

Climate change will require massive investments in higher sea walls, stronger levees, stronger disaster responses, and other adaptation measures. Poorer countries can't shoulder those expenses. Do countries that caused past carbon emissions have a duty to help pay for adaptation and disaster response? Much of the argument about this is phrased in terms of compensation for past emissions not unlike arguments that oil companies should pay damages for oil spills. Tort law suggests another way of looking at the issue, one that doesn't depend on whether climate victims have a right to reparations from emitters.

Let me start out by laying out some basics of torts law. Under U.S. tort law, there's generally no legal duty to provide help to someone who's already been injured. If you see someone at the side of the road who has been injured, they can't sue you if you choose to simply go about your own business. But the situation is quite different if it was your activity that put the person in peril. If your car injures someone through no fault of your own, you can't just walk away from the victim. You have a duty to assist them. That's true by statute in many states where vehicles are concerned. But even without the statutes, state tort law would require you to help out.

A case that I teach in Torts class illustrates the point. A little boy got his fingers stuck in a moving escalator in a store. The court found that the store had no liability for the initial accident. But the store was liable for its failure to rush to the boy's assistance. Because the store's instrumentality, the escalator, had caused the harm, the store had an affirmative duty to come to his rescue.

This is a broadly accepted principle: If the defendant's activity created a risk of harm, the defendant has an affirmative duty to take reasonable steps to assist an accident victim. If we think in terms of climate risks, the point would be that the emitting countries like the U.S. have a duty to assist victims even if our emissions weren't wrongful. The duty to rescue isn't infinite — it means a duty to provide reasonable help under the circumstances.

International negotiations obviously aren't governed by U.S. tort law. Tort law does, however, illustrate how we think about responsibility toward others. The obligation to help those whom you have put at risk is an appealing one and offers a useful guidepost even in the very different context of climate change.

In the domestic context, it might have more legal relevance in litigation against fossil fuel producers and others whose activities have created climate risks. This

doesn't mean a requirement to compensate for all the harms done by climate change, but it does mean a duty to help victims protect themselves from the harms our emissions are causing.

In short, even if we don't think carbon emitters have a duty to make reparations for harm caused by climate change, they should still have a duty to provide reasonable assistance to the victims. This argument doesn't require countries like the U.S. to go on a guilt trip about our past activities. It does require us to take steps to help countries that are being harmed by those emissions and are unable to protect themselves.