

Book Reviews

National Allocation Plans in the EU Emissions Trading Scheme: Lessons and Implications for Phase II, edited by Michael Grubb, Regina Betz and Karsten Neuhoff. London: Earthscan, 2007. 160 pp., GBP 65.00, hardback.

Giving Away Allowances

Admirers of emissions trading often portray it as “automatically” reducing emissions. This collection of articles from the journal *Climate Policy* shows that trading schemes sometimes fail, for the same reason that traditional regulation sometimes fails – regulators fail to demand sufficient emission reductions to make adequate progress. For emissions trading, like traditional regulation, requires regulators to decide how much emission reduction to demand.

Climate experts already know that Europe’s environmental regulators failed to require sufficient emission reductions in the first phase of the EU’s emissions trading scheme (ETS) to stimulate adequate environmental progress or sufficient demand to sustain a market. This book presents detailed information about the National Allocation Plans (NAPs) that European states prepared to determine the amount of reductions their polluters would have to create under the ETS, rich economic analysis, and some useful policy recommendations.

This book should generate fresh efforts by policy-makers and legal scholars to realize, or at least approximate, the vision for emissions trading advanced by Bruce Ackerman and Richard Stewart in their landmark law review article on the subject,¹ while correcting the notion that simply choosing an emissions trading mechanism automatically produces adequate environmental progress or an efficient market. Ackerman and Stewart envisioned a system under which governments would determine the amount of emission reductions needed to meet an environmental target and auction them off.² An application of this approach to the Kyoto Protocol targets would require European governments to create a pool of allowances equal to the tons of carbon allowed in 2012, their assigned amounts, calculated as a percentage below (or in some cases above) 1990 emission levels. The governments would then auction these allowances, with no need to analyze industry or facility-specific factors.

Because the ETS does not, and probably cannot, cover all relevant sectors (because of monitoring difficulties), the approach cannot be quite that simple. This volume, however, presents a troubling picture, because it shows how far governments have strayed from this model. An approximation of this approach has great potential to improve implementation of newer trading programs now emerging in the United States and programs to realize post-Kyoto targets.

European governments have generally demanded modest cuts below projections of future business as usual emissions, rather than demand sufficient reductions to assure Kyoto compliance in combination with their enacted non-trading programs. Since, as Michael Grubb and Federico Ferrario point out in one of the volume’s most novel essays, projections tend to be inaccurate and biased toward the industry with the information to influence the forecast, the first phase of reductions did not achieve even the modest goal of making some cuts below recent baselines. An article on the phase two NAPs compares them to 2005 baselines, phase one allocations, and projected business as usual emissions in 2010, and suggests that the new plans did not do much better, but the European Commission has addressed these deficiencies. It remains to be seen whether they are corrected properly. The proper legal test should be whether the NAPs, combined with other adopted sectoral programs, generate sufficient emission reductions to meet Kyoto targets, a test not well approximated by comparison with these more recent baselines.

European governments not only demanded too little, but also distorted the allocation of allowances through benchmarking, allocating allowances based on a Best Available Technology (BAT) analysis of individual sectors. This problem has been common in trading programs. Ackerman and Stewart described trading as an antidote to BAT regulation, which slows implementation by demanding that government agencies evaluate the

1 Ackerman/Stewart, “Comment: Reforming Environmental Law”, *Stanford Law Review* 1985, pp. 1267 ff.

2 *Ibid.*, at 1347 (suggesting that an administrative agency implementing trading must “determine how much pollution is permitted in each watershed or air quality region” and auction pollution rights accordingly).

capabilities of technologies for particular sectors.³ Subsequent history has shown, however, that emissions trading usually functions as a form of BAT, as regulators use the same techniques they have always used to develop emission limits. Negotiation of the limits underlying the U.S. acid rain program in the legislative process masked this feature, but it has appeared quite unmistakably in subsequent U.S. trading programs as well as in the ETS. In order to make sufficiently rapid progress on climate change, regulators will have to wean themselves from these bad habits and simplify the process along the lines suggested by Ackerman and Stewart. This will not happen as an automatic consequence of trading. It will require lawyers to develop institutional arguments for it to supplement the efficiency-based economic arguments advanced in this book. Several of these articles point out that auctions can increase efficiency, avoid windfall profits, and decrease administrative costs. Legal scholars will have to explain to governments and policy-makers why and how auctions can and should facilitate better and simpler decisions about the amount of allowances to be made available, by freeing them from the benchmarking approach criticized in this book.

As one might expect in a volume from economists, the collected articles analyze the inefficiencies of NAPs better than they analyze their efficacy. But they do provide some useful and detailed information about their efficacy, which lawyers should build upon and supplement. The EU ETS is usually described as the centerpiece of the EU's effort to meet Kyoto targets. It certainly is in terms of the amount of interest generated, and perhaps it will become important in terms of environmental performance once the Member States complete their responses to the European Commission's demand for better NAPs. But to date, Member States have generated no significant reductions from the ETS, and the NAPs analyzed in this book rely much more heavily on non-trading programs than on trading programs for progress toward Kyoto targets. This suggests that analysts that want to learn how to craft more effective climate change policy should devote some of their efforts to analyzing the many non-trading programs Member States have used to realize emission reductions and to figuring

out why they have, so far, proven more successful than the trading programs. Another striking finding involves the heavy reliance of some member states on government purchases of allowances generated by Joint Implementation (JI) and Clean Development Mechanism (CDM) projects. This raises a host of normative issues for legal scholars, involving the proper role of government subsidies, implications for the polluter pays principle, and the relative merits of making governments, rather than regulated private firms, the primary purchasers of CDM and JI credits. To the extent that the Phase II NAPs are not substantially improved, they will raise substantial issues about whether Europe has complied with the Kyoto Protocol's supplementarity principle, the requirement that it only use project-based credits as a supplement to very vigorous domestic reduction programs. Recent work casting doubt on the environmental integrity of the CDM makes analysis of supplementarity and legal issues like additionality – the principle that project-based credits should not be awarded for projects that would have happened without credits – central to analyzing the environmental efficacy of NAPs.

This book focuses much needed attention on the problem of setting adequate caps driving private sector emission reductions. Scholars and policy-makers should read this book, and scholars should extend the analysis to cover non-trading programs and provide the institutional analysis necessary to improve government decisions setting caps.

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A Climate of Injustice: Global Inequality, North-South Politics and Climate Policy, by J. Timmons Roberts and Bradley C. Parks. Cambridge, Mass.: MIT Press, 2006. 384 pp., US\$ 26, paperback.

The impacts of climate change are unevenly distributed across regions and countries, as they ultimately depend on the sensitivity, vulnerability and adaptability of different natural and social systems. They are expected to be heavier on Southern countries owing to their closer dependence on agriculture, lack of financial resources, weaker technologi-

³ *Ibid.*, at 1335-1342 (describing BAT's failings and claiming that their trading system "would respond to these deficiencies").

cal and institutional structures, and lower knowledge and research capacities. These impacts, furthermore, are mainly caused by large carbon emitters in the North, whereas poor countries contributed very little to them. This situation confirms the view that climate change is fundamentally a matter of (in)justice.

In this regard, Roberts and Parks's book analyses the ways in which continuing and emerging global inequalities affect climate justice in order to "specify and empirically evaluate different causal explanations of the existing North-South impasse on climate policy" (p. 32). In short, their main claim is that the most important, and yet least considered, factor fostering international environmental cooperation and international climate policy is "the level of trust among developed and developing nations" (p. 40).

The North-South degree of cooperation depends, according to the authors, on a "triple inequality" in terms of responsibility for climate change, vulnerability to climate impacts, and unequal distribution of costs for mitigation and adaptation. In order to explore the nature of these inequalities, their social and historical determinants, and the causal change through which they affect the "form, frequency, timing, substance, and depth of international cooperation" (p. 5-6), the authors develop various forms of quantitative analysis and put forward cross-country indices of climate vulnerability, carbon emissions, environmental assistance, and environmental treaty ratification.

Roberts and Parks's account of the current climate policy deadlock between developed and developing countries relies on three different arguments: a general one based on international relation theories; an intermediate one centred on international environmental politics and North-South politics; and an issue-specific one concerning the characteristics of climate change. Drawing on these different fields, the book posits that global inequality produces the observed non-cooperative behaviour between the North and the South in two main ways. The first is ascribable to the extreme poverty and powerlessness of most developing countries, which precludes their possibility of negotiating with the North. The second path, usually overlooked, yet – according to the authors – fundamental and more important than the first, is rooted in the worldview and causal beliefs of the South: these have generated a generalized mistrust in the devel-

oping world, divergent and unstable expectations on climatic issues, and, ultimately, defensive negotiating strategies that reduce the chances of achieving mutually acceptable agreements.

To substantiate their thesis, the authors use a fascinating, yet complex, multi-step model of international non-cooperation that explores the direct (i.e. due to lack of capacity) and indirect (i.e. generated by worldviews, mistrust and different expectations) causal pathways linking inequality to (non)cooperation. They first concentrate on vulnerability to climate-related disasters and, through a combination of rigorous quantitative analysis and case studies, evidence that the social, economic and political characteristics of states profoundly affect their ability to deal with, or recover from, climate-related disasters. For instance, they point out that the colonial legacy of many developing countries increases their climate-related risk, and, very interestingly, that Southern governance structures have a greater role in disaster prevention than wealth.

Using a similar approach, Roberts and Parks then analyze the issue of responsibility for climate change, arguing that the "unequal ecological exchange" between the North – which dematerializes its economies – and the South – which is forced to accept carbon-intensive productions – weakens the developing countries' commitment to emissions reduction initiatives.

The authors eventually focus on the ratification of international environmental treaties to highlight the reasons for participation. They argue that there is a quite strong positive correlation between developing countries' exports and their ratification of agreements. More broadly, the quantitative analysis shows that inequality is directly correlated to non-participation in international climate policy. By way of conclusion, the book delineates possible strategies to increase North-South environmental cooperation.

A major strength of Roberts and Parks's work is that it grounds its arguments on long-standing theoretical traditions of the social sciences. Hence, thanks to this broad scope, it is able to analyze the issue of climate (in)justice from different complementary perspectives. A further strength of the book is its explicit focus on North-South dynamics within international climate policy: a very critical and not fully explored standpoint that discloses novel considerations on climate negotiations. Further, this particular perspective is rather neg-

lected in current climate literature, so this contribution usefully fills a significant gap.

Alas, the book does not explore any connections with the growing body of work on the ethical dimensions of climate change. It focuses, in fact, on a very “practical” notion of (in)justice in global climate change, whereas reference to the theoretical notions of distributive and procedural justice would have greatly benefited Roberts’ and Parks’s analysis. Nonetheless, *A Climate of Injustice* successfully combines social science analysis with close attention to environmental implications, doing so in an original and informative way.

Indeed, it is very useful to scholars of international environmental policies and international relations, and more generally to anyone interested in the role of global injustice in international climate policy. An important added value of the book arises from the abundance and depth of its notes, bibliography and index. These features enrich its authoritative-ness and greatly augment its usefulness.

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New Publications

This section provides an overview of recent literature on legal aspects of carbon trading and other dimensions of climate change regulation. Please send any suggestions for inclusion in this list to the Book Review Editor at van.asselt@lexxion.de.

Books

Bernstein, Steven, Jutta Brunnée, David Duff, and Andrew Green. *A Globally Integrated Climate Policy for Canada*. Published by the University of Toronto Press, 2008.

352 pp., £50 (hardcover), ISBN: 978-0-8020-9878-8

Skjærseth, Jon Birger, and Jørgen Wettestad. *EU Emissions Trading. Initiation, Decision-making and Implementation*. Published by Ashgate, 2008.

216 pp., £55.00 (hardcover), ISBN: 978-0-7546-4871-0

Zedillo, Ernesto (ed.). *Global Warming. Looking Beyond Kyoto*. Published by the Brookings Institution Press, 2008.

237 pp., \$62.95 (hardcover), ISBN: 978-0-8157-9714-2

Roggenkamp, Martha, Catherine Redgwell, Anita Rønne, and Iñigo del Guayo. *Energy Law in Europe. National, EU and International Regulation*. Published by Oxford University Press, 2007.

1610 pp., £225.00 (hardcover), ISBN: 978-0-19-921719-9

Articles

1. General Climate Regulation – International

Aguilar, Soledad. "Climate Change and Biofuels as 'Environmental Goods and Services'". 38 *Environmental Policy and Law* (1-2/2008), pp. 57-61.

Aldy, Joseph E., and Robert N. Stavins. "Climate Policy Architectures for the Post-Kyoto World." 50 *Environment* (3/2008), pp. 6-17.

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Posner, Eric A., and Cass R. Sunstein. "Climate Change Justice." 96 *Georgetown Law Journal* (2008), pp. 1565-1612.

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2. General Climate Regulation – Domestic and Regional

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3. Emissions Trading

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Upcoming Conferences and Events

Global Conference on Global Warming

6 July 2008, Istanbul, Turkey

<http://www.gcgw.org>

EU Emissions Trading 2008

7 July 2008, Brussels, Belgium

<http://www.environmental-finance.com/conferences/2008/EUET08/intro.htm>

Carbon Counting 2008: Emissions Accounting, Risk Management & Carbon Investing

14-15 July 2008, Chicago, Ill., U.S.A.

<http://www.frallc.com/conference.aspx?ccode=B616>

The Guardian Climate Change Summit 2008

16 July 2008, London, U.K.

<http://environment.guardian.co.uk/climatesummit>

Berlin Climate Law Conference 2008

25 July 2008, Berlin, Germany

<http://www.lexxion.eu/conferences/climateconf.html>

41st Meeting of the Executive Board of the Clean Development Mechanism (CDM EB)

30 July-1 August 2008, Bonn, Germany

http://unfccc.int/meetings/unfccc_calendar/items/2655.php

Energy Security and Climate Change: Issues, Strategies, and Options

6 August 2008, Bangkok, Thailand

<http://www.serd.ait.ac.th/escc>

Clean Energy & Power Generation 2008

14 August 2008, Kuala Lumpur, Malaysia

http://www.availcorp.com/english/events_list.php?eventsid=142&backurl=upcomingevents_list.php

Financing for Climate Change - Challenges and Way Forward

15 August 2008, Dhaka, Bangladesh

<http://www.unnayan.org/env.conf/index.htm>

4th Australia-New Zealand Climate Change & Business Conference

18-20 August 2008, Auckland, New Zealand

<http://www.climateandbusiness.com>

Accra Climate Change Talks 2008 (3rd Session of AWG-LCA 3 and 6th Session, Part 1, of AWG-KP 6)

21-27 August 2008, Accra, Ghana

http://unfccc.int/meetings/unfccc_calendar/items/2655.php

7th International NCCR Climate Summer School: Key Challenges in Climate Variability and Change

31 August 2008, Monte Verità, Switzerland

http://www.nccr-climate.unibe.ch/summer_school/2008/index_en.html

Green Innovation Venture Capital Summit

7-8 September 2008, Scottsdale, Az., U.S.A.

http://www.opalgroup.net/conferencehtml/2008/venture_capital/venture_capital.php

Biofuels Markets Americas

9 September 2008, Buenos Aires, Argentina

http://greenpowerconferences.com/biofuelsmarkets/bioenergy_americas.html

12th Meeting of the Joint Implementation Supervisory Committee (JISC)

11-12 September 2008, Bonn, Germany

http://unfccc.int/meetings/unfccc_calendar/items/2655.php

5th International Conference on Climate Change and Global Warming

12 September 2008, Frankfurt, Germany

<http://www.waset.org/ccgwo8>

Carbon Markets USA

16-17 September 2008, Washington DC, U.S.A.

http://greenpowerconferences.com/carbonmarkets/carbonmarkets_USA_2008.html

Corporate Climate Response

22-23 September 2008, Chicago, U.S.A.

http://greenpowerconferences.com/corporateclimateresponse/cccrchicago_08.html

2nd U.S. Carbon Finance Forum

24-25 September 2008, New York, N.Y., U.S.A.

<http://www.uscarbonfinance.com>

42nd Meeting of the Executive Board of the Clean Development Mechanism (CDM EB)

24-26 September 2008, Bonn, Germany
http://unfccc.int/meetings/unfccc_calendar/items/2655.php

Carbon Markets India

29-30 September 2008, Mumbai, India
http://greenpowerconferences.com/carbonmarkets/carbonmarkets_india_2008.html

Next Generation Biofuels Market

6-7 October 2008, Amsterdam, The Netherlands
http://greenpowerconferences.com/biofuelsmarkets/nextgen_o8.html

Carbon Finance Asia 2008

7-10 October 2008, Singapore
<http://www.terrapinn.com/2008/carbon>

Clean Energy Asia 2008

7-10 October 2008, Singapore
<http://www.terrapinn.com/2008/clean>

Solar Energy Asia 2008

7-10 October 2008, Singapore
<http://www.terrapinn.com/2008/solar>

Ethanol and Biofuels Asia 2008

7-10 October 2008, Singapore
<http://www.terrapinn.com/2008/ethanol>

RENEXPO 2008

9- 12 October 2008, Augsburg, Germany
<http://www.renexpo.de/en/home.html>

Voluntary Carbon Markets

14-15 October 2008, London, U.K.
http://www.greenpowerconferences.com/carbonmarkets/vcm_2008.html

Carbon Finance World 2008

14-17 October 2008, Sydney, Australia
http://www.terrapinn.com/2008/carbon_au

Climate Change and its Challenges for the International Legal System

17 October 2008, London, U.K.
<http://www.biicl.org/events/view/-/id/299>



**ERNST-MORITZ-ARNDT UNIVERSITY OF GREIFSWALD
 FACULTY OF LAW AND ECONOMICS**

Open Position: Doctoral Fellow, Climate and Energy Policy, Law and/or Economics

Description

The Chair for Public Law, Finance Law and Tax Law at the University of Greifswald, Germany, is seeking applications for a position in the area of climate and energy policy, law, and/or economics. Tasks will include participation in research and teaching activities, and offer opportunities for teaching. Applicants will have the opportunity to enroll in a Ph.D. programme at the University of Greifswald and conduct research towards earning the degree of "Dr. iur.", "Dr. phil." or "Dr. rer. pol."

Eligibility

Suitable candidates are expected to have a good honours degree in a relevant field, native command of the English language, and excellent writing skills. German language skills, teaching experience, and proven research potential are assets, but not required. Presence in Greifswald is optional.

Salary and Conditions of Service

Salary for this position will be based on the German scale of public servant remuneration (BAT IIa). Appointments will be made on a fixed-term contract, with flexible part-time options available. Fringe benefits include annual leave and medical insurance.

Application Process

Please send a cover letter and enclose a current curriculum vitae to the following eMail-address: lsrodi@uni-greifswald.de. Please reference "Doctoral Fellow" in the subject line of your message. The University of Greifswald is an equal opportunity employer. Selection of candidates will not be based on race, colour, national origin, creed, religion, age, disability, sex, gender identity, or sexual orientation or veteran status.

Ernst-Moritz-Arndt-University Greifswald • Prof. Dr. Michael Rodi • D-17487 Greifswald • www.uni-greifswald.de • lsrodi@uni-greifswald.de