



A NEW PROGRAM
BY THE CITY
ON THE MOVE INSTITUTE

Public hearings of
AMERICAN EXPERTS by
EUROPEAN SPECIALISTS

“Climate change, urban mobility and *Cleantech*”

FOR A NEW KIND OF CONTRIBUTION TO THE DEBATE on
mobility issues and energy in the context of
climate change,
AT A TIME WHEN ASSESSMENTS ATTRIBUTE ONE THIRD OF
GREENHOUSE GAS EMISSIONS TO TRANSPORTATION.

Climate change and mobility in the USA: who makes the Law?

Minutes of the 7th session, June 2, 2010

Context

Taoufik Souami

This programme was created, with François Ascher, to explore the way in which climate change issues are approached in the USA; and to explore the role played by the market in collective action that is taken. During previous meetings, American experts have insisted that a pre-condition for measures against climate change is the imposition of severe, precise and rigorous laws on American society. They explained that the market for solutions was only an emerging one. Researchers and experts also insisted that new innovations and solutions could only be successful if the legal framework was in place.

Therefore, we proposed to address several question during this session: who makes the law? What are the aims of the law? What are the roles of private enterprises in designing law about climate change? How are laws supposed to influence the approach of climate change in US?

The audition commission is composed of mainly French, but also European, experts. The expert speakers from the USA are Elizabeth Deakin from the University of Berkeley, who was head of several institutions for research into public transport in California, and Albert Bressand from the University of Columbia, director of the Center for Energy, Marine Transportation and Public Policy.

Agenda

Benoît Lefèvre

This session will focus on the laws, how they are made and the consequences of the decision process on the design and content of laws that are finally adopted. We would like to take a step back from specifics previously discussed, and analyse the evolution of the legal framework. The objective is to understand the evolution of the players' game and power balances; and what the implication of the private sector is (real estate developers, transport and particularly Cleantech). The current situation in the USA must be taken into account. In addition to the impact of Obama's election and the emergence of the conservative right-wing Tea Party movement in the wake of his health reforms, there have been two major crises: financial and environmental (the oil spill in the Gulf of Mexico). In both, the authorities have been asked to intervene.

Strategies to Reduce Global Warming in California

Elizabeth Deakin

Professor of City and Regional Planning, UC Berkeley

I. Federal and Californian Laws to Reduce Global Warming

Despite the failure of the federal government to endorse the Kyoto Protocol or undertake specific climate change action, there are many federal laws to reduce global warming. These are energy efficiency standards for appliances; fuel efficiency standards; cooperation programmes between federal agencies; and a variety of tax credits, incentives and investments in renewable energy. Californian law (www.climatechange.ca.gov) adds tougher energy efficiency standards for buildings and appliances; an electric utility portfolio standard of 30% renewable energy; vehicle CO2 emissions standards; low carbon fuel standards; audits for state agencies; regional transportation targets; and community sustainability strategies.

II. Lawsuit Against the Environmental Protection Agency

California first began a fight with the federal government over Assembly Bill 1493, passed in 2002. After unsuccessfully petitioning the Environmental Protection Agency to regulate greenhouse gas emissions under the Clean Air Act, California obtained a waiver and introduced its own standards. It has always had its own, tougher, air quality and emissions standards. After the Bush administration denied the petition in 2003, 12 other states joined California in filing a lawsuit against the EPA. The EPA argued that CO2 was not a pollutant; that it was a global problem that could not be solved; and that action would interfere with 'international efforts'. In 2007, the Supreme Court ruled that the EPA is obliged to regulate greenhouse gases under the Clean Air Act. The EPA can now be sued by citizens for failing to act. Despite delaying by the Bush administration, the Obama administration has reversed course and is now proceeding with standards.

III. Assembly Bill 32

AB32 is effectively the Kyoto Protocol put into Californian law. Schwarzenegger went even further than Kyoto by looking at targets of 80% below 1990 levels by 2050. A taskforce decided that reducing emissions through electric utilities was a major step. Appliance standards for consumer goods and buildings were toughened; this is significant in light of population growth. Though power is already relatively clean, new forms of renewables can be adopted. California has many old refineries that produce heavy emissions; these needed their technology updating. Transportation is key, representing 40% of emissions in California. Car ownership and use is high. There is an emphasis on clean cars and fuels, though this is a long process and standards could not be met.

IV. Senate Bill 375

This bill was passed to oblige regional agencies to have a Sustainable Communities Plan to reduce emissions to set targets. This will entail encouraging use of transit, walking and cycling. Local

governments will also have to reduce greenhouse gases to 15% below current levels by 2020 by promoting alternative transportation, car sharing, parking prices, bridge and cordon tolls. Recycling and solid waste reduction are also being considered. Heavy-duty vehicles must now have aerodynamic efficiency devices attached; a lending programme for Mexican truck drivers entering California is being discussed. Tyre inflation measures are also in the pipeline.

1. San Bernardino County Lawsuit

Additional lawsuits have been filed against local governments that fail to implement AB32. In California, government decisions involving discretion must be reviewed for their environmental impact; and the impact mitigated. Attorney General Jerry Brown, a former Governor of California, sued because the county had failed to analyse and mitigate greenhouse gas emissions. He won, setting a precedent.

2. Metropolitan Planning Organisations

SB375 requires greenhouse gas emissions reduction targets to be updated every four to eight years until 2050; and requires Metropolitan Planning Organisations to develop Sustainable Communities Strategies (SCS), align their housing and transportation investment policies and creative incentives. Regional agencies are not required to follow local plans. The SCS ties regional planning regulations to the Regional Transportation Plan, meaning that regional plans have to be financially feasible – which has not always been the case. If targets cannot be met, an alternative plan must be produced. This was a controversial bill for the USA, with an urban vs suburban pattern of support and opposition.

V. Next Steps

We believe that 25% of the reductions required to meet the Kyoto levels in California can be achieved through new vehicle technology and fuels. 30% could be achieved through power production and efficiency standards. A (multi-state) cap and trade programme will be required for a 20% reduction; and this is complicated. Reductions are not all likely to be effective; and further measures must be found beyond 2050. Possible transport solutions are extremely small cars; different fuels; more intelligent transportation systems; traffic operations and controls; congestion and parking pricing; and pay per mile emissions fees. Pedestrian and cycling development and car-sharing schemes are also being considered. There are three scenarios: benign mobility, where mobility is emphasised, with major technological changes; accessibility over mobility, where the emphasis is on walking, biking and transit, with transit-oriented development communities and telecommunications; and a mixture of both.

VI. Conclusion

Over a dozen bills have been introduced to reduce greenhouse gases. The most likely provisions are biofuels, cellulosic technology investments, and cap and trade for industry. The major question for California, as a state that has always been ahead of the federal government, is whether the government will pre-empt state authority and potentially reduce its ability to advance. There is an issue of who

should take the lead: the federal government, the various states or even sub-divisions of states. States do not always see eye to eye. Legitimacy and accountability also come into play: unelected people and bodies who make decisions cannot be voted out of office. Pricing is a difficult issue, touched upon by California and a few other states, but blocked by a federal government that does not currently allow tolls on highways. Consumer acceptance and support is also important: opponents remain unconvinced and there are funding issues. Transit funds are in crisis due to the recession. California, like other states, has taken many measures to reduce greenhouse gas emissions and believes it can achieve 75% of its 2020 goal of 1990 levels. Achieving 80% below 1990 levels will require a great deal more effort and aid from our partners; and a combination of new technologies, pricing and transportation strategies.

VII. Question and Answer Session

Benoît Lefèvre

How does the Californian state create channels of dialogue with other states, the federal state and other partners?

I am interested in the support for new technologies, especially Cleantech and soft policies. How are the balances between these being discussed?

After the fight over SB375, the Obama administration reversed decisions made by the Bush administration. Was it Obama's arrival alone that allowed this to happen?

Elizabeth Deakin

Concerning Obama, California has a tradition of environmental concern; Obama committed himself to action during the election, but the matter is far from simple. The bankruptcy of General Motors also had an impact: General Motors has changed its policy from building large cars to smaller, electric vehicles.

In California we think that soft policies create a framework for technology innovation, which is necessary for soft policies to be feasible. The two must be integrated to be effective. For example, intelligent control of the highway systems is vital to create a safe environment for small vehicles.

Due to its size and population, California has been able to afford its own air quality standards. The New England states, New York and New Jersey joined in. It has also had the necessary funding and research groups; and it borrows heavily from elsewhere around the world. Global networking and borrowing ideas from elsewhere in the US and around the world is key.

Californian energy policies began in the 1970s because power plants could not be sited on fault lines. Daniel McFadden, the Nobel Peace Prize winner in Economics, deemed the solution to be conservation. Thanks to conservation, these plants have not been required. Transit and land use changes have

produced environmental, financial and social equity benefits as well as reducing greenhouse gas emissions.

Jean-Pierre Orfeuil

Californian policy was historically driven by a desire to make 'intelligent' money through new technology, as well as the drive to reduce emissions. I am surprised not to have heard a lot about the promotion of technology.

Public action may be more driven by economic considerations than in France. Have you abandoned tax incentives?

Do you expect a lot of legal cases from American citizens who want to buy a Hummer, for example?

Elizabeth Deakin

We are still working on zero emissions vehicles; it has just been announced that a former General Motors plant is to become a test facility for plug-in electrics. There is competition to produce the most electric-vehicle powered city in California. The Governor is very interested in hydrogen, but most of it is currently produced from petroleum products. Cost benefit analysis shows that hybrids and plug-ins are more viable.

Tax credits are an excellent incentive. Feebates are being used as back-up if there are difficulties with fuel standards, for example. Cost benefit analysis indicates that the measures are all below around \$55 per tonne; current carbon trading is much lower, but the California cut-off is around \$60.

There is not a great deal of litigation over specifics, but over failure to mitigate impact, such as the Gerry Brown lawsuit, which sent out a clear and effective message to governments and courts.

Françoise Sirot

Laws on transport and energy have made urban transport plans obligatory. Plans for company transport are also now possible. These laws were aimed at large sectors and revolve around urbanism, energy and transport. In relation to California, I would like to understand more about the organisation and laws at national and local level.

Elizabeth Deakin

The federal system renders states a little like countries in the EU, with independent authority to act barring pre-emptive federal government action. Some states, including California, operate home rule: the local government has authority unless the federal government has pre-empted it (with uniform state laws, for example). The new bill gives regional agencies a say. In the 1960s, cities revolted against the building of inter-state highways through them. A bill was introduced to make approval mandatory.

Despite not being actual government, Metropolitan Planning Organisations have gained increased authority over the years. Regional agencies have a very different, more friendly set of policies and tend to be more interested in new forms of contracting, public-private partnerships and 'newer' thinking than state agencies. The California Department of Transportation does not have the authority to make decisions in the county's four major cities.

From the Floor

Who decides what is feasible and what is reasonable?

Elizabeth Deakin

Both politicians and technical analysts decide this. We are making great efforts to improve our transportation and modelling capability.

From the Floor

I am preparing an editorial on US transportation policy and practice entitled 'Backward, Provincial and Self-Satisfied'. Can you quote measures that have been carried out in France that the USA is considering?

Elizabeth Deakin

We are interested in the *carte orange* system and employer subsidies; public-private partnerships; bicycle planning and clean parking in Paris; transit operations; and financial instruments providing incentives for private participation. We do pay attention!

From the Floor

Is California really interested in continuing with cap and trade? At federal level, is it possible to introduce flaw prevention?

Elizabeth Deakin

There is an argument for the Western climate initiative, but California is sizeable and has partnerships with some Canadian provinces, such as Vancouver. Other states have also expressed interest.

Pre-emption does not always block state action. The Tenth Amendment also creates room for manoeuvre. The major worry in California on pre-emption is having to uphold standards of other states whose circumstances are vastly different.

Reducing New York City's Carbon Footprint

Albert Bressand

Aristotle Onassis Professor in the Practice of International and Public Affairs, University of Colombia

California is on a different planet to New York and the rest of the USA in terms of climate law. New York borrows inspiration from de Montesquieu, with three powers: legislative, executive, and independent judicial, which France does not have. The power of the courts can either uphold standards, as seen in California; or reject them, as when New York City yellow taxis went to court upon being told they had to convert to hybrid energy. See: <http://vem.typepad.com/files/questionnaire-bressand.pdf>.

I. Interplay Between Powers

The seminal 2007 Supreme Court Ruling that the EPA could regulate CO₂ was a positive political decision; but the EPA is not equipped to consider climate change. The interplay between the aforementioned three powers is very different to that of more centralised France. De Tocqueville is also still contemporary in America, where the city pre-dates the council, the council pre-dates the state and the state pre-dates the union. On climate change, a global problem, the lack of national framework in the USA is a major impediment to its playing a full role and entering into binding international agreements such as Kyoto. There is huge also resistance to this. Though government agencies are in favour of UN laws, it is still impossible for the US Congress to ratify them. 'Docking' is the best they can do at present.

II. Domestic Context

The Bush administration is sometimes maligned, but it produced a significant piece of legislation in the CAFE standards on vehicle emissions. Obama, while an environmentalist, is faced with major financial, other global and domestic issues.

Sometimes business is in favour of a national mandate. Utilities need to know what energies to invest in. A national standard would help and protect investors. The US financial sector recognises the importance of European carbon markets and supports the Chicago Exchange and REGGIE. It is in its interest to do so.

III. New York Context

New York's population is set to grow to 9 million by 2030. Its emissions are relatively low compared to other US cities – closer, in fact, to that of many European cities. It is extremely vulnerable to the effects of climate change: a rise in sea levels will impact its subway and electricity production, for example. Unlike California, most of its emissions come from the built environment, not transportation. 70% of New Yorkers use public transport or walk to work on a daily basis, while 70% of Americans use cars.

IV. PlaNYC

Mayor Bloomberg created the Office of Long-Term Planning and Sustainability and the 2007 PlaNYC for a greater, greener city. This comprises a patchwork of initiatives to reduce emissions by 30% by 2030. Public transportation is relatively green, but could be improved. Bloomberg's propositions are building infrastructures, improving services, introducing alternative modes of transport, congestion reduction and modernisation of roads and subways. The fiscal stimulus package included plans for green jobs and high-speed TVG trains. However, unlike Europe, the US is hindered by an 'every man for himself' mentality. Bloomberg had support for the introduction of a congestion charge on the lines of the London model, but the rich saw this as self-protection. Times and Madison squares are now pedestrian. New York now has bicycle lanes and a proposition for a tramway on 42nd Street.

I believe many initiatives will emerge in the USA. However, a consistent plan and climate policy should not be expected, in the current political climate, for some time.

V. Question and Answer Session

Niels Albertsen

One could say that mobility is not that important. Is there any structural reconfiguration of the mobility system in New York? Do you foresee further reconfiguration in mobility policies?

Albert Bressand

Infrastructures are reaching their limits and becoming a growing threat. New York performs well on mobility, but symbolic measures such as bicycles have only been implemented in limited areas. New York needs to perfect and preserve its unique system. The Metropolitan Transport Agency is \$14 billion dollars short and requires a combination of new resources. Reconfiguration must be considered in a wider context: New Yorkers can live without cars, but suburban communities may be more dependent on them. The American approach is geared towards developing new technology without changing lifestyle.

Michel Micheau

There are divergences between the French and US models. The way that local authorities implement laws is significant because of the multiple levels of institutions and the different cases of cities. Debates on the subject link transport with development, the latter of which is absent from the American debate.

Albert Bressand

European governments are different to the US government, with a few exceptions such as California, which has a statute that looks at urban sprawl. However, the archetypal American city is the sprawling Phoenix, Arizona, where proposed development measures have been defeated by voters. Developers

often have concepts of gated, closed communities with private roads. New York is so dependent on its public infrastructures and services that it grants its mayor more power. An enlightened mayor such as Bloomberg can then act. The situation is dependent on local circumstances and totally unlike the French framework.

Nicolas Chaudron

The US fiscal stimulus package financially supports companies to develop Cleantech innovation, but there is no such system in Europe. In Europe, I have the impression that there is a ‘carrot and stick’ situation: the stick is strict regulation of carbon emissions programmes through fines from 2020, and the carrot is, at national level, measures taken by countries to develop and incentivise people to advance. Is there such a difference in approach, locally and nationally, in the US?

Albert Bressand

In New York City, law formulation involves NGOs, consultants and lobbies. There is no European apprehension about such a diverse melting-pot. Whereas the French philosophy is that the public interest can be at odds with private interests, the American view is that the aggregation process is important.

Christian Licoppe

I was surprised that some players are implicated but not accountable. Can you provide an example of how new players are held accountable when they are not elected?

Elizabeth Deakin

There are a lot of safeguards on participation concerning disclosure of conflict of interest, public meetings and records, rendering the system open and scrutinised. A wider issue is that of income disparity, which impacts on participation.

Albert Bressand

There are limits to how much can be spent during a campaign, but this does not affect private funds. Major figures like Bloomberg have no financial limits for campaigns. He is the sovereign. The Tea Party is an extreme and perverse view of this.

I believe that Europe has become paralysed, not because of American superiority, but because of its hypertrophied Digicomp, the anti-trust arm of the EU Commission. This is only partially integrated into government, unlike in the USA. European companies lose out on advantages as a result.

In the US, I believe the stick comes from the court and the carrot comes from the state or government. It is the individual who goes to court.

Elizabeth Deakin

There are a few exceptions such as CAFE standards. There is a great deal of regulation for some agencies. Individuals can also freely sue the federal and local government in a normal court, unlike in France when the state can only be sued on its own terms.

From the Floor

Who exactly has the authority at city, state and government level?

Albert Bressand

There is simply no transportation policy or national perspective in Europe.

From the Floor

US cities have changed their configuration so drastically that we do not know where to start putting them back together again. Paris has been described as ‘Zurich surrounded by Phoenix’. If you could open up *le Grand Paris*, bring in global experts and make it a collaborative learning exercise, you might call it an invisible college for sustainability.

Albert Bressand

Much of what happens in *le Grand Paris* can be understood through analysis of external forces at play. I hope that academia can help provide dialogue on this.

Elizabeth Deakin

Federal government provides financial aid and sets the rules on how money is spent. Perhaps 25% of the transport budget comes from the federal government. California has, on occasion, simply walked away from federal involvement and introduced local taxes. However, there are vast discrepancies between states where many people live on state highways, for example.

Jean-Pierre Orfeuil

In France, there is a large distinction between ‘resources’ and ‘moral’ obligations. Are there obligations for results in the US?

Elizabeth Deakin

Concerning results, analysis of the CAFE standards was unclear. California is trying to monitor input, output and outcome, as well as scientific results (measuring temperature changes and snow melt). However, it needs to improve surveying, travel behaviour, freight and port regulation.

Conclusion

Benoît Lefèvre

I believe four points are important to retain. We have had an excellent overview of the players who make the law, the role of business and the legal system, and how they benefit from their intervention – not necessarily to the detriment of the public good. We have seen how the process and interventions encourage the development of new markets, especially Cleantech; and that soft policies work hand in hand with technical innovation.

Second, there are fundamental differences in the value systems of Europe and the United States, which determine the institutional framework and the way public and private players behave. California's ability to network and borrow from other countries and schools of thought is key.

Third is the importance of scale and coherence. There are 16 different fuel standards functioning in California, but this poses problems on the issue of climate change and adds to the difficulties of the post-Kyoto debate. Since Copenhagen, there have been affirmations that multi-lateralism is over. Coherence is required; the question is how to create that coherence.

Finally, in the case of General Motors, the financial crisis encourages the development of solutions to the environmental crisis. The most economic manner of reducing commissions is to reduce energy consumption. As we have heard, the ensemble of laws that we have discussed today are key motors driving all of these actions.