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# *Anemos-ity, apatheia, enthousiasmos: An economic sociology of law and wind farm development in Cyprus*

AMANDA PERRY-KESSARIS

## ABSTRACT

This piece sketches ‘an’ economic sociology of law: one possible approach, in relation to one case study of wind farm development in Cyprus. Carbon emissions are a global threat to which wind farms may offer something of a solution. But wind farms can also pose local threats. So they tend to produce conflicts on different levels of social life: action, interaction, regime and rationality. As such they are ill-suited to exploration through law or economics, and ideally suited to exploration through economic sociology of law. The approach set out in this paper enables social life of all levels, intensities and types (including the economic) to be placed on the same analytical page. What emerges is a most human story of animosity, enthusiasm and apathy in which law acts variously as means, obstacle and irrelevance.

## PRELUDE

Leave the Nicosia – Larnaca highway at the Kalo Chorio roundabout. Skirt the rolling hills crowned with unhurried blades. Proceed on crunching foot up the steepening slope, past the olive tree-shaded foxhole and the cobbled together fence. Scramble up the bright white, gravelly path, dotted with scented crawlers, thistles and grasses dancing in the quickening breeze. Allow the inductive, robotic hum to draw you in. Detach, turn around and drink in the view. Descend in turmoil: animosity, enthusiasm, apathy?

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*SOAS, University of London, Thornhaugh Street, Russell Square, London WC1H 0XG*

[a.perry-kessar@soas.ac.uk](mailto:a.perry-kessar@soas.ac.uk)

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## AN ECONOMIC SOCIOLOGY OF LAW

The title of this piece promises ‘an’ economic sociology of law—it sketches but one possible approach, and showcases it in relation to a single case study: wind farm development in Cyprus.<sup>1</sup> ‘At first sight the environmental benefits of generating energy from wind farms would seem to be overwhelming.’<sup>2</sup> Carbon emissions are a global threat—economic, emotional and environmental, to which wind farms may offer something of a solution. But wind farms can also pose local threats—economic, emotional and environmental. So they tend to produce conflicts on ‘different scales’ of social life.<sup>3</sup> As such they are ill-suited to exploration through law or economics, and ideally suited to exploration through economic sociology of law.

A legal approach entails the ‘rationalisation of and speculation on the rules, principles, concepts and legal values considered to be explicitly or implicitly *present in* legal doctrine.’<sup>4</sup> From this perspective, ‘law comes first and is the substantive focus. There is no need to look any further.’<sup>5</sup> An economic approach might be said to be similarly constrained, entailing ‘rationalisations’ and ‘speculations’ regarding rules, principles, concepts and economic values thought to be present in human nature, and their impact on production, consumption and distribution.

By contrast, and in keeping with its sociological roots, an economic sociology of law is outward looking. It conceptualises both the ‘legal’ and the ‘economic’ as social phenomena occurring on all, interconnected, levels of social life:

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<sup>1</sup> Interviews and site visits were conducted in Cyprus in April 2012. Interviews are referred to by code, or not at all, to protect identity. Areas under Turkish occupation are not covered.

<sup>2</sup> S. Jackson ‘Wind Power: The legal and Environmental Issues’ (2005) *ELFlite* at 4.

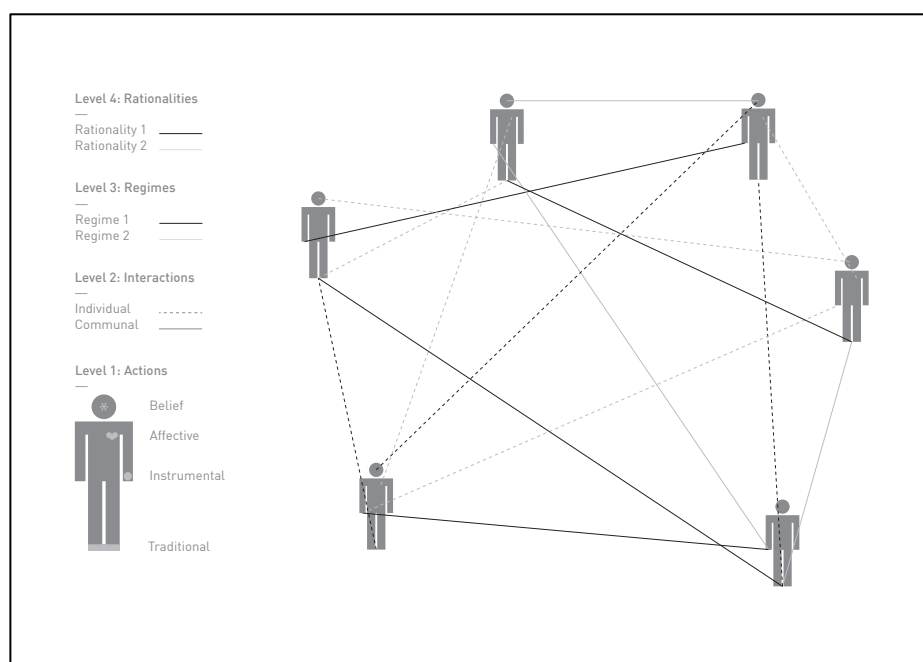
<sup>3</sup> J. Holder and M. Lee *Environmental Protection, Law and Policy* (2007 2<sup>nd</sup> ed) at 698.

<sup>4</sup> R. Cotterrell *The Sociology of Law: An introduction* (1992 2<sup>nd</sup> ed.) at 3.

<sup>5</sup> A. Perry-Kessaris ‘What does it mean to take a socio-legal approach to international economic law?’ in *Socio-Legal Approaches to International Economic Law: Text, context, subtext*. (2012) at 4.

'individual actors and their *actions*', '*interactions* between actors'; 'the institutions of social *regimes*' into which interactions 'aggregate'; and the '*rationalities*' that 'underlie and direct social regimes'.<sup>6</sup> These levels are analytically liberating because they elide boundaries imposed within the disciplines of economics (such as state, firm, household) and law (such as private or public, local or international), allowing us more effectively to capture messy reality. They are presented together, in stylised form, in Figure 1.

Figure 1: Actions, interactions, regimes and rationalities<sup>7</sup>



© Amanda Perry-Kessaris. Designer Sarah Schrauwen.

Social actions centre on widely divergent values and interests. This observation is illustrated in Figure 1 by reference to the human body using the Weberian typology of affective (heart), belief (head), traditional (foot) and

<sup>6</sup> S. Frerichs, 'Re-embedding neo-liberal constitutionalism: a Polanyian case for the economic sociology of law' in C. Joerges and J. Falke (eds.) *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (2011) at 68. Emphasis added. See also A. Perry-Kessaris 'Reading the story of law and embeddedness through a community lens: a Polanyi-meets-Cotterrell economic sociology of law?' (2011) 62(4) *Northern Ireland Legal Quarterly* 401 at 402.

<sup>7</sup> The diagram does not allude to the possibilities that parties perceive their relationship differently; or that interactions might be affected by no, or multiple, regimes.

instrumental (hand). Most importantly for economic sociology of law, this image reminds us that economic activities (production, distribution and consumption) are just one sub-type of instrumental social action, intimately interconnected, through multi-layered and multi-tasking human beings, with other forms of social action (instrumental and otherwise).<sup>8</sup>

Social interactions cover the full range of Weberian actions, and can be conceptualised as occurring at different intensities. This observation is captured in the lines that connect the actors in Figure 1. Broken lines indicate individualistic, superficial, impersonal interactions; solid lines indicate deep, stable and trusting relationships that Roger Cotterrell has termed 'communal networks'.<sup>9</sup> The dominant motivation, or underlying values and interests, of the interaction is suggested by the section of the body to which the line connects.

Laws and other regimes are of sociological interest because they are part—created, used, abused, avoided and destroyed in the course—of social life. So they appear in Figure 1 as part of social interactions: in the colouring of the lines that connect actors (black for Regime 1, grey for Regime 2). Law can trigger, facilitate or hinder all kinds of action and interaction, from individualistic to communal networks, in particular by supporting (or not) mutual inter-personal trust. It does this by expressing (or not) and coordinating between (or not) the often competing values and interests that are central to different social actions and interactions; and by facilitating and

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<sup>8</sup> As Fred Block, citing Viviana Zelizer's notion of 'relational work' notes, people have 'the capacity ... to build and maintain powerful affective and reciprocal relations with each other even when commercial relationships and the rhetoric of self-interest are dominant.' F. Block in this volume citing V. Zelizer, *The Purchase of Intimacy* (2006).

<sup>9</sup> R. Cotterrell *Law, Culture and Society: Legal ideas in the mirror of social theory*, Aldershot: Ashgate (2006) pp. 162-3 and in this volume. See also G. Walker 'The role for "community" in carbon governance' (2011) 2 *Wiley Interdisciplinary Reviews: Climate Change* 777.

encouraging (or not) participation in social life. It is also possible for law to undermine such networks.<sup>10</sup>

Rationalities or ‘shared ways of apprehending the world’<sup>11</sup> are of socio-legal interest to the extent that they influence and are influenced by socio-legal phenomena such as the creation, use, abuse, avoidance and destruction of laws. So they appear in Figure 1 as an overlay on regimes—black for Rationality 1 which is associated with Regime 1, grey for Rationality 2 which is associated with Regime 2.<sup>12</sup>

What are the implications the unique capacity of economic sociology of law to integrate multiple social levels and perspectives in this way? The following sections set out in turn some of the econo-socio-legal phenomena that become visible when actors, rationalities and regimes, and interactions surrounding Cypriot wind farm development are placed on the same page. For the purposes of the present confined space special attention is paid to interplays between those levels of social life. What emerges is a most human story of animosity, enthusiasm and apathy in which law acts variously as means, obstacle and irrelevance.

## ACTORS

This paper focuses on four sets of actors: developers, government actors, project-affected residents and civil society actors. All of these actors engage in instrumental interactions—resisting, assisting or acceding to the development of wind farms. But, as Figure 2 intimates, they are also likely to be acting on a combination of other motivations, centred on divergent values and interests. A developer might wonder: Will I maximise the return on my investment if I locate my wind turbine here? For the resident the questions

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<sup>10</sup> See A. Perry-Kessaris *Global Business, Local Law: The Indian Legal System as a communal resource in foreign investment relations* (2008).

<sup>11</sup> J. A. Dryzek *The Politics of the Earth: Environmental discourses* (2005) at p. 9 and Part 3

<sup>12</sup> For complications arising when rationalities shift see Perry-Kessaris (2011) op. cit. n. 6.

could be: Will the market value of my (or our) land fall (instrumental); and will my (or our) beloved view be ruined (affective)? A civil society actor might ask: Am I (or we) ethically bound to encourage residents to accept the turbine in order to protect others from the effects of climate change (belief). A government actor might ponder the cultural implications of a wind farm towering over an 18<sup>th</sup> Century mosque, built on the 649 burial site of the aunt of the Prophet Muhammed (traditional).

Figure 2: Hala Sultan Tekke and the Alexigros wind farm



© Amanda Perry-Kessaris. Photographer Nicos Kessaris.

Of these actors in Cyprus only project-affected residents can be said to be engaged in stable, trusting 'communal' networks. Relations between developers, government actors and civil society actors are characterised by instability and distrust.

The Government of Cyprus is, as one interviewee put it, akin to a small business: its executives are constrained by impossible demands for multi-tasking and by the ego-bloating concentration of responsibilities. Most regulatory decisions on wind farms are taken by central government bodies, in particular the Ministry of Agriculture, Natural Resources and Environment (MARE) and the Ministry of the Interior in the construction licensing phase; the

Cyprus Energy Regulatory Authority (CERA/PAEK) and the Transmission System Operator (TSO) in the production licensing and subsidy phase;<sup>13</sup> and the Ministry of Commerce, Industry and Tourism (MCIT) for energy strategy. Relations within and between different levels and branches of government are often fractious: 'It is a mess, it's a mess ... There are a lot of voices.'<sup>14</sup> Local governance falls into two categories: 23 Municipalities, including the major towns; and 355 Community Councils.<sup>15</sup> Their input into wind farm development is constrained primarily to planning issues arising during the construction licensing phase.<sup>16</sup> Lines of communication between the local and central government are notoriously bad.<sup>17</sup>

The wind farm developers of Cyprus are a motley crew. For some their wind farm is simply the latest in several decades of experiences in large-scale infrastructure development. For others it is a first foray beyond a career in retail or finance. Between 2003 and mid-2012 CERA received 51 applications for a license to construct wind farms and granted 35, of which 23 remain live.<sup>18</sup> Developers were left to identify sites with the necessary amount of

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<sup>13</sup> Established under Law 122 (1) /2003 on Regulating the Electricity Market, implementing Directive 2003/54/EC on common rules for the internal EU electricity market.

<sup>14</sup> Interview F23Y. For example, the MARE refused to take part in an energy policy review initiated the MCIT: TUV Rheinland Immissionsschutz und Energiesysteme GmbH and BGP Engineers B.V. (hereinafter TUV and BGP) *Inception Report Provision of services for the preparation of a government strategy and action plan for exploiting the opportunities offered by the Clean Development Mechanism (CDM) and European Emissions Trading Scheme (or others) for the periods 2008-2012 and 2013-2020* (2009) p. 11. In another case the Games Department objected that a wind farm application would interfere with bird flight—in fact they 'didn't want [the area] to be withdrawn from their territories': Interview K26C.

<sup>15</sup> See Union of Cyprus Municipalities <http://www.ucm.org.cy> and Union of Cyprus Communities <<http://www.ekk.org.cy>>

<sup>16</sup> Governed by the Town and Country Planning Act of 1972, Law No. 90/72 as well as Local Plans and Area Schemes.

<sup>17</sup> Interviews T23C and A27C.

<sup>18</sup> Email communication with CERA Energy Officer 12.07.12.



wind, obtain permits related to construction (including planning, environmental and a long list of others) and operation (from CERA and the CEA), all in time for the, narrowly advertised and brief, opening of the application window for the Renewable Energy Sources (RES) Fund (should they wish to apply for it) described below.<sup>19</sup> One developer reported in an interview that ‘If you ask me whether I would have done it again, no, never, no way. [You keep going because] you’re so much into it that you lost so much time and so much money you think well...and then at the end you feel like a fool.’ Another said ‘I didn’t know where I was going and whether I would succeed in the end or, you know, or I would get to the end of it...I felt I was just throwing money away.’ In the beginning, the developers formed a ‘very tight’ and ‘very vocal’ Cyprus Wind Energy Association.<sup>20</sup> ‘We all had the same interest’ and there was a degree of ‘solidarity’. Today ‘everybody is pursuing his own interests.’ And when ‘some people choose the easy way...without care of environmental ... or other issues... it is damaging for the rest.’<sup>21</sup>

Cypriot civil society is ‘very young and very unprofessional’, but ‘getting stronger and more professional’.<sup>22</sup> The term civil society has ‘only recently’ come to be used by media and politicians in Cyprus, and then often inaccurately—for example, to refer to the general electorate. Volunteer service-provision and labour association has a long history, but ‘advocacy, dialogue and human rights groups’ are few, ‘nascent’ and generally ‘poor’ at ‘influencing’ and enforcing public policy. The camaraderie and independence of civil society are threatened by their reliance on EU/US/Government of Cyprus patronage. Most civil society actors in Cyprus choose to conduct their advocacy activities through ‘clientelistic’ relations with political parties.<sup>23</sup> This

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<sup>19</sup> TUV and BGP op. cit. n. 13 p. 60. Interviews K23M and T23C.

<sup>20</sup> Interview T23C.

<sup>21</sup> Interviews K26C and F23Y.

<sup>22</sup> Interview D26J.

<sup>23</sup> M. Vasilara and G. Piaton ‘The Role of Civil Society in Cyprus’ (2007) 19:2 *Cyprus Review* 107 at 108, 112 and 116-7. A 2005 survey revealed 44 organisations covering environmental matters on the (un-occupied section of the) island: Bicomunal Development

may be because the Government has a history of systematically internalising private and civil society actors by, for example, co-opting them onto committees.<sup>24</sup> For those who are not so internalised, ‘the Government does not know what consultation means, or take it seriously.’ One civil society actor remarked that is ‘only with the EU that they have introduced this constant jargon’ of consultation—‘they have to say they are doing this.’ But least ‘it gives us a space’ and ‘is moving the right direction—I say this very cautiously.’<sup>25</sup> Also noteworthy is the Environment Commissioner, who creates an unusual bridge between government and governed by independently investigating and reporting on environmental matters to the President, while maintaining a daily blog and engaging in public protests.<sup>26</sup>

### DOWNLOADING RATIONALITIES AND REGIMES

Two international regimes, and their associated rationalities, are implicated in the development of wind farms in Cyprus: the Kyoto climate change regime and the Aarhus participation regime. In order to understand their origin and interaction it is necessary to understand the island as, among other things a post-colony many times over, occupied most recently by the Ottoman and

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Programme *Cyprus Environmental Directory* (2005). Available at [http://mirror.undp.org/cyprus/endir/EnvDir\\_En\\_2005.pdf](http://mirror.undp.org/cyprus/endir/EnvDir_En_2005.pdf).

<sup>24</sup> For example, the Federation of Environmental and Ecological Organizations is an umbrella group of 18 NGOs covering consumption, chemistry, mountain climbing and wildlife and is on environmental committees. See <http://www.oikologiafeeo.org> and Cyprus Department of Environment, MARE, Republic of Cyprus (2011) National Implementation Report on Aarhus Convention. Generated at <http://apps.unece.org/ehlm/pp/NIR/index.asp> on 03.04.12.

<sup>25</sup> Interview P25S. For example, it was reported that the when developing priorities for the EU Structural Fund the government only consulted the Pan-Cyprian Volunteerism Coordinative Council—‘service providers who know nothing of activism’ which is founded by statute and government-funded: Interview P25S. Law 61(1)/2006 on the Pancyprian Volunteerism Coordinative Council.

<sup>26</sup> For the Blog see <http://theopemptou.blogspot.com>. For public protest see: <http://youtu.be/ogSzv3TKb8>.

then British empires, and now Turkey.<sup>27</sup> It is only the third largest island in the Mediterranean, and it is divided into three spheres of governance. The northern third has been occupied by Turkey since 1974 and is governed by executive, legislative and judicial institutions under the title of the Turkish Republic of Northern Cyprus. The Sovereign Base Areas of Dhekelia on the southwest coast and Akrotiri to the southeast remain British Overseas Territories governed by a military-civil Administration. The majority of the island is under the control of the Republic of Cyprus, including a President and Council of Ministers, an elected House of Representatives and a judiciary.

After its 1960 independence from Britain, the developmental state of Cyprus was in many ways highly effective, shepherding in the 'Cyprus Miracle' of 'extraordinary' recovery and growth following the invasion of 'the more productive part' of the island.<sup>28</sup> Cyprus also immediately embarked on a journey of Europeanization, becoming a Member of the EU in 2004. Political scientists have referred to processes by which regimes (and rationalities) are transmitted between (candidate and member) states and the EU as 'downloading' (from the EU to states), 'cross-loading' (between states), and 'uploading' (from states to the EU). This terminology is echoed in Niall Ferguson's nattily branded 'six killer apps of western civilization'.<sup>29</sup> The sociological elephant in the room is that these 'apps' are socially constructed, inherently open source and, as such, subject to what Halliday and Carruthers have called 'recursive cycles' of national and international social and legal change.<sup>30</sup> So they get used, abused and avoided; to positive, negative and no effect; as part of the actions and interactions of social life. That is the stuff of economic sociology of law.

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<sup>27</sup> See W. Mallinson *Cyprus: A Modern History* (2009).

<sup>28</sup> D. Christodoulou *Inside the Cyprus Miracle: the labours of an embattled mini-economy* (1992) and Interview A27C.

<sup>29</sup> N. Ferguson *Civilisation: The six killer apps of Western power* (2012).

<sup>30</sup> T. C. Halliday and B. G. Carruthers *Bankrupt: Global law-making and systemic financial crisis* (2009).

The prevailing direction, accuracy, speed and so on of Europeanization in a given state is governed by what Sepos terms 'territorial' and 'temporal' attributes. Cyprus can be categorised as 'territorially' small, southern, and peripheral. On the 'temporal' dimension, Cyprus is a late joiner to the EU; like other predominantly agrarian, orthodox and Catholic societies, relatively slow to 'reform its traditions'; and like many other post-colonial states, 'bears the imprint and legacy' of its Ottoman and British colonisers, and has suffered from 'ethnic conflict, civil war, political turmoil and divisions'.<sup>31</sup>

Like other post-colonial, small, southern, peripheral states, Cyprus is 'characterized by anticipatory, adaptive and "downloading" Europeanization'. It tends to 'policy-taker' not 'maker'.<sup>32</sup> Social anthropologist Vassos Argyrou has directly linked this tendency to the dominance of a post-colonial rationality, proposing that post-independence Cyprus has been 'ruled' by 'the idea of Europe.' As a post colony, 'the best [it] could ever hope for was to modernise'—in this case, to 'de-Ottomanise' and to 'become *like* Europe—similar, but never quite the same.' He mocks the idea of the so-called 'decision' of Cyprus to join the EU: neither was Europe sure it wanted Cyprus, nor was there serious debate as to whether Cyprus wanted Europe, especially as compared to any other team. So there was no hesitation or debate when Cyprus was asked to drop involvement in the Third Worldly Non-Aligned Movement, of which it was a founding member, as a condition of entry to the First Worldly EU. The downloading of European regimes has, aside from religious objections to homosexuality civil marriage, been fairly automatic. What citizens elsewhere in Europe 'experience as an imposition', Cypriots 'experience as natural and necessary', so much so that 'the most effective way to legitimise new legislation' is to suggest that the EU requires it.<sup>33</sup>

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<sup>31</sup> A. Sepos *The Europeanization of Cyprus* (2008) pp. 6-14.

<sup>32</sup> Id. pp. 9 and 10.

<sup>33</sup> V. Argyrou 'Independent Cyprus? Postcoloniality and the spectre of Europe' 2021 22:2 *The Cyprus Review* 39 at 41-3. This is phenomenon is widely observed: See P. M. Hass 'Compliance with EU directives: insights from international relations and comparative politics' (1998) 5:1 *Journal of European Public Policy* 17.

Accordingly, in a 2011 Eurobarometer survey of Cyprus 95 per cent of interviewees agreed that EU law 'is necessary' to protect the environment in Cyprus, and 81 per cent that the Government's should make environmental decisions jointly with the EU.<sup>34</sup>

Two regimes downloaded by Europeanizing Cyprus are central to the development of wind farms on the island: the Clean Development Mechanism of the Kyoto climate change regime and, to a lesser extent, the Aarhus Convention participation regime. In his highly influential taxonomy of the *Politics of the Earth*, John Dryzek identified three 'environmental discourses' or rationalities that dominate 'environmental problem solving' regimes. They are all 'prosaic and reformist' (operating within the confines of industrial market society), not revolutionary. Dryzek dubs them 'administrative rationalism', which privileges 'experts' and produces expert-based regimes; 'economic rationalism', which privileges 'markets' and produces market-based regimes; and 'democratic pragmatism', which privileges 'people' and produces participation-based regimes.<sup>35</sup> Elements of each of these rationality-regimes have played a part in wind farm development in Cyprus.

#### KYOTO: ADMINISTRATIVE RATIONALISM

Under the 1998 Kyoto Protocol to the 1992 UN Framework Convention on Climate Change (UNCCC), richer Parties (listed in Annex I) are allocated an emissions target in the form of tradable Assigned Amount Units (AAU).<sup>36</sup> In addition, developers of emissions-reducing projects, such as wind farms, that are hosted in poorer ('non-Annex I') states and are registered under the UNCCC Clean Development Mechanism (CDM) can earn tradable Certificates of Emissions Reduction (CERs or 'project offsets' or 'carbon credits') each representing 1 tonne of CO<sub>2</sub> emissions avoided. So Parties can produce emissions to the level of their assigned (and any purchased) Amount

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<sup>34</sup> European Commission *Eurobarometer Survey: Attitudes of European Citizens Towards the Environment, Cyprus Factsheet* (2011a).

<sup>35</sup> Dryzek op. cit. n.10 p. 9 and Part 3.

<sup>36</sup> Articles 10 and 2.2.

Units and CERs.<sup>37</sup> In the taxonomy developed by Dryzek, the carbon market element of the Kyoto regime can be described as market-based, grounded in economic-rationalism.

The Protocol was downloaded into EU law in 2002.<sup>38</sup> EU Member States committed from the outset jointly to fulfil their Kyoto obligations, and the Treaties under which Cyprus and others joined the EU in 2004 included national targets for production from renewable energy sources to ensure those obligations were realised.<sup>39</sup> Instead of targets, the EU caps emissions from member states, power stations and plants across the EU. It allows under-shooters to trade certified emissions reductions to over-shooters. The Emissions Trading Scheme (ETC) is 'largely parasitic upon' the global carbon market created by Kyoto because it recognises the CERs derived from CDM projects.<sup>40</sup>

In Dryzek's taxonomy, the CDM project registration element of the Protocol regime (upon which this paper focuses) can be described as expert-based, grounded in administrative rationalism. It relies heavily on 'a certain idea of bureaucracy' and on 'assumptions' that 'at each step of the process' success will be achieved by 'appropriate ordering.' Applying the lens of Actor Network Theory, Emilie Cloatre has described the CDM as 'hybrid socio-legal and technical solution' produced by lawyers, state negotiators and UN officials ('administrator-sociologists') in partial fulfilment of the 'actor-world' (vision of the type of society into which the CDM solution would fit) that they generated at Kyoto. That world was to include developers and engineers with Project Design Documents detailing how CDM registration will enable the production of new 'clean' energy ('additionality') and contribute to 'sustainable

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<sup>37</sup> Article 12.

<sup>38</sup> Council Decision 2002/358/EC.

<sup>39</sup> Initially six per cent by 2010: Directive 2009/28/EC on the promotion of the use of energy from renewable sources.

<sup>40</sup> J. Scott 'In legal limbo: post-legislative guidance as a challenge for European administrative law' (2011) 48 *Common Market Law Review* 329 at p. 332. See Directive 2004/101 OJ (2004) L 338/61.

development'. Projects would be approved by the Designated National Authority (a government body), validated by a UN-approved commercial auditing company (Designated Operational Entity (DOE), registered by the CDM Executive Board in Bonn, implemented (including technology transfer, capacity building and sustainable development) by engineers, monitored by validators and converted into CERs.<sup>41</sup> Significantly, the CDM actor world did not explicitly include project-affected residents or civil society.

For reasons unclear, but resonating with post-coloniality, Cyprus was originally listed as a non-Annex I Party, eligible to host CDM projects. It was not agreed until 2011 that it might join the rest of the EU in Annex I—and then not because Cyprus could no longer pretend to be a developing country, but in order to put it on the 'same legal footing as other Member States'; and not before 2013, so as to ensure 'smooth transition' and 'avoid implications' for issuing CERs for CDM project reductions achieved to that point.<sup>42</sup> The EU recognises the problem, and is beginning to upload a number of quality controls to the CDM regime, starting with a campaign to limit CDM projects to least developed countries (LDCs)—that is, not Cyprus, Brazil, China and India; and a refusal to allow to be traded on the ETS any CERs emanating from non-LDC CDM projects that are registered after 2013, in the absence of a specific agreement.<sup>43</sup> Meanwhile, six Cypriot wind projects have obtained CDM registration: Alexigros, Orites, Agia Anna, Kambi, Klavdia and Mari, of which the first three are operational.

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<sup>41</sup> E. Cloatre 'A socio-legal analysis of an actor-world: The case of carbon trading and the clean development mechanism' (2012) 39:1 *Journal of Law and Society* 76 at pp. 77-8 and 82.

<sup>42</sup> Secretariat of the UN Framework Convention on Climate Change (2011) Document DBO/JBU/smb/Log 11-2075 available at <http://unfccc.int/resource/docs/2011/cop17/eng/03.pdf>.

<sup>43</sup> J. Scott and L. Rajamani 'EU climate change unilateralism' (2012) 23:2 *European Journal of International Law* 469 at p. 471. See also European Commission (2011b) 'Questions and answers on the use of international credits in the third trading phase of the EU ETS' Available at [http://ec.europa.eu/clima/news/articles/news\\_2011111401\\_en.htm](http://ec.europa.eu/clima/news/articles/news_2011111401_en.htm).

The following sections explore three mismatches between on the one hand, the actor-world envisaged during the construction of the Kyoto rationality-regime; and on the other hand, actors and interactions in Cyprus. The first two mismatches relate primarily to the ‘additionality’ requirement, the third relates the ‘sustainable development’ requirement.

### 1. *Apathy and in-expertise*

The Kyoto rationality-regime relies on the existence of enthusiastic experts who are largely absent in Cyprus. As one developer put it, the government ‘was the most important factor regarding the success’ of wind farms but they ‘didn’t know what they were doing’ and ‘were expecting us to do it for them...It was very confusing.’ Another observed ‘a lack of willingness to take a decision—you would rather that they just say no—or yes.’<sup>44</sup> This gap between international theory and local reality has two important effects.

First, in Cyprus as elsewhere, the Clean Development Mechanism appears to have inadvertently supported projects that would, thanks to local government support, have been financially viable without it.<sup>45</sup> The government has twice (in 2003 and 2009) committed to support a limited amount of wind energy by guaranteeing to pay a particular ‘feed-in tariff’ per unit of electricity supplied by a limited number of wind farms for a specified period.<sup>46</sup> That tariff is made up of the price normally paid by the Electricity Authority of Cyprus (EAC) for non-renewable energy (determined by global energy prices),<sup>47</sup> supplemented with a contribution from the consumer-funded RES Fund.<sup>48</sup> The 2003 tariff was low, so the credibility and CER revenue offered by CDM registration were

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<sup>44</sup> Interviews K26C, T25S and F23Y.

<sup>45</sup> Cloatre p. cit. n. 40 p. 88.

<sup>46</sup> Law 33(I)/2003 on energy conservation and the promotion of renewable energy sources, implementing Directive 2001/77/EC on the promotion of electricity produced from Renewable Energy Sources in the internal electricity market.

<sup>47</sup> At the time of writing, about 0.1542 Euros/kwh.

<sup>48</sup> A levy of 0.22 Euro-cent/kWh is charged on all electricity consumption under Law 33(I)/2003.



crucial to convincing investors of the financial viability of the project: CDM registration would indeed result in the production of 'additional' clean energy. When EU renewable energy targets were raised in 2009 (to 13 per cent by 2020) clean energy 'became important for the government' and the government responded with a generous rise in the feed-in tariff.<sup>49</sup> Several projects were thereby rendered 'economically viable' so that 'additionality' could 'most probably no longer [be] proven.' Nevertheless they were CDM-validated and registered, prompting several developers to query the expertise of validators in Cyprus: They 'had no idea, but they were licensed for it.'<sup>50</sup> And 'the thing is that at the United Nations, once there is a stamp from a validator...'<sup>51</sup>

The second effect of the lack of expertise on the island is that the void where public sector expertise ought to be has been filled by market 'expertise'. So a rationality-regime grounded in administrative rationalism is in fact being guided by economic rationalism. Developers of any project applying for CDM registration are responsible for commissioning the validation of their project by an approved private company (DOE). That system has been found to be open to abuse by validators and the developers who employ them.<sup>52</sup>

In Cyprus, the involvement of economic rationality went much further as, due to government apathy and in-expertise, developers were allowed to co-create the overarching regulatory framework, in addition to commissioning and paying for the environmental impact assessments and public consultations associated with their individual projects. The first Cypriot project to apply for CDM registration, and to navigate the Cypriot regulatory system, was the Mari

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<sup>49</sup> Interviews T25S and K26C. Directive 2009/28/EC. The feed-in tariff was raised by 26 per cent in 2009 as compared to 2003.

<sup>50</sup> Interview T26S and TUV and BGP op. cit. n. 13. The feed-in tariff was 0.092 Euros/KWH in 2003, rising to 0.166 Euros/KWH in 2009.

<sup>51</sup> Cyprus report under Directive 2009/28/EC on progress in the use and promotion of energy from renewable sources, 2011. Available at <[http://ec.europa.eu/energy/renewables/reports/2011\\_en.htm](http://ec.europa.eu/energy/renewables/reports/2011_en.htm)>

<sup>52</sup> Cloatre op. cit n. 40 pp. 86-7.

project in Larnaca--a Cypriot-German joint venture initiated in 1996. The developers '[n]ot only lobbied' but 'trained the whole of the Town Planning Board', funding their 1999-2000 tour of German wind farms and planning departments, providing bespoke translations of German regulations. The 'very specific reason' was to prevent the transplantation of the 'absolutely atrocious...very, very strict' English regulations on wind farm location. In other cases residents were taken to Germany, and officials were taken to Greece: these were, in the words of one developer 'a huge investment of time and money.' This piece of the wind farm legislative puzzle--the desired 'German philosophy in common law drafting'--was finally implemented in 2006.<sup>53</sup> Similarly, an environmental adviser working for developers reported that he 'started from scratch':

'The rules were created along the way....Having done the first one and improved the second one then more or less our table of contents became a standard...I remember meetings with the town planning people [in central government] who were asking us for information and references so that they could come up with certain guidelines for future investors.'

As he delights in reminding regulators, they have neither the skill nor the inclination to verify what they are being told by those applying for licenses. But if the borrowers, the lenders and the Executive Board of the CDM 'have satisfied themselves that it will work...why should anybody else be worried?'<sup>54</sup> Apparently those who ought to be are not.

## 2. *Animosity*

Relations between wind farm developers and government actors have been very much "'them" and "us"'.<sup>55</sup> This is sociologically significant because it has contributed to the above-noted frustration and fractiousness among

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<sup>53</sup> Interview TP25S. See also RES Planning Law 162(1)/2006.

<sup>54</sup> Interview F23Y. Likewise a Belgian firm was hired as a consultant MCIT after acting as co-participant in a CDM application: Kambi PDD p. 23.

<sup>55</sup> Interview F23Y.

developers, and because it constitutes in a further warping of the actor-world envisaged at Kyoto. In a further twist, the CDM registration process treats animosity from governments (and the general population) as evidence of additionality: without the credibility of the CDM, the project (and resulting clean energy) will not materialise.

There is evidence of government animosity towards wind farm developers generally. In 2009 the CERA undermined the worth of CDM registration by including a clause in RES Fund contracts to say that income derived by RES-Funded producers from CERS 'without approval of the Fund shall be deducted from the Subsidy Payments to be made to the producer.'<sup>56</sup> One developer retorted that the clause was arbitrary and 'illegal' so that the 'government will be in...big trouble if any of us go to court'.<sup>57</sup> Some developers have responded by diverting CER rights to special purpose companies<sup>58</sup> or third parties. Moreover 'it is too much hassle and expense to go through the monitoring (or the initial validation process) with the Cyprus authorities to get them to issue the CERs.' So some have not bothered to apply, and are in breach of their obligations to the third parties, to whom they are paying compensation.<sup>59</sup>

There has also been a degree of animosity in the implementation of provisions designed to ensure that developers offer benefits to project-affected residents.<sup>60</sup> Following a tradition built up in relation to quarries, two

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<sup>56</sup> TUV and BGP op. cit. n.13 at p. 11.

<sup>57</sup> Id. at p. 58.

<sup>58</sup> Orites PDD p. 3 and Interview P26C.

<sup>59</sup> Interview TS27.

<sup>60</sup> Such provisions have been found to have positive socio-psychological effects on project-affected residents in other countries: C. R. Warren and M. McFadyen 'Does community ownership affect public attitudes to wind energy?' A case study from south-west Scotland' (2010) *Land Use Policy* 204. But some regard them as bribes: N. Cass et al. 'Good neighbours, public relations and bribes: The politics and perceptions of community benefit provision in renewable energy development in the UK' (2010) 12:3 *Journal of Environmental Policy and Planning* 255 at p. 269.

per cent of revenue for electricity generated by a project is automatically withheld from developers for distribution to the community hosting it. This can work out to a sizeable amount, about 200,000 Euros per year for a large wind farm, upon which the community or municipality can then draw as seed funding for other development projects. 'But the Government has yet to establish a mechanism for dispersing the funds'--whether because they 'are trying to avoid' giving money to local communities where 'there is no transparency and everything works in a very sort of funny sort of way', or because they simply 'don't know how to divide it.'<sup>61</sup> Significantly, the Government does not seek to correct the impression in the press that it is the developers who are at fault. One developer is working together with the local community leader to press the government to release the funds.<sup>62</sup>

Finally there are reports of animosity towards particular developers--of applications for construction licenses being rejected, only to be passed when presented by another developer. Some also suggested that life is harder for foreign developers: 'There is no way' that a foreign company can invest in Cyprus 'on their own'. 'It's one of these places in order to do anything you need to have someone from that -- from the country to, sort of, lead you by the hand.'<sup>63</sup>

The CDM regime does much to reward applicant developers for finding fault with local (public and private) expertise and attitudes. Developers are invited to identify in their Project Design Documents any 'barriers' that would 'prevent' the implementation of the proposed project activity in the absence of CDM registration. Developers gladly accept, often quoting each other verbatim. Exhibit A is the fact that 'Cyprus is not very famous for its winds'<sup>64</sup> which are

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<sup>61</sup> Interviews PC25 and KM25.

<sup>62</sup> Developers pay a construction fee that goes to local communities for use in projects, such as a school: Interview K26C.

<sup>63</sup> Interviews T25S and P25C.

<sup>64</sup> Interview K26C.

'not that favourable' and lead to projects of 'limited efficiency',<sup>65</sup> that are 'financially unattractive to investors.'<sup>66</sup> To be clear, that is treated as a point in favour of registration. Exhibit B is the 'void' where local Cypriot wind energy technological expertise ought to be.<sup>67</sup> Maximum emphasis is placed on Exhibit C: the failures of the Government of Cyprus to implement 'regulation and process definitions'. Construction phase laws were 'not enacted', available only as 'guiding principles', and required 'more than 30 licenses'. The 'lack of experience' among government actors 'in dealing with wind farm applications and preparing contracts imposed additional delays.'<sup>68</sup> Detailed timelines are presented revealing years of delays between costly license applications being made and approvals being given.<sup>69</sup>

Returning to the theme of expertise, developers are being prompted to draw on their market-expertise to turn the absence of expertise on which administrative rationality-regimes rely into an economic advantage.

### 3. *Sustainable development*

CDM registration will not be given unless the host country is willing to 'confirm that it will contribute to "sustainable development"'. This wrongly implies that this term bears some sort of globally-shared technical meaning.<sup>70</sup> Worse still, the CDM regime makes no enquiry into whether such an understanding has

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<sup>65</sup> Klavdia PDD pp. 29 and 30 and Kambi PDD p. 23. Available at <http://cdm.unfccc.int>.

<sup>66</sup> Agia Anna PDD p. 13. Available at <http://cdm.unfccc.int>

<sup>67</sup> For example, Kambi PDD p. 22. Available at <http://cdm.unfccc.int>.

<sup>68</sup> Alexigros PDD p.9, Orites PDD p. 16 and Klavdia PDD p. 19. Available at <http://cdm.unfccc.int>

<sup>69</sup> Klavdia PDD pp. 19-20. Available at <http://cdm.unfccc.int>.

<sup>70</sup> On the many meanings of sustainable development see S. Bell and D. McGillivray *Environmental Law* (2008 7<sup>th</sup> ed.) ch. 3. In a 2008 opinion survey in Cyprus about a third (35 per cent) of interviewees reported never having heard of the term 'sustainable development'. RAI Consultants 'Report on a Quantitative Survey on Perceptions on Sustainable Development and Climate Change in Cyprus' (2008) Prepared for AKTI and CESF in cooperation with UNDP. Available at [http://akti.org.cy/turkish/AKTI\\_report\\_2008\(f\).ppt](http://akti.org.cy/turkish/AKTI_report_2008(f).ppt).

been arrived at locally in relation to a given project, for example by requiring proof of substantive public participation in the awarding of planning approval. So the CDM excludes almost entirely the expertise of project-affected residents.

Yet it is at the local level that multiple interpretations of ‘sustainable development’—as economic growth with emissions reduction, as conservation, and/or as improvement to the lives of the relatively poor—come into conflict. The CDM regime simply black-boxes participation, accepting the word of validator and the government in question that it has occurred, was fulsome and resulted in any necessary change. A typical validation document reads:

‘Relevant stakeholders have been informed five times (one time during the EIA process, two times during the town planning permit process, two times during the licencing process by the [CERA]) by newspaper announcements; further on the [involved community] has been directly addressed. No negative comments have been received. All meetings are documented.’

When specific concerns are raised in local proceedings, the project design document will assert, for example, that ‘the issues of aesthetics and noise have been dealt with’ in the environmental impact assessment commissioned by the developer ‘and the conclusion can be extracted that no negative consequences exist.’<sup>71</sup> As the next section reveals, that never quite all there is to it.

#### AARHUS: DEMOCRATIC PRAGMATISM

The second relevant regime downloaded by Europeanizing Cyprus is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998. The concept of ‘participation has a very strong pull on environmental policy making, but its meaning and aims are rarely made clear.’ At an international level, the idea of public participation—that is, evaluation, comment and influence in relation to

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<sup>71</sup> Orites CDM PDD p. 32. Available at <http://cdm.unfccc.int>. But see <http://www.youtube.com/watch?v=DKtmAWvSxpU>.

regulatory decisions on policies or projects<sup>72</sup>--rose to prominence with Principle 10 of the 1992 Rio Declaration on the Environment and Development. It was then elaborated in the three pillars of the Aarhus regime. Cypriot law has been in formal compliance with the first Aarhus pillar, access to environmental information, since 2004, and the second Aarhus pillar--public participation in decisions on projects, plans and programmes--since 2005.<sup>73</sup> Ex ante public participation occurs as part of the planning application process. In theory, any concerns raised at such meetings must be addressed before a license will be given.<sup>74</sup> 'Every single department is present'-- about 15 to 20 voices—even though they have already expressed their views to the planning authority, and 'if somebody objects then it has to be reviewed again.'<sup>75</sup> The EU has not yet downloaded the third pillar, access to environmental justice, which is directed primarily towards ex-post facto solutions, but Cyprus appears to be formally compliant, thanks in large part to a judicial review gateway via Article 146 of the Constitution which allows complaints to the Supreme Court against an administrative act or omission alleged to be unconstitutional, illegal or an abuse of powers; and directly and adversely affecting legitimate interests of the complainant 'as a person or as a member

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<sup>72</sup> M. Lee and C. Abbott (2003) 'The usual suspects: Public participation under the Aarhus Convention' 66 *Modern Law Review* 80 at 82 and 86.

<sup>73</sup> Law No. 125(I)/2000 on Free Public Access to Information Relating to Environmental Issues; Law No. 119(I)/2004 on Public Access to Environmental Information implementing Directive 2003/04/EC; Law 140(I)/2005 on the Assessment of the Impacts on the Environment from Certain Projects; and Law 102(I)/2005 on the Assessment of the Impacts on the Environment from Certain Plans and Programmes. Member States decide whether to require an EIA for wind farms: Directive 85/337/EEC Article 4(2) and Annex II; and Cyprus requires one for projects of more than 1 MW: Environmental Impact Assessment of Certain Works, Law 140(I)/2005 (as amended by Law 42(1)/2007) Article 31, Appendix I.

<sup>74</sup> One project allegedly obtained an environmental permit without the agreement of the local community. The matter is being heard in court. Interview K26C.

<sup>75</sup> Interviews K25M and F23Y.

of a Community'.<sup>76</sup> This is not quite a gateway to the kind of 'quintessentially communal' public interest litigation enjoyed in India<sup>77</sup> because Article 2 specifies that the term 'Community' which threads through the Constitution of Cyprus refers specifically to the Greek Cypriot or Turkish Cypriot Community of which Cypriots are a member by birth or later choice. Legal persons 'created with the purpose of promoting environmental protection' are, since 2005, 'considered to have sufficient interests that may be affected by a decision' and therefore entitled to launch a judicial review.<sup>78</sup> But as we shall see below, that entitlement has not been exercised.

Each of these pillars (two of which were downloaded into EU Directives) might be seen as a 'hybrid socio-legal and technical solution', akin to the CDM, in partial fulfilment of the 'actor world' generated at Aarhus. In Dryzek's taxonomy the Aarhus regime can be described as primarily people-based, grounded in democratic pragmatism. So the actor world was imagined to include individuals and civil society actors with an interest in information, participation and justice.<sup>79</sup>

### 1. *Apathy*

'[P]erhaps the most significant innovation' of the Aarhus regime and the actor world it generated is 'the distinct role' envisaged for civil society actors<sup>80</sup>--that is, 'non-state actors whose aims are neither to generate profits nor to seek

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<sup>76</sup> Any 'directly affected' person or organisation may complain to the Ombudsman that an administrative decision 'violates human rights' or the law of 'proper administration'. But one civil society actor observed that 'it takes too long' and is pointless it 'is not binding': Interview P25S. See: s. 5(1)(a) and s. 6 Commissioner for Administration Law 3/1991 and <http://www.ombudsman.gov.cy>.

<sup>77</sup> Perry-Kessaris (2008) op. cit. n. 9 pp. 112-3.

<sup>78</sup> Law 140(I)/2005. Department of Environment (2011).

<sup>79</sup> It is also expert-based, grounded in administrative rationalism, imagined to be populated by judicial and bureaucratic actors with the necessary expertise to facilitate (or not obstruct) them.

<sup>80</sup> Lee and Abbot op. cit. n. 75 at p. 87.



governing power'; and who 'unite people to advance shared goals and interests.'<sup>81</sup> In particular where (as seems to be the case in Cyprus) gateways to participation are generally unknown, misunderstood, and even undesired, civil society is key to the success of democratic rationality-regimes. So the emphasis on civil society actors raises all sorts of concerns about their representativeness and independence,<sup>82</sup> as well as their abilities.

As might be expected, there has been some government apathy towards the first Aarhus pillar, access to environmental information: 'Trying to get [information] out of the Government is like getting the proverbial blood out of a stone.'<sup>83</sup> More remarkable are the demand-side constraints.

First, in relation to access to information, the Department of Environment reported in 2011 that '[m]ost' information requests are made by consultants and students. Members of the public only becoming 'involved ...when they are directly affected' by a project, not as civil society actors.<sup>84</sup>

In relation to the second Aarhus pillar, public participation, it is revealing that only 36 per cent of interviewees in a 2008 opinion survey in Cyprus were aware of a law protecting citizens' participation in environmental decision-making processes; and most (60 per cent) reported that citizens are not usually consulted in the decision making process on environmental matters. Moreover, there was only limited enthusiasm for the idea that decisions regarding environmental sustainability should be taken by the local community (11 per cent of interviewees) rather than the EU (29 per cent) level or the

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<sup>81</sup> UNDP (2001) 'UNDP and Civil Society Organisations: A policy of engagement'. New York: UNDP. Available at [http://www.undp.org/content/undp/en/home/ourwork/partners/civil\\_society\\_organizations](http://www.undp.org/content/undp/en/home/ourwork/partners/civil_society_organizations).

<sup>82</sup> Lee and Abbot op. cit. n. 75 at p. 87.

<sup>83</sup> For example, the Cyprus Council of Ministers has had to specifically direct local authorities to make information available for a reasonable fee, not to treat planning applications as private, not to insist that members of the public themselves identify plot numbers: Interview T28C.

<sup>84</sup> European Commission (2011a) op. cit. n. 33.

state (38 per cent).<sup>85</sup> Perhaps as a result, proceedings including an element of public participation are reportedly dominated by developers and government actors.

The CDM Project Design Documents of some Cyprus wind projects refer to 'public hearings' and 'public consultation'<sup>86</sup> but developers and their advisers in Cyprus were adamant:

'It's not a public hearing. It's not a public hearing. They just gather these different government departments in one meeting room, and they discuss, everybody says their opinion, basically. If you know somebody you can influence you, you know...And depending on this, you know...[For some bigger projects they hire a room in a hotel. But in others it is] only the closed sort of, dark room with about 10 people around [the developer]... It's crazy, I mean, it is not a very transparent way of doing things'.<sup>87</sup>

By all accounts proceedings are commonly dominated by central government and developers—others in attendances are usually one-shot players without experience.<sup>88</sup> A major missing factor is civil society.

In relation to the third pillar of access to justice, civil society actors have not availed themselves of the judicial review gateway offered by Article 142 of the Constitution, perhaps because they reportedly have 'no faith in the courts at all. Zero.' They feel they 'will not get justice there.'<sup>89</sup>

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<sup>85</sup> RAI Consultants (2008) op. cit. n. 69.

<sup>86</sup> Alexigros PDD p. 24, Kambi PDD p. 36, Klavdia PDD p. 48. Available at <http://cdm.unfccc.int>.

<sup>87</sup> Interview K26C.

<sup>88</sup> Interview F23Y.

<sup>89</sup> Interview P25S. Developers also claim reason to be wary, but one has reportedly filed a 146 claim against the Paphos District Officer in relation to a permitting error: Interviews KM25 and PC25.

## 2. *Animosity*

Social-psychological studies have shown that residents can form ‘positive emotional’—in Weberian terms, affective and traditional—‘links’ with a location. These links may be ‘disrupted’ by wind farm (and other) developments, resulting in feelings of ‘anxiety and even grief’ both for the direct loss of the loved location, and for the consequential loss of any ‘sense of self or identity’ bound up in the location.<sup>90</sup> It is true that 100 per cent of interviewees in a 2011 Eurobarometer survey of Cyprus agreed that ‘protecting the environment’ was ‘important’ to them ‘personally’, and half included ‘climate change’ as one of the ‘five main environmental issues’ they ‘worried about’.<sup>91</sup> There are also those who find wind farms ‘quite attractive... fascinating...as a piece of modern art’.<sup>92</sup> Some developers have been able to identify residents who are naturally apathetic, or even enthusiastic, about having a wind farm nearby.<sup>93</sup> One developer remarked on the fact that many wind farms have been built on ‘refugee’ land--formerly Turkish Cypriot villages now inhabited by Greek Cypriot refugees from the North. ‘They were very, let’s say, calm in their approach.’ They were ‘the most sceptical’ but ‘did not raise a lot of objections’.<sup>94</sup> Likewise, residents of ‘remote’ locations with little pre-existing economic activity reacted ‘positively’ because they saw the value of their land increasing or because they enjoyed the fact that ‘suddenly people started going and coming, they showed interest’.<sup>95</sup> But behind every wind

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<sup>90</sup> N. Cass and G. Walker ‘Emotion and rationality: The characterization and evaluation of opposition to renewable energy projects’ (2009) 2 *Emotion, Space and Society* 62 at p. 63.

<sup>91</sup> European Commission op. cit. n. 33.

<sup>92</sup> Interview A27C.

<sup>93</sup> Interviews A27C and K26C. Other have built on government land, or bought land. There has been no compulsory purchase.

<sup>94</sup> In Mari residents invited an independent specialist and a Member of Parliament to ‘adjudicate’. Mari PDD p. 23, available at <http://cdm.unfccc.int>, and Interview K25M.

<sup>95</sup> Interview K26C.

farm in Cyprus lie the wrecks of proposals foiled by the animosity of project-affected residents.<sup>96</sup>

Equally, buried beneath every existing wind farm are the remains of animosity that has been manipulated—marketed—away. One developer reported picking off residents one by one, getting them to rent their land to the project, and then relying on them to ‘lobby’ their neighbours-- ‘So they will be working ... on our side.’ The planning approval process is then less of a ‘bother’ because owners have already consented.<sup>97</sup> Another reported making surreptitious payments to just one of several affected communities so that the project as a whole might proceed.

The lack of an active civil society through which to pool energy, ideas and information, also means that discussion is limited, disjointed, unsophisticated and muted. Animosity (and enthusiasm) remain largely individual experiences. Developers are left as the only repeat players, able to dismiss or quash objections, and to define the terms of the debate. Residents, just like the government:

‘depended, mostly, on the effort [developers] made to inform them... If I make the effort and come and find you and explain ... the rationale behind why I want to promote this, and nobody else came to tell you the other side of the story, then you would be influenced by my way of presenting things or ideas. And ... there was no [other] serious approach. It’s sad, to be honest, in many ways, because you would expect that, you know, in the government and the civil side, they would be approaching the thing more maturely.’<sup>98</sup>

One environmental expert noted an interplay between public fear and government lack of expertise, suggesting that ‘fear of windfarms’ exists in part because people don’t trust the authorities—and with ‘good reason’. ‘There is a

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<sup>96</sup> England and Wales reportedly have a 60 per cent refusal rate for onshore windfarm applications. N. Cass, et al. op. cit. n. 59.

<sup>97</sup> Interview F23Y.

<sup>98</sup> Interview K26C.

small paragraph' in environmental assessments 'which nobody reads: "provided all the rules and regulations are followed.'" Environmental inspectors are too few and poorly qualified 'to check that the terms of the licence are actually adhered to.'<sup>99</sup> In short, the experts are the market.

### 3. *Expertise and 'expertise'*

Expert-based regimes, such as the CDM registration process, tend to privilege 'expertise based in scientific and economic rationalities' that are most closely associated with instrumental values and interests. They tend to leave little or no space for 'intangible and aesthetic values' such as 'loss and grief', which can generate just as much animosity as any economic, or other instrumental, motivation.<sup>100</sup> Space for 'loss and grief', and the resulting responses of animosity, ought to be found in regimes based on democratic pragmatism. But even here non-instrumental (affective, belief and traditional) values and interests are all too often silenced by the dominant economic and administrative rationalism.

One way of dealing with animosity that is grounded in non-instrumental values and interests is to dismiss it as misinformed. In the UK, developers frame their interactions with the public using an 'information deficit model', preferring to engage with the public through 'exhibitions' rather than 'public-meetings.'<sup>101</sup> It is assumed that most, if not all opposition can be dispelled by a programme of myth-busting. The constant presentation by policy makers and developers to 'not-in-my backyard –NIMBYs' as deviant minorities<sup>102</sup> is, some argue, unsubstantiated and deliberately designed to render them something to be

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<sup>99</sup> Interview F23Y. It is reported that one civil society actor, having failed to rouse enthusiasm in Cyprus, is complaining to Brussels about the breach of conditions by one developer to protect birdlife: Interview K26C.

<sup>100</sup> Cass and Walker op. cit. n. 89 p.64.

<sup>101</sup> Id. p. 67.

<sup>102</sup> J. Swofford and M. Slattery 'Public attitudes to wind energy in Texas: Local communities in close proximity to wind farms and their effect on decision-making' (2010) 38 *Energy Policy* 2508.

'overcome', in particular by improving levels of 'trust' in developers.<sup>103</sup>

Likewise the only information available on the website of the Cyprus Wind Energy Association is a leaflet on the 'myths' and 'truths' about wind farms, and developers referred to holding 'a public presentation' with 'maps, photographs, examples of other places'. 'We have to explain to people, although sometimes people are not ready to understand.' 'It doesn't cost them anything to say all the nonsense in the world. They don't have to prove it.' 'All these monsters that people are dreaming of, they don't exist.'<sup>104</sup>

A second method of dealing with animosity grounded in non-instrumental values and interest is to dismiss it as irrational and, therefore, irrelevant to the participation-based regime in question. Developers in the UK have been found refer to animosity among project-affected residents as 'gut', 'visceral', 'passionate' or 'angry' and, therefore, irrelevant.<sup>105</sup> In Cyprus, developers reported that it is time consuming but bearable when government actors object to a project during the construction license phase—it is to be dealt with 'on the statutory level.' But the objections of local communities are uniquely infuriating because they are just 'a question of opinion' and 'then the whole thing stops.' Other typical comments in this vein include: 'At [Location X] they were throwing stones at us'; and 'That mayor [at location Y] was shouting like a mad thing'.

Thirdly, developers and their advisors in Cyprus regularly dismissed animosity expressed in the course of participation-based regimes as a, somehow illegitimate, cover for instrumental concerns about the value of land or other assets. For example, 'people will bring out environmental objections in order to cover their real fears. Their real fear is the value of the land.' 'It's unbelievable what nonsense we heard about the objections [in Location Z], even that wind farms will affect the ground water... They were hiding behind the environmental things but they were afraid that they will lose a very

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<sup>103</sup> M. Aitken 'Why we still don't understand the social aspects of wind power: A critique of key assumptions within the literature' (2010) 38 *Energy Policy* 1834.

<sup>104</sup> Interviews PC25 and F23Y. For the leaflet see <http://cwea.org.cy>.

<sup>105</sup> Cass and Walker pp. cit. n. 89 at p.65.

lucrative illegal trade of these small birds, *ambelopoulia*.' Likewise, when anemometers set up by developers in 2007 to measure wind speeds in Agios Theodoros were torn down--some say by 'just ordinary people', others say by property developers or competitors—developers agreed it was because of 'fear.'<sup>106</sup> One developer present at the scene asked reporters to focus on the fact that 'something like this shows that Cyprus is a country full of risks for wind farms' (thereby scoring another potential point towards CDM registration). A second developer reportedly observed that locals were 'simply delaying the inevitable. We are acting perfectly legally, we have all the necessary permits and will not be undone. We have done too much and spent too much money to stop now.'<sup>107</sup> Implicit in these reports is the idea that economic or other instrumental concerns were somehow of less weight or relevance when held by residents, than when held by developers.

## CONCLUSION

The approach that I have set out in this paper enables social life of all levels, intensities and types (including the economic) to be placed on the same analytical page. Empirically, it works from interviews and site visits backed up with secondary sources. Analytically, it connects actions and interactions, with regimes and rationalities—or as Roger Cotterrell puts it elsewhere in this volume, it connects 'what is embedded' with 'in what it is embedded.' Normatively, this approach seeks to give equal consideration to the perspectives of each set of actors. In so doing it offers a unique combination of insights.

It highlights the rationalities that dominate a given regime--in this case economic rationalism and administrative rationalism in Kyoto, and democratic pragmatism and administrative rationalism in Aarhus. It also highlights mismatches between, on the one hand, the actor worlds envisaged by

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<sup>106</sup> Interviews A27C, F23Y, PC25 and KM25.

<sup>107</sup> Cyprus Mail 27.02.07 reposted at < <http://www.wind-watch.org/newsarchive/2007/02/27/we-have-spent-too-much-money-to-stop-now>> accessed on 15.11.12. See also TUV and BGP op. cit. n. 13 at 55.

administrator-sociologist regime creators, in this case at Kyoto and Aarhus; and, on the other hand, real life actions and interactions--in this case occurring among developers (markets), engineers and regulators (experts), project affected persons and civil society actors (people) in Cyprus.

So we see that expertise is at the heart of the Kyoto rationality-regime, but it is lacking among government actors in Cyprus, that the differently-expert views of project-affected residents are excluded, and that the void is filled by the expertise of developers.

We see that civic participation is at the heart of the Aarhus rationality-regime, and government enthusiasm is at the heart of the Kyoto rationality-regime. But *Apatheia* (ἀπάθεια)—in the original meaning of detachment--was cherished by the Stoics, and one might be forgiven for wondering whether it is so valued by civil society and government actors today.

We see that wind (ἄνεμος, *anemos*) is in short supply in Cyprus, but wind farms are rather plentiful, thanks in part to *enthousiasmos* (ἐνθουσιασμός)—in each of its evolving meanings originally, ecstasy arising from possession by God, then over-confidence arising from the delusion that one is inspired by God, then extremism and finally, plain old positive feelings—emanating from carbon market creators in Brussels and Bonn.

The concerns of residents affected by wind farms are mere frippery as compared to the threats of flooding and famine that are faced by others elsewhere and that are ascribed to the use of fossil fuels. But this observation does not dull the significance of the insights set out in this paper. For the extent to which carbon avoidance and sustainable development result from CDM registered projects, whose local support and approval are intended to be aided by the international imprimatur of the UN, is also wide open to scientific question.<sup>108</sup> So the balancing of local values and interests remains

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<sup>108</sup> See K. Holm Olsen and J. Fenham 'Sustainable development benefits of clean development mechanism projects: A new methodology for sustainability assessment based on text analysis of the project design documents submitted for validation' (2008) 36: 8 *Energy Policy* 2819.



an honourable and reasonable task, and one well suited to exploration through an economic sociology of law.