

Research Report of Exchange Visit

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1. Information of exchange:

Title of the visit research: Emission rights and distributive justice

Host University: Catholic University of Louvain

City, country: Louvain-la-Neuve, Belgium

Type of visit: exchange study

Dates of visit: April 15th to May 15th, 2013

2. Purpose of the visit:

There are mainly two purpose of this exchange study in Louvain:

First, finish and discuss the draft paper: “Emission rights and developing country” under the supervision of Prof. Gosseries. In this paper, following questions will be conducted: (1) what is the concept of emission rights? I attempt to reconstruct this concept by providing an evaluation of different understanding of emission rights. (2) Are emission rights morally justified? This paper tries to figure out whether this concept has moral significance, i.e. are there moral reasons to support individuals having emission rights.

Second, generate a framework to analyze the distributive justice of emission rights between the people in developing and developed country. The second part of my research project will deal with the question of how to allocate emission rights in the unjust world. In the international negotiation of climate mitigation, the main arguments of developing countries are referring to the historical emissions and opportunity to development. We are living in the unjust world in which developing counties stand in disadvantaged positions. Even we use the morally ideal methodology to analyze the allocation of emission allowance, and this moral ideal is implementing in such unjust world. Therefore, it is necessary to generate a new framework to deal with the allocation problem of emission rights.

3. The work carried out during the visit

In the first two weeks of the visit, I discussed the content of the article with my supervisor and finish the draft paper: Emission rights and developing countries.

In the last two weeks, the draft paper was discussed with my supervisor and other colleagues. According to the various comments, the draft paper was revised.

Furthermore, the second purpose of my stay: the framework to deal with the allocation of emission rights has been discussed.

In the mean time, during the visit I was invited to attend several seminars and workshops held by Hoover Chair. The topics including: (1) Procreative Responsibility and Population Size(International workshop organized by Axel GOSSERIES and Tim MEIJERS, with papers by Daniel WEINSTOCK, Jurgen DE WISPELAERE, Andrew WILLIAMS, Gustaf ARRHENIUS, Ingrid ROBEYNS, Pieter VANHUYSSSE, Anne LENZE, Cristian FATAUROS, Gregory PONTHERE, Axel GOSSERIES, Nicholas VROUSALIS and Speranta DUMITRU) (2) Are Motherhood and Political Participation Compatible? Lessons from de Grouchy's Letter on Sympathy (3) On VAT and child poverty (and other connections between normative economics and public policy) (4) Virtuous inequality: revisiting maximum

4. The main results and findings obtained

Two main questions are studied: what is meaning of emission rights? Are emission rights moral justified? To be precise, following sub-questions have been discussed: (1) different understandings of emission right in legal regime and in normative debates. (2) An overview of moral debate about the status of emission rights. (3) Defense of emission rights: few problems in the previous argument about the nature of emission right, and adequate position of notion of emission right in the content of climate justice.

(1) Different understandings of emission right in legal regime and in normative debates

In different legal or political mechanism we could find that the notion of emission rights has been interpreted as: Allowance, permit or property right, but they are referring to a limit amount of carbon emissions.

We examine the meaning of emission rights in terms of economic and legal concept in order to make distinction of to the concept we used in the normative debate. No matter the emission rights we mentioned above are “allowance” or “property right”, the aim and nature is to serve the efficiency of the new policy. It is a result of policy innovation. The reason and the aim of this emission right is not to grant a right to the right holders, but to make sure these amount of emission should not be exceed. Contradicted to a moral concept, emission rights as a legal concept it is created by legislation or regulations. The existence and allocation of this right need certain conditions. It is alienable and a local rights which only serves the goal of carbon reduction in certain conditions.

Emission rights in the legal regime, as it has been mentioned above is a created, alienable and local concept in the legal and political regime, which should be distinguished from the one in the more fundamental debate. Should emission rights be considered as a moral concept? Whether this concept has any moral significance?

The notion of emission rights should not only be interpreted as a right to emit carbon, but also imply a right to use the climate resource: the atmosphere of all mankind. Human production and life must obtain necessary elements from atmosphere and emit certain elements to the atmosphere. It is renewable but with limited renewable capacity.¹ This means emission rights also imply a right to use the natural resource which is matter of the justice issue and normative debate than a limitation of carbon emission. In addition, the allocation of emission rights has been interpreted as a simply way of saying “ the benefits from emission generating activities which are made possible through the possession of tradable emission rights²”. Moreover, contradicted to the legal concept, a moral concept should not been created nor unmade, it should not be limited to the citizens or certain agent in particular nation and particular time which means it should be universal and timeless.

¹ Gao Guangsheng, “Carbon Emission Right Allocation Under Climate Change” *Advance Climate Change Research*, 2007, 3 (Suppl.): 87-91.

² Lukas H. Meyer, Dominic Roser, “Distributive Justice and Climate Change.The Allocation of Emission Rights” (2006) p. 223–249.

In sum, the distinction of the concept of emission rights in legal and moral debate is that in the emission trading system, emission rights have been understood as a single action of right to emit. No matter it is a property right, allowance or permit. But in the normative discussion, the emission right should also imply a freedom of using the natural resource and the benefit from emission. Therefore, emission rights should also be considered a right to using certain goods, instead of an allowance to doing bad. This is crucial for understanding the nature of this concept. However, the next question is should people have at least basic freedom to share this right?

(2) Moral debate on whether we have emission rights

There are several reasons to support that the concept of emission right has moral significance: 1) carbon emissions guarantee the necessity for subsistence. Henry Shue's well-known argument of inalienable emission rights based on the distinction of luxury emissions and subsistence emissions. He has proposed that everyone "ought to be allowed at least an equal minimum amount of emissions sufficient for at least a decent life."³ The right to basic needs means a minimum condition of a fair world, food, shelter, and access to basic medical care and also include the right to emit greenhouse gases people can enjoy the minimally decent standard of living⁴. Because as long as the poor have been locked into the condition that fossil fuels is the most practical and important energy resources, carbon emission may be necessary for subsistence. Although he did not directly claim that emission right as human rights, according his description, the carbon emission should be considered the object of an inalienable human right⁵. (2) Every one has the equal opportunity or equal right to access a scarcity resource. Eric Neumayer, in defense of historical accountability for greenhouse gas emissions, maintained that historical accountability is supported by the principle of equality of opportunity. That means everyone has equal opportunity of using the global resource atmosphere, no matter where or when he or she happens to live. The natural absorptive capacity of the planet earth that allows for the decay of a certain amount of greenhouse gas emissions truly

³ Shue, Henry, 1993, "Subsistence Emissions and Luxury Emissions." *Law and Policy* 15, no. 1:39-59.

⁴ Shue, Henry, "Avoidable Necessity: Global Warming, International Fairness, and Alternative Energy," in Ian Shapiro and Judith Wagner DeCew, eds., *Theory and Practice* (New York: New York University Press, 1995); "Subsistence Emissions and Luxury Emissions." *Law and Policy* 15, no. 1:39-59.

⁵ Hayward, Tim, 2007, "Human Rights Versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space." *Ethics and International Affairs* 21, no. 4: 431-450

belongs to nobody and should therefore be equally assigned to everybody in order to give everybody equal opportunity to benefit from emissions⁶. These reasons may support the minimal entitlement of carbon emission to each single person in very different ways: for example, some scholars may argue that human beings are equally entitled to the use of atmospheric resource. The equal share can be allocated to individuals on a per capita basis in terms of divisible emissions rights, or in the form of inalienable subsistence emission.

However, the opponent denied emission right because we are facing the urgency of cutting carbon emission which will give rise to the climate change and this change will cause the severe harm to the people future generation and even in this generation. Following reasons have been raised by Hayward who rejected the concept of emission rights as fundamental rights: (1) there are no human rights to pollute. Emission right is standing on the opposite side of human right to an adequate environmental condition. What we should have is a human right to live in an environment free of harmful pollution but not the right to pollute it⁷. (2) Emission is not inherently link to fulfill the basic rights. He argued that “a fundamental right to carbon emissions on the grounds that the relation between emissions and human ends is indirect and indeterminate.” Carbon emission is only the by-product of how we pursuit our decent life. Moreover, it is not emission it not the end, the subsistence or the development right are the ends. Emission is the alternative way to fulfill these rights. (3) Establishing a human right to minimum emissions will rather exacerbate instead of resolve the problem. Because, as he said the implication that there is not necessarily any upper limit to the inefficient emissions that would be permissible in order to reach what might be necessary. He said it is worrying implication by shifting the attention from capping maximum emission to guaranteeing minimum emission

(3) A defense for emission rights

If we put the notion of emission rights in a more general context and consider it as a right to use the common resource of atmosphere, there are several reasons to defend that

⁶ Eric Neumayer, “In Defence of Historical Accountability for Greenhouse Gas Emissions,” *Ecological Economics*, 33, 2 (2000), pp. 185–192. P188

⁷ Hayward, Tim, 2007, “Human Rights Versus Emissions Rights: Climate Justice and the Equitable Distribution of Ecological Space.” *Ethics and International Affairs* 21, no. 4: 431–450

people having emission rights and these rights has moral significance. Firstly, we have to distinguish the carbon emission and pollution. CO₂ is a harmless gas, its physical and chemical features can be considered neither a “irritant” nor a “contaminant” that cannot cause air pollution⁸. Therefore, carbon emission is not intrinsically wrong. But which part is moral wrong by emissions? As we mentioned above, in the normative discussion, emission rights should be understood as a more general concept of the right of using the atmosphere and carbon emission will use the limited renewal capacity of the atmosphere. In addition, carbon emissions are not a kind of pollution, therefore the action itself it not intrinsically wrong. The reason of this action may harm people and other species because we are using the common resource and the problem of free rider and tragedy of commons. The common pool resource is defined as: ”A resource that benefits a group of people, but which provides diminished benefits to everyone if each individual pursues his or her own self interest. The value of a common-pool resource can be reduced through overuse because the supply of the resource is not unlimited, and using more than can be replenished can result in scarcity. Overuse of a common pool resource can lead to the tragedy of the commons problem⁹.” Fishing is the similar case as carbon emissions. It may give rise the bad results of and over fish. These results will also harm the people and other species. But that is not the reason to deny a right to fish.

Secondly, it is a liberty to use the own share. We assume that if we limit our consumption under the international cap of a 2°C increase over preindustrial times, it will to balance the right of the worse off present generation and the right of future generation. Under its determined size of greenhouse gas budget, we interpreted emission rights as common goods instead of doing bad. Therefore, emission rights indicate a right to use the natural resource of the atmosphere. Everyone have right to share this natural resource no matter when and where he/she is. People have his autonomy to choose by which means or using which energy for development. The way of using this common resource is relevant to the condition of their cultural and social condition. We have to admit that people, especially the people from developing countries are still in the historical stages in which the subsistence and development is depend on the using the fossil fuels. But at the same

⁸ Donald, J. W., & Davis, C. W. (2009). Carbon dioxide: Harmless, ubiquitous and certainly not a pollutant under a liability policy’s absolute pollution exclusion. *Seton Hall Law Review*, 39, 107–128.

⁹ <http://www.investopedia.com/terms/c/common-pool-resource.asp>

time, people have the responsibility to leave enough resource for the future, imagine you over use your own share and this emission will kill people. It is the problem of sharing the responsibility or no harm principle. But emission is still a freedom of doing so. To be simply, it is the question of “what you shouldn’t have done”, it is not the question of “it is not you have right to do that”.

Finally, we have to admit that the result of this research is not to advocate this right in order to support this action. The aim is to examine a right by using the principle based approach instead of using the consequence-based approach. We have the urgency of cutting down the emissions, and the responsibility of cutting emission is belongs to different framework.

5. Projected publications / articles resulting or to result from the grant:

Draft paper titled: “Emission rights and developing countries” has been finished during the exchange visit. The completed article will be the result from the grant.