

“The Environment and Anti-Americanism”

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The Environment and Anti-Americanism*

If the intellectual landscape allows for “respectable prejudices”,¹ then anti-Americanism regarding the global environment has as sound a claim as any. Of course every prejudice, every “feeling towards a person or thing, prior to or not based on actual experience”,² is presumptively objectionable. But when we think of contemporary environmental challenges, the predilection of anti-Americanism can be stripped of its dubious character – made “respectable” – on the basis that there is a solid foundation for our objection. Indeed, there are few areas of international governance where our “actual experience” leads so strongly to an unfavorable feeling as in respect of America and the environment. Whether pertaining to patterns of American consumption, the failure to ratify the Kyoto Protocol or the actuality of extreme climate phenomena, ill dispositions to the US are not entirely absent “actual experience”. If we were looking for evidence of (in)activity in the realm of the environment, any informed global citizen would be able to point to evidence of American conduct that reflects ill on that polity.

The meeting of the environment and anti-Americanism is a pressing and novel issue in the early years of this century. This is not due to the fact of American economic hegemony and its environmental consequences (a matter we've had the better part of a century to acculturate to), so much as the belated cognizance of anthropogenic global climate change, its causes, its effects and the steps taken to combat it. When analyzing the why and what of climate change, the singular position of the United States is a recurrent theme – the American contribution to the production of green house gases and the reluctance to engage in international efforts to tackle climate change being merely the better known charges laid against America. Be that as it may, the question remains whether such conventional wisdom is sufficient to justify a

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¹ Brendan – this is a reference to an article of yours that you mentioned in correspondence. Could you provide the citation?

² *Oxford English Dictionary*, 2nd ed., s.v. “prejudice.”

feeling of anti-Americanism, which in turn revolves around our understanding of that term itself.

Definitions of anti-Americanism must be sensitive to a number of dimensions, not least those of breadth and essence/conduct. Regarding the former, one might adopt the view of Rubinstein and Smith who see anti-Americanism,

as any hostile action or expression that becomes part and parcel of an undifferentiated attack on the foreign policy, society, culture and values of the United States.³

Such an approach is attractive in its embrace, capturing diverse aspects of American activity, the opposition to them, and critically, the weakness of criticism which is essentially unreflective or “undifferentiated”. Nonetheless, the analytical utility of such an approach can be sharpened if we keep in mind, as do both Toinet and Zeldin, the slightly hysterical notion of an opposition to a whole nation.⁴ The weight the term must bear in order to serve any useful end is well put by the former’s insistence that the term “is only fully justified if it implies systematic opposition – a sort of allergic reaction – to America as a whole.”⁵ This is indeed a weighty burden to bear, or to put it another way, quite a high hurdle for the concept to clear in order to serve any useful purpose. Is it the barrier set too high? By adopting such a standard do we become apologists, merely ensuring that no criticism can “justifiably” be termed anti-American, and so neutering the term from the off? It is the argument herein that this definition can indeed be satisfied, that there are circumstances in which the case can be made for a “systematic opposition...to America as a whole” and indeed that the global environment is just such a realm in which that very argument can plausibly be made.

³ Alvin Rubinstein and Donald Smith, “Anti-Americanism in the Third World,” *The Annals of the American Academy of Political and Social Science* 497 (1988): 35-45.

⁴ Theodore Zeldin, “The Pathology of Anti-Americanism” in *The Rise and Fall of Anti-Americanism*, eds. Denis Lacorne, Jacques Rupnik, Marie-France Toinet (Basingstoke: Macmillan, 1990), 35.

⁵ Marie-France Toinet, “Does Anti-Americanism Exist?” *ibid.*, 219.

The second dimension of the definitional work is the is/does dyad, or, can we impugn America for what it is – its values, beliefs, foundational myths etc – or only for its conduct? The “essentialist” approach certainly chimes with popularly shared ideas of America, namely, a society captured by commerce, uncritically convinced of the notion of progress, overly religious, and so on. Less appealing from a scholastic perspective is the chimerical quality of such an approach. For every perception of American religiosity in the form of tele-evangelism, there would be an equal and opposite perception of rampant secularism in MTV. Attempts at pinning down what America “is” will invariably be subverted by the task of speaking generally and accurately about a diverse polity of 275 million people. As pertinently perhaps, the view might be taken that an “allergic reaction” to the values of a society is a form of discrimination akin to racism (excepting the *de minimis* case of societies that hold to National Socialist or other fundamentally repugnant beliefs). Value-based societal objections of this sort seek to classify a vast swathe of humanity not on the basis of what they do but who they are and what kinships they hold. Accordingly, condemnations (or lionizations) move off from a sounder footing when they focus on the conduct of America rather than its being. As we shall see, criticism of American environmental policy on the basis that, say, it is dominated by corporate concerns that enjoy a disproportionate sway over governmental decision making will have greater moment than assertions that “Americans don’t care about the environment”. Care must certainly be taken in ensuring that the evidence of “doing” is evenly selected and deployed, but notwithstanding this modest methodological stricture, the focus on American *conduct* in respect of the environment yields a convincing account of claims of anti-Americanism in this realm.

The issue of global climate change will loom large in this analysis. Whilst not downplaying threats to biodiversity, river pollution or even zoning regulation, climate change as a focus of study has a pre-eminence in contemporary environmental discourse. Moreover, as an issue of regulatory and intellectual concern, the potential of human intervention to bring about climate change and

airborne pollution has long commanded the attention of American governments and other actors. Indeed, from as early as the foundational period of the Republic, there has been an awareness of the capacity of human agency to alter the environment.

Environmental Thought in the Early American Republic

As early as the eighteenth century, there was a prominent debate in America surrounding questions of climate change and particularly the role that humans played in that process. Figures of no less standing than Thomas Jefferson – a man who claimed greater pride in his Presidency of the American Philosophical Society than that of the Nation – engaged with European thinkers in a transatlantic debate that linked climate with culture and civilization. Ideas of this sort have origins in the ancient world⁶ but for present purposes, the debate sprung from enlightenment Europe, sections of whose elites viewed the New World with some disdain. Noting the struggles of the early colonists with the novel climate – its harsher storms and colder winters – European *philosophes* took the view that North America was a frozen, primitive and therefore degenerate continent. The foremost European protagonist of this school was Abbé Jean-Baptiste Du Bos whose *Critical Reflections on Poetry and Painting*⁷ was praised by Voltaire as “the most useful book ever written by a European on these matters.”⁸

Du Bos’s work was principally concerned with aesthetics, making the argument that artistic genius could only flourish in countries with suitable climates. These propitious climates could be identified scientifically – they all were to be found between 25° and 52° North – and the changes in climate that took place over

⁶ Aristotle’s *Politics* famously linked the quality of air and climate to the “exhalations” of a polity (Aristotle, *The Politics* (New York: Viking Penguin, 1981)); Hippocrates’ *Corpus* made a similar but distinct connection between climate and health and national character (*Corpus Hippocraticum* (Amsterdam: A.M. Hakkert, 1961)).

⁷ *Réflexions critiques sur la poésie et sur la peinture* (Paris: n.p., 1719)

⁸ *Dictionnaire de Biographie Française*, s.v. “Du Bos,” quoted in James Fleming, *Historical Perspectives on Climate Change* (New York: Oxford University Press, 1998), 12.

time accounted for the fluctuations in artistic achievement of cultures over time. Thus, Du Bos was able to arrive at a theory of climate (airs, waters and places) and culture that was able to explain the cultural highpoints, or “Illustrious Ages”, of Greece under Philip of Macedon, Rome under Julius and Augustus Caesar, sixteenth century Italy at the time of Popes Julius II and Leo X, and of course, his own era of France under Louis XIV. Borrowing from the language of viniculture, Du Bos argued that just as the grapes of one particular year produce a characteristic vintage, so the inhabitants of a given nation at a particular time represent a cultural vintage distilled from the quality of the air and soil. Only the most favored nations coinciding with the most favored times would produce superior cultural distillations. Those less graced, either in terms of air or water or time, will produce table wines. The unlucky will produce vinegar.⁹

Predictably some European elites saw America as a somewhat vinegary place. However, within the terms of Du Bos’ critique were the seeds for a counter argument. What distinguished his argument from his predecessors was that he wrote not merely of the linkage between culture and climate, but between culture and climate *change*. In this Du Bos was followed by luminaries such as Edward Gibbon, Johann Gottfried von Herder and ultimately the man whose candidacy for a position at the *Academie Française* he sponsored, de Montesquieu, who opened up the political implications of his ideas in the phrase, “[t]he empire of climate is the first of all empires.” By this, Montesquieu sundered the notion that European-type civilizations could not prosper in the North American climate, as it was too extreme. If moderation was possible, then Europeans could in fact colonize the New World as the climate became closer to a “civilized” standard and, importantly, less suited to the natives.

To the generation of the Founding Fathers, the view of their nation as a substandard locus was an affront to their nascent sense of patriotism and as such strongly provocative. The upshot was a literature of apologetics in which Jefferson himself played a key role and can be seen as the catalyst for what is

⁹ Fleming, 13.

almost certainly the first transatlantic debate on climate change.¹⁰ In response to de Buffon's speculation that because of the cooler and more humid American climate its flora and fauna were degenerate,¹¹ Jefferson launched a patriotic defense of the natural phenomena of the New World. In his *Notes of the State of Virginia*, Jefferson argues à la Du Bos and Hume, that the American climate is ameliorating and improving as a consequence of settlement,

A change in our climate....is taking place very sensibly. Both heats and colds are becoming more moderate within the memory even of the middle-aged. Snows are less frequent and less deep...[t]he rivers, which then seldom failed to freeze over in the course of the winter, scarcely ever do so now.¹²

In this and subsequent writings, Jefferson engaged in two intellectual enterprises. One was a literary debate concerned with climate and culture and change, conducted with European scholars, in the tradition of natural philosophy deploying the language of literary argument. Simultaneously, he talked about these same issues in a distinctly scientific voice, with that discipline's concern for measurement and the accumulation of statistical data.¹³ Standing then at the crossroads of these traditions, Jefferson was pivotal as a prominent interlocutor in a transatlantic conversation concerning the very nature of the New World, developing a national sense of pride in not just what America was, but how it could be shaped by human agency, principally through changing the climate such that it would provide the conditions for the new nation to flourish. The related achievement of Jefferson's work in this area was his ensuring that measurements of American climate were taken before the climate changed.

¹⁰ Du Bos' work came to North America via David Hume and his *Of the Populousness of Ancient Nations*, which noted that the climate of Europe had changed gradually over two millennia as forests were cut down, swamps drained, agriculture organized on a large scale etc whilst America had undergone a similar change in merely two centuries. David Hume, "Of the Populousness of Ancient Nations," in *Essays, Moral, Political, and Literary* (Oxford: Oxford University Press, 1963), 381.

¹¹ Georges-Louis Leclerc, *Histoire Naturelle* (Paris: n.p., 1802), quoted in Fleming, 24.

¹² *Notes of the State of Virginia* (Gloucester, Mass.: Peter Smith, 1976).

¹³ Fleming, chapter 2.

Both through his writings, and his example,¹⁴ Jefferson ensured that networks of individuals developed across the nation dedicated to the accurate observation of the environment. The hope, unrealized in his lifetime, was that Federal funds, under the supervision of the American Philosophical Society, would allow such a nationwide meteorological system to develop. Nonetheless, the Society did lend its enthusiastic support to surveys of various sorts, most famously the seminal expedition of Lewis and Clark. From this point onwards, surveys, expeditions, studies and so on proliferated at the local, state and national level through out the nineteenth century.¹⁵

There is little doubt that the catalyst for the systematic observation of the American environment was the dim view taken of it by European natural philosophers of the enlightenment. A combination of scientific enquiry was coupled with patriotic affrontedness to generate a distinctly American response – one that advanced the argument into the new territory of empiricism away from literary argumentation. By the commencement of the nineteenth century, a complex of meteorological systems and surveys had provided scientists with a volume of data such that new views of the climate could be arrived at.

To the extent that this episode subverts the trope of anti-Americanism that claims that Americans "don't care", the early discourse of the environment is of significance. Not only was the climate a matter of concern to intellectuals of the Foundational period, it attracted and held the attention of figures no less than Jefferson and Madison who in turn spurred the development of the science of climatology.¹⁶ Related developments in the nineteenth century such as the protection of areas of outstanding natural beauty¹⁷ and the subsequent development of the National Park Service¹⁸ similarly undermine the notion of

¹⁴ With James Madison, Jefferson is credited with making the first simultaneous meteorological measurements in 1778.

¹⁵ See Fleming, 40-1.

¹⁶ *Ibid.*

¹⁷ In 1864 Congress donated the Yosemite Valley to the state of California for preservation as the world's first state park.

¹⁸ In 1916, at the instigation of President Woodrow Wilson.

American indifference to the environment. The argument might even be made that "America's instinct for conservation has been a longstanding domestic concern."¹⁹

Certainly, there is ample evidence to be had of the devastating environmental impact of the nation's industrialization, but in this respect it was certainly not distinguishable from other nations engaged in the same project.²⁰ Accordingly, "systematic opposition" to America on the basis of this early period would either be over-inclusive (as one would then be compelled to be opposed to every other industrialized polity) or under-inclusive (as failing to account for the sophisticated debate and action on the environment). Either finding would be suspect. However, as American economic hegemony extended, the oppositional argument might well have become easy to sustain. In terms of generating opposition to American policy, few administrations can have been as effective as those of Richard Nixon. Best known for his foreign policy exploits and domestic disgrace, there is a strong (though scarcely known) argument that Nixon's was the most environmentally significant administration in American history.

The Accidental Environmentalist – President Nixon in America

Owing to their perceived closeness to business, Republican administrations are rarely seen as environmentally progressive. In this respect, Richard Nixon could be expected to have been an exemplar. Despite hailing from San Bernardino, California, the young Nixon had an improbably fleeting relationship with nature. Academics were obviously central to the young man that won a full fee scholarship to Harvard (that he could not take up because it did not cover living expenses), but it is somewhat startling that he never ventured to the mountains

¹⁹ See Philippe Sands, *Lawless World: America and the Making and Breaking of Global Rules* (London: Allen Lane, 2005), 74.

²⁰ See David Blackbourn, *The Conquest of Nature: Water, Landscape and the Making of Modern Germany* (London: Jonathan Cape, 2006).

and only rarely to the ocean.²¹ From his brief career as a lawyer, and then his early experiences in the House of Representatives (where he made his name in the House Un-American Activities Committee) and then the Senate, there was no indication of the slightest interest in environmental issues. Nixon was of course the consummate politician and to the extent that substantive policy issues concerned him, they were those for which his Presidency became famous – foreign affairs. Nonetheless, a respectable view amongst environmental lawyers and policy scholars is that in terms of achievement, Nixon ranks amongst the great environmental President. The basis for this claim comes from the record established in the 1969-71 period in which the institutional framework for modern environmental governance at federal level was created. Not only was this an innovation in American policy making, it was considerably in advance of developments taking place in comparable polities such as Japan or the European Union and established a regulatory approach that has since had global influence.

The commonly attributed source for the Nixon administration's focus on environmental matters is groundswell of opinion that led to the original "Earth Day" of April 22, 1970. This outburst of democratic participation and ideological politics was created by widespread public demand for environmental protection. With over 70 million Americans participating in a variety of public events there seemed to be a "republican moment", indicating a remarkable degree of willingness on the part of individuals to undergo sacrifices to promote the public good.²² A political animal as astute as Nixon simply could not fail to respond to such popular sentiment and coupled with the risk of being outflanked by Democratic Congressional leaders such as Sen. Edmund Muskie of Maine, he moved decisively to embrace environmentalism. Indeed, in the first full year of

²¹ Richard Nixon, *The Memoirs of Richard Nixon* (New York: Grosset and Dunlap, 1978), 1, 4; Stephen Ambrose, *Nixon: The Education of a Politician, 1913-1962* (New York: Simon and Schuster, 1987), 27.

²² Richard Lazarus, "A Different Kind of "Republican Moment" in Environmental Law," *Minnesota Law Review* 87(4)(2003): 999.

his Presidency, Nixon passed a comprehensive raft of environmental regulation, unfurling his new approach in the following terms,

It is particularly fitting that my first official act of this new decade is to approve the National Environmental Policy Act...I have become convinced that the nineteen-seventies absolutely must be the years when America pays its debt to the past by reclaiming the purity of its air, its waters and our living environment. [The administration is] determined that the decade of the seventies will be known as the time when this country regained a productive harmony between man and nature.²³

This message was buttressed later in January 1970 with Nixon's first State of the Union address, which stressed the importance of environmental quality and appeared to place the White House at the forefront of environmental activism. The success of this rhetorical strategy can be judged by the (largely approving) debate that followed in elite, policy, religious and other circles.²⁴ It would be unduly cynical however to see this as only so much window dressing. Following the passing of the National Environmental Policy Act, in December 1990 the Environmental Protection Agency was created and as importantly, new amendments to the Clean Air Act were signed into law, establishing the nation's first sweeping pollution control law. Collectively, these measures were nothing less than a revolution in environmental policy making. As far as the latter instrument is concerned, the innovation came not from the legislative incursion into this area of activity – after all, these were amendments to the previous Clean Air Act. What was so striking about the new regime was the policy of Congress setting a national ceiling or cap for SO_x and NO_x (sulfur and nitrogen oxides) emissions, allocating a share to every major polluting plant and allowing these pollution entitlements to be traded – a model is known as cap-and-trade regulation. By contrast to the traditional “command and control” mode of

²³ *New York Times*, January 2, 1970, 1, 20. The NEPA has been described as “the world's first comprehensive environmental protection regime”, see Sands above. *Inter alia* the Act provided federal assistance in the development and operation of state coastal zones plans, mandated exhaustive studies prior to the approval of large federal projects and established a powerful Council on Environmental Quality.

²⁴ See J Brooks Flippen, *Nixon and the Environment* (Albuquerque: University of New Mexico Press, 2000), 53-55.

pollution regulation, in which volumes of emissions are limited by administrative fiat (with all the inefficiencies that that entails), the market based approach of cap-and-trade claims to reduce emissions in the most economically efficient way by leaving the question of allocation to the market. Under either mode, the aggregate quantity of emission saving is identical. The difference lies in the cost of abatement, with the market based mechanism claiming significant allocative efficiency.

Notwithstanding the accomplishment of this legislative effort, there is ample basis on which to doubt their environmental credentials, at least insofar as we are focusing on the question of motivation. Nixon himself was no environmental radical, and was later to describe environmentalists as advocates for “ecological perfection at the cost of bankruptcy.” To the extent that he was energized by the issue, the popular momentum generated by Earth Day was too great even for someone of his policy dispositions to ignore. Further, much of the substantive energy for them came not from the President himself but a group of advocates within the White House (principally John Whitaker, William Ruckelshaus, Russell Train and Walter Hickel) who operated autonomously and often in open conflict with more Conservative elements in the administration and the Republican Party as a whole.²⁵

The fragility of this opportunistic compromise became apparent with unseemly haste. With the same speed that heralded its advent, the conviction of the environmental argument dissipated markedly in 1971. In a conversation with his Chief of Staff Bob Haldeman, Nixon said of the environment,

[it] has to be done but it's not worth a damn...I have an uneasy feeling we're doing too much...it's not a good political issue...it's only a good defensive issue. We're catering to the left in all of this...Don't play up the idea of destroying the system.²⁶

²⁵ *Ibid.*, chapters 1 and 2.

²⁶ Quoted in Richard Lazarus, *The Making of Environmental Law* (Chicago: University of Chicago Press, 2004).

Nixon's feeling that he had milked all the potential political juice from the issue was repeated in various noted conversations throughout the spring of 1971.²⁷ It did not take long thereafter for the President to move decisively away from acceptance of environmental reforms. In July 1971 it was decided to examine all political bills in terms of their economic effects, which was of course a device to slow down the environmental juggernaut without "getting caught". Haldeman himself noted that, "economics is more important than cutting [Senator] Muskie." The sentiment was put even more strongly one year later when Nixon himself stated,

all the ecological arguments we hear today are for the privileged, not the underprivileged. The disadvantaged don't get the benefits of ecology. Only rich people and [Supreme Court] Justice Douglas do.²⁸

Thus, having decided that the political numbers were not stacking up in his favor on environmental matters, Nixon did not so much change gear on policy as perform a U-turn, as highlighted by his veto of the Clean Water Act in October 1972. The timing of that decision, a matter of weeks before voting in that year's Presidential election, indicates just how Nixon's calculation of the politics of the environment had shifted since the heady days of 1970. Given his landslide victory over George McGovern in the 1972 election, it is certainly arguable that Nixon read these runes accurately.

Any analysis of this period is bound to balance the record of substantive accomplishment (to the abovementioned legislative record, one should also note the banning of DDT and the passing of the Environmental Species Act – both against powerful corporate interests – as well as Nixon's own decisive contribution to the establishment of the United Nation's Environment Program in 1972²⁹) with the low politics that gave the environmental cause its initial

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ See Sands. In 1972 Nixon proposed a new legal instrument, "for the nations of the world to agree to the principle that there are certain areas of such unique worldwide value that they should be treated as part of the heritage of all mankind and accorded special recognition as part

momentum and just as quickly undermined it. What should not be forgotten is that whatever the President's own approach, the manifestation of popular opinion in favor of stronger environmental awareness and protection in the Spring of 1970 is significant for the light it casts on the attitudes of large sections of the American population. As such it cannot be lightly dismissed, nor can the fact that the Democrats held majorities in both chambers during Nixon's first term and formed a powerful pro-environment faction in the legislature.³⁰ Seen in these terms, and coupled with the infrastructural achievement of the brief moment of environmental activism, the charge of anti-Americanism sits ill with this period. The dubious motives of the administration are beyond argument,³¹ but both the popular and constitutional structures of America were sufficiently concerned with environmental protection such that environmentalism was firmly installed in the American polity by 1973.

The Development of International Environmental Agreements

Whilst the bulk of Nixon's second term was dominated by the Watergate Scandal, at the University of Berkeley, California, an even more momentous story, in environmental terms at least, was brewing. In a paper that would two decades later earn them a Nobel Prize in Chemistry, Mario Molina and Sherwood Rowland argued that stratospheric ozone could be destroyed by releases of chlorofluorocarbons (CFCs).³² Since their discovery in 1928, the use of CFCs expanded rapidly. The non-toxic, highly stable and cheap chemical

of a World Heritage Trust." The World Heritage Convention was adopted in 1972, with the USA the first country to ratify.

³⁰ The average votes in favour of major environmental legislation during the 1970s were as follows: Senate: 70 versus 5; House: 331 versus 30. See Lazarus, 2004.

³¹ Into the balance cannot be excluded the use of defoliants in the Vietnam War. Various named Agents Pink, Green, Purple, Blue, White and Orange according strength, from 1961 to 1971 these chemicals were used to devastating human and environmental effect – see Christopher Hitchens, 'The Vietnam Syndrome,' *Vanity Fair* August 2006. Crediting Nixon for overseeing the cessation of this policy is difficult to stomach, although he evidently did not devise or initiate it. In any event, it is unlikely that strictly *environmental* considerations ever entered into the calculus for their use or disuse.

³² M.J. Molina and F.S. Rowland, 'Stratospheric Sink for Chlorofluoromethanes: Chlorine Atom-Catalysed Destruction of Ozone,' *Nature* 249 (1974): 810-12.

answered all number of industrial production questions, from the propulsion of aerosols to cleaning microchips and refrigeration. Notwithstanding its apparently boundless uses, Molina and Rowland discovered that after release, CFCs make their way into the stratosphere, break down after exposure to solar radiation and release chlorine which destroys ozone. In turn ozone depletion creates a risk to planetary survival that is difficult to overstate.

The press and television reporting of this scientific paper was considerable in the US, generating much popular concern.³³ The US National Academy of Sciences responded quickly with a follow up study to the Molina-Rowland paper, predicting that CFC releases could deplete the ozone layer by up to seven percent – a substantial risk. Of particular importance for our later discussion, even though a casual link between stratospheric ozone depletion and CFCs was at that point still unproven, the US moved decisively (and unilaterally) to restrict the consumption and production of CFCs.³⁴ This lead was followed by Belgium, Canada, Norway, Brazil, Australia and the EU.³⁵

As welcome as these essentially uncoordinated national measures were, the recognition of the ongoing risk from CFCs to the global climate led to international efforts to address the problem, culminating in the Vienna Convention for the Protection of the Ozone Layer of March 1985. Sands notes of the American role in negotiations,

[t]he United States led international efforts to address the problem, and in 1985, after five years of tortuous negotiations, much delayed by skeptical Europeans, more than 130 countries adopted a global convention to protect the ozone layer.³⁶

³³ Jim Hansen, "The Threat to the Planet," *New York Review of Books* 53(12), July 13, 2006.

³⁴ United States Environmental Protection Agency, "Protection of Stratospheric Ozone; Final Rule," *Federal Register* 53 (1988): 30566-30602.

³⁵ Richard Benedict, *Ozone Diplomacy: New Directions in Safeguarding the Planet* (Cambridge, Mass.: Harvard University Press, 1998).

³⁶ Sands, 75.

The Vienna agreement is a “framework” convention, that is, one which does not require any specific timetables or targets of abatement from signatories, but rather created a forum within which monitoring of ozone depletion could take place, with appropriate action being coordinated and more concrete measures to be pursued in the future. No sooner was the Vienna Convention agreed than it became clear from new scientific evidence that more demanding action was required to safeguard the environment.³⁷ The resulting Montreal Protocol on Substances That Deplete the Ozone Layer (1987) imposed obligations of hitherto unknown stringency. The production and use of many ozone layer hostile substances was banned, including CFCs as aerosol propellants and in domestic refrigeration. For developing countries, who argued that they had not caused the problem and so should be treated less strictly, permission was given to continue to use CFCs for a decade and financial assistance was given to develop chemical alternatives. In the view of one distinguished commentator,

The result [of the Vienna Convention and Montreal Protocol] is that the use of CFCs is now decreasing, the ozone layer was damaged but not destroyed, and it will soon be recovering.³⁸

Again then we see a narrative of American environmental activism, this time in the international arena, that is inconsistent with claims of American indifference to environmental matters. Certainly, as Hansen notes, the impetus for action came from domestic public concern arising from the Molina-Rowland paper, not from enlightened government. From the perspective of grassroots, or bottom-up politics, this episode reflects well on the capacity of the American constitutional system to generate popular interests that the government then feels compelled to act upon. As to the specifics of the landmark international environmental agreements at Vienna and Montreal, a number of points are noteworthy. Firstly, discussions of America and the environment frequently juxtapose the virtue of

³⁷ In May 1985 the British Antarctic Survey reported that between 1977 and 1985, the ozone layer over the Antarctic had been reduced by 40%.

³⁸ See Hansen.

the European Union with the self-serving attitude of America. In respect of the domestic environmental achievements of the Nixon administration, it is notable that these were in advance of any action taken in the then European Community – unsurprisingly given that until the Single European Act of 1986, the European Community had no express environmental competence.³⁹ Thus, the constitutional design of the European Community until relatively recently was such that comprehensive environmental action was outside of its legal authority. Of course, that did not prevent individual member states from taking action on their own, and many did, but the Vienna/Montreal negotiations again reveal that European attitudes towards the environment were far from uniformly principled.

Away from comparative assessments of transatlantic environmental virtue, one of the key issues in contemporary environmental law and policy is what is known as the "precautionary principle". This phrase reflects the recognition that scientific certainty often comes too late to design effective legal and policy responses for preventing many potential environmental threats, and so the principle seeks to address how decisions should be made in the face of scientific uncertainty. It is notable that this is very much the approach adopted by US negotiators in respect the Montreal Protocol, whilst "it was the European Community members who balked at the science and the economic and lifestyle consequences of international actions."⁴⁰

In a similar vein, mention might be made of the approach taken to developing countries by the US in the Montreal negotiations. By taking a demanding approach to the issue of CFC use and production, there would evidently be asymmetric impact on developed and less developed nations. The better off

³⁹ See generally, Andrew Jordan, ed., *Environmental Policy in the European Union* 2nd ed. (London: Earthscan, 2005) and Ludwig Krämer, "The Single European Act and Environmental Protection: Reflections on Several New Provisions," *Common Market Law Review* (1987): 659. Prior to the Single European Act, several discrete environmental measures were passed by the European legislature, including the Council Directive 76/464/EEC on the pollution caused by certain dangerous substances discharged into the aquatic environment of the Community and Council Directive 75/439/EEC on the disposal of waste oils. Both were justified on the basis of fundamental economic freedoms, not environmental protection.

⁴⁰ Sands.

nations and economies of the world will always be better able to adjust to the demands of a new CFC regime, by developing their own alternative chemicals, technologies or processes, or simply by absorbing the cost of forgoing from such conduct. However hard to bear such impacts are for wealthy nations, they will always be more so for the poor. Additionally, such limits would impose burdens on developing countries which developed economies did not have to labor under at the equivalent stage of their development. The failure to deal with these issues is not merely one of moral import but of negotiating significance too. International legal compacts are, at their base, agreements and in order to achieve buy-in from poorer nations, those parties must be incentivized to do so. For larger nations like India, China and Brazil, with burgeoning economies, aspirational citizens and a leadership function amongst their peers, they would need convincing that a treaty that made refrigeration more difficult was in their interests. In this respect, the US again played an important role. In 1990 amendments were made to the Montreal Protocol which allowed developed countries to join in by giving a ten year grace period to meet targets and timetable for the phasing out of production and use, as well as financial compensation towards facilitating that end.

An indication of the significance of the US's role in these negotiations can be seen in the remarks of a prominent critic of American legal action.

The United States played a major role in brokering rules which would allow India and China to sign [the 1990 Amendments] The Montreal Protocol has now been ratified by almost every country in the world [and] is frequently hailed as an international instrument which will be effective: American legal creativity and political muscle helped to make it a truly global instrument.⁴¹

Only a modicum of prescience is required to anticipate the importance of these positions for environmental issues to be discussed below.

Global Warming and Climate Change – New Challenges, New Approaches

⁴¹ *Ibid.*

Concerns about climate change and calls for international action began in the 1970s and continued in the 1980s. By 1990 the specter of global warming loomed so large that the United Nations authorized an Intergovernmental Negotiating Committee on Climate to begin discussions on a global treaty. Simultaneously, the Intergovernmental Panel on Climate Change was charged with assessing the scientific, technical and economic basis of climate change policy in preparation for the 1992 Earth Summit.⁴² The IPCC's first interim report was published in May 1990⁴³ and provided what was then the strongest evidence that atmospheric concentrations of green house gases (including CO₂) has increased significantly as a result of industrialization *and* that these concentrations were contributing to increases in climate temperatures and so sea levels. On a “business as usual” basis, the report predicted rises in global temperature of about 2°C by 2025 and 4°C by 2100, and sea levels rising by 20cm by 2030 and 65cm by 2100.

In the wake of the IPCC's report there followed a plethora of unilateral target setting.⁴⁴ The US's approach was heavily shaped by President Bush (Senior)'s Council of Economic Advisers,⁴⁵ who argued that the costs of reducing green house gases would be between 35-150 times more expensive than compliance with the Montreal Protocol, concluding that,

the highest priority in the near term should be to improve understanding in order to build a foundation for sound policy decisions. Until such a foundation is in place, there is no justification for imposing major costs on the economy in order to slow the growth of greenhouse gas emissions.⁴⁶

⁴² The IPCC was created in 1988 by the United Nation's Environment Program and the World Meteorological Organisation. It was set up “anticipating the critical role that scientific consensus would play in building the political will to respond to climate change.” David Hunter *et al.*, *International Environmental Law and Policy* (New York: Foundation Press, 2002), 590.

⁴³ Intergovernmental Panel on Climate Change, *Climate Change: the IPCC Scientific Assessment* (IPCC: 1990).

⁴⁴ For a full listing of the policies adopted by various nations, see the International Energy Agency's report, *Climate Change Policy Initiatives* (Paris: OECD, 1992).

⁴⁵ *Economic Report of the President* (Washington, DC: US Government Printing Office, 1990).

⁴⁶ *Ibid.*, 223.

Such was the basic approach of the US when entering the negotiations that led to the UN Conference on Environment and Development (UNCED, or the "Earth Summit") in Rio de Janeiro in June 1992. Negotiations opened in February 1991 just outside Washington DC. Already at that time the basic positions of the major global players were set. The European Community was committed to reducing its joint greenhouse gas emissions to 1990 levels by the year 2000, with financial assistance to help developing nations respond to climate change. The Japanese suggested that "emissions of CO₂ should be stabilized on a per capita basis in the year 2000 and beyond at about the same level as in 1990." The Group of 77 developing countries proceeded from the position that 75% of energy related CO₂ emissions were attributable to industrialized countries but acknowledged that developing countries ought not to proceed down the same path. To that end, industrialized countries should transfer environmentally sound technology to developing countries on preferential and non-commercial terms. Further, they called for the creation of a differentiated regime under the climate convention for developing countries, along the lines of the Montreal Convention.

The American negotiating stance could scarcely have been more distinct, commencing from a position of outright rejection of targets and timetables of the sort mooted by the EC and Japan. This has been described as a "no regrets policy" that would only be taken to the extent that they produced benefits separate from those related to global warming. Thus, new energy technology that would generate global warming benefits would only be supported by the US if they could be shown to be more cost effective or to reduce urban pollution.⁴⁷ Added to this was the urging for further research to resolve uncertainties and a comprehensive approach to reducing all greenhouse gas emissions.

The bulk of 1991 was consumed with transatlantic diplomacy as the EC sought to persuade the US to accept targets and timetables. All such advocacy was

⁴⁷ See Donald Goldberg, "As the World Burns: Negotiating the Framework Convention on Climate Change," *Georgetown International Environmental Law Review* 5(2)(1993): 39.

robustly resisted. There were hopes in December 1991 that the hard line position might be ameliorated with the resignation of the White House Chief of Staff John Sununu – one of the most committed opponents to greenhouse gas controls. However, in Goldberg’s analysis,

there was simply not enough time to make large-scale revisions...

The commitment section of the Chairman’s text acknowledged the fact that a legally binding commitment to reduce greenhouse gases was beyond reach if the US was to be a signatory...The Chairman blamed the weak and ambiguous GHG commitment language squarely on the US...

...the difference a constructive US approach might have made should not be overstated...a firm commitment to any targets and timetables would have been a significant improvement and might have accelerated the entire process of negotiating an effective global warming agreement by a year or more.⁴⁸

Whatever the disappointments arising from the United Nations Framework Convention on Climate Change (UNFCCC), it did establish an international and legally binding mechanism for future progress to be made in combating climate change. Most significant in this respect was the new institutional framework for the continued implementation of the Convention and the progressive development of the regime through protocols or amendments. Following the model established by the Vienna/Montreal agreements, the UNFCCC vested policymaking authority to a “Conference of the Parties”, with day-to-day monitoring of implementation being undertaken by a permanent Secretariat.

Putting these undoubted accomplishments to one side, it is clear that the Bush administration can extract little credit from it. By contrast to earlier agreements, the US adopted an approach that was decidedly inward looking. Whereas the effort to tackle ozone depletion was marked by repeated and successful attempts to ensure significant international comity, the UNFCCC negotiations exhibited almost the opposite tendency. The primary reason for this appears to be the question of cost and its capture of the US agenda. Supported by the

⁴⁸ *Ibid.*, 251.

principal oil producing countries, the US was unwilling to allow a Convention which would fix specific targets and timetables for the stabilization of greenhouse gas emissions. Further, the previous US approach to scientific uncertainty, so critical to the success of the Montreal Protocol, was unceremoniously rejected. The precautionary principle, so influential at Montreal, was rejected wholesale by the Americans in Rio.

The Kyoto Protocol and the Clinton Administration

Five years separated the ambiguous achievements of the UNFCCC and the next and perhaps most significant of all international environmental agreements, the Kyoto Protocol of 1997. These years were marked by decisive scientific and political developments, with the IPCC's report of 1995 being the greatest of the former. Described as "one of the most significant milestones in the development of the climate change regime", the report for the first time reported a consensus amongst scientists that, "the balance of evidence suggests that there is a discernible human influence on global climate." The polarizing effect of such a statement can be imagined, with the bulk of scientific opinion endorsing the IPCC's findings and a small but well organized minority disputing them.⁴⁹ On the political plane, the elevation of Bill Clinton to the White House, was of no less significance to the shape of international environmental agreements to come.⁵⁰

President Clinton wasted no time in distancing himself from his predecessor in environmental terms. Whilst President Bush has signed the UNFCCC (making the US the very first nation so to do) and the Senate ratified it in October 1992, the incoming President broke from the path of US policy by committing the US to reducing its emissions of greenhouse gases to 1990 levels by 2000 – the fabled target and timetable that has proved so elusive only months previously. Whilst the new administration's "Climate Change Action Plan" of October was

⁴⁹ See Ozone Action, *The Ties that Bind* (Ozone Action: 1996).

⁵⁰ For a general account of these issues, which argues for the environmental credentials of the Clinton administrations, see Sheila Cavanagh *et al*, "National Environmental Policy During the Clinton Years," Faculty Research Working Paper Series, Paper RWP01-027, John F Kennedy School of Government, Harvard University (June, 2001).

not materially different to that which would have been produced by a Bush administration (acknowledging that the US would fall short of its GHG emission goals by 50%), it was very different in tone.⁵¹ The new view of the Democratic administration transformed the debate on climate change regulation at both the international and domestic plane in a dramatic fashion.

The second of the “Conferences of the Parties” (COP) was held in Berlin in July 1996, at which the new US Head of Delegation (Undersecretary of State for Global Affairs, Timothy Wirth) announced the Clinton administration’s *volte face* regarding time tables and targets and accepted the scientific findings of the IPCC’s 1995 Report. Embracing the UNFCCC’s commitment to “common but differentiated responsibilities”, Wirth’s statement supported legally binding commitments for GHG emission reductions for thirty four industrialized nations and no targets for one hundred and fifty four others – clearing the way for a new settlement which became known as the Berlin Mandate. At home however the new approach generated such hostility that in July 1997 the Senate resolved, by a vote of ninety five to zero, that the US should not approve any agreement at the upcoming third Conference of the Parties in Kyoto that (1) did not impose binding emission reduction targets on all parties; and (2) would harm US economic interests.⁵²

With apparent agreement having broken out between all major groupings at the Kyoto COP, the Berlin Mandate formed the basis of the now famous Kyoto Protocol on Climate Change.⁵³ The industrialized nations made legally binding commitments to reduce their GHG emissions – in the case of the US, it was agreed that it would bring its emissions to seven percent below their 1990 levels by the compliance period 2008-2012. Certainly, this was a modest target but it

⁵¹ *Ibid.*, 29.

⁵² This resolution is known as the Byrd-Hagel Resolution. As a matter of US constitutional law, international agreements are only ratified when signed by the President *and* are approved by a two thirds majority of the Senate. Accordingly, even if a US President is willing to sign an international treaty, it will only have to force of domestic law if the Senate is like minded.

⁵³ For a detailed, official history of the Kyoto negotiations, see Joanna Depledge, “Tracing the Origins of the Kyoto Protocol: An Article-by-Article Textual History,” United Nations Framework Convention on Climate Change, FCCC/TP/2000/2 (2002).

should be noted that the stated goal of the UNFCCC was to “stabilize” emissions not slash them radically. Further, on a business-as-usual scenario the seven percent target translated to approximately a thirty percent reduction.

The active participation of Vice-President Gore in the Kyoto negotiations is well documented, as is his support for the instrument. In addition to the symbolic importance of this stance for coalescing support around the Protocol, the US delegation’s contribution to the substance of the agreement is also significant. It will be recalled that the Clean Air Act regime in the US had long deployed market based mechanisms – in particular, an emissions trading scheme – to reduce acid rain in North America. The effectiveness of the scheme was remarkable,⁵⁴ and given this experience it was not surprising that the US was keen to export this mechanism to the international plane, with “strong and unwavering support for cost-effective approaches” forming a “key component of the Clinton Administration’s climate change policy.”⁵⁵

It is these very market mechanisms (known as “flexibility mechanisms” in the language of the Protocol) that have marked out the Kyoto Protocol as such an innovative legal instrument. Notably, the EU was long opposed to such a regulatory approach and fought a bitter rear guard action against their incorporation at Kyoto before yielding on the issue on the understanding that it was a necessary condition for US participation in the agreement. It reflects well on the EU that having set aside its long held suspicions of emissions trading in order to facilitate a global compact, it then embraced the concept with considerable vim, moving quickly to establish the EU Emissions Trading Scheme – now the world’s leading emissions trading market.⁵⁶

⁵⁴ See Robert Stavins, “What Can We Learn from the Grand Policy Experiment? Lessons from SO₂ Allowance Trading,” *Journal of Economic Perspectives* 12(3)(1998): 69-88.

⁵⁵ See Cavanagh *et al.*, 30.

⁵⁶ For full details, see Chad Damro and Pilar Luaces Mendez, “Emissions Trading at Kyoto: From EU Resistance to Union Innovation,” in Jordan.

The Kyoto Protocol can thus be seen as a qualified, but very real, success. It certainly did not end the need for further negotiations – further COPs at Buenos Aires, The Hague and Bonn followed quickly on. Nor could the relatively modest emission reductions of Kyoto ever be expected to address and reverse the environmental challenges identified by the scientific mainstream. Technical problems relating to compliance could also be identified.⁵⁷ From an anti-Americanism perspective, the agreement is significant for the fact that it represents a firm US commitment to return to the mainstream in international environmental governance. This does not of course mean that the US would be compliant in negotiations, but the acceptance of targets and timetables was a profoundly important step. As was noted in respect of the earlier Montreal Protocol, the engagement of the US in this respect allowed it to deploy its diplomatic muscle such that it was able to create the Kyoto Protocol in its own image, by including the market mechanisms of emissions trading, the Clean Development Mechanism (which allows industrialized nations to offset their emissions by undertaking abatement with a developing country) and Joint Implementation (which allows industrialized nations jointly to reduce their emissions) into the agreement. President Clinton said of Kyoto that it was an,

historic agreement...to take unprecedented action to address global warming. It is environmentally strong and economically sound [and reflected] the commitment of the United States to use the tools of the free market to tackle this difficult problem.⁵⁸

Be that as it may, a pair of related issues remained to be resolved before the Kyoto Protocol could come into force. The first was the Protocol's own requirement of a "double trigger". To become legally binding, the Protocol would have to be ratified by at least fifty five parties to the Framework Convention, and those ratifiers must account for at least fifty five percent of all GHG emissions of the industrialized nations. This meant that the first element of the "trigger" could

⁵⁷ See Barrett, chapter 15.

⁵⁸ White House Press Release, Statement by the President, *Federal Document Clearing House Transcripts*, December 10, 1997.

be easily satisfied, whilst the second required that at least two of the three largest emitters – the US (36%), the EU (24%) and Russia (17%) – must join the Protocol in order for it to be binding. When coupled with the fact of the Byrd-Hagel Resolution and bipartisan Senatorial opposition to the Protocol, domestic US politics presented an insurmountable barrier to the Kyoto Protocol coming into force. This fact was of course no lost of Clinton himself. Despite the US becoming the 60th signatory to the Protocol in November 1998, it was never presented to the Senate for ratification – the then embattled President having no desire to become the Senate’s whipping boy. (The official line was that, as the Kyoto Protocol did not meet the stipulations of Byrd-Hagel, the Clinton administration had no intention of submitting it for Senatorial ratification.) In the absence of American ratification, Kyoto slipped into something of a legal limbo. As the domestic scene became preoccupied with a Presidential election, the question was what stance the Republican challenger, George W Bush, would take on these issues.

The Decline and Fall of American Environmentalism

No story in contemporary environmental law and politics is better known than President George Bush’s contrary attitude towards global warming, the Kyoto Protocol and international law generally. The quasi-comical characterisations of an oafish Texas oilman and stooge of the American corporate world did not combine to fill environmentalists with confidence that he would persuade the Senate to ratify Kyoto. Inevitably, the narrative is somewhat more complex, even if its ending is familiar.

During the Presidential campaign, Bush actually undertook to reduce US CO₂ emissions, albeit without committing to Kyoto. Upon taking office, he appointed Paul O’Neill to the key post of US Treasury Secretary. At first blush, this sent a signal that environmental concerns were not at the top of the President’s agenda. After all, O’Neill had for the past quarter century been the CEO of Alcoa, the world’s largest aluminum producer. Not only did heavy industry not

sit easily with stringent environmental controls, the aluminum industry was exactly that sector of the economy – as a massive energy user – that was most threatened by Kyoto. In this appointment though, Bush arguably had underestimated both the independence of mind of O’Neill and was very likely oblivious to his environmental instincts.

As early as 1997, O’Neill had given great prominence to the issue of global warming in Alcoa’s Annual Report, making the remarkable statement, “We are environmentalists first and industrialists second.” Corporate statements need not always been taken at face value, but O’Neill’s conduct as Treasury Secretary reveal those words to have had real substance. In his very first meetings with the new President, O’Neill raised the issue of global climate change and was asked to “get me [President Bush] a plan on global warming.”⁵⁹ The resulting plan, communicated to the President in February 2001, overtly aimed to knit US policy within the timetables of the ongoing Conferences of the Parties,⁶⁰ proceeded from a rigorously scientific basis and rather ambitiously sought to link environmental policy with an energy policy review then being undertaken by Vice President Cheney.⁶¹

Simultaneously, Bush’s senior administrator at the Environmental Protection Agency, Christine Todd Whitman, was testifying before a congressional committee and speaking from a script on global warming that few could have predicted. Her statement that,

there’s no question but that global warming is a real phenomenon that is occurring. And while scientists can’t predict where the droughts will occur, where the flooding will occur precisely, or when, we know those things will occur...⁶²

enraged elements within the energy industry. Coupled with Bush’s proposed energy policy which acknowledged the importance of carbon dioxide limits, the

⁵⁹ Ron Suskind, *The Price of Loyalty* (New York: Simon and Schuster, 2004), 60.

⁶⁰ *Ibid.*, 105.

⁶¹ *Ibid.*, 104-6.

⁶² *Ibid.*, 98-99.

regulation of carbon dioxide as an air pollutant was attacked by the *Oil & Gas Journal* as “a bad idea that belongs on the outer fringes of environmental extremism.”⁶³ Internationally however, the new administration’s unexpectedly open minded stance convinced the UN to delay the scheduled Bonn Conference of the Parties from May until the summer of 2001, at the administration’s behest. Whitman herself won further international plaudits for the administration when on 5 March 2001, at a G8 Environment Ministers meeting in Italy, she was reported by the *Financial Times* to have said, “The President has said global climate change is the greatest environmental challenge that we face and that we must recognize that and take steps to move forward,” a tone that “pleasantly surprised” many delegates “who feared that the US would ignore the problem of global warming.”⁶⁴

This appears to have been the highpoint of optimism that Bush would act on climate change in a manner that was coordinated with the international community or scientifically, not self-interestedly, driven. Apparently sensing the precariousness of her position, Whitman immediately drafted a memo to the President that has been described as her “laying down the gauntlet.”

I would strongly recommend that you continue to recognize that global warming is a real and serious issue.

While not specifically endorsing the targets called for in Kyoto, you could indicate that you are exploring how to reduce US greenhouse gas emissions internally and will continue no matter what else transpires.

Mr President, this [global warming] is a credibility issue for the US in the international community. It is also an issue that is resonating here, at home. We need to appear engaged and shift the discussion from the focus on the “K” word to action, but we have to build some bonafides first.

We did win some issues at this [Trieste] meeting...I’m available to discuss this further if you want.⁶⁵

⁶³ *Ibid.*

⁶⁴ *The Financial Times*, March 6, 2001.

⁶⁵ *Ibid.*, 113.

Even the modest position outlined by Whitman proved too much for what is now routinely viewed as the cabal surrounding President Bush. On 8 March a letter was sent to the President from a quartet of conservative Republican Senators (including Chuck Hagel, of the eponymous Resolution and Jesse Helms) opposed to the Kyoto Protocol. It was a withering response to the messages that Whitman's diplomacy had been sending to the outside world and unflinching in its opposition to any regulation of CO₂ and other greenhouse gases.⁶⁶ The letter was devastating to Whitman and O'Neill, who had by now joined forces to co-ordinate on what they viewed as "one of the few issues of current policy that is subject to rational thought [in the White House]."⁶⁷ They were in no doubt that the real author of the joint letter was Vice President Cheney.⁶⁸

Any lingering hopes that the new administration would take a positive step on the global warming question were decisively crushed when Whitman met with the President on 13 March, armed with an EPA report, "setting forth the mountain of evidence already assembled, along with proposals for action both outside Kyoto and, if necessary, within the framework of the international protocol." The meeting is recalled in O'Neill's memoirs and is worth setting out at length.

[Whitman] started right in, talking about the importance of promoting international cooperation, the areas of scientific evidence that were indisputable, the issue of US credibility.

Bush cut her off. "Christie, I've already made my decision." He had a letter all ready to send back to Hagel, Helms and the others. He read her portions of it.

He would oppose Kyoto because it exempted 80 percent of the world, including China and India, and it was an "unfair and ineffective means of addressing global climate change concerns."

⁶⁶ See *ibid.*, 118-119 for details.

⁶⁷ *Ibid.*, 119.

⁶⁸ *Ibid.*

...with the California energy shortages...we just can't harm consumers, he said. It only took a moment for Bush to recount the high points of what he'd be telling Hagel, Helms, and the rest of the world.

Whitman just sat. It was a clean kill. She was running around the world, using her own hard-won, bipartisan credibility to add color and depth to *his* campaign pronouncements, and now she ended up looking like the fool.⁶⁹

Quite apart from its stark description of the Bush administration as one in which evidence, analysis and debate are rarely troubled with (a key point in O'Neill's memoirs), the above quotation clearly demonstrates the tensions that existed in the Bush White House, between officials, between executive officers, and between the President and elements within his own office. It could scarcely be said that the President represented the views of his own advisors on this issue (except in the most formal sense), much less those of the nation. Over half of the states subsequently adopted their own emissions reduction plans.⁷⁰ Yet more surprising is the fact many of the titans of corporate America such as Goldman Sachs, Intel and even Wal-Mart, are taking meaningful steps to "green" their activities.⁷¹ General Electric's CEO has even called for the Senate to ratify the Kyoto Protocol.⁷² Whilst this was once a fanciful idea, the bipartisan Climate Stewardship Act 2003, sponsored by Senators Lieberman and McCain and containing much of the substance of the Kyoto Protocol, was only defeated in the Senate by a margin of forty three to fifty five. Quite how those numbers would play out in a post-Hurricane Katrina Senate is anyone's guess.

Conclusions

This chapter's focus on Presidential and Administrative attitudes and actions regarding the environment has sought to discern patterns and continuities in the way "America" thinks about and acts in respect of the environment. As a matter of methodology, any number of other approaches might have been taken. It is

⁶⁹ *Ibid.*, 121-2.

⁷⁰ See the EPA's list of state action plans on global warming <<http://yosemite.epa.gov/globalwarming/ghg.nsf/actions/StateActionPlans?Open>> (August 10, 2006).

⁷¹ Marc Gunther, "The Green Machine," *Fortune*, August 28, 2006, 34.

⁷² Jeffrey Garten, "A Foreign Policy Harmful to Business," *Business Week*, October 14, 2002, 72.

submitted that this avowedly elite survey captures at the very least, “one view of the Cathedral”. Similarly, the attention trained on the substantive environmental problems of air pollution and global warming do not seek to prioritize those issues over other such as biodiversity or hazardous waste. Again, the above does not purport to tell the whole truth of America’s complex relationship with the environment, but it does strive to be true as far as it goes.

To the extent that the notion of anti-Americanism was pinned down at the commencement of this chapter, it is not clear that such an attitude is justified by the above narrative. The claim that America does not care about the environment is too simplistic to detain us for long. Certainly, the Bush Presidency has not shown itself to be its champion, but there have been profound countervailing forces, both within and outside the administration. The early colonists proved themselves to have an anxious interest in this question, albeit not from a perspective that twenty first century advocates might wish. Of President Nixon’s own fleeting and politic engagement, we might set aside our antipathy at his motives when having regard to the remarkable institutional apparatus (and global example) that he established.

To return to the definition of Toinet, can we claim that American environmental in/action is such that it fully justifies a “systematic opposition – a sort of allergic reaction – to America as a whole”?⁷³ This seems doubtful. There is certainly no shortage of American conduct that we might disapprove of, that many Americans might themselves disapprove of, but in this respect, few polities are absolved responsibility. Whilst the Nixon administration was crafting a highly effective set of mechanisms to deal with acid rain, the EU lacked even the basic constitutional tools to take action of any sort. The intellectual leadership that the US demonstrated in the development of both the Montreal and Kyoto Protocols similarly cannot be gainsaid, and has since been endorsed by the EU and its member states despite their opposition at the time.

⁷³ Toinet, 219.

However, to the extent that anti-Americanism is identified with anti-Bushism, there may be a case to be answered. When reading the account of an activist environmental lawyer lambasting Bush for intellectual weakness and acting with crass self-interest, we might be tempted to file it away as a hostile account from an implacable foe.⁷⁴ When a scion of corporate America and former aide to President Ford narrates an identical account (and was there at the time),⁷⁵ we cannot but take note. Contrary to the advice of his senior officials, the approach of a majority of the States of the Union, leading corporate actors and in the face of overwhelming scientific consensus,⁷⁶ President Bush has denied the fact of anthropogenic climate change. He has refused to engage with the rest of the world (save Australia) in tackling the problem, and departed from a noble American tradition of accepting the precautionary principle as the basis of scientific decision making and even withdrawn from the elementary precept of fairness in treating nations in different economic positions differently. Insofar as we might be able to justify an “allergic reaction” to American approaches to the environment, they map identically to those taken by George W Bush.

⁷⁴ See Sands.

⁷⁵ See Ron Suskind’s ghosted memoirs of Paul O’Neill, above.

⁷⁶ See the Joint Science Academies’ Statement: Global Response to Climate Change, June 7, 2005: <<http://www.royalsoc.ac.uk/document.asp?latest=1&id=3222>> (August 10, 2006).