

ENERGY LAW FROM 2020 TO 2030 (PART 1)

DOI 10.18572/2410-4396-2020-2-80-82



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Law plays a significant role in the future and in particular when there are 2030, 2040 and 2050 energy, environment and climate plans. In order to achieve, for example, 2030 climate and energy targets, the law has to be formulated, passed and implemented to achieve that 2030 target. This is because energy infrastructure takes not only time to plan, raise finance for, and to build, but also there are significant planning and environmental hurdles to overcome. And these all feed into the second point, it is at a national level that the law can drive the energy sector forward. A national government can set a policy agenda and ensure law provides the structures, the incentives, and the pathways for energy sector development. This article aims to provide a brief state-of-the-art and modern view of where energy law scholarship, education and future issues should be orienting towards as we move from 2020 to 2030. This article aims to present from a global perspective. Energy law should be relatively similar across the world as it is based on technology which is relatively the same across the world. What is different is in relation to the energy resources a country has at its disposal and the energy mix a country wants to have. But at the same time, law around extraction of energy resources will be the same and even incentives and taxation around the energy resources will be similar. Energy scholarship has however risen to the fore and is now supported across the university.

Part 1 is dedicated to the development of energy law as a science, Part 2 – to the development of Energy Law Education.

Keywords: energy law, energy law scholarship, principles of energy law.

1. Introduction

The future of law and the legal profession itself have been a concern for some academics for many years. [1] The aim of this article is to highlight this analysis of the future for a growing area of legal research, namely, energy law. Energy law will be crucial for the next decade from 2020-2030. A key driver for energy law currently is ‘infrastructure development’ as identified by Heffron and Talus (2016) [2] and this will become even more so post-COVID and the resulting financial crisis (which will be referred to as the 2020 financial crisis hereafter).

This article aims to cover several key issues around energy law as society advances towards the next decade, and post COVID-19 and the 2020 financial crisis. It covers energy law scholarship, energy law education and also how a principle-based approach can achieve improved implementation of energy law. In effect, the aim is to provide an account of where energy law scholarship is at this moment.

There is every reason why energy lawyers (both scholars and practitioners) should consider the future of energy law. Several practitioners and scholars have already highlighted concerns

about the future of energy law. [3] However, this article takes a different perspective in that it tackles the issue more from an external-oriented viewpoint whereas previous scholars have done so principally from an internal perspective of energy law. [4] This article aims to present from a global perspective. Energy law should be relatively similar across the world as it is based on technology which is relatively the same across the world. What is different is in relation to the energy resources a country has at its disposal and the energy mix a country wants to have. But at the same time, law around extraction of energy resources will be the same and even incentives and taxation around the energy resources will be similar.

Energy scholarship has however risen to the fore and is now supported across the university.[5] And this is reflected with the realisation across the world that it is a vital one for economic growth and in particular, its growing prominence is leading to a realisation of its importance in practice and in academia.

2. Energy Law Scholarship

A key reason to review energy law scholarship is the advent of the energy transition. It is clear that the energy transition is happening worldwide. There are many reasons for this from technological development, public health

issues, influence of international actors etc. A significant factor however has to be the success of the Paris COP21 climate change negotiations [6] which have really provided an impetus to the energy transition. The Paris COP21 agreement has, in particular, focused the legal research and practice community on the development of low-carbon energy sources as there is now an international tangible document from which to build legal discussion and arguments from. It is clear that countries across the world are diversifying their energy policy as what the energy transition demonstrates is that there are major cost advantages to using more low-carbon energy sources (such as renewable energy, hydropower and nuclear energy). After many years, finally low-carbon energy sources have become cost competitive with conventional energy sources.

The definition of energy law scholarship has evolved to some degree since Bradbrook’s seminal article in 1986, and in more recent scholarship it reads as “energy law is the regulation of energy related rights and duties of various stakeholders over energy resources over the energy life-cycle”. [7] And this definition and Bradbrook’s will no doubt be debated in the literature in years to come.

However, for energy law to further develop, and to ensure it takes into account the advance of society, new international agreements such as Paris COP21, new technology and new

Table 1

Principles of Energy Law [9]
Principles of Energy Law
1. The Principle of Natural Resource Sovereignty — <i>The right of a state to use their natural resources in their own national interest</i>
2. The Principle of Access to Modern Energy Services — <i>Access to energy should be available to all citizens of a nation</i>
3. The Principle of Energy Justice — <i>The application of human rights across the energy system</i>
4. The Principle of Prudent, Rational and Sustainable Use of Natural Resources — <i>Natural resources should achieve a balance between economic development and environmental concerns</i>
5. The Principle of the Protection of the Environment, Human Health & Combatting Climate Change — <i>The use of energy and natural resources should comply with the triple objective of protecting the environment, public health and climate change mitigation</i>
6. Energy Security and Reliability Principle — <i>There should be a secure supply of energy that should also be reliable</i>
7. Principle of Resilience — <i>The different energy activities in the energy system should be resilient so they can plan, recover, and adapt to adverse events</i>

government policies for transitioning to low-carbon economics, it is time for energy law to have its own set of guiding principles. There are now accepted guiding principles to follow for the development and application of energy law. Such guiding principles can be a force of change, for example, we can witness worldwide the example of one of the most established environmental law principles, i.e. the polluter pays principle. In this context, these principles of energy law can “*act as a guide to policymakers, academics, lawyers, judges and arbitrators when adjudicating, enforcing, making or formulating documentation, laws, regulations, judgments, etc on energy law*”. [8]

Energy law is stated as having seven guiding principles and these are stated below in Table 1.

In thinking of the energy transition, these principles of energy law should act as a guide. They point in particular to many key issues but highlight that decisions need to have a *long-term perspective* and should be *integrated*. As an

example, the continued use of coal while it may provide benefits in the short-term, i.e. such as cost, energy access and energy security, it meets little of the other objectives of the energy law principles. Indeed, a more thorough analysis on the cost of coal needs to be completed, and such cost calculations should include also cost to the public health system, full decommissioning and pollution costs (such as effects on water supply).

The importance of the long-term focus of the energy law principles highlighted above cannot be understated. These principles with the long-term ambition for the energy sector will provide legal certainty in the energy sector. This will result in a reduction in the risk profile of an energy infrastructure project and thus borrowing costs will reduce. If the energy sector is provided with legal certainty, it will be able to develop, grow and mature, and consequently then, investment will flow and the cost of financing for energy investment will reduce over time. ■

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