Temitope Tunbi Onifade- Research Proposal

Law, Society and the Regulation of Low-Carbon Economies

Background Information: Countries' current greenhouse gas (GHG) emissions reduction commitments under the *Paris Agreement* (a global agreement for combating climate change, struck in 2015 under the United Nations Framework Convention on Climate Change) are inadequate to meet the targets of keeping average global temperature increase well below 2°C and avoiding dangerous disruption of the climate system (Rogelj et al 2016; Lawrence and Wong 2017). To meet these targets, countries must drastically transform their economies (McGlade and Ekins 2015). Achieving a low-carbon economy (LCE), however defined (Yuan, Zhou and Zhou 2011) in terms of mitigating carbon dioxide and/or other GHGs (Burns and Osofsky 2007; Blau 2007), is the key international policy agenda for this transformation. Many countries use or plan to use law to drive this agenda, but there are issues about how effective law can be as a tool for this transformation.

Experience in the United Kingdom (UK), the United States (US), Spain and Canada, among other countries, has revealed at least two of such issues. First, integration of LCE laws and their implementation systems (regimes) with existing regimes is difficult, due partly to resistance from entrenched oil, gas and mineral businesses (Geels 2014; Onifade 2015, 2016). Second, even some low-carbon business proponents oppose LCE laws that limit profits (Tamás et al 2010; MacLean, Doelle and Tollefson 2016).

These issues point to my research problem: the limitations of law as a regulatory instrument for LCE. Given the challenges of regime resistance and opposition, combined with the risk of industry capture and weak regulation, law as conventionally defined as a government instrument is not adequate to drive LCE promptly (McGlade and Ekins 2015). Although recent studies focusing on Canada (Maclean 2016; Jensen and Dowlatabadi 2018), China (Zhang 2016) and the UK (Onifade 2016) have addressed some regulatory challenges of LCE, they do not fully explore the possibility that some of the challenges stem from the limitations of law. My research will fully explore this possibility to establish the research problem.

I will then thoroughly examine the role of regulation by society as a supplement to law's regulatory role in LCE. Through governance initiatives, civil society has the capacity to influence business stakeholders to facilitate LCE where law alone might not. Some studies have examined this regulatory capacity of society (Bartley 2011; Lange and Haines 2015; Richardson 2016; Ayling and Gunningham 2017), but not how it can be harnessed to address law's limitations. This is the main gap my research hopes to fill.

Objective, Question and Thesis: My research objective is to examine the roles of law and society in the regulation of LCE, with a focus on Canada. I ask the central question: how could law and society work together in the regulation of LCE? My working thesis is that society could support law. I will examine the roles of law and society separately in the regulation of LCE and the limitations of each, and then show how an integrated regulatory strategy can build on the strengths of civil society to make up for the limitations of law. Civil society, through its model of regulation—civic regulation— can compensate for some of law's limitations.

Contributions: The first original contribution of my research is to show how civil society could regulate LCE through governance initiatives, resulting in civic regulation. The second is to explore how such civic regulation could support law as the conventional form of government regulation.

For the first contribution, I will examine how civil society could regulate business behavior in LCE. People could stimulate social values as regulatory drivers. Actuated through diverse decision-making mechanisms under the umbrella of governance, this civic regulation could motivate action or inaction that supports LCE. To illustrate civic regulation, I will explore new innovative civil society governance mechanisms that regulate LCE. "Carrot Mob," a grassroots non-governmental organization (NGO), employs "buycotts" by organizing people to commit to shopping-sprees in favour of low-emitting businesses. "Equitable Origin," a multi-stakeholder NGO, certifies low-emitting business projects. I will also explore other mechanisms. Given the variety of the governance mechanisms, I will identify the core elements of civic regulation.

The second contribution, on impact, flows from the first. Civic regulation could support law in regulating LCE regimes. It could enhance the entry of LCE regimes into the existing system dominated by laws that advance oil, gas and mineral interests, and might advance implementation. As such, I will explore how society could support law through hybrid regulation that integrates law and civil society governance.

Theoretical Orientation: I will situate my broader theoretical lens in the field of economic sociology that recognizes that society embeds the economy (Polanyi 1944; Granovetter 1985), and that societal actors

could regulate businesses as economic actors. I will then develop my theoretical framework from the leading theories of regulation, governance, and law and society that provide insights into aspects of how society regulates or could regulate: responsive regulation (Ayres and Braithwaite 1992; Grabosky 2013), reflexive law (Teubner 1983), smart regulation (Gunningham and Grabosky 1998), decentred regulation (Black 2001, 2002), new governance (Rhodes 1996; Giandomenico 1997; Lobel 2004; Scott 2004; de Burca and Scott 2006), normative pluralism (Twining 2010), risk-based regulation (Black and Baldwin 2010) and experimentalism (Sabel 2011). I will narrow and bind the framework by creating a taxonomy using theories of private regulation, given my focus on civil society which is constituted by private actors, and of regulatory interactions, since I want to show how law and civic regulation could work together (e.g. Cutler, Haufler and Porter 1999; Freeman 2000; Eberlein et al 2014; Wood et al 2015; Edelenbos & van Meerkerk 2016).

Methodology and Structure: Although guided by a theoretical framework, my study will be empirical. I will use documents along with interviews. I will use legal and policy instruments as primary documentary data sources. I will get these instruments from relevant publicly accessible governmental and non-governmental (e.g. business and civil society) archives. I will then use primary and secondary empirical data. To get the primary data, I will conduct semi-structured interviews of governmental and non-governmental stakeholders involved in decision-making in LCE. For the secondary data, I will consult the climate change and LCE literature as well as publicly accessible archives of organizations involved in climate and low-carbon mobilization and activism.

I will employ some qualitative methods used in law and public policy —literature review (Cooper 1988; Randolph 2009), case study (Baxter and Jack 2008) and framework analysis (Srivastava and Thomson 2009)— to analyse the data. First, I will start with a literature review, which I will synthesize, to provide justification for the project. I will review the literature on resistance and opposition to government regulation, among other issues, and how they lead to my research problem as addressed but not exhaustively discussed in the literature, the limitations of law in LCE. I will then review the literature on civil society and civic regulation, with a focus on works relevant to LCE. I will also review the literature on my research design, data sources and analysis methods, justifying why they would help answer the research question and noting their limitations. Second, to contextualize the research problem, I will conduct a case study of Canada, discussing applicable international, federal and provincial laws and issues. I choose Canada mainly because key provinces have recently made LCE laws that are timely to explore. Third, to examine how to address law's limitations seen in the case study, I will adapt the Transnational Business Governance Interactions framework (Eberlein et al 2014) to analyse select civil society regulation schemes in Canada. I choose the framework because of its capacity to reveal how law and other governance mechanisms regulate. Finally, I will draw on the results to discuss how civil society regulates and how this could support law in LCE.

I anticipate that the resulting dissertation will have seven chapters: Introduction, Methodology (research design, data collection and analysis methods), Theory (conceptualizing the limitations of law and the potential of society to regulate), The Role of Law in LCE (contextualizing the regulatory role and limitations of law), The Role of Society in LCE (contextualizing the governance role of society and its limitations), Law and Society in the Regulation of LCE (making the two contributions: how the governance role of society leads to regulation and how this regulation could support law), and Conclusion.

Benefit conferred by choice of institution: The University of British Columbia is the best place for my work because of the supervisory opportunity. My supervisor, Dr. Stepan Wood, is an expert on non-state regulation for sustainability, the key subject of my research, and he leads an international research network, Transnational Regulatory Governance Interactions, whose work will certainly inform aspects of my research. Dr. XXXX, one of my supervisory committee members, is an expert in environmental policy, especially governance, and he is currently writing a book on the clean energy transformation, so I have much to learn from him. Dr. XXXX, my other committee member, is an expert on regulation, has edited Regulation & Governance (Wiley) which is a top journal in my theory area, and recently published a key book on regulation (*Innovation and the State: Finance, Regulation and Justice*, Cambridge University Press, 2017), so there is much to learn from her. These scholars make an excellent group of interdisciplinary mentors.

Ethics Review Board Process: My research falls under the jurisdiction of UBC's Behavioural Research Ethics Board. I will apply to the board for approval through the Research Information Services system.