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## How environmental protection agencies can promote eco-innovation: The prospect of voluntary reciprocal legitimacy

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### ABSTRACT

This paper examines the UK and Irish Environmental Protection Agencies (EPAs) ability to move beyond regulatory compliance to support and promote sustainable environmental innovation, in short “eco-innovation”. To do so would require them to overcome the perception that they face, often being perceived as ‘policemen’ by the regulated business community. We propose a new empirically-derived theoretical construct called Voluntary Reciprocal Legitimacy (VRL), defined as the development of mutual trust between the regulator and business resulting in arrangements which generate eco-innovation benefits for the regulator, the regulated business communities and society at large. VRL adds a new category to Suchman’s (1995) theory of moral legitimacy as well as highlights how EPAs can build trust between themselves and regulated business, allowing a shift of the ‘beyond compliance’ legislative boundary. Such an approach supports eco-innovation whilst simultaneously protecting the natural environment.

### 1. Introduction

Credibility of Environmental Protection Agencies (EPAs) in pursuing environmental regulatory activities is governed by its legitimacy. This legitimacy can be seen as increasingly important in view of the recently enhanced role of British and Irish EPAs in relation to promoting eco-innovation and sustainable economic growth within their jurisdictions (Environment Agency, 2015; SEPA, 2014). For example, the Regulatory Reform (Scotland) Act 2014 (section 51) recognises that protecting and improving the environment (including managing natural resources in a sustainable way) has high potential to contribute to improving the health and well-being of people, and to achieving sustainable economic growth, thus acting as a further stimulant to eco-innovation (SEPA, 2016). Discussion of the legitimacy of EPAs focuses on two elements: procedural and consequentialist legitimacy (Suchman, 1995). Procedural legitimacy relates to the propriety of processes by which environmental regulations and policies are determined and implemented, and applies to whether environmental regulation is best made by government actors (Eden, 1999) or by non-state market actors (Carmin et al., 2003; Cashore, 2002). In addition, there follows the question of how environmental regulation has been institutionalised and legitimised in a particular context (Francesch-Huidobro, 2012).

Consequentialist legitimacy concerns the extent to which these regulations are successful in achieving their goals (Eckersley, 2007).

Sustainable-orientated innovation (henceforth *eco-innovation*), combining motivation and performance producing environmental benefits (Oltra et al., 2010) is regarded as critical to achieving sustainable economic growth. For instance, Adams et al. (2015) argue that moving from incremental sustainable innovation to system-building, “beyond firm” innovation involves a paradigm shift that will entail “intimate, interdependent collaboration between previously unconnected actors, such as NGOs, industry associations and economic development organisations” (p.193). Collaboration between regulators and business is, therefore, necessary to support the movement towards more radical environmental innovation underpinning sustainable economic growth (Berry and Rondinelli, 1998).

Despite the desire for environmental well-being in societies, environmental regulation can often encounter resistance due to regulators lacking legitimacy in face of suspicions of “Big Government” and fears that regulation contradicts and limits the achievement of economic goals and growth (Francesch-Huidobro et al., 2012; Herbert, 2014). The suspicion of “Big Government” is about procedural legitimacy, to do with the regulatory process, in this case, relating to whether the government is the right actor to regulate and whether it has excessive

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power in regulation (Eden, 1999). The consequentialist stance on legitimacy considers the success with which intervention leads to positive environmental outcomes as a crucial part of the legitimacy of environmental regulation and policy (Eckersley, 2007), with judgements about the contribution of interventions and institutions to solving environmental problems necessary (Kronsell, 2013). Moreover, consequentialist legitimacy can be extended to consider the impact of intervention on sustainable economic growth (Herbert, 2014).

The economic impact of environmental regulation is linked to a body of research examining whether such regulation induces or stifles innovation in regulated industries (Allan et al., 2014; Ambec et al., 2013; Cohen et al., 2013; Kesidou and Demirel, 2012; Porter and Van der Linde, 1995a; Wagner, 2003). Although under Suchman's (1995) institutional perspective, an organisation's legitimacy is socially constructed by its context, he argues that an organisation can manipulate its context to acquire legitimacy. This suggests that EPAs can take action to manage procedural and consequentialist legitimacy and, in so doing, legitimise their eco-innovation activities beyond regulatory compliance.

The literature on the legitimacy of environmental regulation, procedural legitimacy and consequentialist legitimacy are often considered separately (Eckersley, 2007). Research on the legitimacy of environmental regulation is more concerned with the procedural legitimacy of regulation, in terms of regulatory processes and policy design (Cashore, 2002; Eden, 1999; Francesch-Huidobro, 2012; Herbert, 2014). However, processes that are effective in engaging stakeholders are of little value if few tangible outcomes are delivered by them in terms of achieving positive environmental outcomes for society. In other research, more directly concerned with the impact of environmental regulation on innovation within firms, there is greater orientation towards the outcomes of environmental regulation in achieving sustainable economic growth, thus the rationale for consequentialist legitimacy of environmental regulation (Fischer et al., 2003; Kesidou and Demirel, 2012; Porter and Van der Linde, 1995a). Conversely, outcomes in terms of regulations effectively stimulating environmental innovation can be undermined by poor policy design and limited stakeholder involvement.

Few studies consider both forms of legitimacy explicitly in parallel which is intriguing given that they appear to be counterparts of each other (Eckersley, 2007; Kronsell, 2013). In this paper, it is argued that harnessing both procedural and consequentialist legitimacy simultaneously is of crucial importance for EPAs if the pursuit of their activities aimed at stimulating eco-innovation and sustainable economic growth requires resources from social groups, such as consent from the (regulated) business community, public agreement and governmental backing (Suchman, 1995). This legitimacy may partly depend on whether regulation is legitimated and institutionalised in the context in which they operate and on the attempts of regulators to forge legitimacy to further their own strategic needs (Francesch-Huidobro, 2012). If EPAs are to be successful in the pursuit of activities to stimulate eco-innovation and sustainable economic growth, they should harness procedural and consequentialist legitimacy in order to gain support and resources from the businesses that they regulate as well as government.

Given the complexity and tensions identified in the literature – seeking collaboration yet suspicion of regulators, desire to support eco-innovation yet power dynamics between the actors, and the desire to create beneficial outcomes for environment, society and businesses, this paper examines the relationship between procedural and consequentialist legitimacy for EPAs. It is based on three empirical sources (i) a Pan-European EPA benchmarking exercise to identify current practices that support eco-innovation, (ii) interviews with senior executives of the UK and Irish EPAs as well as representatives from business support agencies, and (iii) insights from a multi-stakeholder workshop involving EPA representatives from Scotland, England, Wales, Northern Ireland and the Republic of Ireland. It aims to explore the extent to which UK and Irish EPAs acquire procedural and

consequentialist legitimacy in the pursuit of activities to promote eco-innovation and, therefore, sustainable economic growth.

This paper responds to the separation of procedural and consequentialist legitimacy in the literature by exploring how EPAs can gain, moral legitimacy through stimulating and supporting eco-innovation activities by the industries and businesses they regulate. The new empirically-derived construct introduced in this paper – Voluntary Reciprocal Legitimacy (VRL) – extends our understanding of the theory of moral legitimacy proposed by Suchman (1995). The VRL construct encapsulates the ways in which EPAs acquire both procedural and consequentialist legitimacy to advance their activities in promoting eco-innovation and, therefore, sustainable economic growth in ways that go beyond their regulatory compliance role. Procedural legitimacy is concerned with the nature of the processes of engagement between the EPA and regulated organisations to support eco-innovation. Consequentialist legitimacy is concerned with the extent that the outcomes of the processes of engagement promote beyond compliance that protects and improves the natural environment, and simultaneously creates sustainable economic growth and well-being benefits (Suchman, 1995). In doing this, VRL will contribute to the reconciliation of legitimacy concepts that may be useful for environmental regulators in view of their pursuit of eco-innovation and sustainable growth.

The rest of the paper is set out as follows: next we discuss legitimacy theory – procedural and consequentialist – and its relevance to environmental regulation and eco-innovation; we then discuss the research context, data gathering and data analysis; we then present our empirical findings; this is followed by a discussion of the proposed new theoretical construct: VRL; finally we draw out conclusions including implications for policy and practice.

## 2. Legitimacy theory and its application to environmental regulation

In this section we will, firstly, discuss the evolution of the literature on legitimacy within the debate on environmental regulation and, secondly, focus more closely on the complexities of procedural and consequentialist legitimacy, drawing on Suchman's (1995) seminal work on legitimacy theory. Suchman (1995) describes legitimacy as:

“[...] a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values beliefs and definitions” (p 574).

Suchman (1995) argues that legitimacy enhances the durability of an organisation, as it is more likely to gain resources from social groups (and society more broadly) if its activities are perceived in a positive manner. This, of course, may matter less for organisations that do not require resources from social groups; it may only be important to those organisations in that they do not lose their right to operate. Suchman (1995) identifies three different forms of legitimacy: pragmatic, moral and cognitive legitimacy. Pragmatic legitimacy stems from whether the organisation's activities can meet the self-interested needs and motivations of its “immediate audience” (p.579) (e.g., shareholders). Moral legitimacy is about whether the organisation's activities are regarded as being accepted by society, whereas cognitive legitimacy involves the acceptance of an organisation being self-evident and not subject to issues which involves the interests of different groups, or the evaluation of its activities from a moral perspective (see Fig. 1 below highlighting the perceived distinction between procedural and consequentialist legitimacy). Procedural and consequentialist legitimacy, as mentioned above, belong to moral legitimacy and form the focus of this paper.

Suchman (1995) further differentiates between institutional and strategic views of legitimacy, with the institutional lens being outside-in, whereby factors in an organisation's context shape its legitimacy, such as the political climate and prevailing social norms. In contrast, the strategic lens is inside-out, where an organisation attempts to shape its context to acquire legitimacy. The strategic lens refers both to how

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