Scaling "Local": The Implications of Greenhouse Gas Regulation in San Bernardino County

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SCALING "LOCAL": THE IMPLICATIONS OF GREENHOUSE GAS REGULATION IN SAN BERNARDINO COUNTY

Hari M. Osofsky*

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Over the past couple of years, San Bernardino County ("the County") has been a focal point in conflicts over local climate regulation. Parallel lawsuits brought by the California Attorney General and nongovernmental organizations under state environmental law forced San Bernardino County to begin incorporating greenhouse gas emissions reduction into its local planning. In accordance with a settlement with

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* Associate Professor, Washington and Lee University School of Law. This Essay was greatly enhanced by the interesting dialogue at the Michigan Journal of International Law Symposium on Territory Without Boundaries. I would particularly like to thank the moderator of our panel, Saskia Sassen; my co-panelists, Vesuki Nesiah and Lisa Pruitt; and my Washington and Lee University colleague, Brian Murchison, for their helpful insights. I also am grateful for the thoughtful editorial assistance of Matthew Becker, Louisa Marion, Kate Wagnerr, and Chelsea Warren of the Michigan Journal of International Law. As always, I appreciate the love, support, and patience of Josh, Oz, and Scarlet Gitelson.

1. I have analyzed in depth the debates over scale in this litigation and their consequences for transnational climate regulation in Hari M. Osofsky, Is Climate Change "International"?: Litigation’s Diagonal Regulatory Role, 49 Va. J. Int’l L. 585 (2009). This Essay builds upon that analysis, as well as that of Hari M. Osofsky & Janet Koven Levit, The Scale of Networks: Local Climate Change Coalitions, 8 CHICAGO J. INT’L L. 409 (2008), but has a different focus. Namely, this Essay examines the implications of the San Bernardino County dispute and subsequent regulatory efforts on how we should conceptualize the scale of "local."

the state, the County hired a consultant to develop an emissions reduction plan that aims to bring emissions down to 1990 levels.\textsuperscript{3}

On the surface, this dispute and its resolution provide an uncomplicated local governance story. San Bernardino County, like other cities and counties, is an administrative subunit of California.\textsuperscript{4} In initially choosing not to regulate greenhouse gas emissions and in defending that choice in the lawsuit, the County claimed that climate change was too large-scale a problem for it to tackle—often citing scientific uncertainty.\textsuperscript{5} The State used its power over the County, through the California Environmental Quality Act and the San Bernardino County Superior Court, to push that local governmental unit to take action, despite its protestations.\textsuperscript{6}

This "local governance" narrative becomes more complicated, however, through a closer examination of the territory of San Bernardino County. The County covers just over 20,000 square miles, an area almost twice the size of Israel and larger than many U.S. states.\textsuperscript{7} Although "local" often carries connotation of "urban," this locality contains both some of the fastest growing urban areas in the United States\textsuperscript{8} and major wilderness areas.\textsuperscript{9} San Bernardino County is certainly "local" from a

\begin{enumerate}
\item See Petition for Writ of Mandate at 2, People v. County of San Bernardino, No. 07 Civ. 329 at 2 (Cal. Super. Ct., County of San Bernardino Apr. 11, 2007).
\item U.S. Census Bureau, State & County QuickFacts: San Bernardino County, California (2008), http://quickfacts.census.gov/qfd/states/06/06071.html; Petition for Writ of Mandate, People v. County of San Bernardino, No. 07 Civ. 329 at 2.
\item See Jennifer Schlotterbeck, Preserving Biological Diversity with Wildlife Corridors: Amending the Guidelines to the California Environmental Quality Act, 30 ECOLOGY L.Q. 955,
Scaling "Local" formal legal perspective, but its physical and spatial characteristics resemble those of a much larger entity.

This Essay analyzes local climate regulation in San Bernardino County as a window into the complexities of defining a local scale in an interconnected world. In so doing, it aims to contribute to the Symposium’s broader dialogue about “Territory Without Boundaries” and the Panel’s more specific discussion of “Urban Territory in a Global World.” As a purely territorial matter, U.S. cities and counties differ substantially in their sizes, the quantity and physical characteristics of their land, the size and density of their populations, and the needs of their citizens. Structurally, these localities remain administrative subunits of states, but they also have significant autonomy. Finally, their substantive decision-making requires them to engage with a wide range of actors at different scales as they make decisions about multiscalar problems.

These layered interactions suggest that a law and geography analysis of San Bernardino County might help to capture the nuances of


11. See Neuman, supra note 4.


13. Geography considers the relationship of space, place, and scale over time. The discipline bridges the physical and social sciences and, in so doing, considers a wide range of subjects through a unifying spatial lens. Jane Holder and Carolyn Harrison have defined a law and geography approach as including both the spaces of law (Geography in Law), and the way in which “law shapes physical conditions and legitimates spatiality” (Law in Geography). See Jane Holder & Carolyn Harrison, Connecting Law and Geography, in LAW AND GEOGRAPHY 3, 3–5 (Jane Holder & Carolyn Harrison eds., Oxford 2003). As leading law and geography scholars David Delaney, Nicholas Blomley, and Richard Ford note:

Our legal lives are constituted by shifting intersections of different and not necessarily coherently articulating legal orders associated with different scalar spaces.
appropriate and effective local policymaking with respect to climate change. Although law defines the boundaries of San Bernardino in specific ways, the interaction among legal and socio-political spaces reveals a more complex terrain. As local actors span a wide range of geographic and legal scales and of urban and rural environments, supposedly local climate regulation involves multiple territories at different levels of government engaging in a variety of relationships. This Essay opens such a law and geography discussion of San Bernardino County’s approach to greenhouse gas emissions regulation in order to raise questions for further research about the scale of “local,” the County’s efforts on climate change, and the implications of both for local climate change initiatives.

More specifically, the Essay explores the dynamic between “place” and “space,” and their construction of scale, to provide insight into the boundaries of this “local” territory. Each of these terms has inspired thoughtful debate in the geography literature, which I have described in depth in my previous work, and I use them here in their richest sense. Namely, the “place,” San Bernardino County, is both a physical location


14. Many streams of scholarship, only some of which are explicitly part of the law and geography literature, explore these questions. A full exposition of these literatures is beyond the scope of this Essay, which focuses more narrowly on Kevin Cox’s approach to geographic network theory and on bottom-up lawmaking. However, I provide a sampling of some of the most salient scholarship below. For examples of the literature exploring how decisionmaking should be structured in metropolitan regions, see David J. Barron, Reclaiming Home Rule, 116 HARV. L. REV. 2255 (2003); Gerald E. Frug, Beyond Regional Government, 115 HARV. L. REV. 1763 (2002). For examples of new governance scholarship, which engages the incorporation of local knowledge into complex processes that cut across legal scale, see LAW AND NEW GOVERNANCE IN THE EU AND US (Gráinne de Búrca & Joanne Scott eds., 2006); Bradley C. Karkkainen, “New Governance” in Legal Thought and in the World: Some Splitting as Antidote to Overzealous Lumping, 89 MINN. L. REV. 471 (2004); Orly Lobel, Setting the Agenda for New Governance Research, 89 MINN. L. REV. 498 (2004); Orly Lobel, The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought, 89 MINN. L. REV. 342 (2004). See also J.B. Ruhl & James Salzman, Managing Massive Problems in the Administrative State: Strategies for Whittling Away, 98 CAL. L. REV. 1 (forthcoming 2010) (draft manuscript on file with author) (bringing together new governance, dynamic federalism, and transgovernmental network literatures to explore approaches to massive environmental problems like climate change).

and a cultural construct. Its "spaces" include not only institutional and legal structures but also a range of informal interactions. These spaces—from local planning meetings to courtrooms to coalitions of cities working on climate change—then help to constitute the scales at which the dispute over climate regulation there takes place, as the spaces define and are defined by the County.

Part I describes the overlapping regulatory authorities and sociolegal spaces that converge in San Bernardino County as it addresses the problem of climate change. Part II examines those overlaps through a law and geography lens—specifically geographic network theory and bottom-up networking—to explore the scale of local climate efforts in the County. The Essay concludes with reflections upon the broader consequences of the dispute for how we conceptualize the "local" and its role in climate regulation.

I. THE GEOGRAPHY OF SAN BERNARDINO COUNTY'S CLIMATE REGULATION

This Part maps the regulatory and sociolegal dimensions of San Bernardino County and its efforts to mitigate climate change. It examines the ways in which overlapping formal and informal spaces make the County's efforts multiscalar and socially complex. Part I.A describes the County and its climate change efforts as comprised of multiple, overlapping levels of governance. Part I.B builds on that analysis to consider the sociolegal dimensions of the County and its environmental policymaking, and their interactions with the multiscalar regulatory structure.

A. Overlapping Regulatory Scales

San Bernardino County is legally recognized as a physically defined territory delineated on a map. Put simply, the County is a local entity because the relevant law defines it as such. But if we stop here in our


18. For an in-depth discussion of scale, see infra notes 34–38 and accompanying text.

19. For examples of such official maps, see County of San Bernardino, California - County Map, http://www.sbccounty.gov/maps.htm (last visited June 13, 2009).
understanding of it as a place, then even from a legal perspective, we miss a great deal.

As a structural matter, the County is constituted by smaller and larger units. When we peer within the County, the twenty-four incorporated entities inside the County's border (some of which are cities) are local units within the local unit of the County; they vary in their degree of urban development and in their desired approach to greenhouse gas emissions. Similarly, the large forest, national park, and military areas within the County have different identities from its cities and their spheres of influence.

The following map, reprinted from my previous work, delineates these complex layers.


21. See Osofsky, supra note 1, at 607. Nathan Koch of the Virginia Journal of International Law did an excellent job of converting my original color map into this grayscale version, which is being reprinted here with the permission of the Virginia Journal of International Law.
The map shows the County as made up of cities encircled by their spheres of influence, military bases with adjacent urban areas, forests, and national parks. If the County's plan for urban growth depicted on the map accurately predicts the future, further expansion of development will take place, particularly in southwestern areas. And if we gradually move our view outward, we see the County as part of California's "exurban" periphery, then the State of California, the United States, North America, and the planet.  

Despite its political boundaries, each of the County's edges has ecological, social, and political interactions with the adjacent counties. The dispute between the state and the County reinforced that some localities are at the front end of climate regulation and others lag behind. In fact, state officials used the lawsuit against San Bernardino County as an example to push additional lagging counties to regulate more aggressively. Moreover, the pattern of some California counties occupying the front end of emissions regulation and others resisting it is replicated at larger scales among states in the United States, and among countries around the world.

Thus although San Bernardino County's approach to greenhouse gas emissions regulation occurs within bounded County decisionmaking processes, this scalar structure reveals far more fluidity in how one might define the territory as a legal matter. The overlapping regulatory authorities, and mix of physical and political characteristics, help to constitute the County as it engages in planning and decides its approach to greenhouse gas emissions.

B. Overlapping Sociolegal Spaces

San Bernardino County does not simply consist of overlapping regulatory authorities. Even a brief glance at the County's website makes clear that, like other local governments, it serves as a focal point for a range of social and cultural needs. On January 28, 2009, for example, the website spotlighted a business survival workshop, a free cancer awareness and screening event, Calico Ghost Town's Civil War Reenactment, Arrowhead Regional Medical Center's 3rd Annual Run/Walk, the County's 2008-09 budget, information on foreclosure prevention, flu shot


23. Such intersections have been explored in other contexts in the literature on adaptive management. See, e.g., C.S. Holling et al., In Quest of a Theory of Adaptive Change, in PANARCHY: UNDERSTANDING TRANSFORMATIONS IN HUMAN SYSTEMS 3 (Lance H. Gunderson & C.S. Holling eds., 2002) (providing a "cross-scale, interdisciplinary, and dynamic" theory of global change, termed "panarchy," which integrates "economic, ecological, and institutional systems"); Ruhl & Salzman, supra note 14 (drawing from adaptive management to create models for administrative agencies to "whittle away" at massive environmental problems).


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clinics, Green County San Bernardino, property tax bill redesign, and earthquake preparedness.26

The County’s greenhouse gas reduction efforts—spurred by its August 2007 settlement with California—take place within a broader context of a range of environmental projects grouped together under the auspices of “Green County San Bernardino.”27 As the County describes it,

[In August 2007, the Board of Supervisors launched Green County San Bernardino to spur the use of “green” technologies and building practices among residents, business owners and developers in the County. Additionally, Green County San Bernardino includes a public awareness component aimed at educating residents about steps they can take in their daily lives to conserve resources and protect the environment.28 California Governor Schwarzenegger has hailed the County as an environmental leader for its efforts on this initiative.29

This Green County initiative has many multiscalar aspects. It includes both County and regional projects, as well as links for residents and builders.30 In addition, the County has invited cities within it to join an Inland Empire coalition, founded in June 2007, which includes governmental entities in San Bernardino and Riverside Counties.31 According to the County:

Green Valley Cities must pledge to address five or more policy areas that aim to reduce greenhouse gas emissions. Cities have complete discretion over which policies they choose to adopt. GVI recognizes that each city is unique and a one-size-fits-all

31. San Bernardino County, Invitation to Join the Green Valley Initiative, supra note 30.
approach is counteractive to the overall goal of sustainable economic and community development.32

Current participants in this "coalition of cities" include a number of San Bernardino and Riverside County cities, but also water districts, and the Joint Powers Authority of a realigned Riverside County Air Force base.33

San Bernardino County's efforts to regulate climate change are clearly local. They involve the County taking a range of actions, and promoting those actions as part of a broader environmental effort. But the ways in which these efforts involve multiple scales and actors raise a core question about the character of local action: How do the scalar and sociolegal complexities of local action influence the way in which we should define that scale?

II. IMPLICATIONS FOR THE SPATIAL STRUCTURE OF LOCAL CLIMATE REGULATION

This Part begins to engage that question by drawing from the rich geography literature that grapples with defining the concept of scale. Robert McMaster and Eric Sheppard explain that "[a]lthough the relative merits of, and relations among . . . different perspectives of the construction of scale are still the subject of lively debate . . . , there is consensus on the need to move away from thinking about geographic scales as pre-given dimensions of society, to thinking about their social construction."34 Most relevant to understanding the scale of San Bernardino County, this literature engages foundational issues about what should be included in our delineation of the County's scale and how we

33. See id.
should describe its multiscalar dynamics.35 For example, should the County be treated as a fixed level of governance or should we view its scale more fluidly?36 How does and should the territorial extent of the County compare to the scale of its approach to climate change?37 Finally, to what extent does the County’s creation and implementation of a climate change plan constitute a rescaling of what it means to be local?38

This Part considers these issues through a focus on two particular conceptual constructs grounded in the geography literature on scale. Part II.A views the County’s efforts on climate change through the lens of geographer Kevin Cox’s theoretical work bringing together scale and space. In particular, it examines San Bernardino County’s measures as occurring within multiscalar spatial networks that define this “local” action. Part II.B then focuses on the rescaling taking place through the lawsuits and San Bernardino County’s policy steps, and analyzes that rescaling from a “bottom-up networking”39 perspective.

A. Local Scale as Spatial Networks

This Section relies upon Cox’s article *Spaces of Dependence, Spaces of Engagement and the Politics of Local Scale, or: Looking for Local Politics,*40 because its exploration of space and scale applies particularly

35. I have explored similar scale questions in the context of justice wormholes. See Osofsky, *Justice Wormholes,* supra note 15.


38. For an example of an in-depth examination of those processes, see Brenner, supra note 10, at 9–11.

39. See Osofsky & Levit, supra note 1.

well to local climate change action. More specifically, Cox uses geographic network theory to understand local behavior as both locally-based and deeply interconnected with other levels of government. He introduces the concept of localities as being defined through what he terms “spaces of dependence” and “spaces of engagement” in order to describe these dynamics. Cox explains that spaces of dependence are established through “those more-or-less localized social relations upon which we depend for the realization of essential interests and for which there are no substitutes elsewhere; they define place-specific conditions for our material well-being and sense of significance.” In the context of San Bernardino County’s climate policy, these spaces are constituted at least in part through the social and cultural patterns and expectations surrounding building construction, transportation, and energy use. For example, the County’s website for its Green County Initiative has specific links for residents, builders, and businesses. It explicitly “includes a public awareness component aimed at educating residents about steps they can take in their daily lives to conserve resources and protect the environment.”

These spaces of dependence interact with what Cox terms “spaces of engagement,” which are “the space[s] in which the politics of securing a space of dependence unfolds.” In the case of San Bernardino County, those spaces of engagement include, among others, the court in which the lawsuits against the County were filed, the Green County Initiative itself, the governments that are engaging in it, press releases, and the County website. Cox explains that “[p]eople, firms, state agencies, etc., organize in order to secure the conditions for the continued existence of their spaces of dependence but in so doing they have to engage with other centers of social power: local government, the national press, perhaps the international press, for example.” The social and cultural spaces that define people’s patterns of emissions are then reshaped through these multiscalar loci of sociolegal power.

41. See Osofsky & Levit, supra note 1. I have also relied upon Cox’s analysis in other contexts. See, e.g., Osofsky, supra note 1; Osofsky, Justice Wormholes, supra note 15. I base my analysis on Cox’s work, in particular, because of the way in which he brings together space and scale. For examples of additional approaches to network theory that draw from other disciplines, such as political science and anthropology, see Annelise Riles, The Network Inside Out (2000); Anne-Marie Slaughter, A New World Order 18–23 (2004).
42. Cox, supra note 36.
43. Id. at 2.
44. See Green County—San Bernardino, supra note 28.
45. Cox, supra note 36, at 2.
46. Id.
Cox’s theory does more than just map out these spaces. Most critically for this Essay’s analysis of the scale of the “local,” Cox claims that the dynamic interactions among spaces of dependence and spaces of engagement suggest that networks comprised of many different political, economic, social, and cultural entities form the spatial structure of scale.47 The spaces of San Bernardino County’s climate change regulation efforts described in Part I—from the state court supervising the settlement to the cities, companies, and individuals participating in the Green Valley Initiative—shape the multiscalar character of the local regulatory scale. That local governmental regulator, here the County, at the same time molds the character of those spaces, such as by pushing cities to take additional steps or by modeling implementation of a California Environmental Quality Act settlement agreement. The next Section explores the specifics of these dynamics further by building upon Cox’s theory to begin a bottom-up networking narrative of the County’s efforts.48

B. Rescaling from the Bottom and the Top

In our prior work on local climate networks, Janet Koven Levit and I introduced the concept of bottom-up networking.49 This approach brings

47. Cox, supra note 36, at 2–3.
48. Id.
together Levit’s work on bottom-up lawmaking\textsuperscript{50} with my law and geography work drawing from Cox’s network theory of scale. Bottom-up networking treats local decisions as creating and being created by networks through bi-directional (up and down) rescaling processes, and emphasizes on-the-ground, smaller-scale details as crucial to that narrative. We argued that such an approach would have the advantages of “defining the ‘bottom’ as a socially-constituted and ever-shifting terrain,” providing a more complete rendering of the networks, and allowing for better climate policy by locating local efforts more accurately.\textsuperscript{51}

This Section builds upon that work to provide a bottom-up networking narrative of San Bernardino County’s climate mitigation efforts. In so doing, however, the Section has a somewhat different focus than Levit’s work on bottom-up lawmaking\textsuperscript{50} with my law and geography work drawing from Cox’s network theory of scale. Bottom-up networking treats local decisions as creating and being created by networks through bi-directional (up and down) rescaling processes, and emphasizes on-the-ground, smaller-scale details as crucial to that narrative. We argued that such an approach would have the advantages of “defining the ‘bottom’ as a socially-constituted and ever-shifting terrain,” providing a more complete rendering of the networks, and allowing for better climate policy by locating local efforts more accurately.\textsuperscript{51}


vit's and my work on local climate change coalitions. Specifically, the Section relies upon bottom-up networking theory to explore the meaning of "local" as expressed through the County's decisionmaking.

The County's general planning process is at the core of what we would typically think of as local. However, even before the lawsuit by the state forced the County to address greenhouse gas emissions more directly, the County's comment process and informal interactions were multiscalar. For example, the nongovernmental organizations that commented and ultimately sued the County have ties to multiple levels of government through their mix of local, state, and national offices and relationships. When they viewed the County as insufficiently responsive to their comments regarding climate change, these nongovernmental actors, as well as the state of California, used the top-down approach of a lawsuit under the California Environmental Quality Act to force further action.\(^2\)

Although the state court's authority over the County through the lawsuits is top-down, the County's environmental efforts, most of which are not explicitly linked to the lawsuit, have both top-down and bottom-up elements. For example, Green County San Bernardino involves smaller governmental and social units within its borders, but is also a collaboration with a same-level governmental entity, Riverside County (itself comprised of smaller units and through relationships with larger ones), to form the regional initiative, Green Valley Cities. In addition, one of the "smaller-scale" units participating in Green Valley Cities is the March Air Force Base Joint Powers Authority, which is both "a federally recognized reuse authority for a formerly active base" and a local governmental entity governed by three cities and Riverside County.\(^3\)

Even in the portion of its efforts most directly linked to the lawsuit—the revision of its General Plan\(^4\)—the County makes choices based on the consultant's recommendations about how to monitor emissions and reduce them.

Moreover, when these interactions are viewed through a broader scalar lens, most of them take place near the legal "bottom." The top-down forcing of San Bernardino County's regulatory efforts comes from state-level government, a level well below the national and international negotiations about climate treaties and national implementation. Although certainly the County makes choices which are impacted by federal legislation and regulation, an influence that will likely grow in

\(^2\) See sources cited supra note 2.


\(^4\) See sources cited supra note 3.
the climate change arena under the Obama Administration, most of the key actors in this narrative are entities that are a step up or down from the County on the regulatory chain.

In this version of local climate regulation, then, what constitutes "the local" emerges from complex, multiscalar interactions of sociolegal spaces across networks. However, those networks are largely comprised of smaller-scale actors. As a result, the County's regulatory scale in this climate context develops through an ever-evolving web of relationships clustered around the county level. That clustering reinforces the notion that county-based efforts have a distinct scale—one that comports with a traditional sense of "local" as small-scale—even as those efforts are multiscalar.

III. CONCLUDING REFLECTIONS ON THE SCALE OF LOCAL

San Bernardino County's efforts to regulate climate change can only be understood through a detailed engagement of specifics, a full exposition of which is beyond the scope of this Essay. The County has a particular geography, economy, ecology, population, politics, and culture, all of which vary within the County and remain connected to forces beyond the County's border. Other local entities' attempts to address climate change are similarly unique.  


56. Levi's and my prior work on Portland and Tulsa engages two examples of such local variation. See Osofsky & Levi, supra note 1.
But throughout these individual stories are common threads of micro-interactions and multiscalar networks which help to shed light on the scale of "local." In order to influence local efforts on climate change and understand their impact, we have to unpack these networks and the many small-scale relationships that help to constitute them. Bottom-up networking narratives like the one begun in this Essay serve as small steps in such an approach. Such narratives provide a means for exploring the nuances of what it means to be a local territory in a globalizing world, and how smaller scale efforts fit into the transnational regulation of multiscalar problems like climate change.