

DUTIES TO STRAND ASSETS AND COMPENSATORY CLAIMS

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15.3.2017

RESEARCH QUESTION FOR WORKSHOP: CLEAR-EYED EQUITY: SETTING A CLIMATE EQUITY AND JUSTICE RESEARCH AGENDA

Avoiding dangerous anthropogenic climate change will require, among other things, to leave a majority of proven carbon reserves in the ground – reserves which states and companies have already invested in and planned to extract. We ask a) what the relevant duties to strand assets consist in, to whom and by whom they are owed, b) how these duties should be distributed, and c) whether states, on the international level, and companies, on the national level, should be compensated for frustrated investments and plans.

We argue that the relevant duties are two-fold: *Intergenerationally*, they are owed vis-à-vis future people and consist in hindering people to fall below a threshold of well-being defined in terms of basic rights (and bringing people up to that level). Our sufficientarian understanding of this duty assigns it absolute or very high priority. *Intragenerationally*, we rely on a prioritarian notion of distributive justice for assigning duties to strand assets. They are to be distributed with an eye on the overall distribution of all benefits and costs of responding to climate change. The addressees of these duties are, in the first instance, states. Among them, wealthy industrialized states should bear most of the costs. Insofar as states sold assets or granted extraction licenses to companies, these companies can be required to strand their assets.

We discuss a number of problems with identifying states as the primary duty bearers. First, benefits from fossil fuel extraction are often distributed unequally within a country. This is especially the case in resource-dependent developing countries where most proceeds of resource extraction go to rich elites and where there are few trickle-down effects (through taxation, job creation, innovation, etc.). This is important because poor but resource rich countries could at least incur some duties to strand assets, too, which will hurt the poorest in those countries. Second, not all assets are state-owned or controlled by state-owned companies: A significant portion of assets is held by multi-national, investor-owned companies. This complicates the picture. It will often be hard to trace where the benefits of the extraction, sale, and use of fossil fuels went.

Regarding compensation, we argue that compensatory claims require the existence of an institutional framework with reference to which legitimate expectations can be formed and frustrated. Since, as we claim, there is no such framework in the international arena, states cannot claim compensation. Companies, though, operate in an adequate framework and could, in principle, claim for compensation. In discussing this, we propose that it is useful to analyze the concept of stranded assets further. Usually, stranded assets are those “assets that have suffered from unanticipated or premature write-downs, devaluations or conversion to liabilities”. When it comes to compensation, only a

subset of these negative consequences is relevant. Namely those caused by (significant) changes in the institutional framework. We discuss a number of policy measures (cap and trade, regulation, revoking extraction licenses) and ask whether they constitute a violation of companies' legitimate expectations in a stable policy environment and can thus ground compensatory claims.

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