

Discussions of cap and trade tend to frame it in various ways, which often skews the debate. These different frameworks guide the thoughts of both supporters and critics, sometimes in surprising ways. There are four different ways to talk about cap and trade, and they tend to lead the debate in very different directions.

The Economics Frame. Cap and trade began with economists, and economics still plays a large role in discussions by policy wonks. For an economist, cap and trade is a tool to solve an economic problem as cheaply as possible — the economic problem being that sources of pollutions impose costs on others rather than themselves. In general, economists favor either emissions taxes or cap and trade to deal with pollution, depending on circumstances. In the case of climate change, they prefer a carbon tax for technical reasons that aren't worth getting into here, but their second choice would be cap and trade. Legal issues and implementation problems tend to be peripheral to this framework.

The Free Market Frame. We can also think of cap and trade as a way of creating a new form of property and then using the power of the free market to improve the environment. Until a few years ago, conservatives favored this viewpoint, and it probably played a role in George H.W. Bush's support for using cap and trade to address acid rain. People on the Left often share this framework but draw the opposite conclusion: they worry about making pollution into a form of property and thereby legitimizing it, and they're afraid that markets will operate to the detriment of disadvantaged communities. Using this framework naturally makes one think about property law rules that might apply to the permits and various kinds of market regulations that might apply to transactions.

The Regulatory Frame. A third possibility is to consider cap and trade to be just another tool that government regulators can use to achieve their goals. This is distasteful to conservatives but congenial to liberals. From this perspective, the legal issues relating to cap and trade are basically part of administrative law.

The Tax Frame. A recent [book](#) by Sanja Bogojovic does a great job of delineating these frameworks for thinking about cap and trade, as well as showing how they have operated in the European context. Because her focus is Europe, however, she doesn't discuss a fourth framework: cap and trade as tax. This framework was adopted by conservatives in opposing the Waxman-Markey bill. But liberals, too, are beginning to realize that cap and trade (with auctions of allowances) could be revenue enhancers. This approach switches the focus to fiscal policy and to laws relating to taxation — for instance, whether allowance auctions in California violate

Prop 13 (the anti-tax measure).

It's interesting that these frames can work both ways — for instance, that the “free market” frame is shared by old-fashioned conservatives and environmental justice advocates, but pushes them in opposite directions. Of course, cap and trade is really all of these things in some ways and none of them in others. But we seem to need frames to help us think about the world, even as we suffer from their ability to distort debate.