

PROPOSAL

Law, Society, and the Regulation of Low Carbon Economies

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BACKGROUND

To address growing concerns that emissions reduction commitments might not meet desirable cumulative emissions reduction targets (Rogelj et al 2016), countries might need to drastically transform their economies. Low carbon economy (LCE) is a policy agenda that has already emerged at the international level to guide how countries transform their economies. However, LCE faces challenges. Some of these challenges appear where law, as a regulatory instrument in policy decision-making, impacts the implementation of LCE mechanisms.

During decision-making, many countries choose law as the regulatory instrument for driving LCE implementation. These laws usually provide for economic mechanisms, often alongside non-economic mechanisms. Overall, how countries effectively use law to drive LCE implementation depends on how smoothly law works.

Experience across some jurisdictions, notably the UK and Spain, has revealed two issues. First, LCE laws and their implementation regimes may find it difficult to mesh with existing carbon regimes as they could be resisted (see Geels 2014). Second, business proponents may oppose LCE laws that undermine profit maximization (see Tamás et al 2010; Onifade 2015, 2016).

These issues point to the research problem the project will tackle: the limitations of law as a regulatory driver in LCE. Given the challenges of regime resistance and business opposition mentioned above, among other potential problems such as weak regulation and regulatory capture, law as traditionally defined might not be adequate to drive LCE at a desirable speed.

Society could help law if properly organised to do so. It could facilitate LCE regimes and control the behavior of business where law alone might not. The study proceeds on this rationale.

CONTRIBUTION

To address the research problem, the question that will guide my proposed project is: how could law and society work together in the regulation of LCE? To answer this question, my working thesis will be that society could support law in the regulation of LCE.

In answering the question, the project will make two original contributions. It will shed light on: how society, however organised, could regulate, arguably amounting to law and governance; and where society regulates, how this could support law as traditionally understood as government regulation.

1. As for the first contribution which is the crux, the study will examine how society could regulate by influencing business behavior in LCE. People could stimulate social values as regulatory drivers. This could motivate action or inaction that supports LCE which could then be actuated through diverse decision-making mechanisms.

While the Forest Stewardship Council certification scheme and similar initiatives exemplify regulation through society within the broader environmental decision-making area, there are relatively new schemes, operating within and across territories, showcasing this mode of regulation as specifically applicable to LCE. “Carrot Mob,” a mass-based non-governmental organisation (NGO), employs “buycotts” by organizing people to commit to shopping-sprees in favour of low-emitting businesses, for instance those using clean energy, bringing them substantial returns. Also, “Equitable Origin,” a stakeholder-based NGO, certifies low-emitting business projects, for instance those adopting green practices, bringing them social license.

These new schemes show how society, organised through NGOs, could regulate carbon emissions through mechanisms such as “buycotts” and certification. However, this does not mean there are no other modes of organisation, for instance through universities and the press which are now mobilizing for low carbon divestment, and other implementation mechanisms, for instance Leadership in Energy and Environmental Design as well as Consumer Reports, both of which currently use rating to motivate low carbon business behaviour. Therefore, given the variety of implementation mechanisms represented by the diverse schemes, the study will identify the elements of decision-making in regulation through society. It will start with the most basic element, contract, which most of these decision-making processes seem to have, and then explore the possibilities of other elements.

As a further contribution on how society regulates, the study will examine whether regulation through society amounts to a new form of law, as understood in transnational law theories, or just governance, as envisaged by global and hybrid governance theories. It will show how elements of regulation through society could satisfy the requirements of both law and governance.

2. The second contribution, on impact, flows from the first. If society could regulate, this could support the role law currently plays in driving LCE regimes. It could enhance the entry of LCE regimes into the existing carbon terrain, and advance relevant implementation mechanisms.

METHODOLOGY

The study will be theoretical, and will use legal and policy instruments as primary data sources. These instruments will come from relevant government and business websites. However, the study will also employ secondary empirical data, albeit for strengthening arguments rather than drawing conclusions. Being secondary, the empirical data will come from the climate change literature and the websites of organisations involved in climate activism and mobilisation. Overall, the study will back theoretical arguments with empirical evidence already in existence.

As for my analysis, I will employ qualitative methods, specifically literature review along with case study and framework analysis. I will integrate the analysis into the introduction, methodology, theory, result and discussion, and conclusion sections of the study.

I will take the following sequential steps:

1. I will start with a literature review to provide theoretical and practical justification for the project, showing the issues that scholars have addressed in the regulation of LCE, for instance regime resistance and business opposition of government regulation, and how these lead to another issue not clearly addressed, the limitations of law in LCE. This review is substantive since it will justify the research, and as such will be integrated into the introduction, theory, and result and discussion sections. I will also review the literature on the research methods I employ. This review will not be substantive as it will only show how things will be done, and as such will mainly appear in the methodology section of the thesis.
2. I will follow with the case study of the UK to contextualise the result of the literature review, limitations of law in LCE. This will appear mainly in the result subsection. I choose the UK because I am familiar with the country's low carbon policy, having published two articles that discuss it, and it has several laws and other instruments at the national, regional, and international level that have influenced its low carbon policy, hence making the potential lessons broader.

3. Then, for the framework analysis, I will apply the transnational business governance interactions framework (Eberlein et al 2014) to make the main contribution on how society could regulate, arguably amounting to law and governance, and the other contribution on how this regulation supports law as traditionally defined. This application will appear in the discussion subsection. I choose the said framework because of its ability to reveal regulatory capacity and institutions. Knowing the regulatory capacity and institutions will facilitate my arguments for the two contributions.

Finally, I will draft the introduction and conclusion sections based on the work done. I will then organise the study into chapters and make necessary revisions.

EXPECTED RESULT

The study will find that society has a regulatory capacity— the normative decision-making power of people— that is not directly based on what we traditionally understand as law (Lange 2013; Lange & Haines 2015). Arguably, harnessing this regulatory capacity, especially across territories, could amount to a type of law captured by the emerging theory of transnational law. In any case, society could harness the capacity to control business, and as such could support law, as traditionally defined, in the regulation of LCE.