

GLOBAL WARMING AND MORAL THEORIZING

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ABSTRACT: The aim of my paper is to explore in some detail some epistemological issues concerning moral theorizing on global warming. First, I consider the issue of the structure of the theoretical approach in a field of inquiry requiring normative assessments. How do theoretical principles work here? What is to be regarded as a normative evidence for such a theory? Second, the criteria to determine which part, if any, of the theory gets normatively constrained, and which does not, are discussed. Third, I focus on the procedures to reach an equilibrium between such a theory and its evidence and to reach it, changes might be required on the normative side of the theory, rather than on its non-normative one.

Keywords: principles of justice, concept of justice, questions of justice, standards of justice, ethical practice, application of theory, ethical theory, structure of theory.

1. Applied philosophy and philosophical practices

It is often claimed that a theoretical approach to global warming should include in its index of relevant variables something like the fairness or the equity of the distribution of the greenhouse gas emissions among states. But how to mix up this normative dimension with the standard, non-normative one? I think that this issue is very interesting from an epistemological standpoint, for at least three reasons. First, it involves a view on the structure of the theoretical approach in a field of inquiry requiring normative assessments. How do theoretical principles work here? What is to be regarded as a 'normative' evidence for such a theory? Second, one might wonder about the criteria to determine which part, if any, of the theory gets normatively constrained, and which does not. Third, there is the problem of the procedures to reach an equilibrium between theory and its evidence (and to reach it, changes on the normative side of the theory might be required, rather than on its non-normative one).

The aim of my paper is to explore in some detail these epistemological issues concerning the moral theorizing on global warming. However, to get flesh on their bones, my remarks need focus on a certain, more or less articulated, normative theory of global warming. My choice went to professor Henry Shue's view. In a series of recent papers, he argued that if we try to offer a satisfactory account of global warming, we cannot avoid some equity considerations on international action to constrain this process. Now equity is an ethical concept and it immediately points to

the venerable philosophical problem of justice. (Throughout this paper, I shall use the terms 'equity' and 'fairness' as having the same meaning; and I shall assume that equity or fairness is located in the core of justice.) Is there any question of justice in the attempts to design policies appropriate to deal with global warming? And if the answer is in the affirmative, how is this justice to be given its proper place? For example, is there any fair share of the greenhouse emissions the different nations in the world are entitled to? Shue is apparently concerned only with questions like these, and he apparently avoids a more fundamental one: What is the proper conception of justice one should rely on if an answer to them is to be provided at all? One might argue, of course, that she needs not to offer an answer to this question, for the main aim of the approach is to show that issues like global warming are interesting for a philosopher.

A deeper reason for holding such a position runs as follows. When one agrees that any account of an issue in which equity is involved presupposes some conception of justice, one conceives of a single appropriate kind of a philosophical inquiry: the top-bottom one. You must first have the principles, and second try to apply them to your concrete case. This is a simple instance of *applied philosophy*. Philosophers usually discuss (and diverge on) two aspects: first, the way in which principles are to be agreed upon; and second, which principles are more likely to be agreed on. However, when one makes applied philosophy, her interest is neither to establish a principle, nor to prove that it is more likely to be valid than another, all things considered. The point is simply to show *how* it works in the concrete case under consideration.

J. Rawls once remarked that it is worth

noting from the outset that justice as fairness, like other contract theories, consists of two parts: (1) an interpretation of the initial situation and of the problem of choice posed there, and (2) a set of principles which, it is argued, would be agreed to. One may accept the first part of the theory (or some variant thereof), but not the other, and conversely.¹

The applied philosopher is not, however, much impressed by the reasoning conducive to a certain principle. For her it is much more important to see how the principles work in particular cases. And this approach is largely independent of the way in which the principles were to be established. Suppose that two largely diverging theoretical approaches come to validate one and the same principle. If it works in a specific concrete case, the applied philosopher has no reason to be concerned with the mechanisms by which it was provided. In fact, her investigation is not more favorable to one sort of approach rather than to the other.

Moreover, usually the applied philosopher is not supposed to *test* certain principles in concrete cases. Rather, she tries to handle them as appropriate tools in her work. If they help her, success is the best reward; if they don't, then she might indeed be tempted to doubt about their validity. Not necessarily so, however. Maybe she has already used them successfully in numerous other cases; maybe she strongly believes in their validity. And, fortunately, the applied philosopher always has at hand other appealing alternatives: to question the intuitions she relied on when first dealing with that case; to re-describe the case so that it would be better fitted to be accounted for by the appeal to those principles; to deny that it is a genuine moral case; to produce

some new marginal conditions to the effect that in this way the principle leads to other results than those expected, etc. Such immunization procedures are powerful and largely used. They help one to *apply* a piece of philosophical theory without much bother about the theory itself.

Of course, sometimes principles are tested against moral situations. But that is not part of an applied philosophy. Tests are performed against paradigmatic cases or situations, like suicide, promise, lying, etc.; such cases are accepted as morally significant and unavoidable, previously to any attempt to 'test' the theory. A theory's ability to deal with them belongs to its 'hard core', not to applying it. A moral theory is not just an abstract collection of principles; it comes together with its paradigmatic successful applications to a collection of cases, and these are to be regarded as an essential part of it². To apply a theory is to show that the collection of its successful application can be extended, and the stunts of an applied philosopher usually consist in such extensions. Now, of course the collection of paradigmatic cases is not assumed to be fixed over time. As it happens, some cases leave the realm of applying a theory and turn to 'crucial' tests. Issues like abortion, euthanasia, animals have steadily become so very important that no respectable moral theory can afford to treat them as mere new 'applications'; for if it fails to provide a reasonable account of (standard, at least) cases of abortion, euthanasia, etc., then doubts might arise concerning the theory itself and, consequently, the very principles it contains are more likely to be rejected. If no such account is made available, then to state that an attempt to apply a theory's principles to a concrete collection of cases failed seems to be a distorted description of the situation. Rather the theory itself did not succeed in passing a test: it was not able to include paradigmatic moral cases in its 'hard core'. It is then possible to doubt about the validity of its principles.

This view on pure and applied philosophy has few, if any, connections with the distinction between deductive and inductive reasoning. I shall leave aside the issue if pure (moral) philosophy makes an essential use of inductive reasoning. The point is that applied moral philosophy is not an instance of a deductive process. For, first, it concerns theories and not separate moral principles, i.e. universal statements from which a particular statement is to be inferred. And it is doubtful if a theory is just a collection of mutually independent universal statements³. Second, the activity of the applied philosopher does not meet the formal structure of a deductive reasoning. When one infers 'Socrates is mortal' from 'All humans are mortal' and 'Socrates is human', the pattern of the deduction is simple: some universal statement, taken together with a statement describing the concrete situation, yields the desired result. But in applied philosophy the sort of activity a philosopher is expected to perform is quite different. If she simply said, e.g.: 'Abortion is evil', since 'Killing people is evil' and 'Abortion is killing people', one would have good reasons to doubt about the need to take a course in applied ethics.

An analogy might be useful in this context. Newton's second law states that the total force acting on a body is its mass times its acceleration: $f=m.a$. Now consider a body in free fall. Its movement can be described by the equation $m.g=m.d^2s/dt^2$. Alternatively, consider a simple pendulum; the equation one makes use of in describing its movement is $m.g.\sin(u)=-m.l.d^2u/dt^2$. Are these two equations instances of Newton's second law?

How do you recognize them, or even more complicated equations⁴ as applications of the second law to a certain concrete cases? These examples show how the 'applied' physicist extended successfully Newton's mechanics to new collections of cases. The problems she had to consider involved not only the re-describing of those cases in terms of the theory, but also a re-shaping of the theory itself, so that it would successfully apply in those cases. The principles cannot be used in the application as such: they need be reformulated up to a moment when a layperson could hardly recognize them under disguise. It is also very important to note that seldom one needs to appeal to special principles holding *only* in the cases contained in that class, not in all cases of which it makes sense to say that the original principle or theory might apply to. To say, therefore, that such a procedure is a deductive one, in the logicians' precise sense, is to miss some of its most relevant traits.

The same happens in the field of applied philosophy. A cogent example is offered by P. Taylor's theory of environmental ethics⁵. A large space is devoted by him to developing the means of adequately applying his general (and hence 'abstract') principle of 'respect for nature' to different types of cases. The principle was charged, e.g., to break down when specific moral cases involving a conflict between humans and other species are considered. Now, if unsuccessful in important moral situations, some doubts about the very idea of applying the principle would follow. To face this charge, Taylor takes an elaborate strategy. He shows that cases in which the principle is to be applied are of very different moral types, and that for each type one must consider further principles, which account for that type (but not necessarily for other types). For example, 'the principle of distributive justice' applies to those conflict situations in which a) nonhuman organisms are harming us; and b) the interests of humans and nonhumans are all basic, and hence are on the same level of comparative importance⁶. How the general principle of respect for nature is to be understood in such cases -this is what we should expect from the applied ethicist.

P. Taylor is perfectly explicit about this characteristic of his account:

[T]he principles do not function as premises in a deductive argument. We cannot deduce from them, along with the facts of the case, a true conclusion expressible in a normative statement about what ought to be done, all things considered. We should strive to make our decisions on the basis of relevant considerations, and the relevance of the consideration is determined by the application of the principle.⁷

The relevant considerations Taylor mentions are analogous to the specific laws or principles that hold in some (not necessarily all) applications of a theory like Newton's classical particle mechanics (e.g., the law of gravitation is taken into account only in some applications). It would, therefore, be misleading to try to view applied philosophy in terms of deductive/inductive procedures, or of a combination thereof.

H. Shue once seemed to agree that his investigations might be regarded as a sort of applied philosophy, in fact of *applied ethics*. About fifteen years ago⁸ he discussed the use of fictional examples in philosophy. He noted that

no conclusions whatsoever follow from imaginary situations, for any actual cases that are significantly different from the extraordinary cases imagined. Artificial cases make bad ethics -and even worse applied ethics.⁹

Shue was concerned with basic human rights, and specifically with subsistence rights. This issue in political theory was, he contended, 'partly moral'¹⁰. In that context, he seemed to distinguish two types of approaches to human rights. Commenting on the favored one, he wrote:

in an approach to human rights like the present one that is committed to examining the ramifications of people's actually having their rights protected and in fact using them, instead of discussing the "rights themselves" (whatever exactly that could really mean) in the abstract, a consideration of both the effects of population growth on ability to enjoy various rights and the effects of the enjoyment of the rights on population growth (...) is not optional or peripheral but critical and central to the overall plausibility of the view.¹¹

So, an account of rights can be either in the abstract, or committed to actual cases in which they are involved. The latter one would be a piece of 'applied ethics'. It looks difficult to decide how Shue's use of this phrase is related to the one I tried to sketch above. To attempt at an answer, observe first that he is skeptical about the possibility to develop a coherent account of rights of the former type. The reason is that, taken into abstract, one is committed to doing away with any reference to cases of actual protection and/or use of rights. This assertion might be interpreted, though, in two different ways. On the former interpretation, it is doubtful that an abstract theory of rights 'in themselves' could even exist. I do not think this is a correct one. Indeed, it would contradict the claim that there is a distinction between ethics and applied ethics, as it was maintained in the first quotation. Furthermore, even in his very recent papers H. Shue invokes 'complete theories of justice' one can possibly agree on¹². Shue's claim does not appear to be directed against the *existence* 'as such' of abstract theories, and specifically of abstract theories of rights; rather he doubts about the correctness of viewing them as abstract structures concerned with properties of abstract entities. It seems to me, therefore, that this former interpretation does not render adequately Shue's position. Now, on the latter interpretation, no theory of justice is satisfactory if it does not come equipped with a set of actual concrete cases of protection and/or use of rights it claims to successfully deal with. This interpretation does not question the existence of theories of justice; the point is *epistemological*: it is argued that the 'hard core' of a satisfactory theory of justice (anyhow it would look like, i.e. whatever its principles would happen to be) should contain not only those principles, but also successful applications.

The problem I would like to address is this: how to characterize in an appropriate way the sort of philosophy exemplified in Shue's account of the issue of global warming? Is it correct to say that he develops a sort of applied philosophy? Now, it seems to me that, as far as applied philosophy is in a sense a top-bottom strategy (as indeed was assumed in the way I described it above), the answer must be in the negative: Shue's papers on global warming are not applied ethics. My position is that such accounts are pieces of *philosophical practices*, and specifically of *ethical practices*. To argue for it, I shall take a three-steps strategy. The first step is negative, and is a matter of showing that we have reasons to reject some alternative attempts to conceptualize accounts of that sort (this step is partly developed in the following section, and partly in the final one). The second step is (partly) descriptive

in that it concerns certain details (with a special view to epistemological ones) of Shue's treatment of the issue of global warming. The third is positive and is a matter of showing that we have good reasons to conclude in favor of my conceptualization. What exactly I mean by a 'philosophical practice' (or an 'ethical practice') will result steadily from my argument. The following three sections aim at developing this strategy.

2. Against applied ethics

An increasingly number of philosophers hold the view that, as far as applied ethics concerns an appeal to theories and principles, it has failed in its intentions¹³. According to this view, theories and principles are not the right tools one should make use of when trying to give an account of a concrete moral problem. A leading proponent of this view is the Oxford philosopher B. Williams. Moral theories, he says, are normative tools devised to tell people what to think (in ethics) and how to live:

An ethical theory is a theoretical account of what ethical thought and practice are, which account implies either a general test for the correctness of basic ethical beliefs and principles or else implies that there cannot be such a test.¹⁴

Theories of the first kind are 'positive' (Bentham's utilitarianism is a paradigm case of a positive ethical theory); theories of the second kind (e.g., emotivism) are 'negative'. According to positive theories, existing moral beliefs can be appraised to be correct or incorrect; according to negative theories, it is meaningless to ask about the correctness of moral beliefs. But, argues Williams, they all share the belief that moral beliefs can be appraised, and that the aim of theories is to judge the tests designed for this. Now, if theories are to meet such goals, they are bound to fail: "I shall argue that philosophy should not try to produce ethical theories."¹⁵ The anti-theorist claims that philosophy is not endowed with the power to assess (*via* general tests of correctness) the existing moral beliefs: it has not the power to tell us how to think (in ethics) and how to live.

The ethical approach to concrete moral cases should then have not the form of attempting to start from theories and principles and then trying to see how those cases are subsumed under them. The whole project of *governing* (moral) practice is not workable. This view naturally gives way to two sorts of question: Which are the grounds for rejecting theories and principles as appropriate tools to deal with concrete cases?, and: If successful at all, what sorts of consequences would such a rejection have? For the aims of the present paper, the former is not much relevant; it is this reason why I shall say some words only about the latter.

Suppose that the anti-theorist's view is correct. Then dealing with specific concrete cases¹⁶ would have to be an activity of quite a different kind than the now abandoned 'applied ethics'. For dealing with concrete cases would not consist in appealing to a theory or a principle and trying to see which is the right action, according to that theoretical tool. E.R. Winkler suggested that a 'contextualist' ethics¹⁷ would be more sensitive to context, particular circumstances, particular perceptions of individual moral agents, or the practices of local moral communities. In the field of

medical morality, 'medical ethics' would be replaced by 'clinical ethics'¹⁸: the accounts of specific concrete cases would be given without reference to general moral principles or theories, but as a result of a minute analysis by people directly involved in clinics. This last condition brings us to a second consequence: ethical theories and principles are the result of the activity of philosophers. Usually, their aim is to produce a sort of knowledge: moral knowledge, in the same way in which a physicist who designs a physical theory produces physical knowledge. It is then apparent that a person who knows the content of a physical or an ethical theory has increased her knowledge, as compared with a layperson. But, if ethical theories are to be rejected, it follows that a philosopher could not claim more moral knowledge than any other person; philosophers should submit to their fate: they have not more moral expertise than other people; e.g., in health cases, they are not more entitled to suggest moral solutions for action than doctors, nurses, or the patient's relatives¹⁹.

I have two short comments on these claims. First, assuming that the anti-theorist's arguments were sound, it still does not follow that in dealing with concrete cases the philosopher has not a role of her. The anti-theorist only showed that the philosopher cannot claim a special status in virtue of his producing ethical theories or principles. But it does not follow that in, say, 'contextualist' ethical accounts the philosophical perspective has no place. The anti-theorist simply argued that *some* uses of theories and principles are not suited to deal with specific concrete cases; however, she did not yet rejected *every* use of theories or principles. Second, if the anti-theorist's arguments are not sound, then these consequences plainly cannot be derived.

This view on theories and principles has a very interesting variant. It is a 'modest' view: according to it, the difficulties in applied ethics do not imply that theories as such are not useful and should be abandoned. But they imply that the search for all-encompassing ethical theories, for grand principles, aiming at subsuming all our moral life, and consequently the attempt to apply such findings, should be abandoned. At best we can hope to produce small theories able to deal with certain type or types of concrete moral cases, but never intended to generalize over our entire moral life. On this view, the principle-based approach in the ethical study of concrete cases has failed only in the sense that no collection of moral principles was able to cover all cases. But it does not prevent one try to develop theorita providing adequate accounts of certain type(s) of cases. Those theorita have a limited scope; and failed attempts at applying them to some new types of cases is not a mark of their weakness; rather they signal a category mistake: the types of cases are too different to be approached by a single theory (would you attempt at studying euthanasia by use of classical particle mechanics?). The moral realm is brittle, and our endeavor is to search for the right crumbs. The 'modest view is appealing, though, I think, it does not faithfully describe ethical practices. However, I shall be in a position to critically discuss this view only in section 4.

I shall now take a look at H. Shue's approach of the issue of global warming. It might be the case that at some points I shall present a reconstruction of Shue's position rather than his own explicit one. However, I think that the general spirit of his position will be preserved. I shall try to show that his approach is *ethical* in nature, but that neither the 'fault-based' nor the 'modest proposal' view of the role of

principles in ethical inquiry provide a satisfactory understanding of its logical structure.

3. An ethical approach to global warming

3.1. *Back to the concept of justice.* Suppose you go with your two children at Ned's Pizzeria in Downtown. Both are equally hungry, and you know that one does not usually eat more than the other. Now you buy two slices of pizza for one, and only one for the other. Is it a fair distribution of the slices of pizza? Maybe you should have bought four slices, and distribute them equally; or, if you had not enough money to buy another slice, the third should have been divided between the two children. Suppose, however, that your daughter has some money of her own (she saved it one week ago); she is still hungry and buys another slice. Her brother has no savings, but he is also covets some more pizza. Does fairness require that his sister give him a piece of this slice of hers?

One might be tempted to think that the problem with this example is, What are the fair mechanisms of distributing some good? What makes a share of someone's be a *fair* share? In short, what is the conception of justice to adopt? The problem is real, but -if we take the above questions be meaningful- it is preceded by an implicit option. Indeed, we answered: Yes to the question, Does 'fair' mean the same thing in both the two cases of buying slices of pizza?

3.1.1. *The logic of fairness.* When I say: x bought y from z , the buying relation is taken to hold among three entities (logicians would say that it is ternary); and the nature of y is very important, since the constraints one would like to impose on transactions between x and z depended upon it. Indeed, x may buy from z a car or a piece of land; but is it possible for him to buy z 's freedom to move from some place to another? Questions like these are popular in the debates between libertarians and their critics. They point, however, to an important feature of the buying relation: it is ternary, and the nature of the middle term is important in deciding when it *makes sense* to say that a transaction of this sort took place. Now, one might argue that in some contexts the nature of the middle term is irrelevant. The relation one is interested in is: x bought something from z , and it is a binary relation, for it concerns just two relata²⁰. It is worth noting that 1) the two relations are different, and that 2) the former is more general than the latter (while the latter can be defined in terms of the former, the converse does not hold).

Something analogous is involved in the two situations located at Ned's Pizzeria. I believe that 'fair' referred to two different relations in the two different situations, and hence that the answer: Yes to the question concerning its meaning was (at best) hasty. In the first situation, the fairness relation invoked was somehow like this: goods of the sort x are to be fairly distributed to members of the set y ²¹. But when your daughter spent her savings in buying a slice of pizza another relation was considered: goods of the sort x are to be fairly distributed from members of a set z to members of a set y . (Of course, sets y and z may have a non-empty common part; moreover, in many situations we assume that z is a subset of y .) The first relation is binary, while the

second is ternary. And again we might say that the one of them is definable in terms of the other. Indeed, starting with the second, it is possible to define the first as follows: goods of sort x which are somehow available are to be fairly distributed to members of a set y ²². Another point deserves to be mentioned: usually the choice of a term of the relation imposes some constraints on the other: the choice of the y 's or of the z 's is relevant for the way the fair allocations are conceived of. The issues: what to allot, from whom and to whom are not sharply separated.

It is important to notice that I did not try to argue that the relation one should consider when developing a conception of justice is the ternary one. The point is that if the binary one is preferred, an option was made, and it should be defended against the alternative. On the other hand, if one prefers the ternary relation, one has to make it clear that the appeal to the set z in the fairness relation is not superfluous, i.e. that it makes a difference.

H. Shue argued firmly that the distinction is relevant in his accounts:

A principle of justice may specify to whom an allocation should go, from whom the allocation should come, or, most usefully, both²³. The distinction between the questions, from whom and to whom, would seem too obvious to be worth comment except that "theories" of justice actually tend in this regard to be only half-theories. They tend, that is, to devote almost all their attention to the question "to whom", and to fail to tackle the challenges to the firm specification of the sources for the recommended transfers. This is one legitimate complaint practical people tend to have against such "theories": "you have shown me it would be nice if so-and-so received more, but you have not told me who is to keep less for that purpose -I cannot assess your proposal until I have heard the other half".²⁴

Here are more points I wish to comment on. First, Shue does not deny that theories of justice are useful tools in dealing with concrete problems of allocations. He agrees that the principles they contain might function as guides in convincing 'practical people' of the fairness of a proposed action. Now, he suggests that problems arise once principles of justice are directed only toward 'to whom' questions, i.e. when they do not answer the other half of the issue: who is as a consequence to keep less? But, if this is the complaint, then one 'merely' needs to include in her conception of justice the 'from whom' question, and hence to move from the binary to the ternary relation of fairness. Once certain answers to this sort of questions are integrated in the theories and corresponding principles, it would be possible to derive from them practical proposal of acting; and nothing prevents them from being able to adequately deal with concrete problems like global warming. If equipped with new principles, the theories of justice might be successfully *applied* to new cases.

It seems to me that, from Shue's view this is not a good description of the situation. Indeed, if theories of justice merely lacked to address the 'from whom' question, besides the 'to whom' one, this was simply a matter of remedy. Just add the missing elements and make the theory complete! But that would not entitle him to call them, somehow pejoratively, 'theories', and, more important, to look for an approach which should not be integrated as applied ethics. Let us observe, first, that Shue is not addressing to peculiar theories of justice: he holds that all have something in common, i.e. they all are based on the binary relation of fairness, and that it is a serious

predicament for them. But the problem is not that they are not fitted to deal with some types of cases; rather, their claim to be applicable in all cases is questioned. If, e.g., during an epidemic medical supplies are scarce relative to need (i.e. they cannot be divided usefully among *all* the persons who need them), then it is a case in which everyone in need has an equal claim to those supplies: *no one has any special claim to the supplies*²⁵. Here, indeed, the question 'from whom' makes no sense.

Roughly speaking, in such cases it is supposed that the goods to be allotted somehow function like 'offices'. M. Walzer described offices as opposed to 'prizes':

A prize, for example, can be deserved because it already belongs to the person who has given the best performance; it remains only to identify that person. Prize committees are like juries in that they look backward and aim at an objective decision. An office, by contrast, cannot be deserved because it belongs to the people who are served by it, and they or their agents are free (...) to make any choice they please.²⁶

Walzer remarks at one moment²⁷ that 'the current thrust in both politics and political philosophy is toward the reconceptualization of every job as an office -for the sake of justice'. If, more generally, we think of all goods to be distributed as offices, then it makes sense to say that the 'from whom' question has no bearing in these cases. So, the doubt expressed by Shue is not concerned with certain conceptions of justice: it concerns a *prerequisite* of those conceptions. It became customary to put this difference by recalling Rawls' distinction between the concept of justice and conceptions of justice. He suggests that the concept of justice is needed for, and people are prepared to affirm the existence of certain sets of principles of justice.

Thus it seems natural to think of the concept of justice as different from the various conceptions of justice and as being specified by the role which different sets of principles, these different conceptions have in common.²⁸

It seems to me that Shue's position might be interpreted as the claim that the fairness relation is not included in the concept of justice as a binary one. For, if it was thus included, the range of admissible conceptions of justice is restricted so that some concrete cases -the cases in which the 'from whom' question is relevant- are not accounted for. So, his position is not an attack against some conceptions of justice: it is directed against the way philosophers think of the very concept of justice underlying them.

But it does not imply that one should replace in the concept of justice the binary relation of fairness with the ternary, more general one (it is more general in the sense that the binary one can be defined in terms of it). A more correct view is to do away with the relation of fairness from the concept of justice. It should be emphasized that this does not mean that the idea of fairness is excluded from the concept of justice. It only means that being a binary or a ternary relation is not presupposed in the claim that fairness is part of the concept of justice. If one has some reasons to consider that an account of some concrete case is bound to appeal to the idea of fairness, and that it should be conceived as a (binary or ternary) relation, she has to show *how* that relation is to be conceived of, i.e. under which conditions 'from whom', 'to whom', etc. questions are relevant or not. For, indeed, the 'from whom' question is not relevant in many cases (think of the three slices of pizza bought at Ned's); but when your daughter

spent her own savings to buy another slice of pizza, the 'from whom' question became relevant in that particular case.

Now, the problem is, under which general conditions the 'from whom' question is relevant? (Note that, for this problem to be meaningful at all, it should be supposed that equity as a ternary relation is not taken as a part of the concept of justice.) H. Shue spent a lot of effort to give a description of the conditions met by certain particular cases in order that the issues concerning the sources of the allocations be unavoidable²⁹. The following two conditions are indicated by him as *sufficient* ones: 1) the amount of the thing to be redistributed in fairness cannot be enlarged; and 2) that thing is linked with a 'vital interest'³⁰ of the people involved. Condition (2) implies that if a certain distribution is such that it affects vital interests of some people involved, while diminishing the share of some other people affects their non-vital interests, then we have a good reason to claim that this distribution is not fair. When interpreted in this way, condition (2) has not necessarily a value-import: that would require something more, i.e. a claim that 'vital interests' make a moral difference. To say that one has a good reason to claim that a distribution is fair or not does not entail that this reason is endowed with a normative force. A good reason is not a 'sufficient reason'. So it seems to me that condition (2) involves (relevant) facts, not values. Condition (1) points that a) the kind of thing we are concerned with is already under use, and hence we have to consider the *actual* distribution of it, the shares people have actually; b) the thing is to be redistributed, i.e. the actual shares are to be modified; c) redistributions concern a nonexpandable amount of that thing: this fact makes our problem fall among zero-sum decisions³¹; d) the redistribution should be made in fairness. So, at least partly (i.e., when the last claim is considered) condition (1) expresses (relevant) values.

I shall not discuss these conditions. For the purposes of this paper, it does not matter if they also express *necessary* conditions for the question 'from whom' to become significant. My interest is methodological: conditions (1) and (2) define, on Shue's view, situations in which the issue of justice should be given a certain treatment. Global warming meets these conditions, and consequently 1) it is doubtful that an appeal to usual theories of justice (which neglect the 'from whom' question) would be useful; 2) an account of the issue of justice involved in this situation is unavoidable; but 3) we are not entitled to extend this sort of account of other cases, unless we gave good reasons that the new one is relevantly similar to this.

3.2. *The question of the four questions.* I shall try now to discuss the philosophical bearing of the four questions on justice Shue distinguishes in his account of global warming. A 'standard' way to put them is this³²: (1) What is a fair allocation of the costs of preventing the global warming that is still avoidable? (2) What is a fair allocation of the costs of coping with the social consequences of the global warming that will not in fact be avoided? (3) What background allocation of wealth would allow international bargaining (about issues (1) and (2), to be a fair process)? (4) What is a fair allocation of emissions of greenhouse gases (over the long-term and during the transition to the long-term allocation)?

Thus, the first question concerns the issue of allocating the costs of prevention; the second -the issue of allocating the costs of coping; the third -the issue of the background allocation of resources and fair bargaining; and the fourth -the issue of allocating emissions in fairness³³. Shue's strategy is to look at the connections among the answers one would be willing to give to these questions. Is it possible, e.g., to answer question (1) without simultaneously answering question(2)? Which is the relation between the answer to question (1) and the answer to question (4)?, etc. He takes, thus, for granted that there is no a priori method to deal with these questions. The answers are a matter of investigation of the special cases. Now, this strategy is at odds with the one an applied ethicist would favor. To see how the differences raise, let me attempt at developing the strategy the applied ethicist would consider more appropriate in approaching the issue of global warming.

She would start by drawing two distinctions³⁴: (a) between what persons *do* and what they *merely let happen*; and, in the field of what they do, (b) between what they *intend* and what they *merely foresee* (or are expected to foresee). Then, she would claim that for each distinction, the two sorts of actions might have not the same moral standing. Consider, indeed, the collection of those events that contribute to a person' being wronged. One might think that, on the former distinction, any wrong an agent does to some person is morally more significant than the wrong the agent merely lets happen to that person: we might put this claim in the assertion that when the agent wrongs a person, she harms that person, while when the agent merely lets that wrong happen to some person, the agent does not harm her; or, less sharply, that the harm the agent brought about in the first case is greater than the harm the agent brought about in the second. On the other hand, one might deny, of course, that one of these acts is morally more significant than the other³⁵. On the latter distinction, one might again think that any wrong an agent intends to do to some person is morally more significant than the wrong the agent merely foresees. Rephrasing again, we get: when an agent intends to wrong a person, she harms that person, while when the agent merely foresees that her action will wrong a person, the agent will not harm that person; or, less sharply, the harm an agent brought about to some person is greater in the first case than is the second. But, of course, some might deny that there is a significant moral difference between what the agent does in the two cases.

Third, the applied ethicist would define general conceptions of morality, as follows: (1) a conception of morality is *deontological* if and only if it holds that on both distinctions the action of the agent makes a moral difference; (2) a conception of morality is *consequentialist* if and only if it holds that at least on some distinction the action of the agent makes no moral difference, and: (2.1) it is *fully consequentialist* if and only if it holds that on both distinctions the action of the agent makes no moral difference; (2.2) it is *semi-consequentialist* if it is consequentialist, but it is not fully consequentialist.

Analogously, one may define general conceptions of justice: deontological, fully consequentialist or semi-consequentialist. A deontological conception of justice would hold, e.g., that the agent's doing an action that brings about wrongful effects is more unfair than she merely letting those effects happen; and that the wrongful effects of an

action the agent did are more unfair if she intended to bring them about than if she merely foresaw them³⁶.

Fourth, equipped with some sort of a conception of justice, the applied ethicist would try to approach the issue of global warming. Thus, in terms of doing or letting happen, she would consider, on the one hand, the costs of *acting* to prevent the global warming that is still avoidable. Justice immediately requires an answer to a question like, What is a fair allocation of the costs of acting to prevent the global warming that is still avoidable?, i.e. Shue's question (1). On the other hand, the applied ethicist would consider our letting things happen without acting to prevent global warming. She might argue that people are not equally supposed to let things happen. Some of them would want to do more than others. One of the reasons is that they would have more to lose by non-acting than others. Some would want to do something against global warming, but they are not in the best position to persuade others do the same thing, or have interests that count against acting for preventing global warming (e.g., acting would require a dramatic fall in their quality of life). So, one of the issues of refraining to act for preventing global warming concerns the background interests and preferences. Among them, we may find very important the background allocation of wealth, and one of its effects: different bargaining power of the parties. When the applied ethicist comes to consider the issue of justice, (at least part of) Shue's question (3) comes as a very natural conclusion: What background allocation of wealth would allow international bargaining about the costs of preventing the global warming that is still avoidable be a fair process?

Suppose, however, that acting to prevent global warming is under discussion. In terms of intending-foreseeing, the applied ethicist would eventually uncover that our actions have intended and merely foreseen effects. Among the intended effects, one should count, of course, the allocation of emissions of greenhouse gases, both over the long-term and during the transition to the long-term allocation. When the issue of justice comes to the limelight, Shue's question (4) presents itself. But our actions have effects we do not intend, among them effects we cannot prevent. In our case, acting to prevent global warming probably would not succeed in avoiding wrongs and other social consequences. The costs of coping with such effects should also be distributed, and justice asks, What is a fair allocation of the costs of coping with the social consequences of global warming that will not in fact be avoided? It is no surprise, I believe, to find here Shue's question (2) of justice.

The fifth step in an applied ethicist approach to global warming is to invoke the general conception of justice she adheres to. Thus, on the deontological conception, an answer to question (1) does not settle the answer to (3). Further, since some of the affects of our actions are intended, while others are not and this makes a moral difference), the answer to (1) does not presuppose anything about the treatment of the issues expressed by (2) and (4)³⁷. A semi-consequentialist who denies that a sharp distinction between intending and merely foreseeing is morally relevant would cast some doubt on the last claim; and a full consequentialist also would not consider that answers to questions (1) and (3) are independent.

H. Shue's approach to global warming is quite different. He asks the four questions, but he does not assume that the connections holding among the answers to them are

somehow predetermined by a general conception of justice. Rather he seems to believe that an inquiry is necessary if one tries to provide a genuine view on these connections. However, the converse is worth-mentioning. If one finds that the answers to some of the four questions are close connected, this might have consequences out of this special topic of inquiry. Shue argues that the answers to questions (1) and (4) are linked, not merely in the sense that the answer to (4) presupposes some answer to (1), but also in the sense that the answer to (1) cannot be given without answering to (4)³⁸. Second, he rejects the separation of prevention and coping³⁹, i.e. of the answers to questions (1) and (2): it is not possible to answer (1) without simultaneously answering to (2)⁴⁰. Now, these two claims let us infer that Shue agrees that, since in one specific situation they are not distinct, *in general* intending to act in a certain way and merely foreseeing that some effects will happen are not distinct things. For otherwise, as I noted above, the answer to question (1) had to be independent from answers to (2) and (4).

Sometimes, he argues, it is not possible to sharply distinguish issues of acting from issues of letting happen. If such a distinction would always have a moral significance, then 'negative' rights would have a quite different status from 'positive' rights. There are, though, good reasons to consider that at least some 'positive' rights (e.g., the rights to security and subsistence) are as basic as 'negative' rights like liberty. Therefore, the underlying distinction presupposed in the argument that the 'positive' and 'negative' rights have not the same moral significance⁴¹ -i.e., the distinction between acting and omitting to act⁴²- is somehow doubtful in a moral perspective. (In the case of global warming, doubt would consist in trying to find out connections between the answers to (1) and to (3); however, I did not meet an explicit account of this issue in Shue's papers.)

If we attempted to view H. Shue's work as applied ethics, the conclusion that he does not accept any of the distinctions constitutive of a deontological conception of justice would be straightforward. Hence, under this condition, Shue appears to be a *fully consequentialist* philosopher. But I do not know if this conclusion still makes sense if that condition is put away.

4. What is an Ethical Practice?

I mentioned that H. Shue is not committed to rejecting the existence of 'complete', i.e. fully elaborated, theories of justice. He doubts, however, that in specific concrete situations people actually appeal to them in judging the fairness of the actions they rely on.

In general -Shue writes- if several parties (individuals, groups, or institutions) are in contact with each other and have conflicting preferences, they obviously would do well to talk with each other and simply work out some mutually acceptable arrangement. They do not need to have and apply a complete theory of justice before they can arrive at a limited plan of action.⁴³

It follows that, as far as these parties agree that the arrangement they worked out is fair, they do not assess it so in the light of some pre-chosen theory of justice⁴⁴. But now it seems natural to ask, How do these parties assess the fairness of their

arrangement? What reasons do they have to agree that, e.g., a particular allocation of the costs of preventing global warming, or of coping with the social consequences of the global warming that they will not succeed in avoiding, is fair or equitable?

Shue's answer to such questions is twofold. First, he suggests that, in order to be adequate, it is sufficient that an evaluation be slightly above certain minimal requirements: the evaluation should succeed in identifying specific goals of the bargaining process (e.g., the distributions of greenhouse emissions to end up with), or minimal conditions⁴⁵ to the effect that the distribution be not so unfair as to undermine the bargaining process⁴⁶. This account is weak enough to rule out as uncalled for any appeal to general theories of fair distributions. Second, Shue holds that some criteria for producing such evaluations are available. When assessing the fairness of a certain distribution, we may appeal to the existence of some *standards of fairness*. These standards are supposed to satisfy the minimal requirements of appraising the fairness of a certain bargaining process or distribution. On my view, the notion of standard of fairness plays a key role in Shue's inquiry. Therefore, I shall endeavor to discuss it in some more detail.

Sometimes it is possible to design such standards starting from an analysis of the activities carried out together by two or more parties toward the solution of a common problem. The notion of fairness involved in that situation concerns at least the terms of the agreement the parties eventually adhered to (actually, it might also concern the fairness of the bargaining relation). The fairness of the distribution of a good is thus judged with respect to the conditions the parties voluntarily agreed to. Note that in this process the 'from whom' questions might be extremely significant. In the case, e.g., of global warming, the background allocation of emissions is significant, since it produced different bargaining power of different states. As I mentioned above (in section 3.1.1), Shue considers that two conditions are sufficient for making unavoidable the taking into account of the sources of an allocation: the amount of the good (i.e., the greenhouse emissions) to be distributed cannot be enlarged, and the fact that these emissions are linked with some 'vital interest' of (some of) the people involved. Thus, an adequate standard of fairness for a certain (unfortunately, only suggested) distribution of greenhouse emissions should comprise, as a minimal requirement, a protection of 'vital' or 'survival' interests of (some of) the people involved. If an agreement (which was, however, accepted by, e.g., Haitians, since they lacked the bargaining power to oppose it) requires that they give up all perspectives of development, a minimal standard of fairness should regard that distribution as unfair⁴⁷.

An inquiry into the structure and adequacy of such standards of fairness appropriate in the study of specific concrete issues like global warming is *ethical* in nature and is, of course, welcome. Moreover, if the use of such standards does not rely on a certain general theory of justice, or from some general principles, it is not a piece of 'applied ethics'. One might evoke here the 'modest' view on theories and principles, (sketched in section 2) and the idea of a 'theorita': a small theory aiming at dealing with a specific type or type of concrete moral cases, but which does not aspire to provide a theoretical understanding of the entire moral life. I admit that this might be an interesting and perhaps relevant ethical approach to some aspects of issues like

global warming. But this is not the kind of philosophical (and specifically ethical) activity H. Shue is engaged in. Indeed, on the one hand this activity is exclusively a bottom-top one (and the 'top' is not very high!); but I shall try to show that although in a sense Shue's account of such issues presupposes the existence of theories and principles, and hence it is in a sense a top-bottom one⁴⁸, it does not do this in the same sense as applied ethics or the 'modest view' do. On the other hand, it does not pay attention to the existence of two distinct types of standards of fairness: pre-agreement and post-agreement ones. I shall first have a look at this second aspect.

Standards of fairness sometimes stem from voluntary and explicit agreements between parties involved. But it is still possible to argue that a certain distribution of a good is unfair, even if no arrangement was yet agreed on. The present distribution of wealth and poverty in the world is seen by many people as extremely unfair, though it does not contradict any previous agreement between various nations. Similarly, suppose that rich nations continue to increase their greenhouse emissions; but, given that this will disrupt the climate, and threaten the survival capacity of especially members of poor nations, this is not in the spirit of fairness. Now, the question arises, How could a nation do something against fairness before any agreement had been made specifying what is and what is not fair to do? The answer, Shue conjectures, is that some standards of assessing the fairness of wealth distribution or of shares of greenhouse emissions are not the result of explicit and voluntary agreements:

In fact, we do not generally believe that one is bound to do only what one has explicitly and voluntarily agreed to. On the contrary, we regularly judge agreements to be fair or unfair, which reflects that we take some elemental principles of fairness to be more fundamental than explicit agreements and to include standards that agreements themselves must satisfy in order to be binding.⁴⁹

Now, the existence of such standards is largely admitted by many ethicists and political philosophers. One interpretation of this situation is the well-known doctrine of 'natural law': such standards are viewed as 'natural', in the sense that they are prior to any human conventions. If Shue tried to derive the validity of these pre-agreement standards from a doctrine like the natural law one, then obviously his account was in an essential point an 'applied' one. But he is strongly against an interpretation like this of his strategy. First, regarding pre-agreement standards as 'natural' "creates unnecessary problems, introduces false issues, and invites misleading comparisons"⁵⁰. The second reason Shue presents is interesting not only in itself, but also because it introduces the basic idea of his own use of theories and principles (i.e., the type of top-bottom strategy he accepts). He suggests that admitting such pre-agreement standards is a sort of precondition of any ethical account of concrete cases like global warming:

Regardless of whether this reflects anything 'natural', it certainly reflects something very deep, which ordinary people respect are not about to abandon (nor is there any reason why they should).⁵¹

There are two distinct theses involved in here. First, that the appeal to values is legitimate in approaching specific concrete cases. A rigid⁵² reference to the features, circumstances of those cases makes us sure that the emphasis stands on the side of

what is characteristic, irreducible, impossible to subsume under certain a priori chosen principles or theories in those cases; the pre-agreement standards of fairness let us assess morally certain actions or distributions, etc. Second, Shue is very cautious in formulating the way in which the appeal to standards is to be done. On the strategy of applied ethics, one had to mention the theory and/or the principles she accepts, and then to show how they worked in some given case. The *choice* of a theory or of some principles is compulsory, and it must *precede* using them. Shue's strategy is weaker: he merely says that '*something* very deep' comes with these standards of fairness; but he does not *point* to that very deep thing. Indeed, he if tried to say anything about that thing, Shue would have embraced the strategy of applied ethics; and this is exactly what he wanted to avoid.

There are some other passages in his papers in which this different strategy is more clearly expressed.

Issues of justice -he argues- arise, of course, in more than one way, and it is an open question whether the standards of justice applicable to the various different contexts in which questions of justice arise are the same.⁵³

His view is then this: in approaching different questions of justice we are bound to appeal to some standards of fairness or justice. These standards might be pre-agreement ones, and hence come from some theories or principles. But in the account of some specific concrete case it is not necessary to appeal to a given theory or some given principles; rather it is only necessary to assume that *there is* such a theory or there *are such* principles. Theories and principles are necessary ingredients in Shue's ethical strategy. But, in opposition with the strategy of the applied ethicist, he considers that the relevance of these ingredients does not rely on the nature of their content. Rather their relevance is simply a matter of their existence. As he remarks at one moment,

[i]t seems reasonable to assume that, whatever exactly will be the content of the standard of justice for allocating emissions [of greenhouse gases], the emissions should be divided somewhat more equally than they currently are.⁵⁴

Thus, the content of the standards of justice needs not be specified in a very rigorous manner: *whatever exactly* they would be, something would follow.

The strategy preferred by H. Shue looks then to incorporate at least the following aspects: 1) no theory of justice or principles are chosen in advance to approaching a specific concrete issue; 2) the account is then not devised as an application of such a theory or principles to that specific concrete case; 3) the use of rigid reference to characteristic features, circumstances of the case guarantees that the emphasize is not on subsuming cases to theories or principles, but on their specificity; 4) there are theories of justice (or: ethical theories) and principles of justice (or: ethical principles): their existence supports the use of value-judgements, the possibility to assess actions, distributions of goods as fair or unfair etc.; 5) but the specific content of these theories and principles is not at issue (as in the case of applied ethics): no use of a *specific* substantive principle is essential or unavoidable; 6) theories and principles justify the use of normative assessment of particular characteristics of the

case the approach is addressed to; 7) nevertheless, the distinction between factual and normative aspects in that approach is a matter of contextual decision, and is not settled in advance; 8) since theories and principles are presupposed, but not particular ones, the results of such an approach do not affect any of them; rather they give reasons to doubt about certain ways of understanding some prerequisites of all theories or principles of some sort: in the case of accounts of the *fairness* in issues like global warming, it is the concept, not the conceptions of justice that would be affected. This points characterize, on my view, a philosophical practice (and, in our case, an ethical practice).

To take another example, consider the birth of environmental ethics. It involved two distinct sorts of theoretical activity, although usually they were not separated with much care. On the one hand, it was argued that environment is morally considerable, it is an essential and unavoidable topic of moral inquiry. On the other hand, much effort was spent to construct ethical theories of the environment. The former account represents a philosophical practice; the latter is more substantive: not only that it acknowledges that environmental items are morally relevant, it requires specific and substantive moral principles. While the philosophical practice was successful, and today it is hardly possible for an ethical theory to ignore environmental issues, its peculiar characteristics seem to be underestimated and even neglected. (The old times when ethical theories did not even worry about environment are almost forgotten.) But the strife to elaborate satisfactory moral theories of the environment presupposes such a previous philosophical practice.

One final comment. A philosophical practice does not question the existence of theories or principles, though of course it might have many to say about their adequacy in treating specific concrete cases (in general, the philosopher who engages in such a project is skeptical about the virtues of attempting to apply given theories and principles to any such cases, without a prior account of their circumstantial, contextual features). But, on the other hand, a successful philosophical practice shows that a specific concrete case, or a specific class of cases, are significant with respect to a philosophical issue. Global warming, as Shue forcefully argues, is extremely relevant for the problem of justice, and consequently a philosophical approach to global warming is legitimate. A satisfactory theory of justice should strive to provide adequate accounts of this issue. It follows that global warming must be regarded as a kind of paradigmatic, essential 'application' of an acceptable theory of justice. If, as I argued above in the first section of this paper, theories are to be conceived not just as abstract structures, but as pairs of theoretical principles and paradigmatic applications⁵⁵, then a philosophical practice is a necessary philosophical activity aiming at providing such applications.

Notes

- 1 Rawls, J.: 1971, *A Theory of Justice*, Cambridge, Mass., Harvard University Press, p. 15.
- 2 See Sneed, J.D.: 1971, *The Logical Structure of Mathematical Physics*, Dordrecht, D. Reidel.

- 3 In fact, on Sneed's approach, it is *not*. Rawls' theory forcefully exemplifies this point. Indeed, his principles of justice are not thought of as independent general statements; rather, they are connected by a sophisticated mechanism of assigning priorities.
- 4 The examples are given by Th. Kuhn in his classic *The Structure of Scientific Revolutions*, second ed., Chicago, Chicago University Press, Chicago, 1970, *Postscript*. Kuhn offers even more complicated examples, concerning, e.g., the case of a pair of interacting harmonic oscillators, when Newton's law becomes two equations, each of them more complicated than the ones mentioned above.
- 5 Taylor, P.W.: 1986, *Respect for Nature*, Princeton, Princeton University Press. It should be noted that Taylor's account is more elaborated than this remarks might suggest.
- 6 Taylor, p. 292. Other principles, e.g. 'the principle of minimum wrong', are equipped with even larger collections of conditions in which they are supposed to play their role (see p. 280).
- 7 Taylor, p. 263.
- 8 Shue, H.: 1980, *Basic Rights*, Princeton, Princeton University Press. See especially pp. 94-5 and 190-1.
- 9 Shue, *Basic Rights*, p. 94.
- 10 Shue, *Basic Rights*, p. 107.
- 11 Shue, *Basic Rights*, p. 92. He adds: 'Consequences are not all that matter morally, but they do matter very much.' This conclusion is, on my view, difficult to accomodate with viewing his account as a consequentialist one (see section 3.2).
- 12 Shue, H.: January 1993, 'Subsistence Emissions and Luxury Emissions', in *Law and Policy*, vol. 15, no 1, p. 47.
- 13 It is sometimes suggested that the phrase 'practical ethics' would be more appropriate. But I think this is misleading. Many philosophers already use it intersubstituable with 'applied ethics'. P Singer, e.g., wrote a book on *practical ethics* and edited one on *applied ethics*; but he seems not to consider that the 'applied' and the 'practical' accounts are different in nature. Second, traditional philosophy was usually divided in 'theoretical' and 'practical' (in many European continental universities the philosophy curriculum is still divided in theoretical and practical disciplines). Ethics was paradigmatically included in practical philosophy, and hence the phrase 'practical ethics' has the flavor of a tautology.
- 14 Williams, B.: 1985, *Ethics and the Limits of Philosophy*, Cambridge, Mass., Harvard University Press, p. 72.
- 15 *Ethics and the Limits of Philosophy*, p. 17.
- 16 Some authors suggest that the approach to concrete cases is a legitimate intellectual activity, and that it has its own 'logic'. See for a recent analysis of this aspect Shrader-Frechette, K., McCoy, E.D.: 1994, 'Applied Ecology and the Logic of Case Studies', *Philosophy of Science* 61, no 2, 228-49.
- 17 Winkler, E.R.: 'From Kantianism to Contextualism. The Rise and Fall of the Paradigm Theory in Bioethics'.
- 18 See, e.g., Siegel, M.: 1979, 'Clinical Ethics and Clinical Medicine', in *Archives of Internal Medicine*, vol. 139, 914-5; see also some papers in the Hoffmaster, B. et al. (eds.): 1989, *Clinical Ethics: Theory and Practice*, Clifton, Human press.
- 19 Even the proponents of applied ethics agreed that *decisions* in difficult moral cases usually were not made by (applied) ethicists; but they hoped at least that ethicists are in a position to suggest which actions are right and which are wrong. With anti-theorists, an ethicist should not aspire any more to be an adviser in such cases.
- 20 Logicians would say that the binary relation comes from the ternary one by an existential quantification over a free variable.

- 21 I use the term 'set' instead of, say, 'classes' of people because 1) 'set' does not necessarily involve a structure *previously* defined among its members; and 2) 'class' has some connotations sometimes it is better to avoid.
- 22 The logical tool used in this construction was, again, the existential quantification.
- 23 It is not necessary to add: *how* does that allocation come? For the 'how' question is involved in the concept of fairness. (Shue partly addresses this problem in his discussion of 'fault-' and 'non-fault' based principles.)
- 24 Shue, H.: 'Subsistence Emissions and Luxury Emissions', p. 50.
- 25 The example is borrowed from Lyons, D.: 1975, 'Nature and Soundness of the Contract and Coherence Arguments', in Daniels, N. (ed.): *Reading Rawls*, New York, Basic Books, p.155
- 26 Walzer, M.: 1983, *Spheres of Justice*, New York, Basic Books, p. 136.
- 27 *Spheres of Justice*, p. 131.
- 28 Rawls, J.: *A Theory of Justice*, p. 5.
- 29 See his 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?', in *Indiana Journal of Global Legal Studies*, vol. 1, 2, Spring 1994, pp. 343-366, especially section III, and 'Avoidable Necessity: Global Warming, International Fairness, and Alternative Energy', unpublished paper.
- 30 This expression is used in Shue's 'The Unavoidability of Justice', in Hurrell, A., Kingsbury, B. (eds.): 1992, *The International Politics of the Environment*, New York, Oxford University Press, pp. 373-97, section F.
- 31 This part of condition (1) says that we have not a win-win situation: if one gets more, other gets less. If, however, we are still considering the possibility of expanding the quantity of the thing to be distributing, or if we do not take the 'from whom' question into account (part (a) of this condition), then surely our problem of imposing constraints on its distribution meets the issue of the *public goods*, and immediately appeals for a treatment in terms of some variant of the 'prisoner's dilemma'. For such an account, see, e.g., Danielson, P.: 'Morality, Rationality, and Politics: The Greenhouse Dilemma', in Winkler, E.R., Coombs, J.R. (eds.): *Applied Ethics*, pp. 329-40.
- 32 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?', p. 344.
- 33 'Subsistence Emissions and Luxury Emissions', p. 51.
- 34 The definitions of a deontological and of a consequentialist conception of morality (and of a conception of justice) I shall appeal to come from Pogge, T.W.: 1989, *Realizing Rawls*, Ithaca, Cornell University Press, Ithaca, pp. 44-45.
- 35 A rejection of the moral relevance of this distinction is to be found in some accounts of the issue of active and passive euthanasia. Some authors (e.g., Rachels, J.: 1986, *The End of Life: Euthanasia and Morality*, Oxford, Oxford University Press) argued for an 'equivalence thesis': the view that killing and letting die are morally equivalent (if all other things are equal, i.e. if there are no morally relevant reasons which will make either killing or letting die the morally preferable option).
- 36 Pogge considers that Nozick's conception of justice is deontological, while Rawls's is semi-consequentialist, in that it rejects the second claim of a deontological position.
- 37 However, the converse is not true: what we intend to do when we act and what we merely foresee when we act presuppose that we act somehow; hence answers to (2) and (4) depend upon the answer to (1).
- 38 See his 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?'
- 39 It is important to emphasize that it is not the issue of separating prevention from coping that is under scrutiny here. Rather the query is, Is it fair or just to keep them separate?
- 40 E.g., in 'The Unavoidability of Justice'. A clear statement of this claim is on p. 391.
- 41 Shue, H.: *Basic Rights*, p. 37. He writes:

[T]he moral significance, if any, of the distinction between positive and negative rights depends upon the moral significance, if any, of the distinction between action and omission of action.

- 42 One might, of course, argue that omitting to act, or refraining to act is different from letting things happen: for in the former case we still have an action -of refraining to do something- while in the latter one we have an absence of action. However, in many passages Shue seems to think of omissions as of absence of actions (see, e.g., his treatment in Chapter 4 of *Basic Rights* of the issue of food shortages). This position is consistent, on my view, with the doubts he expressed concerning the possibility to draw a distinction between indenting and (merely) foreseeing.
- 43 'Subsistence Emissions and Luxury Emissions', p.47.
- 44 Thus, theories of justice do not *motivate* the way these parties act; but this does not settle the question if they are still supposed to *explain* why the parties act in certain ways.
- 45 As opposed to specifying thoroughly fair distributions. In such a case, a theory of justice is more appropriate to provide the necessary evaluative tools.
- 46 See 'Subsistence Emissions and Luxury Emissions', pp. 48-9.
- 47 Shue suggested to distinguish between justice in terms of the argument itself (*internal justice*) and the justice of the circumstances within which the agreement is being made (*background justice*); see 'The Unavoidability of Justice', pp. 386-7. I think that this distinction, though correct, entangles two separate issues: 1) the role of the 'from whom' questions in addressing the problems of fair distributions; and 2) the role of the standards of fairness. We shall immediately see that Shue separates pre-agreement from post-agreement standards of fairness, and that the latter ones are extremely important for his account. But the existence of such standards is not necessarily linked with the role of the 'from whom' questions of justice.
- 48 This claim seems to contradict another I made in the first section of this paper, when I asserted that Shue's account is not a top-bottom strategy. But my assertion was not so strong: it was intended to mean that his account is not a top-bottom one in the *same sense* in which applied ethics is conceived of as such a strategy.
- 49 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?', pp. 361-2.
- 50 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?', p. 362.
- 51 'After You: May Action by the Rich Be Contingent Upon Action by the Poor?', p. 362.
- 52 See section 3.1.2 above.
- 53 'The Unavoidability of Justice', p. 386.
- 54 'Subsistence Emissions and Luxury Emissions', p. 49.
- 55 According to J.D. Sneed's approach to theories.

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