

responsibility for the environment

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REASONS FOR AGREEING, REASONS FOR COMPLYING:
THE PARIS AGREEMENT AND THE COMPLIANCE ISSUE*

Abstract

How should we deal with noncompliance in the context of the Paris Agreement? After having delimited the scope of noncompliance as a motivational issue, I will argue that two kinds of reasons can motivate agents to comply, moral and prudential reasons. Then, I will show that moral and prudential reasons can motivate compliance, although in different ways, as moral reasons require the institutions, whereas prudential reasons are thought to be self-sufficing. Prudential reasons come with the assumption that they have ample motivational force to elicit compliance. I will contend that, for what concerns climate treaties, this assumption does not hold. To do so, I will argue that, from an interest-based perspective, reasons for agreeing on a treaty rarely conflate with the reasons that motivate agents to complying with it, so, if we want to ensure compliance, the international climate regime should establish institutions to oversee compliance when prudential reasons fails to motivate.

1. Introduction

Contrasting climate change seems to be a losing battle. The negative effects of poisonous emissions have been known since 1990 when the Ipcc (Intergovernmental Panel on Climate Change) published its first assessment report. It stated that if the exploitation of environmental resources and pollution did not diminish, the consequences for our planet would be devastating¹. Thirty years

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¹ Currently, climate scientists declare that the mitigation targets should aim to keep the raise of the average surface temperature below 1.5°C on pre-industrial levels.

later, here we are, dealing with the very same issues – increasing temperatures due to dangerous emissions, resources depletion, deforestation and other phenomena contributing to climate change. In the meantime, some things have changed. Data have piled up, our knowledge about the physical processes causing climate change has deepened, projections on the future scenarios have become more precise². At the same time, a complex international regime on climate change has been established, emphasising, on the one hand, the global scope of such issue and, on the other hand, signalling that international coordination was the viable way to deal with it. However, despite their active participation in international climate conferences, national governments still hesitate in including effective climate change reforms into their domestic political agenda, preferring to either ignore the problem or plan inadequate measures.

The preferred strategy to contrast climate change is through international treaties, whose function is to establish a shared rule system to implement measures aimed at climate change mitigation or adaptation³. Since the establishment of the United Nations Framework Convention on Climate Change (Unfccc), the international institution in charge of all climate change-related matters, many attempts have been made to ratify a widely accepted international agreement. After many false starts – some more successful than others⁴ – the Paris Agreement, approved in 2015, represented a turning point for climate change policymaking. In contrast with previous treaties, the Paris Agreement obtained a vast consensus among Unfccc state members because it granted much more autonomy to individual countries, which could determine what policies they would be going to implement domestically to contrast climate change.

The Paris Agreement's winning formula consisted in its flexibility, which allowed each country to set its mitigation commitments through a system of so-called 'nationally determined contributions' (Ndc's for short) which facilitated the agreement process⁵, eliciting the collaboration of historically reluctant countries⁶. However, this flexibility is a double sword, for it clearly incentivises states to find common agreements, but, on the other hand, it leaves their implementation to the national willingness to do so. Indeed, for many countries, the

² For an overview, see Parker 2018.

³ Moellendorf 2012: 133, 2015.

⁴ For an overview see Gupta 2010, Okereke 2010.

⁵ Victor 2016.

⁶ Most notably, the only exception is represented by the United States of America. Under the Obama administration, the US made climate change one of the flagship issues that needed to be tackled, and the US became one of the main promoters of the Paris Agreement. However, with the administrative change to the Trump presidency, the American stance on climate change radically changed, with the president announcing the intention to withdraw from the agreement.

progress made with mitigation policies has been evaluated as largely insufficient if compared to the targets they set in their nationally determined contribution⁷.

As it is right now, the international climate change regime lacks the means to guarantee compliance⁸. Allowing countries to adapt nationally determined contributions to their interests and needs – according to each country's prudential motives – has brought a broad and unprecedented consensus to an overarching climate treaty. Ideally, if a country can plan for itself how to contribute to climate change mitigation, then it would be more motivated to comply and implement its planned policies.

When devising international treaties, negotiations entirely focus on seeking the countries' consensus, as they aim to make both enthusiastic and reluctant countries⁹ sign the same agreement. To obtain this consensus, the Paris Agreement, for the first time in climate change international policymaking, has explicitly opened up to the possibility that countries could agree on their own terms by letting them have full autonomy in the decision of their nationally determined contributions' content. However, international treaties do not seek only countries' consensus. They also ought to produce results, and, especially for what concerns climate change mitigation, results depend on countries' compliance. Yet, international institutions lack the means to monitor whether countries are implementing their self-imposed mitigation targets or not¹⁰. What I will argue in this paper is that global environmental institutions should not stop their function to the ratification of an agreement, but they should also see to its implementation, by monitoring countries' progress and, if necessary, by intervening to enforce compliance.

To defend this thesis, I will first distinguish between noncompliance due to unwillingness and noncompliance due to unfavourable conditions, limiting the scope of the paper only to former. Once I have established that noncompliance is a matter of motivation – or lack thereof – I will show how there are two main sets of motivating reasons – moral and prudential. If motivated by moral reasons, in order to have compliance we need the mediation of institutions,

⁷This group of noncompliers includes the highest polluters which, incidentally, are also the most developed countries, such as the Usa, Russia, China and all European Union members. See: www.climateactiontracker.org (accessed: 26 September 2020).

⁸Spash 2016.

⁹I borrow this distinction from Victor 2011: «Enthusiastic countries are willing to spend their resources to control emissions. These countries are the engines of international cooperation» (Victor 2011: 11). By contrast, reluctant countries «don't put global warming high on the list of national concerns, they won't do much to control emissions except where those efforts coincide with other national goals» (*ibid.*).

¹⁰The Paris Agreement contemplates the possibility of creating a controlling mechanism, but in the form of a yet-to-be-established 'non-adversarial and non-punitive' expert committee (Spash 2016), which would have no authority to enforce compliance if necessary.

whereas prudential reasons are thought to be sufficient to motivate agents to comply. Contra this view, I will show that prudential reasons motivate compliance only if compliance is a crucial part for pursuing one's ends. In the context of the Paris Agreement, whose success consists in openly allowing prudential considerations, this condition does not verify. Therefore, I will argue that, just as moral reasons do, also prudential reasons need some institutional framework, especially for monitoring compliance.

2. Compliance: Some distinctions

In this section, I will provide some initial distinctions on how to intend noncompliance. To do so, starting from John Rawls' difference between ideal and non-ideal theory, I will distinguish between two kinds of noncompliance, one due to unwillingness and the other due to unfavourable conditions. Then, I will characterise noncompliance in the context of the Paris Agreement as being mainly due to agents' unwillingness to act.

In *A Theory of Justice*, Rawls introduces the distinction between ideal and non-ideal theory. Ideal theory outlines principles of justice according to two assumptions, full compliance and favourable circumstances¹¹. In ideal theory, all agents – individuals and institutions – are thought to be strictly complying with principles of justice and the society they belong to enjoys favourable natural and historical conditions, providing a thriving context for realising justice¹². By contrast, non-ideal theory drops these two assumptions. It investigates what should be done under unfavourable circumstances and when agents are not willing to act according to the principles of justice¹³.

In its broad meaning, noncompliance occurs whenever an agent does not perform a required action. So, imagine that in a country there is a new rule: starting from next week, the only cars allowed to circulate shall be hybrid or electric vehicles, no more petrol or diesel cars. Time passes, the rule is enforced, and all citizens are complying except for Emily and Colin, who both still drive high-emissions vehicles. As it is, both Emily and Colin are equally noncompliers for what regards the 'no polluting cars' rule, so we should respond to their noncompliance in the same way (e.g. both their vehicles should be seized).

Now, imagine that we discover that the circumstances around Emily's and Colin's noncompliance are not equal. Emily is a well-off manager. She drives a gas-guzzling Ferrari and, even though she could afford to replace her supercar for a hybrid model, she decided not to do so because her favourite activity is

¹¹ Rawls 1971: 216.

¹² Heyward, Roser 2016: 5; Valentini 2012: 655.

¹³ *Ibidem*: 6.

driving her Ferrari at top speed. She could have complied, but that would have meant to give up something that she values, so she decided to ignore the rule and continue to drive her favourite car. Colin, instead, is a low-wage worker owning an old diesel car, which he uses mainly for his commute to work. He would have respected the 'no polluting cars' rule, but he could not afford to buy a new car., in the light of additional information, should the response to Emily's and Colin's noncompliance be the same? The two circumstances are very different: Emily's noncompliance is due to her unwillingness to comply, whereas Colin's noncompliance is brought about by unfavourable conditions. Emily could comply if she wanted to, whereas Colin cannot comply – not without unreasonable costs for him¹⁴. Knowing what the reason behind one's noncompliance is, helps to identify what strategies are the best to rectify it¹⁵. For example, making Colin pay a fine would not remedy his noncompliance. Giving him a bonus to buy a hybrid car, instead, would help him more than making him pay a fine for his rulebreaking. Therefore, we can distinguish between two types of noncompliance, the first due to unwillingness to act, and the second due to unfavourable external conditions. Each one of them asks for different considerations and different strategies to correct it and turn noncompliance into compliance.

This distinction also applies to climate change-related noncompliance. Indeed, there are countries (the United States, for example) which would have the means to cut their emissions drastically with little costs for them. Yet they are reluctant to do so and decide not to enact any mitigation policy, not even modest ones. By contrast, other countries simply cannot realise ambitious mitigation goals, not without too onerous costs. If a country is already struggling with unfortunate natural or historical conditions, the implementation of aggressive mitigation policies would be too demanding for them. However, the Paris Agreement has devised its own mechanism to distribute mitigation duties, which consists of letting every country decide how to contribute to contrasting climate change. Through the Ndc's mechanism, each country can determine its own mitigation goals. So, it is reasonable to think that the content of Ndc's would be compatible with each country's circumstances. If, for instance, a country like Greece which has been through a severe economic crisis, would likely have few resources to allocate for environmental policies. Thanks to the Ndc's mechanism, Greece can be part of the Agreement by submitting modest mitigation goals that could be easily realised considering their current unfortunate situation. Under the specific Paris Agreement regime, Greece simply cannot be forced to pledge for more than it could. The implication for the issue of noncompliance is that in the context of the Paris Agreement, we can exclude

¹⁴ Chahboun 2015.

¹⁵ Caney 2016a, 2016b.

the case of noncompliance due to unfavourable conditions. Indeed, a country can submit its own mitigation goals in the form of nationally determined contributions, which leaves to each state the autonomy to select mitigation targets that are suitable to its economic, natural and historical circumstances. The Ndc mechanism, *de facto*, annuls noncompliance due to unfavourable conditions, making it entirely a matter of unwillingness. If noncompliance is due to a country's reluctance to act, then it means that noncompliance is due solely to a lack of motivation to act.

3. Motivations to comply

After having delimited the scope of noncompliance as a motivational issue, in this section, I will argue that there are two kinds of reasons that can motivate agents to comply, moral and prudential reasons. By relying mainly on the contractualist tradition, I will show that moral and prudential reasons can be able to motivate compliance, although in different ways. Indeed, moral reasons for compliance imply the establishment of institutions, whereas prudential reasons are thought to be self-sufficing for motivating compliance.

Under the current climate regime, agents' noncompliance is due to a motivational fallacy, as the reasons that should motivate them to comply often fail to do so. However, these reasons convey enough motivational force to make countries undersign an international agreement on climate change. But what are these reasons that should motivate agents to agree and comply? The contractualist tradition¹⁶ provides a method to clarify what are our reasons for «endorsing and complying with some set of social rules, principles or institutions»¹⁷ at least in ideal conditions. Once we have made clear what should happen in ideal conditions and whether there are additional requirements to motivate compliance, we would be able to pinpoint how to address a motivational fallacy whenever noncompliance occurs.

The similarities between international agreements and contractualism consist in their common effort to maintain agents' autonomy in deciding for themselves and in the central role they both assign to consensus. On the one hand, the contractualist theory and the international diplomatic practice share the idea that agents – in this specific case nations – should be conceived as free

¹⁶Contractualism can come in many forms and shapes (Freeman 2012; Hamlin 2013; Darwall 2003; Quong 2017), as there are many variables which can be fine-tuned to build a contractualist justification of norms, principles and social arrangements. For the purpose of this work, exploring how the contractualist tradition justifies the adoption of certain (mitigation) duties would bring us beyond the scope of this paper. For examples of contractualist arguments regarding climate justice see Rinderle 2010, Suikkanen 2014.

¹⁷D'Agostino, Gaus, Thrasher 2017.

and equal, and most importantly, as able to define what is the best thing to do autonomously. The parties in an international treaty, as well as the parties in a contractualist justification, should not be forced to make a pact under duress; instead, they should be «rationally and/or morally motivated to cooperate with others»¹⁸. If conceived in this way, agents are indeed thought to be perfectly capable of understanding not only why they should select specific measures over others, but also why they should comply with them¹⁹. What might be the reasons motivating agreement and compliance? Overall, we can identify two main strands of contractualist traditions which rely respectively on moral reasons and prudential reasons. The former, of Kantian descent, assume that there are impartial, justice-related moral reasons motivating agents²⁰. In contrast, the latter, of Hobbesian derivation, holds that agents' motivation to act derives entirely from agents' desire to further their interests²¹.

According to the first version of contractualism, based mainly on moral reasons, agreements are undertaken from an impartial standpoint and governed by a moral ideal of mutual respect among free and equal agents²². Moral reasons for actions «rely on antecedent principles of right, moral interests, or other moral assumptions (e.g., moral equality or the equal right to natural freedom)»²³ that play a role in justifying political principles, incorporating concepts about what is right or what justice would require into the fabric of the agreement. The political principles resulting from an agreement based on moral reasons «are not then reduced to only nonmoral interests and principles of rational choice but instead incorporate some prior idea of what is right or reasonable»²⁴. In morality-based approaches, moral reasons should motivate us towards what is the right thing to do and to comply with it. Indeed, moral agents should be able to recognise what is the right course of action and should also be motivated to realise it.

Still, sometimes complying with what is right can impose onerous demands on agents. For what concerns compliance, the right thing to do might indeed require additional efforts from agents. Justice might point to demanding and ideal principles of justice, which in real-world conditions might reveal to be *too* demanding. For example, morality-based climate justice might easily require that all nations should design aggressive mitigation strategies to lower emission

¹⁸ Freeman, 2012: 134.

¹⁹ *Ibidem*.

²⁰ Kant 1991 and 1996; Rawls 1971.

²¹ Hobbes 1988; Gauthier 1989.

²² Southwood, 2009: 926.

²³ Freeman 2012: 137.

²⁴ *Ibidem*.

rates as fast as possible. However, this is easier to achieve for a wealthy country than for worse-off ones. Moreover, even in a wealthy country, there might be conflicting accounts on how resources should be spent (e.g. a contrast between implementing environmental or social justice reforms) that might discourage to push for the achievement of ambitious mitigation goals. Thus, complying with what justice requires can be very difficult. More generally, morality-based approaches develop their requirements for justice assuming ideal conditions that in real-world circumstances will difficultly occur, creating a rift between what should be done and what is feasible to do. Simply, we cannot assume that moral reasons *per se*, be they particularly demanding or not, can motivate in the real world. When there are moral reasons to comply, it is necessary to integrate the motivational force of moral reasons with the presence of institutions, whose function is to help to realise principles of justice and see that agents are complying with them.

The second version of contractualism, instead, is based on prudential reasons. According to interest-based approaches, principles of justice are thought to be «instrumental means»²⁵ that agents need to realise their fundamental interests. Agents who seek to promote their interest should be «historically situated in the sense that they know their present and historical situations; they know their particular desires, interests, and circumstances»²⁶. When agents are motivated by prudential reasons, they should recognise that being part of an agreement is the rational choice to advance their own interests, and, similarly, they should be motivated to comply because it is in their interest to do so, assuming that they have true beliefs about their circumstances. That is to say that «any act is rational if it one an individual *would* determine he *should* take to fulfil his present desires *if* he had true beliefs»²⁷. In other words, prudential agents may shape their decision according to any kind of consideration that they deem as relevant for them and the advancement of their interests. Agents, thus, can be motivated by any sort of consideration that the agent itself considers as relevant, be it pertinent or not to the matter at stake. Prudential reasons should create a direct line between motivations to agree and to compliance. The underlying reasoning is: if agreeing to *p* is in my interest, then I have a motivation to comply with *p*. Whereas moral reasons need the mediation of institution to shift from agreement to compliance, prudential reasons instead are thought to be self-sufficing for compliance. Indeed, as interest-based considerations are considered to be already endowed with the necessary motivational force to make agents comply.

²⁵ *Ibidem*.

²⁶ Freeman 2012: 137.

²⁷ Hampton 1986: 36 (emphasis in the original text).

4. Prudential reasons and the Paris Agreement.

Prudential reasons come with the assumption that they have sufficient motivational force to elicit compliance. In this section, I will contend that, for what concerns climate treaties, this assumption does not hold. To do so, I will argue that, from an interest-based perspective, reasons for agreeing on a treaty rarely conflate with the reasons for complying with it, so prudential reasons should be supported by institutions overseeing compliance, just like moral reasons do. In conclusion, I will briefly discuss some suggestion to reform the existing institutional regime so as to pay more attention to compliance.

Moral reasons require the help and the mediation of institutions to motivate agents to comply. In contrast, prudential reasons are assumed to have enough motivational force to prompt compliance on their own. However, it should be noticed that the underlying assumption in interest-based contractualism is that for «instrumentally rational prudential agents»²⁸, reasons for agreement are also reasons for compliance. Agents can form a clear picture of the ends they want to pursue and of the means to reach them efficiently. Agreement and compliance are both crucial parts of the means to obtain the desired ends. Yet, this juxtaposition between the reason for agreeing and the reasons for complying occurs only in peculiar conditions, that is to say, only when compliance is a crucial part of obtaining the desired end. What I contend is that the prudential turn of international climate change treaties assumes that self-interest would be enough to motivate compliance, ignoring the fact that there may be a dissonance between what motivates a country to be part of an agreement in the first place, and what motivates the effective compliance with mitigation goals.

To clarify this point, let us unpack the mechanism of the Paris Agreement. As explained in the introduction, the core of the Paris Agreement are nationally determined contributions, according to which each country chooses what mitigation goals should be pursued. The Ndc submission is a necessary condition for being part of the Paris Agreement, whereas compliance with the goals set within an Ndc is not. Now, as shown before, prudential reasons may represent a vast array of interests. Countries may well decide to be part of a treaty because it would provide them with international recognition, or because it would help to secure a leadership role in the international arena or domestically. Agreements can be pursued to be part of an international 'club', gaining a chance to open a dialogue with potential allies or maybe to obstruct potential rivals. Ultimately, prudential reasons motivating countries to sign a climate agreement might have nothing to do with either climate

²⁸ D'Agostino, Gaus, Thrasher 2017.

change or environmental concerns at all. Prudential reasons that motivate to sign a treaty would also motivate compliance only if there is a convergence of interests between the reasons for agreement and the reasons for compliance. In some cases, such convergence occurs, but in others, compliance is merely redundant. For example, the Pacific Islands' nations might have such a convergence of interest. Their territory is at high risk of being submerged, so to avoid this risk, they agree on mitigation or adaptation measures that would prevent their land from being engulfed by rising sea levels. Consequently, compliance is crucial for pursuing such interest. In cases like this, we affirm that prudential reasons do really have the necessary motivational force to motivate both agreement and compliance.

But still, not all countries do have such convergence of interests. As said before, some countries may want to be part of an international treaty for reasons that do not include any environmental concern whatsoever. Imagine a country such as Russia, very powerful but relatively isolated by the international community. Being part of an international treaty might be a chance to open channels of communication that otherwise would be unavailable. To pursue this interest, Russia does not need to comply with its own Ndc. It is sufficient just to submit perfunctory mitigation goals and sign the agreement. In this case, and many others, prudential reasons for agreeing do not automatically translate into motivation for compliance.

As it is currently designed, the Paris Agreement relies mainly on the appeal of prudential reasons, by assuming self-interest as a premise for agreement, but ignoring that only in few cases it is enough to guarantee compliance. In other instances, instead, prudence, much like moral reasons, needs the external support of institutions to motivate compliance. Considering that the ultimate aim of climate treaty is to mitigate climate change effectively, compliance assumes then a crucial role for reaching it. For this reason, even in the background of a prudence-based conception of agents, the Paris Agreement should establish institutions to monitor on compliance, considering that self-interest alone does not suffice to motivate agents to comply.

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