power, capabilities, and possibilities that enable people (or their representatives, as understood in Saward's (2010: 42-43) conceptualisation of representation as a dynamic process of collective claim making) to participate in the design and implementation of governance systems affecting their lives are largely retained by more powerful, wealthier countries. Even if the international governance systems were just in outcome terms, they would not be entirely just without allowing the possibility for all parties, especially the weaker ones, to be fairly and thoroughly involved, particularly when serious environmental threats are at stake (O'Neill and Spash, 2005).

The aim of this article is to outline a notion of procedural justice that is suitable for an urgent global environmental crisis, i.e. climate change, with the objective of defining fairness criteria that are applicable to the governance systems of the global climate regime. Although the procedural dimension of justice is a highly sensitive topic in the context of climate change and despite the acknowledgement that this dimension is necessary for the realisation of the entire climate regime, the relevant literature has only recently devoted closer attention to procedural justice (e.g. Paavola and Adger, 2006; Vanderheiden, 2008; Author 2010; Page, 2011; 2012; Schalatek, 2012a). In our opinion, there is a strong case for the inclusion of procedural justice in issues of climate change, given that debates and standpoints are marked

by the persistence of cleavages among moral principles and theories determined by a plurality of values and worldviews (Gupta, 2010). These cleavages have been exacerbated by the demise of the Keynesian-Westphalian frame (Fraser 2005), and they ultimately produce harsh and apparently insurmountable conflicts (Roberts and Parks, 2007: 40-47) due to the impossibility of simultaneously satisfying opposing values and views.² Such condition of plurality (and its recognition, i.e. pluralism) is important for defining what account of justice can better reconcile the conflicts among values and worldviews to promote well-functioning institutions (Nagel, 1991: 36). Plurality requires that procedural accounts of justice be minimal; i.e. they must be based on the most parsimonious set of values and worldviews possible to be acceptable to heterogeneous parties. In other words, minimalism makes a theory of justice ‘trans-contextually justifiable to diverse agents’ (Ceva, 2007: 365). However, pluralism alone cannot vindicate the *adoption* of a minimal account of procedural justice *tout court* (Rawls, 1993; Cohen, 1994, cited by Ceva, 2007: 360). For such an account to be useful in situations of pluralistic and potentially conflictual values and views of the world, it must be trans-contextually applicable, i.e. normatively cogent, in states of affairs and circumstances of justice that are different from those for which the procedural account of justice was originally developed (Ceva, 2007; 2009).

A theoretical analysis of procedural justice that is useful for framing the issues involved in climate governance systems should first refer to Barry’s (1965) influential treatment. Barry (1965: 97-99) distinguishes between procedural fairness, i.e. when a procedure works according to the formalities that define it, and background fairness, i.e. when all parties have an equal opportunity to participate in a procedure from the outset. Rawls (1999: 74-75),

² A specific example related to climate governance systems is the North-South conflicts on management and governance of the UNFCCC Adaptation Fund, which after numerous failures, was surprisingly solved at the Nairobi 2006 25th meeting of the Subsidiary Body for Implementation (SBI), primarily due to the greater emphasis placed on procedural justice (Author, 2011).

drawing on Barry's analysis, distinguishes among three different forms of procedural justice: perfect, imperfect, and pure. Perfect procedural justice requires an independent criterion with which to define the just outcome and that is given before the definition and application of the procedures that will produce that outcome. Imperfect procedural justice requires an independent *a priori* criterion, but there is no guarantee that a specific procedure will lead to a just state of affairs. In pure procedural justice, there are no independent rules for defining what counts as a just outcome; rather, the focus is exclusively on the principles and criteria defining just procedures.

In light of Rawls's foundational work, this article proposes a particular version of procedural justice (*impure* procedural justice, see the following section). This concept seems better suited to pluralistic contexts because of its '*open texture*, allowing for a certain degree of indeterminacy' (Ceva, 2007: 370, emphasis in the original) and its greater flexibility and adaptability. Furthermore, its parsimony in terms of values and worldviews and trans-contextual cogency increase its normative significance.³

On this theoretical basis, this article substantiates fairness criteria that are applicable to climate governance systems. This article also empirically justifies the criteria using the no-objection procedure of the most comprehensive, yet still undefined, multilateral instrument to support climate action and fund low-carbon growth in the developing world under the

³ Notably, some perspectives of moral and political philosophy hold that procedural approaches are better suited than outcome-oriented ones to pluralistic and conflictual contexts due to the greater flexibility and adaptability of procedural justice (Barry, 1995, especially Part I; Habermas, 1996, especially Chapters 6 and 7; Hampshire, 1999, Chapter III). The psychological literature on procedural justice also makes this claim. For instance, MacCoun (2005) reviewed the relevant works and noted the convergence among cultures and peoples on the dynamics of procedural justice. We do not uphold this perspective; rather, we argue that procedural justice can complement outcome/distributive justice, which is not considered in this article but is very relevant for furthering the successful international governance of climate change.

UNFCCC, i.e. the Green Climate Fund (GCF), a central institution of the future climate regime.⁴

Such a procedure, which is decisive for the fund's effectiveness and fairness, is a critical and divisive governance system that involves different elements, levels of participation, and possible evolutions depending on the finalisation of the GCF.

The article concludes with general considerations prompted by the theoretical and empirical analysis.

2. Framing impure procedural justice in governance systems

What makes governance systems fair? What are the requirements that normative approaches should fulfil to be procedurally just? According to Bone (2003), procedural justice cannot be reduced either to the perception of parties that they have been treated fairly, as some psychological literature seems to claim, or to the welfare implications of a given process because this simplification reduces procedural justice to utility. The answer, predictably, is more nuanced; a notion of procedural justice that does not account for the outcomes of governance systems seems remarkably important for plural and conflictual contexts such as climate change. It implies an *ex ante* argument that is consistent with Bone's (2003: 496) claim that 'a procedure is fair to a party if a rational person in the position of the party would have agreed to the procedure before the dispute arose'. This *ex ante* stance on procedural justice, wherein outcomes are not relevant, reduces controversy because it distinguishes between the analyses of procedural and outcome justice. The confusion between procedural

⁴ The 2009 Copenhagen Accord proposed the establishment of the '... Green Climate Fund (GCF) ... [as] an operating entity of the financial mechanism of the Convention to support projects, programmes, policies, and other activities in developing countries related to mitigation including REDD-plus, adaptation, capacity-building, technology development, and transfer'. The GCF was finally established and launched at Durban COP 17 (decision 3/CP.17), although its organizational and operational aspects are still to be finalized. The process will likely be completed, according to Schalatek (2013), in 2014.

and outcome justice in the divisive realm of climate change may be an additional source of disagreement among parties involved. For this reason, Muller's (1998) formal approach to procedural justice is not considered here; his approach argues that the acceptability of climate negotiations depends on the perception that they deliver just solutions. It is also interesting to note that Vanderheiden (2008: 63) propounds an imperfect standpoint that requires an independent *a priori* criterion but does not present a guarantee that a specific procedure will lead to a just state of affairs. Paavola and Adger (2006) and Author (2010: 54) instead acknowledge the importance of pure, i.e. outcome-independent (see below), procedural justice in climate change and suggest that it includes issues such as recognition, participation, and the distribution of power. Page (2012) stresses that the two crucial elements of procedural justice in this context are impartiality and equality of opportunity.

Procedural justice is vulnerable to two main objections, which are also relevant in relation to climate change. The first objection refers to its morally relativist attitude; the second refers to its possible acceptance of any type of outcome (Ceva, 2008; 2009). These criticisms suggest that we should look for a version of procedural justice that is both open-ended (i.e. flexible and adaptable to the extreme plurality of moral values and worldviews that characterise climate change and its multiple stakeholders) and cogent (i.e. able to resolve, or at least lessen, the relative conflicts among involved subjects).

To frame this version of procedural justice, it is first useful to consider Rawls's *ex ante* notion of pure procedural justice wherein there are no independent rules for defining what counts as a just outcome. Instead, the focus is exclusively on the principles and criteria that define fair processes and procedures (Rawls, 1999; 74-75). However, pure procedural justice, despite its appeal due to its non-acknowledgment of outcomes, seems 'too indeterminate and lacks normative prescriptive power' (Ceva, 2009; 223) in conflictual contexts; that is, it favours an 'anything goes' attitude towards justice that potentially makes any outcome acceptable. In

other words, pure procedural justice would be fully subject to the two above-mentioned criticisms challenging its suitability to the current climate crisis. In light of these considerations, we turn to the *ex ante* notion of *impure* (i.e. non-self-sufficient) procedural justice (Ceva, 2008; 2009). This notion is outcome-independent, minimal in terms of values and views, and should be grounded in ‘trans-contextually applicable and justifiable properties of procedures as established by an external criterion independent of contextual contingencies’ (Ceva; 2009: 224). Impure procedural justice resists the criticisms that weaken pure procedural justice because it is ultimately able to reconcile open-endedness and cogency through trans-contextual justification and application. Ceva (2008: 20) illustrates the idea of impure procedural justice through a school-board meeting example. In the example, board members disagree on which subject matter should be strengthened given the limited resources available. To overcome the impasse, Ceva argues, board members should be given procedural guidelines that are considered to be just in accordance with a criterion trans-contextually applicable. Ceva further specifies that such a procedure can, for instance, draw on a particular understanding of equality intended as a formal quality of a material procedure, i.e. allowing all board members an equal amount of time to make their cases, as happens in other contexts (e.g. parliamentary and assembly decision-making processes, the trans-contextual references in Ceva’s example).⁵

To more closely frame a notion of impure procedural justice that is suitable for climate governance systems, we must therefore find some reference capable of offering trans-contextual justification and application for defining minimal criteria of fairness that are not excessively influenced by contingencies. The most obvious reference, given its long-standing tradition of handling issues of procedural justice, is psychology, which has a well-established

⁵ Interestingly, Ceva (2008: 19) holds that this notion of impure procedural justice is, in her opinion, ‘the best approximation to the idea of purity [i.e. pure procedural justice] that ... Rawls himself had in his mind’.

record of developing fairness criteria independent from contingencies.

Over thirty-five years ago, in the preface of their seminal book on procedural justice, Thibaut and Walker (1975: 1) had the astonishing foresight to claim that ‘[o]ne prediction that can be advanced with sure confidence is that human life on this planet faces a steady increase in the potential for interpersonal and intergroup conflict. The rising expectations of a continuously more numerous population in competition for control over rapidly diminishing resources create the conditions for an increasingly dangerous existence’. Thibaut and Walker advanced the then-counterintuitive claim that people care as much about how conflicts are resolved as they do about the outcomes achieved through their resolution. Prolific subsequent research (as of December 2013, the PsycInfo databases list 2,487 works related to procedural justice) applied to a wide variety of contexts of analysis (e.g. law, medicine, business, politics, international relations) has confirmed the significance of procedural justice (Lind and Tyler, 1988; Folger and Cropanzano, 1998; Tyler and Blader, 2000; Blader and Tyler, 2003a; MacCoun, 2005) and its role in the resolution of conflicts (Welsh, 2004; 2006) and negotiations (Hollander-Blumoff and Tyler, 2008; Hollander-Blumoff, 2010), as well as its ambits of relevance, its antecedents and underlying mechanisms, and its effects (Hollander-Blumoff, 2011). Due to space considerations, we do not review how these issues have been treated by the psychology literature.

According to the psychological perspective, procedural justice is largely achieved through the careful shaping of decision-making processes (Thibaut and Walker, 1975; 1978). Otherwise, it is obtained through adherence to the fair characteristics of governance systems, such as consistency, lack of bias, correctability, representation, accuracy, and ethicality (Leventhal, 1980). Alternatively, the group value model (Lind and Tyler, 1988; Tyler and Lind, 1992) proposes that procedural justice should primarily focus on the relations among the involved subjects and on the quality of treatment. Blader and Tyler (2003a; 2003b) instead suggest a

mixed construct that includes both considerations, similar to Thibaut and Walker's (1975) model of decision-making, and relational concerns derived from the group value model (Lind and Tyler, 1988; Tyler and Lind, 1992).

In the context of negotiations, the prevalent psychological literature on procedural justice (e.g. Welsh, 2004; 2006; Hollander-Blumoff and Tyler, 2008; Hollander-Blumoff, 2010; 2011) is grounded on the group value model. It centres on individuals who directly negotiate to support/defend their interests by interacting with third-party authorities such as judges, police officers, or managers. Given this focus, psychology argues that procedural justice in negotiations matters both for conflict resolution and for more general decision-making. It does so for three reasons: i) a fair process favours the achievement of better outcomes, ii) the fairness of procedures specifies the status of the individuals involved in the decisional process, and iii) procedural justice increases information and reduces uncertainty (Hollander-Blumoff and Tyler, 2008). In the psychological literature, therefore, the elements of procedural justice that dominate the context of negotiations are i) process control, ii) dignity of treatment, iii) trustworthiness of decision-makers, and iv) neutrality of decision-makers (Tyler and Blader, 2004; Hollander-Blumoff, 2010).

Climate governance systems differ somewhat from the topics considered by the relevant psychological literature because such systems, by and large, constitute a clear example of intra-unit procedural justice given that they originate from negotiation processes with no formal external authority (Li and Cropanzano, 2009). Delegates negotiate on behalf of their country or constituency, sometimes in line with their supranational grouping/s under the UNFCCC or coalition, to pursue the interest of the government/grouping or constituency/coalition that they represent without having to respond formally to another

external authority.⁶ In this role, they are expected to behave impersonally, relying on their technical and diplomatic skills with only indirect emotional involvement.

Given the characteristics of the context of analysis and the requisites of our impure notion of procedural justice, which needs minimal, context-independent, and outcome-independent⁷ criteria of fairness, we do not consider the relational aspects of the group value model (Lind and Tyler, 1988; Tyler and Lind, 1992) endorsed within that body of literature (see above). Minimalism and context- and outcome-independence demand the use of criteria that are characterized by careful development and implementation of governance systems (Thibaut and Walker, 1975; 1978), and by the observance of fair process characteristics (Leventhal, 1980). This perspective is particularly parsimonious in terms of the values and views of the world endorsed, and it seems more useful for the technical role that countries and stakeholders should be assured in fair climate governance systems.

A final *caveat* is in order. Psychology has focused mostly on individual-level procedural justice. Philosophical work, on the contrary, aims to define normative approaches of procedural justice with which to deal fairly with decision-making and conflict resolution, i.e. with objective circumstances in a social choice context. Our perspective merges the two lines of inquiry: it ultimately applies the trans-contextual findings of psychological investigation (i.e. individual-centred criteria of procedural justice) to a social choice ambit (i.e. governance systems). We are aware that by construing a notion of impure procedural justice suited to our context of analysis, we risk committing the naturalistic fallacy (Hume, 1739/1978; Moore

⁶ In direct negotiating contexts, such as sessions of the Conference of the Parties (COP) or of its bodies, the Chair of the session is simply a moderator with no authority over the parties (Yamin and Depledge, 2004).

⁷ The considerable and convoluted psychological debate on the relation between procedural and outcome/distributive justice (e.g. Walker, Lind and Thibaut, 1979; McCoun, 2005: 184-6) therefore falls outside the scope of this article.

1903/1959) because we somehow derive the *ought* (fairness criteria for defining frameworks of impure procedural justice for climate governance systems) from the *is* (trans-contextual psychological evidence). Nonetheless, we find general support in Flanagan's (1999) Natural Method, which suggests that theoretical approaches need the background knowledge of the pertinent sciences and in Casebeer's (2003: 15-35) arguments addressing the naturalistic fallacy. As for the specific area of analysis of this article, Dolan *et al.* (2007) seem to vindicate our attempt too. They claim, in fact, that when governance systems have value beyond their instrumental purposes, as is the case in climate governance systems where all subjects involved should be assured that a substantial opportunity exists for them to deploy their technical and political skills, fairness criteria derived from psychological observation should assume social significance.

3. Fairness criteria and climate governance systems

We define a set of fairness criteria based on Thibaut and Walker's (1975; 1978) and Leventhal's (1980) works, as recommended by Dolan *et al.* (2007: 160), who systematically reviewed the literature across several contexts and noted that procedural justice can be summarised using six broad procedural characteristics: voice, neutrality, consistency accuracy, reversibility, and transparency'. The fairness criteria that we developed are briefly described and contextualised to climate governance systems below. A clarification is in order. The following fairness criteria do not differ substantially from those put forward by the relevant literature of climate justice cited above (e.g. Paavola and Adger, 2006; Author, 2010; Page, 2012), though their larger number and consequent narrower scope, in our opinion, allow for finer-grained analyses of procedural justice. Therefore, it is worth stressing again that the reason for their psychological derivation is mostly given by the trans-contextual justification and applicability required by the notion of impure procedural justice, rather than by a mere

different and/or wider coverage of the issues entailed by procedural justice in relation to climate change.

Voice

To develop effective governance systems, it is necessary to select and use information that forms the basis for resolving conflicts and making educated decisions (Thibaut and Walker, 1975). The voice criterion essentially requires that those who are or may be affected by a decision have an opportunity to contribute, based on their knowledge and intelligence, to the various aspects of governance systems (Dolan *et al.*, 2007). This criterion includes Leventhal's (1980) representation, which holds that allocative processes must account for all of the basic concerns of the subjects affected.

In the context of climate change, every country and stakeholder (intergovernmental and civil society organisations or other interested parties) should be able to express their interests, objectives, aspirations, and fears about the governance systems of the government, people, organisation, and interest group that they/she/he represent/s in any setting and to use any means to do so.

Information

The information criterion requires that governance systems, particularly decision-making processes and procedures, be based on accurate information, knowledge, and opinion so that decisions can be made based on evidence rather than incorrect judgments or personal biases (Leventhal, 1980; Dolan *et al.*, 2007). This rule applies both to the accuracy of information and to the competencies of decision-makers. The scant knowledge of climate change, as determined by mental models, ontological assumptions, cognitive biases, the use of heuristics, and misunderstandings of the risks and potential harm to physical traits, makes its political, socio-economic, and moral aspects particularly challenging and contentious (Author, 2013).

The information criterion plays a crucial role in enhancing familiarity and knowledge and is essential in furthering climate governance systems, especially the most divisive ones.

Transparency

We argue that the transparency criterion, which entails unconditioned and complete access to relevant knowledge, is particularly important in social decision-making contexts, in which there is no guarantee on how decisions are reached (Dolan *et al.*, 2007). When some pieces of information about governance systems are out of reach or are lacking, which is often the case in the context of climate change for less powerful developing countries and stakeholders, the possibility for understanding and promoting the fairness of climate governance systems is at risk.

Consistency

On the one hand, this criterion requires that decision-making be consistent across subjects and be stable over time, at least in the short term (Leventhal, 1980), to ensure that norms, procedures, processes, institutions, structures and instruments are shared by the largest possible number of stakeholders. On the other hand, the consistency criterion requires the neutrality of decision-makers, i.e. their ability to overlook their own preconceptions and self-interests (Dolan *et al.*, 2007). Leventhal (1980) calls this characteristic bias suppression. In the psychological literature, the two facets of the consistency criterion are usually kept distinct. We merge them because fair climate governance systems need both relative stability in the rules of the game and the impartiality of decision-making bodies and decision-makers. Governance systems and decision-makers are closely intertwined; the fairness of governance systems cannot exist without the neutrality of decision-makers and vice versa.

Correctability

According to Leventhal, ‘opportunities must exist to modify and reverse decisions made at various points of the allocative process’ (Leventhal, 1980: 43). Specifically, this rule requires

that when any subject involved complains about unfairness, it is possible to revise the points that have made the governance system unfair. Again, the complexity of the issues at stake in climate change and the consequent possibility of distortions necessitate that climate governance systems be modifiable through amendments and/or integrations.

Respect

The respect criterion affirms that governance systems must be compatible with the fundamental moral and cultural values of the subjects involved (Leventhal, 1980). This is a very demanding criterion given the extreme heterogeneity of values and worldviews that characterise climate change. We have included it, however, because when understood in a broader meaning, this criterion should ensure the acknowledgment of the cultural and social diversity of countries and stakeholders and of the views of the peoples on whose behalf they make decisions about climate governance systems.

In light of this categorisation, we argue that, consistent with our complementary trans-contextual references based on Thibaut and Walker's (1975; 1978) and Leventhal's (1980) approaches to procedural justice, it is possible to identify two homogeneous groups of fairness criteria.

The first, which is closer to Thibaut and Walker's perspective, relates in different ways to information in accordance with the salient trait of climate change negotiations, i.e. complexity (Depledge, 2005: 8), whose reduction needs information. As emphasised above, the voice criterion may refer to the selection and development of information, i.e. to the inclusion of the informed concerns of all subjects involved in climate governance systems. The information criterion requires that the accuracy and reliability of information characterise such governance systems to ease any potential conflicts among subjects. Transparency demands completeness of information as a guarantee for fair climate governance systems. Interestingly, on a more abstract level of moral reasoning, this family of criteria inevitably leads to Hampshire's

adversary argument (Hampshire, 1996; 1999), which holds that the minimal requirement for fair interactions in pluralistic settings among conflicting subjects is that all subjects have the opportunity to be heard when advancing their cases. That is, all subjects have the possibility of fairly exchanging information on all issues at stake. As Hampshire puts it, governance systems ‘involve the fair weighing and balancing of contrary arguments bearing on an unavoidable and disputable issue. They are all subject to the single prescription *audi alteram partem* (hear the other side)’ (Hampshire, 1996: 150). Similarly, the Third Assessment Report of the International Panel on Climate Change (IPCC) specified that procedural justice should refer to Habermas’s notion of an ideal speech situation, where dialogue and decision-making are free from any constraints (Toth and Mwandosya, 2001: 668). According to the discourse-ethical approach, just processes presuppose the procedural rules of discourse at a higher level of the ethical debate that generated them (Habermas, 1990).

The second group, inspired mostly by Leventhal’s (1980) standpoint, considers the control of the fairness of the governance systems. In this perspective, consistency and correctability criteria are *ex-post* adjustments that make it possible for the relevant subjects to control the elements of procedural justice at stake in climate governance systems. Respect demands an *a posteriori* confirmation of the inclusion of the cultural and social diversity of any subjects involved in governance systems.

4. Empirical justification of fairness criteria

The ultimate objective of this section concerns the need to give an empirical justification for the fairness criteria put forward rather than an analysis of the procedural justness of the GCF’s no-objection procedure. We believe that, given the great significance of the empirical perception of procedural justice (Todd and Zografos, 2005), the theoretical justification of fairness criteria presented above is not enough; these criteria also need an empirical justification that is conducted on pragmatic grounds and is able to show their broader

evaluative strengths and weaknesses to clarify the scope of their application. This twofold notion of justification is inspired by Feigl's (1952) well-known distinction between validation (*justificatio cognitionis*) and vindication (*justificatio actionis*).

The GCF's no-objection procedure has already proved to be controversial and divisive in other governance systems;⁸ nonetheless, we claim that such procedure is a significant empirical yardstick against which to gauge our impure procedural framework. The rationale for choosing the GCF is that this multilateral funding instrument, 'where parties pledged to mobilize \$ 100 billion a year in long-term finance by 2020' (Schalatek and Nakhouda, 2012: 1), will be the ultimate financial cornerstone of the upcoming climate regime. In particular, its no-objection procedure, whose importance and urgency emerged also at the 2012 Doha COP 18,⁹ is a crucial matter for the effectiveness and probity of the sums to be disbursed by the GCF (Bretton Woods Project, 2011) and for the feasibility and solidity of future climate regimes. In brief, such a procedure is an interesting case for conducting a thorough empirical justification of fairness criteria because it involves different elements of governance systems at various levels, from civil society to the state, and concerns highly controversial and divisive issues.

According to paragraph 7, decision 3/CP.17, the no-objection procedure should be 'transparent', and should 'be conducted through national designated authorities to ensure consistency with national climate strategies and plans and a country driven approach and to provide for effective direct and indirect public and private sector financing ...'. The goals of the no-objection procedure should be, on the one hand, to help countries maintain ownership

⁸ See Orenstein *et al.* (2012) for an analysis of the (rather inefficient) application of procedures and structures similar or analogous to the no-objection procedure to the World Bank's International Finance Corporation (IFC), the UNFCCC's Clean Development Mechanism (CDM), and the Global Environment Facility (GEF).

⁹ See decision 6/CP.18 at paragraph 7(a) – reiterated from paragraph 7, decision 3/CP.17.

of projects and plans financed by the GCF and, on the other hand, to make it possible for people, especially the most vulnerable individuals and communities of the developing world, to reject projects and plans that might endanger their livelihoods (Orenstein *et al.*, 2012). If correctly and transparently designed, the no-objection procedure can single out the projects and plans that are not compatible with national climate policies and/or are harmful for individuals, host communities and their environments and that should therefore not be funded by the GCF.

Depending on the business model and vision that the GCF's board embraces, two possible funding scenarios are possible. The first, preferred by the developed countries, would primarily maximise the involvement of the private sector, which could directly propose projects and plans to the National Designated Authority (NDA). The second, favoured by the developing world, would mostly target climate-resilient sustainable development in poorer nations through projects and plans proposed by the NDA to the board, consistent with national climate policies (Orenstein *et al.*, 2012; Schalatek, 2012b; 2013). Though the no-objection procedure is pivotal for engaging civil society in both scenarios, in the former case, it should also ensure state sovereignty in terms of climate policy. The main risks of the latter scenario are the bypassing of low-income countries, the failure to reach the poor in middle-income countries, the priority given to large corporations over small and medium ones, and the possible environmental/climatic inadequacy of projects and plans. In light of these risks, the main traits of impure procedural justice that a no-objection procedure should include are the engagement of civil society and the assurance of the country-driven focus of national climate strategies and their environmental/climatic integrity.

The nuanced application of a no-objection procedure (see Note 8) makes it clear that to achieve the goals of the GCF, such a procedure needs to set some sort of universal standard in relation to both outcome and procedural dimensions. As for the second dimension, our focus

is on the following elements the GCF's board should adopt: appeals mechanism, host country veto, sequencing of the procedure, transparency and access to information, inclusion of multiple decision levels, and stakeholder consultation and consent (see Orenstein *et al.*, 2012: 20-21) for details on these elements).

The first three elements (i.e. appeals mechanisms, host country veto, sequencing of the procedure) mostly refer to the procedure. In terms of our impure procedural justice criteria, they concern control over the fairness of the governance systems. In particular, all three elements can be ascribed to the correctability fairness criterion. The remaining elements (i.e. transparency and access to information, inclusion of multiple decision levels, stakeholder consultation and consent) largely concern projects and plans that are proposed to the GCF's NDA. These elements relate to the information group fairness criteria. Transparency and access to information relate to both the information and transparency criteria, while the inclusion of multiple decisional levels and stakeholder consultation and consent relate to the voice criterion.

The two prevalent references of procedural justice that should be included in the no-objection procedure are the possibility for interested subjects to modify decisions at various points (correctability criterion) and to be engaged in and contribute to decisional processes related to fundable projects and plans, the so-called multi-stakeholder engagement (voice criterion). The predominance of these criteria depends on the specifics and objectives of the no-objection procedure. Nonetheless, the analysis supports both the relevance of the information and control criteria put forward in the previous section and their similar role in achieving procedural justice. Indeed, our analysis of the GCF no-objection procedure provides a solid empirical justification for the impure framework of procedural justice in the context of governance systems. The consistency criterion did not surface in the analysis of the no-objection procedure. Despite it is theoretically validated by moral and psychological

arguments, its empirical justification should therefore be sought in other ambits of climate governance systems.

The presented fairness criteria, excluding the consistency criterion, pass the empirical test that we conducted; consequently, they provide, in our opinion, a solid basis on which to ground the procedural justness of climate governance systems. In particular, we argue that the information group and correctability criteria are essential for furthering the effectiveness of the climate governance systems. Because of pluralism and the controversial nature of climate change, agreed-upon procedural justice, when based on fairness criteria similar to voice, information, transparency and correctability, may prove to be a key means to favour the proper functioning of climate regimes.

5. Conclusions

Science has shown that climate change involves non-linear connections and feedback effects in and among a variety of physical processes. Ultimately, the uncertainties and associated probabilistic representations profoundly affect policy responses. Furthermore, such complexity is exacerbated by the multiplicity of parties' values and views with which climate change is approached in institutional settings. Overall, the scientific, political, and cultural difficulties that pervade the issue of climate change reverberate in its governance systems, which are among the most complex worldwide (Paavola and Adger, 2006).

Consequently, a reduction in complexity would lessen the high level of conflict and the transaction costs (i.e. the costs associated with the physical and financial resources, time, and human effort necessary to set agreed governance systems). This effort would improve the feasibility of climate change governance systems. Our analysis suggests that impure procedural justice has empirical traction that through complexity and conflict reduction seems particularly useful for promoting fairer and more viable climate governance systems.

From a different perspective, the impure framework of procedural justice put forward here may help countries achieve two major objectives that can and should inform the governance of climate change. First, impure procedural justice favours the reduction of entrenched and profound power asymmetries that still characterise climate politics (Hurrell and Sengupta, 2012) and that greatly complicate the crafting of genuinely fair governance systems. Procedural justice does this by emphasising the need of involving a large number of subjects and relevant stakeholders and of assuring them a direct possibility of informed participation in and factual control over governance systems. A second major advantage is that the inclusion of diverse entities and stakeholders would effectively disrupt the monopoly of states in ways that have already proven extremely useful for advancing the governance of international institutions (Gartner, 2010). This circumstance involves rediscovering the participatory revolution that characterised the first international environmental institutions (Raustiala, 1997), and it would facilitate a deeper engagement of civil society, which is a fundamental prerequisite for the success of any climate governance system.

References

- Albin, C. 2003. 'Negotiating international cooperation: global public goods and fairness'. *Review of International Studies* **29**: 365-385.
- Barry, B. 1965. *Political Argument*. London: Routledge and Kegan Paul.
- Barry, J., Mol, A.P.J. and Zito, A.R. 2013. 'Climate change ethics, rights and policies: an introduction'. *Environmental Politics* **22**(3): 361-376.
- Blader, S.L. and Tyler, T.R. 2003a. 'A four component model of procedural justice: Defining the meaning of a "fair" process'. *Personality and Social Psychology Bulletin* **29**: 747-758.
- Blader, S.L. and Tyler, T.R. 2003b. 'Advancing the assessment of procedural justice: What constitutes fairness in work settings?'. *Human Resource Management Review* **13**: 107-126.
- Bodansky, D. 1999. 'The legitimacy of international governance: a coming challenge for international environmental law'. *American Journal of International Law* **93**(3): 596-624.
- Bone, R.G. 2003. 'Agreeing to fair process: the problem with contractarian theories of procedural fairness'. *Boston University Law Review* **83**: 485-552.
- Bretton Woods Project 2011. A faulty model? What the Green Climate Fund can learn from the Climate Investment Funds. London: Bretton Woods Project, <http://www.brettonwoodsproject.org/2011/06/art-568686/> (accessed 14 December 2013).
- Buchanan, A. and Keohane, R.O. 2006. 'The legitimacy of global governance institutions'. *Ethics & International Affairs* **20**(4): 405-437.
- Casebeer, W.D. 2003. *Natural Ethical Facts. Evolution, Connectionism, and Moral Cognition*. Cambridge: MIT Press.

- Ceva, E. 2007. 'Plural values and heterogeneous situations: considerations on the scope for a political theory of justice'. *European Journal of Political Theory* **6**: 359-375.
- Ceva, E. 2008. 'Impure procedural justice and the management of conflicts about values'. *Polish Journal of Philosophy* **II**(1): 5-22.
- Ceva, E. 2009. 'Just procedures with controversial outcomes: on the grounds for substantive disputation within a procedural theory of justice'. *Res Publica* **15**: 219-235.
- Ceva, E. 2012. 'Beyond legitimacy. Can proceduralism say anything relevant about justice?'. *Critical Review of International Social and Political Philosophy* **15**(2): 183-200.
- Cohen, J. 1994. 'Pluralism and proceduralism'. *Chicago-Kent Law Review* **69**: 589-618.
- Depledge, J. 2005. *The Organization of Global Negotiations. Constructing the Climate Change Regime*. London and Sterling: Earthscan.
- Dolan, P., Edlin, R., Tsuchiya, A. and Wailoo, A. 2007. 'It ain't what you do, it's the way that you do it: characteristics of procedural justice and their importance in social decision-making'. *Journal of Economic Behavior & Organization* **64**: 157-170.
- Eckersley, R. 2007. 'Ambushed: the Kyoto Protocol, the Bush administration's climate policy and the erosion of legitimacy'. *International Politics* **44**(3): 306-324.
- Feigl, H. 1952. 'Validation and vindication: an analysis of the nature and limits of ethical arguments'. In: W. Sellars and J. Hospers (eds.), *Readings of Ethical Theory*, pp. 667-680. New York: Appleton.
- Flanagan, O. 1999. *Dreaming Souls: Sleep, Dreams and the Evolution of the Conscious Mind*. Oxford: Oxford University Press.
- Folger, R. and Cropanzano, R. 1998. *Organizational Justice and Human Resource Management*. Thousand Oaks: Sage.

- Fraser, N. 2005. 'Reframing justice in a globalizing world'. *New Left Review* **36**: 1-19.
- Gartner, D. 2010. 'Beyond the monopoly of states'. *U. Penn J. Int'l L.* **32**: 595-641.
- Author, 2010.
- Author, 2011.
- Author, 2013.
- Gupta, J. 2010. 'A history of international climate change policy'. *Wiley Interdisciplinary Reviews: Climate Change* **1**(5): 636-653.
- Habermas, J. (1990). 'Discourse ethics: notes on philosophical justification'. In: J. Habermas, *Moral consciousness and communicative action*, pp. 43-115. Cambridge: MIT Press.
- Habermas, J. 1996. *Between Facts and Norms*. Cambridge: Polity Press.
- Hampshire, S. 1996. Justice is conflict: the soul and the city. The Tanner Lectures on Human Values, delivered at Harvard University, October 30-31, 1996, http://tannerlectures.utah.edu/_documents/a-to-z/h/Hampshire98.pdf. (Accessed 14 December 2013).
- Hampshire, S. 1999. *Justice is Conflict*. London: Duckworth.
- Hollander-Blumoff, R. 2010. 'Just negotiations'. *Washington University Law Review* **88**(2): 381-432.
- Hollander-Blumoff, R. 2011. 'The Psychology of procedural justice in the federal courts'. *Hastings Law Journal* **63**(1): 127-178.
- Hollander-Blumoff, R. and Tyler, T.R. 2008. 'Procedural justice in negotiation: procedural fairness, outcome acceptance, and integrative potential'. *Law & Social Inquiry* **33**(2): 473-500.

- Hume, D. 1978. *A Treatise of Human Nature*. Glasgow: William Collins (Original work published 1739).
- Hurrell, A. and Sengupta, S. 2012. 'Emerging powers, North–South relations and global climate politics'. *International Affairs* **88**(3): 463-484
- Jagers, S.C., and Stripple, J. 2003. Climate governance beyond the state. *Global Governance* **9**(3), 385-399.
- Li, A. and Cropanzano, R. 2009. Fairness at the group level: justice climate and intraunit justice climate. *Journal of Management* **35**: 564-599.
- Lind, E.A. and Tyler, T.R. 1988. *The Social Psychology of Procedural Justice*. New York: Plenum Press.
- MacCoun, R.J. 2005. 'Voice, control, and belonging: the double-edged sword of procedural fairness'. *Annual Review of Law and Social Science* **1**, 171-201.
- Miller, D. 1999. *Principles of Social Justice*. Cambridge: Harvard University Press.
- Moore, G.E. 1959. *Principia Ethica*. Cambridge: Cambridge University Press (Original work published 1903).
- Muller, B. 1998. *Justice in global warming negotiations. How to obtain a procedurally fair compromise*. Oxford Institute for Energy Studies, Oxford, <http://www.oxfordenergy.org/1998/03/justice-in-global-warming-negotiations-how-to-obtain-a-procedurally-fair-compromise/> (accessed 14 December 2013).
- Nagel, T. 1991. *Equality and Plurality*. Oxford: Oxford University Press.
- Nardin, T. 2006. 'International political theory and the question of justice'. *International Affairs* **82**(3), 449-465.

O'Neill, J and Spash, C.L. 2000. 'Conceptions of value in environmental decision-making'. *Environmental Values* 4(1): 521-536.

Orenstein, K., Redman, J. and Tangri, N. 2012. *The Green Climate Fund's "No-objection" procedure and private finance: Lessons learned from existing institutions*. Washington, D.C.: IPS, FoE and GAIA, http://www.ips-dc.org/reports/the_green_climate_funds_no-objection_procedure_and_private_finance_lessons_learned_from_existing_institutions (accessed 14 December 2013).

Paavola, J. and Adger, W.N. 2006. 'Fair adaptation to climate change'. *Ecological Economics* 56: 594-609.

Page, E.A. 2011. 'Cosmopolitanism, climate change, and greenhouse emissions trading'. *International Theory* 3(1): 37-69.

Page, E.A. 2012. 'The hidden costs of carbon commodification: emissions trading, political legitimacy and procedural justice'. *Democratization* 19(5): 932-950.

Parks, B.C. and Roberts J.T. 2010. 'Climate change, social theory and justice'. *Theory, Culture & Society* 27(2-3): 134-166.

Pattberg, P. and Stripple, J. 2008. 'Beyond the public and private divide: remapping transnational climate governance in the 21st century'. *International Environmental Agreements: Law, Policy and Economics* 8, 367-388.

Peter, F. 2010. 'Political legitimacy'. In: Ed Zalta (ed). *The Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/legitimacy/> (accessed 14 December 2013).

Raustalia, K. 1997. 'The "participatory revolution" in international environmental law'. *Harvd. Envtl. L. Rev* 21: 537-557.

Rawls, J. 1999. *A Theory of Justice. Revised Edition*. Oxford: Oxford University Press.

Roberts, T.J. and Parks, B. 2007. *A Climate of Injustice, North-South Politics, and Climate Policy*. Cambridge: MIT Press.

Saward, M. 2010. *The Representative Claim*. Oxford: Oxford University Press.

Schalatek, L. 2012a. 'Democratizing climate finance governance and the public funding of climate action'. *Democratization* **19**(5): 951-973.

Schalatek, L. 2012b. *Taking charge. At its first meeting, the GCF Board lays the groundwork for the functioning of the new fund*. Washington, D.C.: Heinrich Böll Stiftung North America, <http://www.boell.org/web/140-Ecology-ClimateFinance-TakingCharge.html> (accessed 14 December 2013).

Schalatek, L. and Nakhooda, S. 2012. *The Green Climate Fund*. Climate Funds Update, Climate Finance Fundamental 11, November 2012, <http://www.climatefundsupdate.org/resources/finance-fundamentals> (accessed 14 December 2013).

Schalatek, L., 2013. Decision time? *The 4th meeting of the Green Climate Fund Board focuses on the Fund's business model and its new Executive Director*. Washington, D.C.: Heinrich Böll Stiftung North America, http://www.boell.org/web/index-Boell_GCF_BM4_Pre-MeetingReport_DecisionTime.html (accessed 14 December 2013).

Thibaut, J. and Walker, L. 1978. 'A theory of procedure'. *California Law Review* **66**: 541-566.

Thibaut, J. and Walker, L. 1975. *Procedural Justice: A Psychological Analysis*. Hillsdale: Erlbaum.

Todd, H. and Zografos, C. 2005. 'Justice for the environment: developing a set of indicators of environmental justice for Scotland'. *Environmental Values* **14**(4): 483-501.

- Toth, F.L. and Mwandosya, M. 2001. 'Decision-making frameworks'. In: B. Metz, O. Davidson, R.J. Swart and J. Pan (eds.). *Climate Change 2001: Mitigation, Report of Working Group III of the Intergovernmental Panel on Climate Change*. Cambridge: Cambridge University Press.
- Tyler, T. and Bies, R.J. 1990. 'Beyond formal procedures: The interpersonal context of procedural justice'. In: J. Carroll (ed.) *Applied social psychology and organizational settings*, pp. 77-98 Hillsdale: Erlbaum
- Tyler, T.R. and Blader, S.L. 2000. *Cooperation in Groups: Procedural Justice, Social Identity and Behavioral Engagement*. Philadelphia: Psychology Press.
- Tyler, T.R. and Blader, S.L. 2004. 'Justice in negotiation'. In: M.J. Gelfand and J.M. Brett (eds.) *The Handbook of negotiation and culture*, pp. 295-300. Stanford University Press, Stanford.
- Tyler, T.R. and Lind, E.A. 1992. 'A relational model of authority in groups'. *Advances in Experimental Social Psychology* **25**: 115-191.
- Vanderheiden, S. 2008. *Atmospheric Justice. A Political Theory of Climate Change*. New York: Oxford University Press.
- Walker, L., Lind, E.A. and Thibaut, J. 1979. 'The relation between procedural and distributive justice'. *Virginia Law Review* **65**(8): 1401-1420.
- Welsh, N. 2004. 'Perceptions of fairness in negotiation'. *Marquette Law Review* **87**: 753-767.
- Welsh, N. 2006. Perceptions of fairness in negotiation. In: A. Schneider and C. Honeyman, (eds.) *The negotiator's fieldbook*. Washington, D.C.: American Bar Association.