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RECIPROCITY AND ENVIRONMENTAL OBLIGATIONS

*Leslie P. Francis**

I. INTRODUCTION

Reciprocity—put most generally—is the idea of actions-in-return that are not founded in voluntary agreements or contracts. Understood in this way, reciprocity can be one-on-one: the return of a kindness or the exchange of presents. But it need not be: pitching in to do one’s share of cooking for a potluck supper, cleaning up the local park, or contributing to the local public radio station. Here, the idea of reciprocity is doing one’s part to produce a common good, when—and especially because—others are doing theirs.¹ The moral contribution of reciprocity in such cases is that pitching in rests not only on the idea of fair shares coupled with the recognition that the desired outcome will not be produced if too many fail to contribute, but also on the fact that others are doing their part. Free riders fail to do their fair shares, but this is not the full moral story. In addition, free riders let others down by failing to respond in return to the good efforts that others are making.

Reciprocity in this sense has played a major role in contemporary bioethics discussions of pandemic planning. The most influential statement of the ethics of pandemic planning takes reciprocity to be a fundamental value, requiring that “society support those who face a disproportionate burden in protecting the public good.”² Echoing the

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1. For an insightful discussion of reciprocity in these senses, see LAWRENCE C. BECKER, *RECIPROCITY* 81-83 (1986).

2. PANDEMIC INFLUENZA WORKING GROUP, UNIV. OF TORONTO JOINT CTR. FOR BIOETHICS, *STAND ON GUARD FOR THEE: ETHICAL CONSIDERATIONS IN PREPAREDNESS PLANNING FOR PANDEMIC INFLUENZA* 7 (2005), available at http://www.jointcentreforbioethics.ca/people/documents/upshur_stand_guard.pdf.

Canadian national anthem,³ the reciprocity of *Stand on Guard for Thee* includes not only compensation and protection for health care workers who take significant risks, as well as their families, but also responsiveness to people who are quarantined or otherwise limited in their activities in order to protect others.⁴ In addition, *Stand on Guard for Thee* recommends extensive, open, and transparent public discussion of both priorities and their implementation.⁵

In environmental ethics, however, reciprocity seems not to have surfaced as a value to quite the same extent as in pandemic planning.⁶ Perhaps the explanation is that it seems very difficult to apply the idea of actions-in-return to problems that implicate future generations who will not be able, except figuratively, to respond in kind to present generations.⁷ Or perhaps the explanation is that, by some at least, reciprocity has been viewed in the narrow economic terms of bargaining for mutual advantage.⁸ Or perhaps reciprocity has been thought of as limited to compensation for harm, a paradigm drawn from tort that seems inadequate to account for the obligations of ordinary individuals in the face of global climate change.⁹ This discussion aims to show that such myopia is misguided and to take some steps to reclaim reciprocity for environmental ethics.

Over twenty years ago, Lawrence Becker developed a rich account of reciprocity in virtue-theoretic terms.¹⁰ Reciprocity, in Becker's view, is a complex of dispositions, among them to return good for good, and to do so in fitting and proportional ways.¹¹ Several features of Becker's view are particularly noteworthy. First, we should think of reciprocity in terms of traits of character to be cultivated, not as a set of principles to

3. See Robert Stanley Weir, *O Canada* (1908), available at <http://www.pch.gc.ca/pgm/ceem-cced/symb/anthem-eng.cfm>.

4. PANDEMIC INFLUENZA WORKING GROUP, *supra* note 2, at 11, 13-15.

5. *Id.* at 16.

6. There are exceptions. See, e.g., Edward A. Page, *Fairness on the Day After Tomorrow: Justice, Reciprocity and Global Climate Change*, 55 POL. STUD. 225, 233 (2007) (arguing for intergenerational environmental stewardship, under which present generations have obligations in reciprocity to both the past and the future).

7. See, e.g., Stephen M. Gardiner, *The Real Tragedy of the Commons*, 30 PHIL. & PUB. AFF. 387, 403-04 (2002).

8. For a recent criticism of this view, see Jonathan Quong, *Contractualism, Reciprocity, and Egalitarian Justice*, 6 POL., PHIL. & ECON. 75, 89-90 (2007).

9. See, e.g., Daniel A. Farber, *Basic Compensation for Victims of Climate Change*, 155 U. PA. L. REV. PENUMBRA 1605, 1618-21 (2007), <http://www.pennumbra.com/issues/pdfs/155-6/Farber.pdf>.

10. BECKER, *supra* note 1, at 49, 74.

11. *Id.* at 89-92.

be applied in mechanical fashion—although the traits of character are dispositions to act in ways that are guided by principled commitments.¹² Second, we should not think of reciprocity in terms of mutual advantage;¹³ Becker thus detaches reciprocity from the bargaining paradigms employed in some versions of social contract theory.¹⁴ Third, reciprocity is not limited to one-on-one exchanges, but instead requires us to consider what responses are fitting, and how they ought to be directed.¹⁵ Thus, on Becker's view, the virtue of reciprocity can be directed both to those in the present and to those in the future. Fourth, and most crucially for the argument here, reciprocity requires supportive social structures in order to flourish; in designing legal institutions,¹⁶ for example, we should consider whether they are likely to undermine reciprocity or to foster its flourishing—within families, social groups, or society more generally.

There is, of course, a great deal more to say about how to understand reciprocity as a virtue. This discussion begins with two relatively minimalistic reciprocity guidelines. In several quite important respects, however, our institutions quite likely undermine dispositions to behave in accord with these guidelines. On this basis, I—hopefully not in the spirit of Jonathan Swift—develop a modest proposal or two about how to realign social structures in the United States to foster individual virtues of reciprocity in the context of environmental ethics.

II. RECIPROCITY GUIDELINES

In this section, I sketch two more specific reciprocity guidelines together with some examples of how in the United States today we fail to meet them. Although I will not defend these guidelines here,¹⁷ I believe that they are relatively minimal, especially the first one. They are

12. *Id.* at 45-46, 49, 74.

13. *Id.* at 230.

14. The idea of justice as an actual bargain for mutual advantage is developed in DAVID GAUTHIER, *MORALS BY AGREEMENT* 145 (1986). Philosopher John Rawls conceptualized justice as the first virtue of social institutions designed to share the benefits and burdens of social cooperation. JOHN RAWLS, *A THEORY OF JUSTICE* 231, 232 (rev. ed. 1999). Whether Rawls—and social contract theory, more generally—is thus subject to the objection of limiting obligations of justice to those who can fully cooperate has been the subject of much critical discussion. *See, e.g.*, MARTHA C. NUSSBAUM, *FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP* 93 (2006).

15. BECKER, *supra* note 1, at 93.

16. *Id.* at 85-86.

17. I have defended them elsewhere. *See* Leslie Pickering Francis, *Global Systemic Problems and Interconnected Duties*, 25 *ENVTL. ETHICS* 115, 125-28 (2003).

deliberately open-ended, requiring dispositions about how to think rather than an exact commitment such as a duty to reduce your carbon footprint by twenty percent. Here they are:

ONE. If you expect others to incur significant costs in order to further environmental goals that you favor, you have a duty to reconsider aspects of your own behavior that might be undermining those very preservation goals and to identify achievable steps that you might take in amelioration.¹⁸ In other words: Don't undo unto others as you wouldn't have them undo unto you. Call this the "un-golden rule."

TWO. If you expect others to incur significant costs in order to further environmental goals that you favor, you should consider whether the expectations you have of them are fair in comparison to the expectations you have of yourself, and try to identify at least some costs that you believe would be fair for you yourself to incur.¹⁹ Call this "pitching in."

There are many examples of how we, in the United States, currently fail with respect to the un-golden rule. Consider national treasures which, as a matter of federal policy, we seek to preserve. For example, the Everglades are at present the subject of a Comprehensive Everglades Restoration Plan, enacted by Congress in 2000.²⁰ The Plan includes a fifty percent contribution by the state for restoration efforts and attempts to mitigate the expected effects of restoration on minority communities in the area.²¹ Yet it remains highly possible that restoration of the Everglades will largely fail if global climate change continues.²² Moreover, subsequent efforts to buy out sugar producers in the Everglades area have been criticized both as sweetheart deals and for failing to take into account the economic impacts on area communities.²³ Yet little national attention has been devoted to the extent to which

18. *Id.* at 125-26.

19. *Id.* at 127-28.

20. See generally S. FLA. WATER MGMT. DIST. & U.S. ARMY CORPS OF ENG'RS JACKSONVILLE DIST., ENVIRONMENTAL AND ECONOMIC EQUITY PROGRAM MANAGEMENT PLAN: COMPREHENSIVE EVERGLADES RESTORATION PLAN (2001), available at http://www.evergladesplan.org/pm/pm_docs/eee/eee_sept_17.pdf (detailing the social and economic framework behind the restoration effort).

21. See *id.* at 5, 7-8.

22. S. FLA. INFO. ACCESS, UNDERSTANDING AND PREDICTING GLOBAL CLIMATE CHANGE IMPACTS ON THE VEGETATION AND FAUNA OF MANGROVE FORESTED ECOSYSTEMS IN FLORIDA 3 (2004), available at http://sofia.usgs.gov/publications/reports/gcc_final/Understanding_and_Predicting_GCC_in_ENP_FINAL_REPORT.pdf.

23. §1.3B U.S. Sugar Buyout Approved Amid Skepticism of Everglades Deal, ORLANDO SENTINEL, Dec. 17, 2008, at B4.

agricultural subsidies continue to encourage sugar production in the Everglades region—activity that is counterproductive to Everglades restoration.²⁴

To take another example, Lake Tahoe is the subject of development controls implemented to maintain the clarity of its waters,²⁵ yet South Lake Tahoe continues to advertise itself with apparent success as a place for tourists to come and play.²⁶ Or another example: The creation of the Grand Staircase of the Escalante National Monument remains controversial in southern Utah, while the Intermountain Power Plant in nearby Millard County continues to supply forty-five percent of its power to Los Angeles and to impact visibility across the area of the Grand Staircase.²⁷ To be fair, in 2005 the City of Los Angeles withdrew support for a proposed power plant expansion and is devoting the funding instead to pursuing alternative energy sources—but Los Angeles continues to get about half of its power from dirty plants in Nevada, Arizona, and Utah.²⁸

Although there are also many examples of our failure to pitch in, automobile use is a particularly good one. Consider attitudes of residents of the United States with respect to bearing a share of the costs of reducing fossil fuel usage in automobiles. Poll data suggest persistent opposition to increases in gas taxes.²⁹ The current view of the Secretary

24. Op-Ed., *Overdue for Diet; Our Position: Ever-Expanding Handouts for Big Sugar Can't Be Justified*, ORLANDO SENTINEL, Feb. 2, 2008, at A20.

25. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 308 (2002).

26. *See, e.g.*, City of South Lake Tahoe, <http://www.cityofslt.us/index.html> (last visited Oct. 14, 2009).

27. TOM BAXTER ET AL., DARK HORIZONS: 10 NATIONAL PARKS MOST THREATENED BY NEW COAL-FIRED POWER PLANTS 27 (Nat'l Parks Conservation Ass'n eds., 2008), http://www.npca.org/darkhorizons/pdf/Dark_Horizons_Report.pdf (highlighting the effect that the Intermountain Power Plant would have on visibility and air quality in Zion National Park and the surrounding area); Project No Project: Intermountain Power Plant (IPP), Delta, UT, <http://pnp.uschamber.com/2009/03/intermountain-power-plant-ipp-delta-ut.html#more> (last visited Oct. 14, 2009) (“The City of Las [sic] Angeles takes roughly 45 percent of the power that is produced.”).

28. *See* Bernadette Del Chiaro, *Los Angeles Mayor Stops New Coal Plant: Environmentalists Praise Hahn's Orders to Immediately End City's Investment in the Intermountain Power Plant Expansion*, ENV'T CAL., Aug. 24, 2004, <http://www.environmentalcalifornia.org/envirocalifenergy.asp?id2=14321>; Grand Canyon Trust, Air Quality and Clean Energy Program, <http://www.grandcanyontrust.org/programs/air/coal-fired.php> (last visited Oct. 14, 2009).

29. *See, e.g.*, Dennis Jacobo, *Majority of Americans Favor Suspending Federal Gas Tax: Lower- and Middle-Income Americans Join Republicans in Favor of Gas-Tax Holiday*, GALLUP, May 13, 2008, <http://www.gallup.com/poll/107257/majority-americans-favor-suspending-federal-gas-tax.aspx>; *81% Oppose Gas Tax Hike to Encourage Sales of More Efficient Cars*, RASMUSSEN

of Energy in the Obama administration, Steven Chu, is that increasing the gas tax as a way to lower consumption is “not politically feasible.”³⁰ Americans consume 8,989,000 barrels (378 million gallons) of motor fuel per day,³¹ and account for twenty-five percent of world energy use overall.³² In 2006, there were approximately 135 million registered automobiles in the United States—nearly half a car per person.³³ At least one attitude survey suggests that people in the United States (along with people in China) are less concerned about global climate change than Europeans.³⁴ Americans show limited interest in shifting their approximately 12,000 miles of driving per passenger vehicle per year to smaller cars or to public transit, except when there are impressive increases in gas prices.³⁵

III. STRUCTURING RECIPROCITY

These are clear failures to meet reciprocity guidelines among people in the United States.³⁶ Indeed, all too often individual responses to the problem of global climate change seem to be either a combination of bewilderment and discouragement (what can *I* do, really? Will *my*

REP., May 11, 2009, http://www.rasmussenreports.com/public_content/business/gas_oil/81_oppose_gas_tax_hike_to_encourage_sales_of_more_efficient_cars [hereinafter *81% Oppose Gas Tax Hike*]. There have been some encouraging signs, however. For example, amidst a set of questions giving very negative answers to proposals to increase the gas tax, a majority said they would be willing to support a tax increase if the revenue were specifically earmarked for action to reduce global warming. Louis Uchitelle & Megan Thee, *Americans Are Cautiously Open to Gas Tax Rise, Poll Shows*, N.Y. TIMES, Feb. 28, 2006, at A14.

30. Carola Hoyos et al., *Rise in Taxes on US Petrol 'Not Feasible': Energy Secretary Alters Stance on Fuel Policy*, FIN. TIMES, May 28, 2009, at 1.

31. Energy Info. Admin., *Petroleum Basic Statistics*, <http://www.eia.doe.gov/basics/quicoil.html> (last visited Oct. 14, 2009).

32. Nat'l Res. Def. Council, *Reducing U.S. Oil Dependence: A Real Energy Security Policy*, <http://www.nrdc.org/air/energy/fensec.asp> (last visited Oct. 14, 2009).

33. FED. HIGHWAY ADMIN., U.S. DEP'T OF TRANSP., *HIGHWAY STATISTICS 2006: STATE MOTOR-VEHICLE REGISTRATIONS tbl.MV-1 (2007)*, available at <http://www.fhwa.dot.gov/policy/ohim/hs06/pdf/mv1.pdf>.

34. PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, *PARTISANSHIP DRIVES OPINION: LITTLE CONSENSUS ON GLOBAL WARMING I (2006)*, <http://people-press.org/reports/pdf/280.pdf> [hereinafter PEW RESEARCH CTR.].

35. The 12,000 miles of driving per vehicle figure is from the U.S. ENVTL. PROT. AGENCY, *EMISSION FACTS: GREENHOUSE GAS EMISSIONS FROM A TYPICAL PASSENGER VEHICLE 4 (2005)*, <http://www.epa.gov/OMS/climate/420f05004.pdf>. For data on increases in public transit ridership, see Press Release, Am. Pub. Transp. Ass'n, *10.7 Billion Trips Taken on U.S. Public Transportation in 2008: Highest Level in 52 Years; Ridership Increased as Gas Prices Decline and Jobs Were Lost (Mar. 9, 2009)*, http://www.apta.com/mediacenter/pressreleases/2009/Pages/090309_ridership.aspx.

36. PEW RESEARCH CTR., *supra* note 34, at 3-4.

efforts make a difference?) or whining (don't raise my gas tax—I'm already paying too much in taxes). Rising gas costs—and the attendant shift in interest to more gas-efficient vehicles—were not met with serious efforts to consider individual actions of the un-golden rule or the pitch-in sort.³⁷ This may be, of course, because we are a country of selfish people who took Thrasymachus as a role model from their introductory philosophy courses.³⁸ But it may also be because there are structural features of American society that make it hard to confront and think about how we are acting without the virtue of reciprocity on a grand scale, and hard to figure out how to improve even if we would like to.³⁹ In light of these structural features of U.S. society, U.S. failures to behave with the virtue of reciprocity should not be surprising.

Probably the largest two aspects of individual energy use are where and in what people live and what and how much people drive. About where we live: We have a tax code that favors large, single-family homes and school systems that flourish in areas where these homes are located but far less so in areas of older or denser housing.⁴⁰ The home mortgage deduction (available up to one million dollars on first and second homes, but not on the third or fourth) is an enormous tax subsidy that encourages profligate energy use in housing.⁴¹ To be sure, there are energy tax credits for such things as biomass stoves, solar panels (up to \$2000) and wind power installations (up to \$4000).⁴² Many of these, however, are largely boutique items: For example, one widely advertised system for home wind power for utility bill reduction is priced at \$43,645 and recommended for land sizes of over an acre.⁴³ There are no

37. See *81% Oppose Gas Tax Hike*, *supra* note 29.

38. PLATO, *REPUBLIC* 15 (C.D.C. Reeve trans., Hackett Publ'g Co. 2004) (1930); see also STANLEY ROSEN, *PLATO'S REPUBLIC: A STUDY* 43 (2005) ("According to Thrasymachus, justice is the interest of the stronger.").

39. See, e.g., Francis, *supra* note 17, at 117-20; see also Quong, *supra* note 8, at 83 ("[T]he distinction between the basic structure of society and the personal choices that people make within that basic structure is arbitrary and permissive of injustice.").

40. See Posting of Edward L. Glaeser to Economix, <http://economix.blogs.nytimes.com/2009/02/24/killing-or-maiming-a-sacred-cow-home-mortgage-deductions/> (Feb. 24, 2009, 07:40 EST); see also Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 20-22 (1990).

41. This point is surfacing in the current policy debates. See, e.g., Posting of Edward L. Glaeser to Economix, *supra* note 40.

42. I.R.S., Residential Energy Efficient Property Credit (Form 5695), at 3 (2008), available at <http://www.irs.gov/pub/irs-pdf/f5695.pdf>.

43. Bergey Wind Energy, <http://www.bergey.com/> (follow "Value Packages" hyperlink under "Site Directory"; then follow "10 kW GridTek System" hyperlink under "Utility Bill Reduction") (last visited Oct. 14, 2009).

tax credits for homes that are not single-family or for homes that are located in areas of density rather than sprawl.⁴⁴ The tax credit of \$8000 for first-time home buyers extends to investments in energy efficient devices—but does not take into account such energy-important factors as overall square footage.⁴⁵

Or consider transportation policy. The current federal tax per gallon of gasoline is 18.4 cents, an amount that has not been raised since 1993.⁴⁶ Increases in tolls have been equally difficult to implement—and the federal interstate highway system remains free to users despite pilot projects to generate toll revenues.⁴⁷ By contrast, a report issued in February 2009 by the National Surface Transportation Infrastructure Financing Commission recommended that the funding and financing structure should ensure that users of the surface transportation system bear the full costs of their use—which they fall far short of doing today.⁴⁸ The Report recommended an ultimate shift to a miles-driven basis for assessing user fees phased in until 2020, with a small increase in the gas tax in the interim.⁴⁹ The focus of the Report was surface transit, not mass transit, moreover; and the report did not tackle the question of how to fund a far more robust public transit system.⁵⁰ To give one illustration of comparative funding for highways and public transit, the American Recovery and Reinvestment Act authorized only \$8.4 billion in capital funds for public transit improvements,⁵¹ but \$26.8 billion for highway construction,⁵² \$19.2 billion of these highway funds have already been allocated.⁵³

44. I.R.S., *supra* note 42, at 3.

45. *Id.*

46. Christopher Conkey, *Raising the Federal Gas Tax is a No-Go*, WALL ST. J., Mar. 4, 2009, at A2.

47. *Id.*

48. NAT'L SURFACE TRANSP. INFRASTRUCTURE FIN. COMM'N, PAYING OUR WAY: A NEW FRAMEWORK FOR TRANSPORTATION FINANCE 27-28 (2009), available at http://finance.commission.dot.gov/Documents/NSTIF_Commission_Final_Report_Advance%20Copy_Feb09.pdf.

49. *Id.* at 193-94.

50. *Id.* at 5.

51. Fed. Transit Admin., American Recovery & Reinvestment Act (ARRA), http://www.fta.dot.gov/index_9440.html (last visited Oct. 28, 2009).

52. Fed. Highway Admin., The American Recovery and Reinvestment Act of 2009 (ARRA), <http://www.fhwa.dot.gov/> (last visited Oct. 28, 2009).

53. *Id.*

IV. CONCLUSION

Behaving virtuously is not easy and can be lonely. Dispositions to be virtuous can be undermined by the observation that others are not being virtuous as well. When multiple actors are needed to make a real difference, even those who wish to be virtuous can be discouraged, as they see their own good efforts achieve little if anything. Changes in structural features of U.S. society—how we design our homes and communities—and how we use the law to create incentives for design systems can make enormous differences in this regard. Yet despite the present hopes of realignment during the economic downturn, we seem to be making only limited efforts to create structures to encourage people to engage in virtuous behavior with respect to climate change. As a result, Americans seem all too likely not to follow the un-golden rule, continuing to undermine good efforts of others. And our failures to pitch in will not be attributable just to selfishness or enjoyment of liberty, but to very real limits on the choices we have.
