Climate change and mobility in the US: who's making the law?

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One of the first reasons for exploring mobility and climate change in the US is the importance (real or imagined) of businesses and private enterprise. Surprisingly, however, several contributions in the previous sessions of the program, and as well as articles and books, show that the US is tackling climate change by introducing strict laws to make emission reductions compulsory, in particular on vehicles. Two examples from previous sessions illustrate the point. At the inaugural session, which focused on markets, the representative of the *Cleantech Group* said that the clean technologies market would only take off after tough and ambitious laws had been introduced, particularly in the USA. Then at the session on ICT, Jean-David Margulici also emphasised the need for a legal framework that would also apply to public bodies. For example, he showed that the failure of the transportation authorities to release information was limiting the development of innovations in low-emission mobility. Several contributors to that session felt that there should should be rules ensuring a write-off access to information held by such bodies. In their view, freedom of information is a condition and driving force for the emergence of mobility services in the market .

When we hear such claims in the US, a country with an image of economic liberalism, the question arises: is climate change in the process of inverting mobility-related values in the USA,

not through market mechanisms, but by a change in the role of government and its legislative resources in society?
What is the significance of the laws discussed in the Senate or the much hyped Californian laws? Are they really free of influence and competition from firms involved in transportation and energy? Are they opening up new possibilities for action by citizens or NGOs? What real effects can we expect from them?
To answer these questions, we decided to look at legal frameworks and laws as markers of change or inertia. These rules are assumed to frame the various players' new positions and to set new priorities. These priorities are to be redrawn to take account of climate change, which is largely accepted, bringing something of a shift in attitudes to the inalienable American right to "freedom of movement".

Elizabeth Deakin, prof of urbanism and transportation at Berkeley, was director of one of California's leading transportation research centres. She was also involved in drawing up a number of Californian laws on the subject and therefore has practical experience of the situation in California, a state seen as a leader in innovation. Albert Bressand is a professor at the University of Columbia and director of the *Center for Energy, Marine Transportation and Public Policy*. His role was to tell us about the experience of New York, in balance with its counterpart on the West Coast. The picture that emerged here was of a confrontation between the mayor and the governor. The mayor, apparently sensitive to climate change issues, was trying to influence events in the sphere of transportation, which is more a prerogative of the State and its governor.

No obstacle in a complicated institutional architecture

The different papers and debates frequently referred to the complexity of the institutional and legislative architecture in the US, in particular for transportation. Even for Americans, it is hard to know who makes decisions on what subjects and the scope of those decisions. Worse still, the different bodies and institutions regularly step outside their accepted scope of intervention to tackle areas of mobility that would not normally be within their purview: the city of New York, which wants to introduce congestion-pricing when transportation is in fact a State prerogative; the State of California, which is introducing standards on CO_2 emissions, when this is in fact a federal prerogative; or the Environment Protection Administration (EPA) which was responsible for local pollution and wants to become a regulator for climate change. This picture, disturbing as it is to French and European eyes, does not particularly seem to bother the American specialists.
For Americans, this organisation—a long way from the French conception of an ideal architecture (which corresponds more to an ideal picture than to the reality of institutions and legal frameworks in France)—is not a handicap in tackling mobility in relation to climate change. For them, the most important thing seems to be to find the appropriate institutional structure to tackle this question. Appropriate in the sense of most effective and/or most legitimate. "In the quest for a quick and easy way to reduce CO_2 emissions… let's try and find a win-win situation."

In trying to develop an integrated approach to climate change, the State of California eventually combined four different regulatory authorities within a single commission: transportation, air, environment and planning. The role of this alliance is to prepare the new laws, the legal frameworks and the action programs. The legitimacy of these institutions and their approach to mobility is something relatively new in the US, since mobility was an individual matter for which the role of the institutions in the different sectors was to provide infrastructures, equipment or services. Climate change is altering this picture, by making mobility a more central and more collective issue. A growing awareness of the 25 to 40% contribution of transportation to emissions in US cities is making mobility a topic of public concern. The question that then arises is which bodies and institutions will have the authority to construct the legal framework to this collective approach and what action will follow.
The institutions responsible for drawing up the laws on climate change thus have no automatic legitimacy, based on a division of powers rooted in existing laws or in economic or sectoral divisions on the market. In the response to climate change, it would seem that the legitimacy of the existing institutions needs to be (re)constructed, particularly as they are sometimes in competition, if not in conflict. EPA is one instructive example: in charge of quality and health, this federal agency had to go to court to legitimise its "authority" in respect of climate change. The central factor in acquiring this legitimacy seems to be the potential effectiveness of the institutions or their combinations in drafting laws and winning votes on the legal frameworks.

Constant arguments over spheres of responsibility

These institutional arrangements do not develop peacefully. They often arise from confrontations, from successive conflicts and gradual consolidations.
Two examples provided by Elizabeth Deakin illustrate this process. The EPA was not immediately recognised as the main federal body responsible for climate change issues. In fact, it developed as the body responsible for regulating and inspecting local air quality and pollution. It therefore took a decision by the Supreme Court to confirm this role and consolidate its position.
Second example: in order to apply the Californian law on climate, the State of California went through the courts and the attorney general. Indeed, the county of San Bernardino had its revised urban masterplan attacked by the attorney general Jerry Brown, because it did not comply with the State of California's AB32 and CA Env. Quality Act, since it encouraged urban sprawl. More specifically, the attorney general found that the county had not taken account of greenhouse gas emissions in analysing its plan, as required by the law. This precedent delighted Californian urban planners committed to promoting an effective policy on climate change.

Laws that are independent of institutional areas of responsibility.

In addition, the laws are not necessarily linked with the institutions, and the people who pass the laws are not the same ones responsible for applying them. In his introduction, Albert Bressand pointed out the profound difference between France and the US: from a French perspective, there is a confusion between policy, laws, the institutions making the laws, and the bodies responsible

for monitoring their application. If a municipality votes for a rule, that rule defines its policy and the municipal departments are responsible for applying it and monitoring compliance. The ideal links in the French model are, apparently, not those that structure processes in the US. The States dictate laws which are implemented by citizens, companies or NGOs. To ensure compliance, they often go to the courts, rarely to the State institution that issued the law. Professional federations may take responsibility for ensuring compliance with the laws, sometimes after heavily influencing their content.

Albert Bressand takes the argument further and claims that our difficulty in understanding transportation policies arise from the fact that no such policies exist in the US. This provocative claim in fact reveals a different perception of policy. In the US, unlike in Europe, laws do not provide a framework for the actions of public and private entities, but structure the conditions of those actions. A private company in the US does not start by wondering how to comply with the law, but how to use it to develop its business.

Phased laws for effectiveness rather than to define powers and their allocation?

American laws therefore gain legitimacy through their effectiveness. They are not an instrument for claiming and consolidating a power. Nevertheless, the legal texts on climate change have not entirely followed this "conception". The resistance to the Californian laws and the competition between State and city in New York on climate change show that the legislative function is also gaining in importance. Are the issues different? Is climate change transforming certain American attitudes?

Another difference was noted during the debates: law is not defined for the people who institute it but for those who are going to use it. However, with climate change, the ones who might use these laws are not at present individuals or companies: they have created an arena that relates primarily to institutions and public bodies. The contributors did not mention court proceedings brought by individuals or companies. Here again, the standard American model does not seem to apply to climate change. On the other hand, we see once more the mixture typical of US legal texts: a combination of "hard" policies (infrastructure, vehicles, etc.) and "soft" policies (practices, etc.); incentives (tax reductions, subsidies, exemptions, reductions in red tape, etc.) and obligations (strict rules on vehicle emissions, etc.).

A legal formulation aimed at the individual: is this enough to tackle mobility given the challenges of climate change?

One question was asked by both participants and contributors, but not answered. Are these laws introduced as incentives to companies to focus investment on priority technical solutions relevant to climate change?

Companies make relatively little use of these laws in developing products and activities. Their positions vary: some carmakers are against them, others in favour; some energy companies are calling for them, while most try to delay their implementation. Incentives for solution "portfolios" leave too many uncertainties for investors, who are afraid that they will have to pick up the tab

while the other market operators reap the benefits. In any case, these laws don't seem to outline a sufficiently persuasive working environment, even for companies who want to invest around climate change. Nonetheless, they correspond to the legal framework which, in the past, has led to the emergence of the American economy's most important markets and sectors: automobiles, petrochemicals, media and culture, the new economy. When it comes to climate change, however, it looks as though a resort to law may be necessary, with stricter norms to establish common rules for the market. So should we assume that American companies are waiting for a profound transformation in this legal format to give the climate change market more substance? And if so, what are the laws that will lead to the (anticipated) birth of the climate market?

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