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## Comprehensive Climate Change Policy: Is it Possible in the United States?

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# Stern-Ellis: Comprehensive Climate Change Policy in the US

## COMPREHENSIVE CLIMATE CHANGE POLICY

IS IT POSSIBLE IN THE UNITED STATES?

ETHAN STERN-ELLIS

This article was written in the fall of 2020 and reflects the political realities of that time, including the partisan majority in the Senate, the presidential administration in power, and the signatory status of the United States to the Paris Climate Accords. In an effort to honor the author's analysis in its most authentic form, the editors have decided to present the article without any corrections to content that may conflict with or contradict the political realities at the time of the issue's publication.

According to David Wallace-Wells, author of *The Uninhabitable Earth*, “already, more than 10,000 people die each day from the small particles emitted from fossil-fuel burning; each year, 339,000 people die from wildfire smoke, in part because climate change has extended forest-fire season (in the U.S., it has increased by seventy-eight days since 1970).”<sup>1</sup> Several states in the international community have implemented policies to combat climate change. The United States, however, has failed to put together a comprehensive policy tackling the issues of climate change and reducing greenhouse gas emissions. The purpose of this paper is to explore what the United States has achieved with regards to climate policy, present the limitations it has encountered that have precluded comprehensive policy creation, and to explain why the future of climate change policy is highly uncertain. While there have been significant gains, four key limitations — a rise in conservative ideology, international noncooperation from the United States, poor use of adversarial legalism, and poor timing — have been sufficient in preventing the United States from creating comprehensive climate change policy. This paper concludes with a look to the future in climate policymaking, assessing whether or not a breakthrough will be feasible.

### IMPORTANT GAINS THAT SET THE STAGE

While the federal government has failed to develop a comprehensive policy addressing the challenge of climate change, significant strides have been made at the state and federal levels. This paper will mention four

<sup>1</sup> Wallace-Wells, David. “When Will the Planet Be Too Hot for Humans? Much, Much Sooner Than You Imagine.” *Intelligencer*, 10 July 2017, [nymag.com/intelligencer/2017/07/climate-change-earth-too-hot-for-humans.html](http://nymag.com/intelligencer/2017/07/climate-change-earth-too-hot-for-humans.html).

significant achievements that have been made in policy, legislative, and administrative areas. First, the twenty-two legislative victories from 1964-1980 were the building blocks for current climate policymaking.<sup>2</sup> For example, the Clean Air Act established national air quality standards to regulate motor vehicle and stationary emission sources.<sup>3</sup> The Clean Air Act also became a central part of the 2007 opinion in *Massachusetts vs. Environmental Protection Agency*, where it was held that, "...the Clean Air Act's sweeping definition of air pollutant unambiguously covers greenhouse gases...The act requires EPA to regulate whenever it forms a judgment that an air pollutant causes or contributes to air pollution which may reasonably be anticipated to endanger public health and/or welfare".<sup>4</sup> As a result of this ruling, though eventually regressed, the Bush administration issued an executive order demanding the EPA to regulate greenhouse gasses.<sup>5</sup> This ruling is just one example of how the "golden era" legislative victories impact modern law.

A second achievement is how states have implemented successful programs for regulating greenhouse gases. This is particularly true in California, a state that passed the, "...first important public policy in the United States to explicitly address the risks of climate change..." and made other gains combating climate change in more elusive ways.<sup>6</sup> As the first important public policy to address the risks of climate change, what is known as the Pavley Bill gave the California Air Resources Board (CARB) the power to regulate greenhouse gasses.<sup>7</sup> Given CARB's extensive scientific and technical expertise, this was a big win for environmentalists.<sup>8</sup> California made further progress when the state implemented a Renewable Portfolio Standard (RPS) in 2002 to address the 2000-2001 Electricity Crisis.<sup>9</sup> This RPS, which became a model for other states, forced investor-owned utilities and retail sellers to increase the renewable energy usage from 12% to 20% by 2017.<sup>10</sup> This effort was a particularly savvy move by environmental organizations, who managed not to bring up climate change when supporting the legislation and argued successfully that this RPS would benefit the state financially.<sup>11</sup> California's efforts "encouraged national environmental groups to pressure the federal government for federal climate change legislation," and while the pressure proved unsuccessful, it is still a notable feat.<sup>12</sup>

A third achievement is the Obama administration's incorporation of \$80 billion into the American Recovery and Reinvestment Act to foster cleaner energy, despite a partisan-blocked Congress.<sup>13</sup> Lastly, a fourth achievement is the introduction of the proposed Green New Deal, which calls on the federal government to address the issue of global warming into public discourse. While not presenting any specific policy solutions, the Green New Deal has certainly created a framework and talking point for putting climate change in the national spotlight during the 2020 Democratic Primaries, and may provide some hope for future policy ventures.

#### KEY LIMITATIONS

While progress has been made in addressing climate change and greenhouse gas emissions, there have been several limitations that have prevented any sort of definitive and comprehensive policy from emerging. Four limitations will be discussed in this paper. First, there is a complicated story of conservative ideology and increasing polarization, which has emerged and risen in the United States over the past several decades and altered the national agenda that is set regarding climate change policy. There are three critical aspects of this particular limitation. The first began with what is referred to as the "Republican Reversal." The "Republican Reversal" began when the "...Reagan administration broke with bipartisan consensus on the importance of environmental protection."<sup>14</sup> This shift occurred because conservative ideology became a major identity in American politics, which led to the rise of an organized network of conservative interests and ultimately resulted in new attitudes toward the environment and climate change.<sup>15</sup>

The second aspect of this first limitation comes from the organized network of conservative interests, namely the Koch brothers' organization. The Koch brothers began their network in 1977 by backing the creation of the Cato Institute, coinciding with the period when the Republican Reversal was taking hold.<sup>16</sup> As of 2015, the Koch network has influenced at least fifteen major organizations including think-tanks, policy advocates, donor coordinators, constituency mobilizers, and political utilities.<sup>17</sup> This influence has resulted in "the Koch network...urging [Congressional] Republicans to take positions against the beliefs of most of their constituents—including majorities of moderate Republicans."<sup>18</sup> This congressional pressure has contributed to limiting climate change action, in particular because the Koch

<sup>2</sup> Klyza, Christopher McGrory, and David J. Sousa. *American Environmental Policy: Beyond Gridlock*. The MIT Press, 2013: 42

<sup>3</sup> Layzer, Judith A. *The Environmental Case: Translating Values into Policy*. CQ Press, 2012: 42.

<sup>4</sup> "Massachusetts v. Environmental Protection Agency." Oyez, www.oyez.org/cases/2006/05-1120. Accessed 10 May, 2020.

<sup>5</sup> Layzer, 410

<sup>6</sup> Vogel, David. *California Greenin: How the Golden State Became an Environmental Leader*. Princeton University Press, 2019: 201-203.

<sup>7</sup> Vogel, 203

<sup>8</sup> Ibid., 203

<sup>9</sup> Ibid., 201

<sup>10</sup> Ibid., 201

<sup>11</sup> Ibid., 201

<sup>12</sup> Ibid., 204

<sup>13</sup> Vig, Norman J., et al. *Environmental Policy: New Directions for the Twenty-First Century*. CQ Press, an imprint of SAGE Publications, Inc., 2019: 139

<sup>14</sup> Turner, James Morton, and Andrew Christian. *Isenberg. The Republican Reversal: Conservatives and the Environment from Nixon to Trump*. Harvard University Press, 2018: 8

<sup>15</sup> Turner & Isenberg, 8-12

<sup>16</sup> Skocpol, Theda, and Alexander Hertel-Fernandez. "The Koch Network and Republican Party Extremism." *Perspectives on Politics*, vol. 14, no. 3, 2016: 684

<sup>17</sup> Skocpol & Hertel-Fernandez, 685

<sup>18</sup> Ibid., 693

brothers' libertarian beliefs directly contradict any sort of centralized government climate policy.

The third aspect contributing to the rise of conservative ideology is the notion of the “Deep Story.” If, on one hand, there is the conservative ideology championed by the Reagan administration and supported by organized networks like the Koch network, then, on the other, there are the constituents who are molded by these elements of society. Attention to the lived experiences of constituents most affected by environmental misaction or lack thereof reveals that constituents are “stuck” in a paradox: these constituents live in Louisiana, one of the biggest victims of environmental problems in the United States, yet they are increasingly hostile towards federal support.<sup>19</sup> Why is this the case? The answer lies within the Deep Story: “[people] want to achieve the American Dream, but for a mixture of reasons feel they are being held back, and this leads people of the right to feel frustrated, angry, and betrayed by the government.”<sup>20</sup> These same people, who already feel betrayed by the federal government, believe that climate change is a hoax provoked by “liberal fear” and align themselves with the Republican representation that shares that sentiment.<sup>21</sup> The deep story is part of why progressive states, like California, can achieve much at the state level, but Republican or right-oriented states are beholden to their constituents’ and representatives’ interests and, in this case, disinterested in effecting comprehensive climate policy change. The Deep Story, coupled with the first two aspects of this limitation, is emblematic of a rise in conservative ideology that is at odds with comprehensive climate change policy.

The second limitation is how the rise in conservative ideology has impacted international agreements. According to Judith Layzer, “...the way the problem of and solutions to climate are defined domestically is a primary determinant of the U.S. position on international agreements to address it.”<sup>22</sup> In other words, U.S. decisions on international climate agreements are a reflection of domestic interests. This is currently affecting the Paris Climate Agreement (PCA), an international agreement into which President Obama entered the United States in 2016. The goal of the agreement, which has support from every state in the international community, is to reduce greenhouse gas emissions enough so that there will be less than a two degree celsius rise in global temperatures this century.<sup>23</sup> President Trump, champion of those who have experienced the Deep Story, however, can remove the United States from this agreement as of November 4th, 2020. Given Layzer’s

position on international agreements, it would seem contradictory for President Trump to withdraw from the Paris agreement, especially since a October 2019 Pew Research Center poll says that 67% of Americans say that the federal government is not doing enough to reduce the effects of global climate change (Funk and Kennedy). However, public opinion has little effect on how climate is currently defined domestically. Instead, it is the members identified in the discussion of the first limitation in this paper, President Trump’s political base, that set the U.S. agenda on the international stage. This explains why the current domestic environment has not been conducive to comprehensive climate policy on an international level.

The third limitation is that one of the main policymaking pathways used to create climate policy is not conducive to comprehensive policy measures, exemplified by the Rock Creek Mine case. Congress is a legislative body that has been, “...a poster child for legislative gridlock.”<sup>24</sup> Because of this gridlock, environmental groups have turned to what Christopher Klyza and David Sousa dub as “alternative pathways” to conduct climate policy. One popular pathway, which has been more of a limitation than a venue for successful comprehensive climate policy, is what Robert Kagan calls “adversarial legalism.” Adversarial legalism is a way in which groups and, for our purposes, environmental groups, use litigation to combat opponents of their interests.<sup>25</sup> It is costly and time consuming. The Rock Creek Mine case shows just how this process works. The Rock Creek Mine was first proposed in 1987 and the struggle to approve construction of the mine continues to this day.<sup>26</sup> The reason for this struggle is that environmental groups have found multiple ways to invoke laws such as the Clean Air Act, Endangered Species Act, and Clean Water Act to prevent the mine from being built, yet, at the same time, there is a right to mine on public lands.<sup>27</sup> Both sides in this case use adversarial legalism to attempt to achieve their goals. In a struggle that has lasted since 1987, neither side has won. This Rock Creek Mine case is a clear example of how environmental groups in the United States spend considerable time combating their opponents micro-issues to protect the environment, while also making little progress in achieving comprehensive climate policy.

A fourth limitation is that the issue of climate change was born in the wrong era. Anthony Downs explains a concept called the “issue attention cycle.” According to Downs, there are five stages in this cycle. The first is the pre-problem stage, where an undesirable social condition exists but has not reached comprehensive policy combating climate change.<sup>28</sup> The second is the

<sup>19</sup> Hochschild, Arlie Russell. *Strangers in Their Own Land: Anger and Mourning on the American Right*. The New Press, 2018: 9

<sup>20</sup> Hochschild, 146

<sup>21</sup> *Ibid.*, 48

<sup>22</sup> Layzer, 381

<sup>23</sup> Denchak, Melissa. “Paris Climate Agreement: Everything You Need to Know.” *NRDC*, 29 Apr. 2020. [www.nrdc.org/stories/paris-climate-agreement-everything-you-need-know](http://www.nrdc.org/stories/paris-climate-agreement-everything-you-need-know).

<sup>24</sup> Vig & Kraft, 136

<sup>25</sup> Kagan, Robert A. “Adversarial Legalism.” 2019, doi:10.4159/9780674242678: 371

<sup>26</sup> Sousa, “Rock Creek: The Challenges to Mining in the New West,” draft chapter: 2

<sup>27</sup> Sousa, 6

<sup>28</sup> Downs, Anthony, *Up and Down with Ecology—the Issue-Attention Cycle*, *Public Interest*, 28 (1972:Summer): 39

stage of alarmed discovery and euphoric enthusiasm, where the public believes that it can be solved given enough effort.<sup>29</sup> This stage is important because it is where the most policymaking can be achieved. The third stage is the realization of the costs of significant progress, where part of the cost is understood as a need to restructure the public's way of living.<sup>30</sup> The fourth stage is a gradual decline of intense public interest, leaving the final stage, where any organizations or institutions created during the cycle are left to battle these issues on their own.<sup>31</sup> The problem with climate change and reducing greenhouse gas emissions is that it was not the salient issue we know today when environmental politics reached the second stage of the cycle in the late twentieth century. Indeed, once environmental policy reached the fifth stage of the cycle, the rise of conservative ideology began to take hold. One might point out that, if the issue attention cycle is correct, then the issue of climate change should have its own second stage where policy can be created. However, it is because of the first and third limitations discussed in this paper that the laws created during the late twentieth century are the only readily available tools environmental groups can use to combat threats to the climate. As shown throughout this paper, they are not quite the right tools for creating a comprehensive policy combating climate change.

#### IS BREAKTHROUGH POSSIBLE?

There are some reasons to be optimistic for the future and some not to be, but it is currently unpredictable. One reason to believe that it will be just as difficult in the future is due to the legacy of judicial appointees put forth by the Trump administration. One example of this legacy is that, "on the courts of appeal, the final word in the overwhelming majority of federal cases, more than one-quarter of active judges are Trump appointees."<sup>32</sup> These judges are affiliated with the Federalist Society, a group of experienced lawyers that President Trump appointed to make all of his judicial selections in order to implement a web of conservative justices throughout the nation.<sup>33</sup> This will already make it difficult to come up with a breakthrough, but if Trump is re-elected and the Senate continues to enjoy a Republican majority, it will be even more difficult in the future.

One reason to be optimistic is a possible revival of the Clean Power Plan. The Clean Power Plan, introduced by the Obama administration, was an attempt at a comprehensive policy solution to combat climate change. In particular, it intended to, "reduce carbon pollution from power plants, the

nation's largest source, while maintaining energy reliability and affordability."<sup>34</sup> The Trump administration, however, revoked the CPP and replaced it with the Affordable Clean Energy rule. This new rule is much weaker compared to the CPP: it reduces power sector emissions between 0.7-1.5 percent by 2030, whereas the CPP would have reduced emissions by 32 percent by 2030.<sup>35</sup> Clearly, this is a huge blow to climate change combatants. The reason there is hope, however, is that several environmental organizations have organized to file suit against the EPA, in another attempt to invoke and engage in adversarial legalism. In fact, an opening brief was filed on April 17th, 2020, arguing, "that EPA's decision to repeal the Clean Power Plan was based on a fundamental misreading of the Clean Air Act that would force EPA to ignore common-sense, cost-effective emission reduction measures and would 'frustrate the Act's capacity to reduce the enormous amount of climate pollution emitted by fossil fuel-fired power plants.'"<sup>36</sup> This is one case where adversarial legalism would support comprehensive climate policy. It remains to be seen, however, if this venture will be successful in bringing back the Clean Power Plan.

The future of climate change policy and the feasibility of a policy breakthrough are made unclear by recent developments related to the COVID-19 pandemic, an ongoing event that has greatly impacted the United States and the rest of the world. One mainstream argument against comprehensive climate policy is that people simply will not change their habits in order to battle climate change. The battle against COVID-19, however, has shown that the United States can largely alter its habits for an extended period of time rather quickly. The consequences of these changes on the environment are starting to show and scientists are studying their potential global impacts.<sup>37</sup> Environmentalists are hopeful that the global community will see the results of these consequences and gain a new understanding of how detrimental the world's current habits are to combating climate change. COVID-19 is also throwing a curveball into the United States' presidential and Senate elections. What were already difficult and tight races are now unpredictable. The next Senate and presidential administration will be crucial in determining whether or not climate policy will become center stage on the national agenda.

<sup>29</sup> Downs, 39

<sup>30</sup> *Ibid.*, 40

<sup>31</sup> *Ibid.*, 40

<sup>32</sup> Millhiser, Ian. "What Trump Has Done to the Courts, Explained." *Vox*, Vox, 9 Dec. 2019, [www.vox.com/policy-and-politics/2019/12/9/20962980/trump-supreme-court-federal-judges](http://www.vox.com/policy-and-politics/2019/12/9/20962980/trump-supreme-court-federal-judges): 3

<sup>33</sup> Millhiser, 4

<sup>34</sup> "FACT SHEET: Clean Power Plan Overview." EPA, Environmental Protection Agency, 9 May 2017, [archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-overview.html](https://archive.epa.gov/epa/cleanpowerplan/fact-sheet-clean-power-plan-overview.html).

<sup>35</sup> Irfan, Umair. "Trump's EPA Just Replaced Obama's Signature Climate Policy with a Much Weaker Rule." *Vox*, Vox, 19 June 2019, [www.vox.com/2019/6/19/18684054/climate-change-clean-power-plan-repeal-affordable-emissions](http://www.vox.com/2019/6/19/18684054/climate-change-clean-power-plan-repeal-affordable-emissions).

<sup>36</sup> "Public Health and Environmental Coalition Argues D.C. Circuit Should Vacate Unlawful Rollback of Clean Power Plan." *Environmental Defense Fund*, 17 Apr. 2020, [www.edf.org/media/public-health-and-environmental-coalition-argues-dc-circuit-should-vacate-unlawful-rollback](https://www.edf.org/media/public-health-and-environmental-coalition-argues-dc-circuit-should-vacate-unlawful-rollback).

<sup>37</sup> Goldbaum, Elizabeth. "NASA Probes Environment, COVID-19 Impacts, Possible Links." *NASA*, NASA, 29 Apr. 2020, [www.nasa.gov/feature/nasa-probes-environment-covid-19-impacts-possible-links](https://www.nasa.gov/feature/nasa-probes-environment-covid-19-impacts-possible-links).

# Stern-Ellis: Comprehensive Climate Change Policy in the US

## CONCLUSION

The purpose of this paper was to show how, despite significant achievements, four limitations have been sufficient in preventing the United States from implementing comprehensive climate change policy. The limitations have been a rise in conservative ideology, which is contributing to empty international agreements, as well as poor use of adversarial legalism and bad timing for the salience of climate issues. While a look to the future shows uncertainty, what is certain is that, in a post-republican reversal era where climate-reversal is sorely needed, the United States government is not currently in a position to be the champion of climate change policy. Comprehensive changes will be in the hands of future administrations, congresses and everyday activists.