

# THE INTRINSIC JUSTIFIABILITY OF GRANDFATHERING IN CLIMATE POLITICS

**MENNO R. KAMMINGA**

*Faculty of Arts*

*University of Groningen (The Netherlands)*

m.r.kamminga@rug.nl

## **ABSTRACT**

Climate philosophers conceptualize ‘grandfathering’ as ‘emissions grandfathering’: past emission levels entitle to future emissions. With the notable but controversial exception of libertarian Luc Bovens (2011), they regard grandfathering as intrinsically, even if not instrumentally, unjust. Questioning both the standard dismissal and Bovens’s Lockean pro-argument, this article defends the intrinsic (albeit limited) fairness of grandfathering conceptualized as ‘resources grandfathering’: fossil resource creation entitles to future resources use. A threefold ‘social constructivist’ ethical argument for this position is developed. First, philosophers’ basic aversion to grandfathering, while consistent with their emissions-based understanding, rests on an undefended, shallow ‘cosmopolitan materialism’. Second, Bovens’s Lockean defense of the intrinsic fairness of grandfathering emission rights falls short for assuming a dubious ‘first-come first-served’ within a retained cosmopolitan materialism, although it sensibly suggests to include respect for investments in our understanding of grandfathering. Third, a ‘communitarian idealist’ defense of grandfathering, which stresses that ‘natural resources’ are cultural-historical creations, succeeds by undermining cosmopolitan materialism and eliminating first-come first-served. Thus, grandfathering supports Western countries and opposes (possibly) non-Western small rich or rapidly industrializing ones, and implies a critique of the view that the West owes a massive climate debt to developing countries. Yet, grandfathering, as distributional starting-point within a pluralist framework, should arguably be complemented by ‘no-harm’ and ‘ability to pay’.

## **KEYWORDS**

Climate justice; communitarianism; grandfathering; idealism; materialism; social constructivism

## **INTRODUCTION**

The politically most practiced but philosophically most opposed principle for allocating emissions space is arguably ‘grandfathering’. Climate philosophers generally understand this principle as one that distributes emission permits among states according to their current emission levels, so that the more a state emits in the start year, the more permits it receives for the future (Mi et al. 2019: 312;

Moellendorf 2015: 177; Page 2013: 233). As such, grandfathering is highly controversial: it benefits developed, rich countries, whereas poor, developing countries would benefit by a seemingly more just principle that accounts for ‘historical responsibility’ for climate change (Mi et al. 2019: 317). During two decades of international climate negotiations, developing countries have basically defended an ‘equal per capita emissions’ standard and rejected grandfathering - or ‘equal percentage emissions reductions’ - as proposed by developed countries as wholly unfair (Damon et al. 2019: 34-37; cf. Torpman 2019: 6). In this, developing countries have received support, even if qualifiedly so, from climate activists and philosophers: since past emissions have caused climate change, it would be counterintuitive, if not perverse, to reward polluters who should actually pay (Damon et al. 2019: 29). Thus, Darrel Moellendorf holds that grandfathering troublingly ‘[entrenches] an entitlement to high emissions to historically high emitters simply because they are historically high emitters’ (2015: 177); and Simon Caney concludes that ‘[n]o moral and political philosopher (to my knowledge) defends grandfathering, presumably assuming that it is unjust’ (2009: 128; cf. Breakly 2015: 158). Indeed, seen from an often (roughly) accepted ‘equal per-capita share’ perspective (cf. Torpman 2019: 2), one would expect the US and other Western states to accept a status as ‘debtors’ and transfer many trillions of dollars of climate reparation payments to developing countries as ‘creditors’ (Matthews 2016).

Yet several ethical defenses of ‘emissions grandfathering’ have emerged. Probably the best known is the Lockean libertarian account of Luc Bovens (2011). According to Bovens, states have a future use right in their historically productive use of the atmospheric absorptive capacity as a good initially unproductively owned by all humanity. Largely in response to Bovens’s attempt to defend grandfathering on such intrinsic grounds, Carl Knight (2013, 2014) and Rudolf Schuessler (2017) have argued that grandfathering can be defensible but on instrumental grounds only, that is, if derived from basic ethical theories such as utilitarianism, egalitarianism, and luck-based ethics. In being ‘moderate’, a defensible grandfathering (Knight 2013: 411-412) does *not* reward the polluters (cf. Caney 2009: 127). As Knight puts it, ‘that pumping out carbon should, intrinsically and regardless of its effects, *increase* entitlements would be a *reductio* of [libertarianism]. Emissions just do not seem intrinsically entitlement-granting’ (2013: 416, emphases in original; cf. Moellendorf 2015: 177). If, then, Knight and Schuessler are right in rejecting Bovens’s view, we would still lack reason for thinking that grandfathering could be *intrinsically* legitimate and so should *basically* maintain Caney’s dismissal.

This article criticizes the usual rejection of grandfathering as intrinsically unjust while attempting to improve upon Bovens’s Lockean pro-argument. Thus, I defend the intrinsic (even if limited) fairness of grandfathering conceptualized as (for lack of a better term) ‘resources grandfathering’: fossil resource creation entitles to future resources use. I will develop a threefold ‘social constructivist’ ethical argu-

ment for my position. First, philosophers' basic aversion to grandfathering, while in line with their emissions-based understanding, rests on an undefended, shallow 'cosmopolitan materialism', according to which atmospheric absorptive capacity and fossil resources are 'ecosystem services' to be treated as common global goods (cf. Torpman 2019: 1). Second, Bovens's defense of the intrinsic fairness of grandfathering emission rights falls short for assuming a dubious 'first-come first-served' (cf. Shue 2015: 19; Damon et al. 2019: 23) within a retained cosmopolitan materialism, although it sensibly suggests to include respect for investments in our conception of grandfathering. Third, a 'communitarian idealist' defense of grandfathering, which highlights that 'natural resources' are cultural-historical creations, succeeds by undermining cosmopolitan materialism and making first-come first-served non-existent. Thus, grandfathering supports Western countries and opposes (possibly) non-Western small rich or rapidly industrializing ones, and implies a critique of the view that the West owes a huge climate debt (e.g., Matthews 2016) to poor countries. Yet, grandfathering, as distributional starting-point within a pluralist climate ethical framework, should arguably be complemented by principles of 'no-harm' and 'ability to pay'.<sup>1</sup>

Before developing my arguments, I should clarify the difference between (the already mentioned terms of) 'materialism' and 'idealism' as ontological positions regarding 'society' (Wendt 1999). As Alexander Wendt (1999: 23) explains, 'materialism' holds that the key social fact is the impact of material forces; often, human nature, natural resources, geography, forces of production, and forces of destruction are seen as belonging to this category. By contrast, 'idealism' holds that the key social fact is the impact of social consciousness, that is, the constitutive effects of ideas or knowledge (Wendt 1999: 24). I shall, then, in line with Wendt's 'social constructivism' (albeit against his materialist view in this respect; Wendt 1999: 23, 111), defend an idealist view of 'natural resources' as especially 'ideational' and only 'material' in a minimal sense. Thus, I will make a communitarian-idealist ethical case for grandfathering based on the 'cultural history' behind fossil fuels and atmospheric absorptive capacity.

## A CRITIQUE OF THE STANDARD PHILOSOPHICAL REJECTION

My first argument is that philosophers' basic dislike of grandfathering, while that fits their emissions-based conception, presupposes a narrow, questionable 'cosmopolitan materialism'. I shall focus on directly relevant arguments of Edward Page, Caney, Knight, and Schuessler.

<sup>1</sup> Seeking a moral foundation for grandfathering in the context of climate justice, I will not cover possible practical implications such as the advantage of bringing stakeholders together or the disadvantage of undermining incentives to invest in abatement or new technology (Damon et al. 2019; cf. Caney 2009: 128-130).

According to Page, emissions grandfathering is clearly unfair. As he writes:

[T]he obvious problem with emissions grandfathering...is that it assigns an implausible weight to the normative relevance of historic usage of the capacity of the atmosphere to assimilate greenhouse gas. [Thus,] anchoring the emissions entitlements of states to their past emissions profiles would be unfair to states responsible for modest accumulations of atmospheric greenhouse gas since 1750 (Page 2013: 233).

One undesirable consequence, Page fears, is that ‘the per capita emissions of the developed world’ will continue ‘to exceed those of the developing world for many decades’ (2013: 233).

However, in reaction to Page, while *emissions* in dangerously high levels do form an ‘obvious problem’, we need not conclude that *grandfathering* as a principle is obviously problematic. Indeed, Page’s negative judgement tacitly presupposes that emissions and atmospheric absorptive capacity are simply material and should be globally shared so as to halt the historically unequal distribution of per capita emissions. Remarkably, Page thus also assumes the positive, wealth-related quality of ‘emissions’ as such. But this begs the question of what has made such beneficial emitting actually possible.

Caney (2009) finds grandfathering - ‘that the fair share of emissions for any actor should be a function of its past share of emissions’ (127) - perverse. He raises two objections:

First, it is insensitive to people’s needs and would lock members of developing countries into a permanent state of poverty and underdevelopment...And...eradicating great poverty is an ethical concern of paramount importance....Grandfathering would entail that both China and India receive radically fewer emission rights per capita than North American, Japanese and European citizens, and as such would thwart the former’s legitimate interests in development and the realization of fundamental human rights to meet basic needs. Second, grandfathering runs contrary to another deeply held principle of justice - namely,...historical responsibility. It is widely held that those responsible for creating an environmental problem should bear a commensurate cost...Grandfathering, however,...remunerates people for behavior that has caused the problem (Caney 2009: 128).

Now, Caney’s ‘strong’ (Knight 2013; cf. Damon et al. 2019: 26) verdict, notably his second objection of historical responsibility, is conceivable as regards ‘emissions grandfathering’, but it is also silently dependent on assumptions entailing the essential materiality and global-ness of emissions and atmospheric absorptive capacity: these provide his benchmarks for why polluters as causers of this ‘environmental problem’ should pay. Note also that Caney, like Page, tacitly concedes the inherently positive, development-creating potential of fossil fuel-based ‘emissions’ by itself; he even claims that developing countries are entitled to a particular share due to their legitimate anti-poverty development needs (his first objection).

But again, we are not told how the very possibility to emit so valuably has come into being in the first place. Finally, as Caney's first objection of the global poor's needs merely points to emission *limits* for the rich, it might be combined with *pro tanto* grandfathering and a plea for pluralism into a 'moderate' position - to be discussed now.

Knight (2013, 2014), who argues that a 'moderate' grandfathering may be morally legitimate, maintains that grandfathering cannot be *intrinsically* fair. 'Emissions grandfathering maintains that prior emissions increase future entitlements', Knight (2013: 410) accepts. What he defends, then, is a grandfathering that (i) holds that one's past emissions provide a *pro tanto* entitlement to one's future emissions and so allows other considerations (e.g., basic needs, ability to pay) to influence emission entitlements, and (ii) is justified on *instrumental* grounds. Knight's primary justification is utilitarian: in terms of welfare, since high emitters would probably benefit more than low emitters from each extra available unit of emission entitlements, they receive more entitlements. Grandfathering so construed is probably temporary but not necessarily so depending on the factual balance of positive and negative outcomes (Knight 2013). Knight (2014) adds that members of countries with higher past emissions will face higher costs when transitioning to some lower emissions level; he then argues extensively that, from the perspectives of utilitarianism, egalitarianism, prioritarianism, and sufficientarianism, they are therefore instrumentally entitled to greater emission entitlements than those with lower emissions. Knight (2014: 572-573) explicitly acknowledges that he, like most climate philosophers, assumes a broadly cosmopolitan account, treating the allocation of emission entitlements as a matter of distributive justice which ultimately derives from individuals' equal moral standing.

Now, Knight's claim that an agent's earlier emissions offer a *pro tanto* reason for future emissions and so enable other important moral considerations to influence emission entitlements is well-taken. Indeed, a moderate defense of grandfathering need not depend on it trumping all other concerns, but may well be at home within some pluralist framework. Yet, his instrumental justification (the success of which I need not examine) notwithstanding, Knight tacitly assumes the basically material character of all emissions and does not bother to defend the cosmopolitanism according to which, he thinks, entitlements should be fairly distributed. Again, the question is why, if at all, these beliefs should be accepted.

Schuessler (2017) offers a non-intrinsic, 'luck-based' argument for grandfathering: the undeserved adverse shocks agents are subjected to should be communally 'buffered'. Since agents should have time to adapt to a situation that might otherwise cause severe suffering and unsettle their lives, the non-permanent grandfathering he defends permits people in industrial countries to reduce emissions gradually. As Schuessler explains:

Awareness of anthropogenic global warming [around 1990] entailed a responsibility to reduce GHG output considerably, and given the potential or even expectable negative welfare effects of such reductions, learning about global warming at a time when advanced economies already heavily depended on fossil fuel is to be regarded as a stroke of brute bad luck (Schuessler 2017: 151).

Schuessler, then, defends ‘buffering’ as a luck-based transitory principle of justice, although he does assume global sufficientarianism about entitlement to basic resources and opportunities. He thus offers a principle of gradual adjustment in support of grandfathering, one that provides an appropriate amount of time to adapt to greener lifestyles and avoid severe unwarranted losses, without requiring the economy and habits to change abruptly yet expecting the need for buffering to become lesser over time (Schuessler 2017: 152, 158, 162).

Like Knight, Schuessler appears plausibly committed to a bounded defense of grandfathering (of which, again, I need not discuss its non-intrinsic success) within a pluralist (here sufficientarianism-including) setting. Yet, again, we encounter an undefended basic commitment to cosmopolitanism and an account of emissions as self-evidently material, without any investigation of the origins of fossil fuel-based emission as a phenomenon.

In sum, philosophical critics and instrumentalist defenders of (moderate) ‘emissions grandfathering’ wish to avoid the suggestion that grandfathering could have intrinsic legitimacy as a principle of climate justice. However, it is their mostly implicit, superficially cosmopolitan-materialist perspective that could make it too easy for them to reject grandfathering *basically*. For all their differences, the above critics of ‘intrinsic’ grandfathering *uncritically* share a framework of materialism and cosmopolitanism, and a maximal or minimal, weak or strong, egalitarianism.<sup>2</sup> Accordingly, their view of natural resources is rather static, which will make ‘intrinsic’ grandfathering quickly appear an unfair legitimization of a first-come first-served use of natural resources such as fossil fuels and atmospheric absorptive capacity. Given the silent acceptance of ‘cosmopolitan materialism’, this framework might be vulnerable to non-egalitarian attacks that (successfully) defend ‘idealism’ and ‘communitarianism’. But perhaps an intrinsic defense of grandfathering on cosmopolitan materialist terms, to be examined in the next section, could also succeed (though I will argue otherwise).

<sup>2</sup> My criticism applies to not only ‘isolationists’ but also ‘integrationists’. The former see emissions egalitarianism as a fair principle for one specific climate issue (the distribution of the available carbon budget); the latter (notably Caney) treat egalitarianism as comprehensively including emissions, other burdens of climate change, and other justice concerns (Torpman 2019: 3). Yet both camps tend to uncritically accept cosmopolitan materialism.

## BOVENS'S LOCKEAN DEFENSE AND ITS SHORTCOMINGS

Second, I argue that Bovens's defense of the intrinsic fairness of grandfathering emission rights falls short for assuming a dubious first-come first-served within a retained cosmopolitan materialism, even though it sensibly suggests to include respect for investments in our understanding of grandfathering. Bovens aims to offer 'a sustained, yet qualified, moral argument in support of grandfathering emission rights on Lockean grounds' (2011: 126), which entails that none of the empirical differences between the atmosphere and the pastures precludes transposing grandfathering from the latter to the former (Godard 2017: 139).

John Locke examined the legitimate appropriation of natural resources, notably land, in a pre-political state of nature. Like today's cosmopolitans, he postulated initial common ownership of resources subsequently exposed to private appropriation. In this state of nature, persons are free and equal, all possessing rights and duties regarding life, freedom, and ownership. Now, for Locke, (land) appropriation is legitimate if human labor changes the resource from common good to private good, no waste results, and 'enough-and-as-good' remains for the others (Godard 2017: 140-142). Bovens (2011: 128), then, postulates an unmanaged and unproductive commons and extends Locke's argument for land allocation to allocation of atmospheric absorptive capacity.

According to Bovens, before industrialization, until 1800, the atmosphere was a rather unproductive commons, although it allowed breathing. It could absorb a certain amount of GHGs without problems, but there was no technology emitting worrisome amounts of 'GHGs as by-products' (Bovens 2011: 129). Then, due to technological progress, entrepreneurs started using portions of this atmospheric absorptive capacity. Initially, this happened without violating the enough-and-as-good and no-waste conditions: many benefited, nobody was disadvantaged and all use was productive. Once the atmospheric absorption capacity, say, around 1960, appeared to be running out and overuse threatened to violate the enough-and-as-good condition and initiate dangerous climate change, we closed the commons. Just as farming created claim rights over land, use of atmospheric absorption capacity created claim rights over atmospheric absorption capacity. Past use establishes differential claim rights to upcoming use of the atmospheric absorption capacity by emitting GHGs, according to Bovens (2011: 129, 140-141). His question now is: with atmospheric absorptive capacity appropriations having exceeded 'enough-and-as-good', why would people having unequal emission rights based on their various use levels be unfair if we had accepted an allocation procedure that yielded unequal rights (Bovens 2011: 129)? His main answer is as follows:

Developed countries should be able to demand that, in deliberations, some respect be paid to their appropriations of the atmospheric absorption capacity that predate the cutoff point at which the enough-and-as-good condition was first violated. When violations have been ongoing, this is not the sole principle, since we also need to

impose rectification on illicit appropriations past this cutoff point. And granted, these are for a large part due to growth in developed countries (but also to the GHG-intensive development of emerging economies). That *some* respect be paid to differential investments made during the time when there were no violations of the enough-and-as-good condition is common in such policy decisions. This, I take it, is the moral ground for grandfathering...emission rights (Bovens 2011: 134, emphasis in original).

A radical, investment-disrespectful egalitarian reform of emissions rights, based on a sudden 'equal rights' idea, is as problematic as egalitarian land reforms without respect for historically established rights, Bovens (2011: 135-136) insists. Bovens does soften his claim in view of existing great differences in emissions per capita. Humanitarian concerns such as a minimally decent standard of living should also count, although Lockean concerns or historical emission patterns should carry *some* weight (Bovens 2011: 136). Bovens foresees that '[m]y approach to GHG emission rights leads to a distribution of emission rights that will gradually become more and more egalitarian', also by balancing 'a concern for respecting differential investments' with 'a concern for rectification on grounds of the *polluter-pays* principle' and with 'egalitarian concerns and a concern to raise developing countries above the subsistence level' (2011: 143, emphasis in original). Thus, Bovens, too, eventually defends a broadly pluralist overall view that, as such, could have more plausibility.

Now, Knight (2013: 415) thinks that Bovens's libertarian justification fails essentially. Although Bovens narrows the impact of the initial acquisition of emissions rights, he does make it the starting-point. But, Knight insists, such rights become untenable once we consider later generations, who, with nothing left to acquire, are disenfranchised. Without a redistribution mechanism that could undo the initial acquisition effects, the end result will be that later people do not receive the same rights as those permitted to make the 'first moves'. Hence Bovens's libertarian approach ends up unattractive. Because, Knight adds, greenhouse gas emissions lack all moral appeal, Bovens's extension of the libertarian justification to carbon emissions should make us question libertarianism: we cannot accept a view that entails that emissions, or 'pumping out carbon', should intrinsically increase entitlements.

Knight, I believe, overemphasizes 'emissions' in, and even makes a caricature of, Bovens's position, which clearly does more than just defending 'pumping out carbon'. Indeed, Bovens relates emissions rights, and thus grandfathering, to *productive* natural resources use - notably of 'atmospheric absorptive capacity' as analogous to 'land' - rather than 'emissions' as actually 'worrisome by-products' (Bovens 2011: 129). What Bovens stresses is that we should pay 'some respect to (differential) investments' made. Yet, Knight's 'first moves' concerns directly, and rightly, target Bovens's effectively proposed 'first-come first-served' starting-rule for distributing scarce material resources as troubling from the latter's own sensitivity

to existing great differences in per capita emissions and fundamentally conflicting with the egalitarianism he also appears to endorse. Indeed, since Bovens (2011: 142) accepts not only a Lockean cosmopolitanism but, surprisingly, also the rival egalitarian one, his attempt to reject the cosmopolitan critique of grandfathering looks quite questionable.

Next, Schuessler (2017: 147-150) argues against Bovens that industrial countries have not legitimately appropriated a larger share of the atmosphere's absorptive capacity and cannot justifiably claim more extensive (Lockean) emission rights than others on a per capita basis, especially not by referring to the emission totals of 1990: the usual yet unstable reference point. As he further explains:

The absorptive capacity for GHG is practically a non-renewable resource...Hence, the consumption of absorptive capacity is more or less analogous to the eating of a cake. Having eaten a fair share of the cake while others have just started nibbling at it does not entitle a fast eater to a larger piece of the cake, or to continued consumption at an established proportional speed relative to others (Schuessler 2017: 149).

Moreover, Schuessler argues, '[i]f countries are deprived of the opportunity to achieve economic growth, which under the prevailing technologies is coupled to greenhouse gas emissions', it will be virtually impossible for them to engender welfare for their citizens; and this does not just 'mitigate Lockean grandfathering' but 'strikes at its roots' (2017: 149). Like Knight, then, Schuessler finds that 'there is no reason to grant industrial countries higher emission rights...simply because they have a history of high emissions' (2017: 150).

Now, Schuessler, too, overstates 'emissions' and neglects the role of 'investments' in Bovens's account. Again, Bovens's defense of grandfathering in favor of industrial countries entails more than 'simply because they have a history of high emissions' (Schuessler). Nevertheless, Schuessler's 'fast eater' objection entails an appropriate critique of Bovens's effectively proposed 'first-come first-served' starting rule for atmospheric absorptive capacity distribution. After all, Bovens accepts egalitarianism in addition to his Lockean respect for investments and treats atmospheric absorptive capacity as ultimately materialist, and so indeed as 'more or less analogous to the eating of a cake' (Schuessler).

In sum, Bovens's intrinsic, (moderately) Lockean account, although not wholly implausible, cannot be decisive. Sharing the standard cosmopolitan materialist view of atmospheric absorptive capacity and even conceding the final force of egalitarianism, he ends up advocating an unsatisfactory 'first-come first-served'. Thus, eventually weakening his Lockeanism for the sake of his critics' other-regarding concerns, Bovens fails to refute philosophers' tendency towards a more or less egalitarian distribution of resources and emissions. We should now either reject 'intrinsic' grandfathering or, as I propose, seek a defense that transcends cosmopolitan materialism and egalitarianism; a defense that enforces Bovens's move towards natural resources and investments - as still a *partially* satisfactory answer to

the question of where the very possibility to beneficially emit comes from - but also nullifies problems such as the 'cake eating' one.

### A COMMUNITARIAN IDEALIST ETHICAL CASE: FROM COMMONS TO CULTURAL HISTORY

My third argument is that a 'communitarian idealist' defense of grandfathering succeeds by undermining cosmopolitan materialism and making the problem of 'first-come first-served' non-existent. We should move beyond Bovens's Lockean view towards a communitarian one that stresses 'natural resources' being the result of idealist inventiveness and so cancels out 'first-come first-served' at this basic level. We should not think of resource use in terms of appropriation of a commonly owned and practically non-renewable resource and adopt Schuessler's 'cake eating' analogy. As we shall see, there were no such resources before the Industrial Revolution as a unique socio-historical process, so that discovery and use come first, distribution only second. According to Knight, grandfathering means that past emissions enlarge rights to future emissions; yet, to suggest that there is no reason to grant industrial countries higher emission rights permanently simply because they have a history of high emissions, while correct as such, is to misstate the issue. As will become clearer, not all emissions should count equally. Moving to communitarian idealism, then, will enable an effective defense of the intrinsic force of grandfathering. I use work of economic theologian Michael Novak and social scientist Olivier Godard in order to show the social construction of fossil fuels (Novak) and the atmosphere (Godard) as initially non-scarce resources.<sup>3</sup>

My broadly anti-egalitarian, communitarian argument for grandfathering I take from Novak: modern (fossil) resources, without mass welfare just could not have been possible, are rooted in Western, notably Anglo-Saxon, cultural history. Novak ([1982] 1991: 305) first notes that no people, no matter how exploitative or imperialist, had been able to achieve a tenable economic development until the steam machine and Industrial Revolution were invented. Next, he explains how, through science, technology, and economic organization, England managed to do this in the first half of the nineteenth century:

In 1850, Great Britain was just completing seventy straight years during which, with a dynamism never before matched in history, its gross national product grew every year by an average of nearly 2 percent a year. This seemingly miraculous achieve-

<sup>3</sup> The discussion to follow draws on and builds on Kamminga (2019: 8-13, 36). Its argument nullifies the debate about the extent to which the Lockean enough-and-as-good and no-waste conditions (could) have been satisfied in the case of atmospheric absorptive capacity use since the Industrial Revolution (Bovens 2011; Moellendorf 2011; Godard 2017: 143-145). After all, the point here is that, by invoking communitarian idealism as a more fundamental perspective, we need not be concerned with such conditions.

ment introduced into the world the reality of economic development...The law of patents had greatly stimulated invention, as had the Royal Society. In every decade and in almost every year, new technologies excited the populace (Novak [1982] 1991: 301).

Regarding America, Novak explains how much the fact that the US population uses much more energy than the world average proportionally has been interpreted wrongly:

[It has been stated that] 40 percent of the world's energy is used by 6 percent of the world's population residing in the United States. This way of putting the facts [exemplifies a] cultivation of guilt...What the entire human race meant by energy until the discovery of the United States and the inventions promoted by its political economy were the natural forces of sun, wind, moving water, animals, and human muscle...In 1809 an American outside Philadelphia figured out how to ignite anthracite coal. The ability to use anthracite...made practical the seagoing steamship and the locomotive. In 1859 the first oil well was dug outside of Titusville, Pennsylvania...Arabia would have been as rich then as now, if anybody had known what to do with the black stuff. The invention of the piston engine and the discovery of how to drill for oil were also achieved in the United States. The first electric light bulb was illuminated in 1879 in Edison, New Jersey. After World War II the U.S. government dragooned the utilities into experimenting with nuclear energy...[promoting] the peaceful uses of the atom. Thus 100 percent of what the modern world means by energy was invented by 6 percent of the world's population. More than 60 percent of that energy had been distributed to the rest of the world. Though the United States can, of course, do better than that, we need not feel guilty for inventing forms of energy [so] useful to the human race (Novak [1981] 1995: 777; cf. [1982] 1991: 300; 2008; 2014).

Now Novak tends to exaggerate the US contribution in comparison with the European one. Yet it is clear that about 100 percent of modern energy is of Western, largely American, origin.<sup>4</sup> Novak, then, offers no cosmopolitan or (purely) libertarian view but a communitarian one: by nature, humans are social beings, or 'communitarian individuals' (Novak [1982] 1991: 143-155), who can be inventors only within a social-cultural and institutional context of inventiveness and industriousness. Thus, beneath Bovens's materialism we find more than resource-based 'investments'. The ideational factor of cultural historical achievement, without which fossil resources would not have come into existence, is what makes the difference.

<sup>4</sup> Novak enumerates: 'electricity, the Franklin stove, the steam engine, the piston engine propelled by gasoline (and now by electric and/or hydrogen batteries), the processing of crude oil into gasoline, nuclear energy, the jet engine, the development of ethanol and other fuels derived from plants, and other devices - all of these except one [the British-invented steam engine] were invented by the people of the United States, as their gift to the world' (2008). Yet, although the US have constantly made technological and commercial-optimizing contributions, underlying these are often also originally European inventions (engines, batteries, nuclear energy).

Accordingly, Novak plausibly argues that, since for resources ‘culture’ is the key factor, ‘equality’ is irrelevant (cf. Kamminga 2008: 679). He quotes Brazilian Roman-Catholic archbishop Dom Helder Camara, who stated in 1970: ‘It is a sad fact that 80 percent of the world’s resources are at the disposal of 20 percent of the world’s inhabitants’ (Novak [1982] 1991: 299; cf. 2008). This, Novak holds, illustrates a false use of the term ‘resources’. Such a ‘sad fact’ is only so from a particular ideological-moral perspective; but behind this (partially true<sup>5</sup>) fact lie ‘quite diverse cultural histories’ (Novak [1982] 1991: 299). Novak recalls only how short ago entire humanity had no clue of the potential of oil. Most ‘materials’ we now call ‘resources’ were not regarded as such before the development of a democratic capitalist political economy, but remained ‘dumb’, ‘inert’. The meaning of ‘resources’ includes the ideational factor of culture, as expressed by discovery and invention; the ‘Protestant European culture’ of ‘proliferation with talents’ has been particularly fertile in this respect. Thus, archbishop Camara could have noted: ‘It is a marvelous fact that [80-90] percent...of the world’s resources have been discovered and put to use during the past century by one of the smaller cultures...The benefits of such discoveries have been carried to every continent’ (Novak [1982] 1991: 300). In so openly deploring inegalitarianism, Camara ignored that some cultures have arranged their political economy for the goal of discovering resources and inventing useful technologies, while others have not. His own Brazil could itself have created technologies for utilizing (its) resources, Novak ([1982] 1991: 300) states.

This unique, anti-equality view of the ‘conservative’ Novak, while ignored by cosmopolitans (Godard 2017: 74-78; cf. Knight 2014: 589) in particular, finds support in the work of familiar, ‘progressive’ yet (roughly) communitarian, philosophers. Thus, David Miller (1999) stresses that the value of a resource depends on the talents, knowledge, and technological skills needed for using it fruitfully. Until recently, uranium-rich rock was useless instead of the valuable resource it has become today; no one knew how to extract and exploit it. A low-developed country with uranium depots does not simply own a valuable resource if it does not also possess the technology for mining and using uranium. It will need an outside (Western) mining company to extract the uranium, and without extraction the value of the resource stays undetermined. Whether, then, the citizens of this (or any other) country possess something like their ‘equal share’ cannot be established, Miller (1999: 193) concludes. John Rawls, philosophical defender of egalitarianism within liberal societies, holds that ‘the causes of the wealth of a people...lie in their political culture and [their] religious, philosophical, and moral tra-

<sup>5</sup> Fossil energy exporting countries are mostly non-Western rather than Western. Thus, the OPEC countries are the ones who possess most of the oil and control the supply and price thereof. Indeed, the West is often a net-payer itself, without having full command of the benefits of its own inventiveness in this regard.

ditions..., as well as in [their] industriousness...cooperative talents...and...capacity for innovation' (1999: 108). This, Rawls (1999: 117) argues, makes discussions about a more or less equal transnational distribution of natural resources otiose.

All this being so, the dominant cosmopolitan, (roughly) egalitarian view overlooks the 'cultural' point by frequently, but mistakenly, presupposing that '[r]esources are found "out there,"...under one's feet'; it thus misleadingly infers that 'the natural distribution of resources is a [relatively pure] case of something being "arbitrary from a moral point of view"', and that 'each person has an equal prima facie claim to a share of the total available resources' (to quote Beitz [1979] 1999: 139-141). I disagree, then, with Megan Blomfield (2019), who assumes, in cosmopolitan materialist vein, that natural resources, which are of fundamental value to everybody, exist independently of human beings, and who argues that natural resources are appropriate objects of egalitarian justice: all human beings have an equal original claim to them (even if not a right to an equal share), she insists. But (modern) 'natural resources' are *not* human-independent; and people's rights to basic needs fulfillment (Blomfield 2019) should be treated as a separate issue (involving, e.g., foreign aid or population restriction) and not as simply linked to natural resources entitlement.

Still, one could object that, historically, more has happened than 'Western inventing'. The Islamic world influenced medieval European culture in many ways: philosophically, scientifically, mathematically, and technologically. Various features of modern technology are the product of various cultures in mutual interaction. Oil was already in use in the Middle East, before Western entrepreneurs recreated and utilized it for modern purposes. However, first, all of this does not affect the decisiveness of the Western-cultural contribution of constructing resources for industrial welfare development. Oil was actually used in earlier (biblical) times for products such as perfume and ink (Novak [1981] 1995: 777), or as lubricant, for instance. Yet it were the inventions of the combustion engine and oil drilling technology that could unlock oil's full potential and turn it into the important modern - and subsequently widely desired - energy source with which the West, in line with the English-European Industrial Revolution, lay the foundation for the creation of society-wide prosperity.<sup>6</sup> And second, in conceding the role of 'culture', such an objection could only - but again, not really - compel us to draw the circle somewhat wider. In the absence of sustained intercultural influencing globally, it could also not entail a convincing defense of an equal per capita (or some other cosmopolitan) emission norm.

<sup>6</sup> In the Middle East, the first oil strike took place only in 1908, with Western companies providing the technology and knowledge Middle Eastern countries themselves lacked. See the clear oil history timeline in BBC, 'Black gold: how did oil come to run our world?', <https://www.bbc.com/timelines/zqgxtfr>, last accessed 27 September 2019.

Next, as regards atmospheric absorptive capacity, the creation of this as a ‘resource’ has resulted from the creation of welfare and elimination of mass poverty through fossil fuels and technology as a Western-cultural invention actively based on resources as ideational constructions rather than passively as matter. As Godard (2017: 107-108, 127, 140) explains, the atmosphere in 1990 was not a new manna to be shared among all world citizens without taking account of legitimate past uses and rights. There was no prior collective ownership. The West had not been using something that clearly belonged to everyone or anyone; rather, it actively, albeit unintentionally, created something that did not yet exist in a meaningful way (against Torpman 2019: 5-6). To quote Godard’s non-generic, historical account:

[It would be] a historical misinterpretation [to assume] that in moral terms the ability of the atmosphere to absorb GHGs has been a resource common to all humankind since the beginning of historical time...[T]his function of the atmosphere emerged only when human technology and economic activity transformed a natural condition into a useful resource. Moreover, it was [only] at the end of the twentieth century that it became a scarce resource due to the feared impacts of climate change. [Thus], considering that the absorption of GHGs was a common resource in 1850 is the result of a retrospective illusion. It is blind to the contingency of the historical conditions for the emergence of the climate threat: the recent evolution of GHG emissions since 1988...did not constitute a fatality or a fate that people in 1920, for example, could and should reasonably have anticipated. Not only did people at that time have no knowledge of the phenomenon, but the phenomenon itself had not been historically shaped. It was still possible that future energy systems would be based on diversified sources of energy, and that human demography would not take [such a] galloping pace...: in 1920, the world population stood at just 1.8 billion people. Futures without climate change were still possible...Historical conditions have made the absorption of GHGs the scarce resource that it was not initially (Godard 2017: 107-108).

Regarding the atmosphere, Godard’s argument cuts deeper than a Lockean one, and has more force against cosmopolitan egalitarianism. In contrast to land, for the atmosphere the - less material but more ideational - point of departure is not an initial common ownership of terrestrial resources, but a socio-historical process of the construction of something new: ‘atmospheric absorptive capacity’. Whereas a Lockean starting-point - a commons unmanaged and unproductive (Bovens 2011: 128) - may have applied to land, the atmosphere, by contrast, was no commons apart from breathing as its core material element. Rivalry and non-excludability as features of common pool resources (Bovens 2011: 130) became later and unforeseen concerns only. The atmosphere was owned by no one initially, in contrast to land usually (like American land being firstly owned by Indians). While people have usually wanted land for more direct reasons, atmospheric absorptive capacity is at best wanted more indirectly, insofar as cultures have created - industrial-economic - reasons for needing it. That industrialized countries had

the benefit of early entrance (Bovens 2011: 141) is irrelevant: atmospheric absorptive capacity did not really exist until the West generated industrialization. Thus, the current cosmopolitan belief that the atmosphere is humanity's common property to which everyone has the same indisputable right wrongly suggests that whoever invented atmospheric use is morally random. But the atmosphere is now being *framed* as the 'common property of humankind' to which all humans should have the same right, whether they belong to past, present or future generations. Thus, the idea - based on some norm of equal per capita distribution supposedly valid since the beginning of history - that some countries have made excessive historical use of the atmosphere is false, even if the issue of possible damage caused to the environment of other countries by GHG emissions from a given country remains valid (Godard 2017: 80; Bovens 2011: 134, 143). Without the Western finding of fossil fuels, non-Western countries could never have had any reason for claiming something like the 'atmospheric absorptive capacity' to be equally divided globally.<sup>7</sup>

In sum, cosmopolitan materialism should give way to (what could be called) 'resources grandfathering'. The West invented the Industrial Revolution and worked hard to generate fossil (and nuclear) energy, so that its millennia-long state of hunger and misery could eventually be replaced by mass welfare. As Schuessler admits, 'the riches of industrialization did not come about as mere windfall profits or simply as a result of fossil fuel burning. It took much thought and effort to create the wealth of nations' (2017: 151 n. 16). It is, then, too simple to insist that countries and persons all have an obvious moral right to fossil fuel-based economic growth to the same extent as industrialized countries, and to assistance provision by those latter countries insofar as is needed for this purpose. From a communitarian perspective, not all countries' emissions should count equally as causes of 'pollution'; those done by inventor countries should weigh less and entitle more to grandfathering. Resources are not just material and for the picking-up; without Western Europe, particularly England (thus not India or China) with its Industrial Revolution as path towards sustained welfare (see Landes 1998), and the US, which with its talent, effort, and creativity as ultimate source of their later welfare transformed rough materials into 'resources', we might never have come to know

<sup>7</sup> My 'second-line' communitarian idealist argument would be that the extra emissions from the West are broadly compensated by what it has thereby produced specifically as life-enhancing goods to the benefit of non-Westerners also (cf. Bovens 2011: 132). Consider industrialization and economic production, but also progress regarding science, technology, literature, communication, music and instruments, medicine, health care, and food production. Admittedly, developing countries have often paid for benefits acquired from Western inventions. Yet these are often positive externalities for which Westerners have not been fully compensated (Posner and Sunstein 2008: 1594); and the value of the original creativity behind these findings as *sine qua non* cannot be morally wiped out - wholly reduced to commodities - by plain payment acts. It is, then, not unfair that the West has benefited first and most from a fossil fuel-based and atmosphere-utilizing economic process it has invented and developed itself.

their usefulness. Hence, while a ‘first-come first-served’ basis for distribution would be unfair, the popular idea that the West was ‘only the first’ is simply false.

## CONCLUSION

I have argued that grandfathering, construed in terms of ‘resources’ rather than simply ‘emissions’, possesses intrinsic fairness for the purpose of combating climate change. Thus, grandfathering may play a major, lasting role in climate politics, namely by working selectively in favor of the West. Insofar as political climate practice has benefited the West, there is nothing particularly unjust about this, that is, as a starting-point. The real distributional problem does not lie with the US or Europe, despite them being large resource users and emitting entities, and having already used much atmospheric space in the past. As a baseline, they are entitled to grandfathering and thus to maintaining relatively (but not absolutely) high annual permits for future emissions. Accordingly, not entitled to grandfathering are high-emitting non-Western countries such as China, India, and other industrializing countries, and high-emitting small rich countries such as Qatar, Curacao, Latvia, Bahrein, and United Arab Emirates. Note that, with distributive justice not being the whole of morality, there is one escape from this conclusion, albeit an unattractive one: to argue that the Industrial Revolution was a wrong turn in human history - with sustained and widespread global poverty as the price to pay. Thus, the moral choice is either to accept grandfathering or to reject Industrial Revolution-based economic development and so the very right to emit altogether.<sup>8</sup>

If we do accept the (relative) intrinsic moral justifiability of grandfathering as defended in this article, we should *not* exempt Western countries from making very serious efforts in the fight against climate change. First: Bovens is right to reject ‘a regime in which...developed countries...are branded as scoundrels for every inch that they deviate from equal emission rights per capita, and in which they [owe]...developing countries...Versailles-style wartime reparations’ (2011: 144). Yet some climate debt does exist insofar as the West - like the non-Western countries mentioned above - has violated its community-transcending negative duty (as ethically more basic than positive duties to assist the needy) by, through its high emissions, having done excessive harm to those who suffer the most from climate change and have hardly contributed to the problem (Duus-Otterström and Jagers 2012; cf. Pogge 2004: 278-279; Shue 2015: 17-18; Blomfield 2019: 225). This ‘residual debt’ would have to be paid off, that is, insofar as communities harmed will maintain a climate-friendly behavior by abstaining from fossil fuel use. Second, as

<sup>8</sup> For principal-ecological reasons, one could dismiss industrial welfare as means to combat poverty and thereby consistently blame the ‘Western community’ as the key climate spoiler. However, the moral consequence of such a dismissal would also be to refrain from fossil fuel employment oneself as means for achieving welfare - for poor countries a position difficult to maintain.

with power comes responsibility, the ‘good grandfather’ should accept climate responsibility as based on the positive duty of ‘ability to pay’ (Knight 2013), notably for funding the energy transition and climate adaptation worldwide. This way, then, we have arrived at a specific pluralist framework of climate justice: one that includes ‘no-harm’ and ‘ability to pay’ besides ‘grandfathering’. Thus, while something like ‘equal percentage emissions reductions’ by all emitting states as (technically) accepted by developed countries (as noted in the introduction) has moral force and is really urgent now, this pluralist framework also entails the special responsibility of rich, powerful countries to help make the 2015 Paris Climate Agreement a success by ensuring finance.

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