



Universität
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University Research Priority Programm for Ethics

Shifting Liabilities for Climate Loss and Damage after Paris

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Initial Starting point

Decision 1/CP.21 on the adoption of the Paris agreement:

“Article 8 of the [Paris] Agreement does not involve or provide a basis for **any liability or compensation**” (UNFCCC 2015)

Conceptually implausible because in case of losses or damages usually those harming are under duty of remedy/compensation.

Theses to be defended:

Liability shifts from those **outcome responsible** for L&D to those **best suited/able** to remedy / mitigate the consequences of L&D.



Three initial arguments

Theses to be defended:

Liability shifts from those **outcome responsible** for L&D to those **best suited/able** to remedy / mitigate the consequences of L&D.

1. **Pragmatic:** Since compensation is such a hot potato in international climate politics, it is better to conceptualize L&D in different terms.
 - *No historical duties*
2. **Humanitarian:** In case of emergency we should help first and then clarify afterwards who is responsible for the harm.
 - *Ability to pay / remedial responsibility*
3. **Conceptual:** Compensatory duties can only be assigned for anthropogenically induced climate change but not for natural climate variability.
 - *Redistribution*



Dimensions of Climate Justice II

Responsibility	Distributive Justice	Comp. Justice
Entitlement	How should the burdens of climate protection / emission rights be distributed?	Who has to pay how much remedy / compensation due to his contribution to climate change ?
Liability		
Capacity		

Entitlement: Who is **entitled** to what?

Liability: Who **owes** what to whom?

Capacity: Who can carry what **burden**?



Relevant Principles

Responsibility	Distributive Justice	Comp. Justice
Entitlement		
Liability		Polluter Pays Beneficiary Pays
Capacity	Ability to Pay	

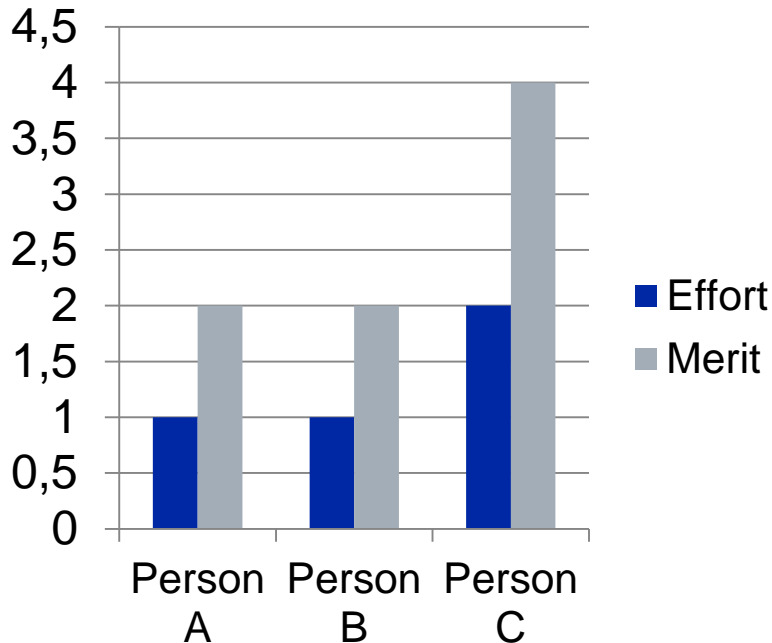
PPP: those contributing more to anthropogenic climate change are **responsible** to shoulder heavier burdens to realize climate measures.

BPP: those benefitting more from the high emissions of others (e.g. their ancestors or other high-emitting co-citizens) are **responsible** to shoulder heavier burdens to realize climate measures.

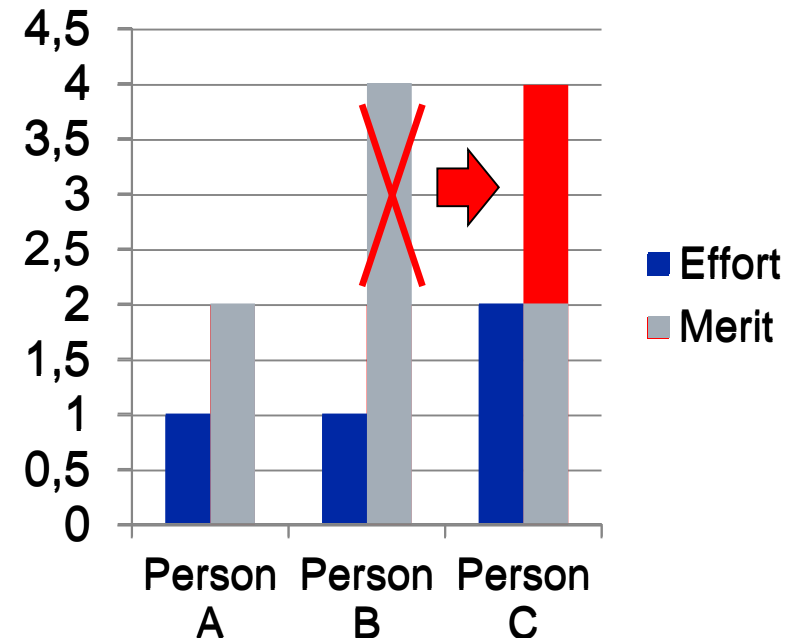
APP: those better able of carrying the burdens of climate protection are **responsible** to contribute more to climate measures.

Distributive vs. Compensatory Justice

Distributive Justice



Compensatory Justice



Most important: Compensatory duties are owed by those humans / institutions **responsible for an injustice.**



Means Replacement / Ends Displacement

Responsibility	Distributive Justice	Comp. Justice
<p>This is problematic because in cases of severe threats assistance is owed to remedy all harm.</p> <p>But</p> <p>... not all climate L&D materializing is anthropogenic.</p> <p>... not all contribution to climate L&D is an injustice.</p> <p>... not all emitters causing climate L&D are equally well suited to assist (economically / technologically / knowledge etc.)</p>	<p>Means Replacement / Ends Displacement: anthropogenic <i>climate impacts</i></p>	
	<p>Polluter Pays P. Beneficiary Pays P.</p>	

Means Replacement: compensate by replacing L&D.

Ends displacement: compensate by helping change end attached to L&D.



Means Replacement / Ends Displacement

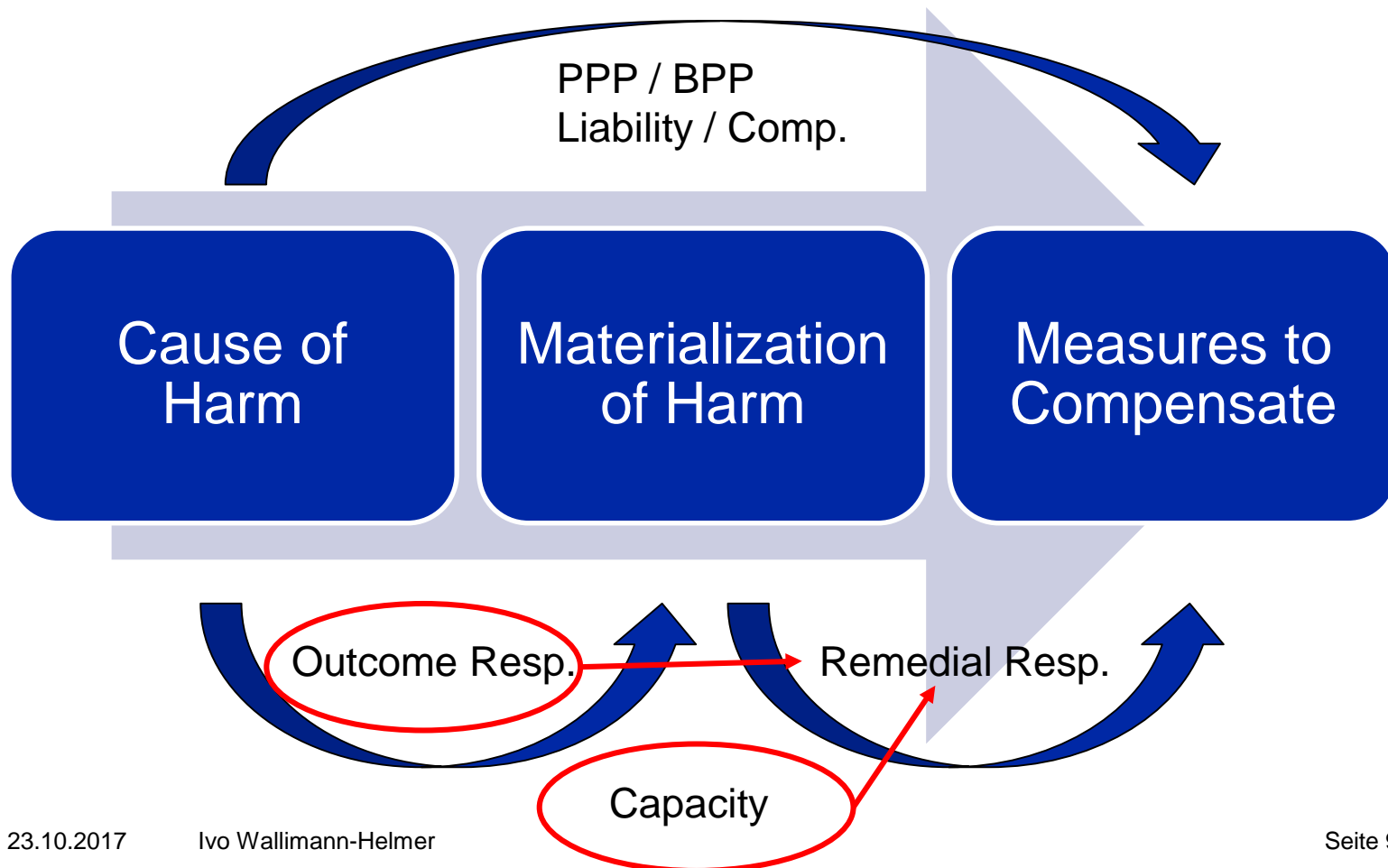
Responsibility	Distributive Justice	Comp. Justice
Entitlement		Means Replacement / Ends Displacement: <i>anthropogenic climate impacts</i>
Liability		Polluter Pays P. Beneficiary Pays P.
Capacity	Ability to Pay: Means Rep. / Ends Disp.: <i>all climate impacts</i>	

Means Replacement: compensate by replacing L&D.

Ends displacement: compensate by helping change end attached to L&D.



Outcome Resp. vs. Remedial Responsibility





Shifting Liabilities

Responsibility	Distributive Justice	Comp. Justice
Entitlement	Undeserved disadvantage due to climate L&D	Means Replacement / Ends Displacement: <i>anthropogenic</i> <i>climate impacts</i>
Liability		Polluter Pays P. Beneficiary Pays P.
Capacity	Ability to Pay: Means Rep. / Ends Disp.: <i>all climate</i> <i>impacts</i>	

After Paris: **Shift of liabilities and compensatory duties needed:**

- According to adoption of **Paris Agreement (§ 52.)**: no basis for liability or compensation.
- Here: **Liability for remedy** according to capacity – **shift of meaning**.



Consequences

Theses to be defended:

Liability shifts from those **outcome responsible** for L&D to those **best suited/able** to remedy / mitigate the consequences of L&D.

1. The focal question becomes not who is responsible for harm but who faces **undeserved disadvantage**.
2. **Not** all developed countries have the **same remedial responsibilities**: Depending on economic and scientific capacity as well as know-how these might vary.
3. It is **not only developed countries** which are under duty. Especially transfer of know-how might be in the remedial responsibilities of developing countries facing similar threats.