



OPEN FOR BUSINESS

Conservatives' Opposition to Environmental Regulation

Judith A. Layzer

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Open for Business

American and Comparative Environmental Policy

Sheldon Kamieniecki and Michael E. Kraft, series editors

For a complete list of books in the series, please see the back of the book.

Series Foreword: Conservative Ideas and Their Consequences

Corporate leaders and conservative analysts have long been critics of U.S. environmental policy. They maintain that environmentalists exaggerate problems and predict dire consequences in order to alarm Americans unnecessarily, raise money for their cause, and shape public policy to their liking. In addition, they contend that many laws, regulations, and government programs are excessively burdensome and costly, will result in only modest—if any—improvements in environmental quality, and, therefore, are unnecessary. In their view, corporations have a great deal at stake financially (as do their shareholders), and they have every right to express their positions and lobby government to protect their interests.

Environmentalists counter these arguments in several ways. They point out that the true costs of environmental damage (e.g., to public health and property) often are excluded from cost-benefit and other economic assessments as well as from the actual costs of manufacturing processes and goods. When they are included in such calculations, efforts to protect the environment and public health, as well as to promote natural resource conservation, are more than worth the effort and expense. Moreover, at the global level, environmentalists say that the United States is not playing a major role in forging an effective international agreement to control climate change because of the political power of certain domestic industries, primarily the energy companies. They accuse conservative leaders and business of derailing efforts to enact legislation to protect the environment in Congress through the kinds of lobbying tactics they use and by the vast sums of money they contribute to U.S. House and Senate campaigns. Following the passage of environmental protection laws, they remind us, business interests frequently seek to influence rulemaking in government agencies and, if unsuccessful, challenge the laws in court.

In addition, environmentalists charge that business groups spend large sums of money to frame issues in a manner that serves their narrow interests while often misleading the public. Firms do this, according to environmentalists, by manipulating media coverage, filling the airwaves and print media with advertisements that tout their green credentials, and writing editorials that slant the truth. In addition, a number of large companies, including Koch Industries, ExxonMobil, Philip Morris, General Motors, General Electric, and Archer Daniels Midland, have developed and heavily funded several conservative think tanks such as the Cato Institute, Citizens for a Sound Economy, and the Federalist Society. The money is primarily used to fund policy and scientific research, produce publications and mailings, and hire “neutral” experts to write articles and editorials that support business interests. Several think tanks have sponsored scientific studies that minimize the severity of environmental threats posed by air and water pollution, acid rain, and climate change. Findings from these studies are being used to undermine the precautionary principle, undercut adaptive management, and argue that only “complete” scientific knowledge can serve as a basis for environmental regulation. Policy and economic analyses conducted by industry-funded think tanks almost always contend that current and proposed environmental and natural resource rules and regulations are extremely costly and provide little or no benefit.

Conservatives and business leaders reject these accusations and point to the progress the country has made since the early 1970s in improving air and water quality, conserving energy, keeping the price of energy relatively low, and encouraging the safe transportation and disposal of chemical wastes. Companies have spent billions of dollars to retool their plants and manufacturing processes in order to control emissions, save energy, and safely dispose of toxic wastes. The reduction of sulfur dioxide (SO₂) emissions by power plants in the mid-Atlantic states has significantly reduced acid rain, thereby protecting forests, lakes, and streams in the United States and Canada. The timber industry has hired numerous ecologists and conservation biologists and is now managing forests more wisely by protecting critical habitats. Large agricultural firms are effectively managing soil erosion and are containing feedlot waste and chemical runoff from cropland. Unlike in the past, firms are cooperating more closely with government regulators and maintain that a “greening of industry” is currently taking place.

Using this ongoing battle over environmental protection and resource conservation between opposing political groups as a backdrop, Judith

Layzer asks: how, and to what extent, have conservatives influenced U.S. environmental politics and policy? Have they, despite the acquisition of substantial political power, truly failed to make a significant difference in the environmental regulatory framework? Have their efforts had a discernible effect on Americans' exposure to environmental risks?

As Layzer points out at the beginning of her book, American conservatives have consistently voiced skepticism about the ability of government to solve the country's social and economic ills. Instead, they have favored minimizing the regulatory burden on the private sector and devolving responsibility to state and local governments and private entities. While they disagree on certain issues, for the most part conservative leaders have succeeded in building an enduring political coalition among libertarians, pro-business Hamiltonians, and a populist faction that in the 1980s called itself "the New Right" and in the 2000s is known as the Tea Party. According to Layzer, this has been accomplished through the vilification of government and portrayal of business leaders as "entrepreneurs," the virtuous engines of economic growth and prosperity.

She explains that, for the conservative coalition, the two core and unifying values are freedom of individuals from government interference and economic efficiency, viewed as the product of markets unencumbered by government regulation. From this perspective, government intervention in the economy must be opposed because it reduces personal freedom and creativity; impairs the ability of business to maximize profits and create jobs, thereby hampering overall economic growth; and is almost invariably ineffective while causing negative, unintended consequences. Proponents of government action must demonstrate that the benefits exceed the costs, and that the intervention mitigates a serious risk. Conservatives believe that when government does enact environmental rules and regulations, it should do so in a way that is minimally coercive and least costly and burdensome to business, for example, by relying on incentives and market-like systems, or, preferably, encouraging compliance through voluntary programs.

Likewise, government should minimize impediments to the use of public land and natural resources and refrain from restricting the use of private property. On the rare occasions when government is compelled to enact restrictions on private property, policymakers should compensate landowners for any reduction in the market value of their property. Layzer argues that since the 1970s, conservative activists have worked hard to promote these antiregulatory ideas in hopes of rolling back—or at least substantially changing—the environmental regulatory

framework fostered by landmark legislation such as the Clean Air Act and Endangered Species Act, and preventing or delaying action on newly identified problems like climate change.

Drawing on a detailed historical analysis of both conservative ideas and their political and policy consequences, Layzer argues that conservatives' inability to enact wholesale reform masks their true impact on both policy and politics. To make that case, she examines the role that conservatives' antiregulatory ideas have played in shaping the United States' response to environmental issues since 1970. The main focus of the analysis concerns innovations in and contests over the use of administrative discretion. Conservative policymakers have devised new ways to relax existing rules and delay or prevent the adoption of new ones. In response, members of Congress who support environmental protection have sought to limit administrators' ability to undermine regulatory stringency. When in power, political appointees who favor improving environmental quality have used their discretion to advance environmental protection in the face of hostility from a conservative Congress.

A second focus involves policy learning, defined as revising policy goals or techniques in response to experience. Some environmentalists have been genuinely convinced by arguments about the need for less prescriptive mechanisms, such as inducements, collaboration, and programs that facilitate voluntary stewardship; others have reluctantly accepted new analytic tools and policy mechanisms in deference to apparently intractable opposition.

A third focus is political learning—in other words, adjustments in tactics in response to experience. Conservatives have learned to employ environmentally friendly language and avoid confrontation, while environmentalists have adopted the rhetoric of “balance,” “common sense,” and “efficiency” out of similar notions of political expediency. In Layzer's view, over time, the use of administrative discretion by conservative officials, combined with policy and political learning among both advocates and officials, has yielded an environmental policy regime that is increasingly inadequate relative to the global risks we face.

The book illustrates well the goals of the MIT Press series in American and Comparative Environmental Policy. We encourage work that examines a broad range of environmental policy issues. We are particularly interested in volumes that incorporate interdisciplinary research and focus on the linkages between public policy and environmental problems and issues both within the United States and in cross-national settings. We welcome contributions that analyze the policy dimensions of rela-

tionships between humans and the environment from either a theoretical or empirical perspective. At a time when environmental policies are increasingly seen as controversial and new approaches are being implemented widely, we especially encourage studies that assess policy successes and failures, evaluate new institutional arrangements and policy tools, and clarify new directions for environmental politics and policy. The books in this series are written for a wide audience that includes academics, policymakers, environmental scientists and professionals, business and labor leaders, environmental activists, and students concerned with environmental issues. We hope they contribute to public understanding of environmental problems, issues, and policies of concern today and also suggest promising actions for the future.

Sheldon Kamieniecki, University of California, Santa Cruz
Michael Kraft, University of Wisconsin-Green Bay
American and Comparative Environmental Policy Series Editors

Preface

Upon assuming the governorship of New Jersey in January 1994, Christine Todd Whitman announced that the state would be “open for business.” Like many Republicans, Whitman shared the conservative belief that environmental regulations ought to be curtailed to enable business to thrive. Subsequently, as administrator of the Environmental Protection Agency under President George W. Bush, Whitman discovered that her views were moderate compared to those of antiregulatory conservatives like Vice President Dick Cheney. In mid-2003, Whitman resigned her position, and two years later she published a book entitled *It's My Party, Too*, in which she criticized the efforts of the Bush White House to weaken environmental regulations. Whitman's experience is emblematic of a decades-long struggle within the Republican Party over how to address the environment in the face of a conservative coalition determined to free business of regulatory constraints.

I was motivated to write this book by puzzlement over what, exactly, that coalition had accomplished since the 1980s, when they began to dominate both the Republican Party and American politics. It seemed likely to me that, although they had failed to dismantle the existing regulatory framework, conservatives had influenced environmental politics and policymaking in discernible ways. For example, by the 2000s, most of my students were reluctant to describe themselves as “environmentalists,” even though they clearly shared the values of many environmental activists. In addition, most of the tools employed in the environmental policies of the 1960s and 1970s had fallen out of favor, even within the environmental community. Were these the consequences of learning from experience, an effective antienvironmental campaign, or some combination of the two? This book is an effort to sort out that quandary.

The theoretical framework of the book rests on the understanding that the conservative movement is rooted in ideas—in particular, ideas about the importance of individual freedom and unfettered markets. According to Alfred Regnery, one of the patrons of the conservative movement, the intellectual founders of contemporary conservatism “wanted to use their ideas to change the world.”¹ Yet one early reviewer of the manuscript for this book asked whether the conservative movement is really motivated by ideas at all, or is instead just a coalition of self-interested groups. As evidence of the latter, he pointed to the “hypocrisy” of ranchers who claim to oppose government intervention yet accept subsidies for their own activities. As I try to make clear, while conservatism is far from a coherent ideology, it is unfair to suggest that it is simply a cloak for unprincipled self-interest.

Moreover, although conservatives tend to agree on a small set of ideas, history does not suggest the existence of a “vast right-wing conspiracy” that has inexorably executed a well-formulated plan to take over American politics. Political development is far more contingent than such a vision would allow. That said, there is strong evidence that over the past forty years a well-funded and relentlessly ambitious core of political operatives has sought to craft, articulate, and disseminate ideas that will resonate among political elites and ordinary Americans. Those operatives have also devised effective tactics for dismantling, dislodging, or at least getting around the policies and programs they abhor.

It is also worth noting that although conservatives have gained ascendance in the Republican Party, the terms “conservative” and “Republican” are not synonymous. Many moderate Republicans, mostly concentrated in the Northeast, have been staunch defenders of environmental protection throughout the period of conservative ascendancy. Even some avowed conservatives do not subscribe to the particular views of the antiregulatory activists that dominate the movement. Divisions among industry, religious conservatives, and antiregulatory activists over endangered species conservation and climate change have occasionally riven the Republican Party.

This book fills a gap in the literature on the conservative movement. The dozens of books about conservatives that have been published since the 1980s say little to nothing about environmental issues. In part, this is because for many conservatives environmental issues are not a top concern; in fact, that is why those who do care about these issues have had virtually free rein. With its detailed exploration of the low-profile tactics employed by conservative activists, as well as the policy and politi-

cal impacts of those tactics, this book also adds to the small but growing literature in political science about incremental institutional change. And finally, this book deepens the environmental policy literature. As environmental historian Samuel Hays observes, most scholars are “inclined to engage in close examination of the environmental movement itself and to ignore the equally vast subject of the environmental opposition.”² Hays contends:

The environmental opposition is far more complex than the environmental impulse. Its components are far more diffuse; it uses more varied strategies to express opposition; it develops and evolves over time to establish a coherent, persistent force for countering environmental initiatives. . . . Contemporary observers identify the environmental impulse as a coherent force in modern society, but they rarely speak of the environmental opposition in similar fashion as a movement having like features of distinctive social, economic, and political roots. The subject remains an untapped exploration for environmental historians.³

Hays goes on to say that analysis of the environmental opposition is an intricate undertaking that requires varied analysis and careful gathering of evidence to figure out how it arises piecemeal from various sectors of the economy and society and then comes together as a larger political movement. He asks: What distinguishes those who see environmentalists as beyond the pale and those who “see themselves as engaged in pragmatic contests for the allocation of public and private resources?”⁴ These are the challenges and questions I set for myself in writing this book.

Acknowledgments

In the pages that follow, I recount a history but do not provide a comprehensive historical treatise; instead, I have tried to understand a forty-plus-year period through the lens of an analytic framework that captures the interplay among contemporary ideas and institutions. In reconstructing the events of the conservative era, I am indebted to the journalists, historians, and policy scholars who have traced the development of the conservative movement, as well as those who have documented decision making in particular presidential administrations. Over the past five years, my research assistants at MIT—particularly Molly Mowery, Sarah Madden, Rachel Henschel, Kate Van Tassel, Joshua Sklarsky, and Kate Dineen—tracked down information that contributed to this volume. Alexis Schulman was a thorough fact checker and dogged investigator of details.

Some of my colleagues deserve thanks as well. Steve Teles, who several years ago asked me to write a chapter based on this research, reminded me to put myself in the shoes of conservative activists. This book is likely more (although still not completely) even-handed as a result. Gus Speth read an early draft of the manuscript and gave helpful feedback. Erik Bleich and Kathleen Thelen read drafts of the “theory” chapter, and Andrea Campbell talked through some of the concepts in the analytic framework. Kateri Carmola provided extremely thoughtful editorial comments on chapters 1 and 2. Richard Lazarus—on short notice and in the midst of the holiday rush—gave powerful advice about portraying jurisprudence. Richard Andrews of the University of North Carolina, as well as two anonymous reviewers, provided extraordinarily thorough and incisive comments on the original draft of the manuscript. Mike Kraft, Sheldon Kamieniecki, and Clay Morgan gathered reviews and did their best to help me produce a high-quality book.

I am fortunate to have brilliant friends and family who have not only supported me but actually read and edited chapters. Liz Phillips and Bill Rodriguez read portions of an early draft. Bill also provided excellent suggestions on a near-final version of the concluding chapter. Emmy Rubin, Melissa Shufro, and others talked through nettlesome sections, and Melissa took a day out of her busy life to help me copyedit. Daphne Kalotay generously proofread a chapter on short notice as well. Most important of all: my brother, Nick, read the entire first draft; his enthusiasm gave me the confidence to submit the book for review. And my parents, Jean and David, read every word of the next-to-final draft, providing thoughtful (and encouraging) reactions and wonderful editorial suggestions.

Finally, there are the all-important people who helped produce the book itself. Lee Zamir sacrificed a chilly afternoon to capture the wonderful image that graces the front of the book. Yasuyo Iguchi, at the MIT Press, performed wizardry to transform that image into a bold, clear cover. I agonized over the title, exchanging countless emails, texts, and phone calls with a team of consultants: Steve Almond, Eve Bridburg, Daphne Kalotay, Rishi Reddi, Bill Rodriguez, Julie Rold, Judy Sharkey, Larry Vale, and, of course, Jean, David, Carolyn, and Nick Layzer. Clay Morgan at the MIT Press suffered through all of this with enormous patience. Marcy Ross did yeoman's work to format and copyedit not only the prose but also the extensive endnotes and references. And I'm particularly grateful to Sandra Minkinen, who gracefully tolerated my penchant for endless editing and selflessly engineered a tight production schedule to give me even *more* time to make last-minute changes.

Contents

Series Foreword: Conservative Ideas and Their Consequences	vii
Preface	xiii
Acknowledgments	xvii
1 Introduction	1
2 Discerning the Impact of Conservative Ideas	11
3 The Environmental Decade and the Conservative Backlash, 1970–1980	31
4 Ronald Reagan Brings Conservatism to the White House	83
5 Conservative Ideas Gain Ground Under George H. W. Bush	135
6 Bill Clinton Confronts a Conservative Congress	187
7 George W. Bush Advances Conservatives' Antiregulatory Agenda	257
8 The Consequences of a Conservative Era	333
Notes	371
Selected References	471
Index	489
Series List	501

Introduction

On November 5, 2008, voters elected Barack Obama the forty-fourth president of the United States. Environmental concerns played a minimal role in the twenty-two-month-long presidential campaign, despite their growing prominence in popular culture during that period. In some respects this was not surprising. Historically, the environment has not been a deciding factor in national elections. Moreover, in the months leading up to the 2008 election, the near collapse of the global financial system dominated the news and the presidential debates. The campaigns' lack of focus on the environment also reflected the relatively small differences between the two candidates' positions on the preeminent environmental issue, global climate change. Both Obama and his rival, Republican John McCain, acknowledged that global climate change is real and caused by human activity. Both candidates also supported a cap-and-trade system for carbon dioxide, the most prominent of the greenhouse gases that cause climate change.¹ In fact, during his years in the Senate, McCain had repeatedly cosponsored legislation to limit carbon dioxide emissions using a cap-and-trade mechanism. But McCain's leadership on climate change made him anomalous within the Republican Party. More important, it was inconsistent with the views of a vocal contingent within the party that decried global warming as a hoax and had long deplored environmental regulation as a ploy by liberal activists to impose government control over every aspect of American life.² Such antiregulatory conservatism dominated the Republican Party from 1980 to 2008; it receded only briefly before reappearing with a vengeance in 2009, not long after President Obama took office.

In the United States, conservatives share a skepticism about the ability of the federal government to solve social and economic problems; they favor minimizing the regulatory burden on the private sector and devolving responsibility to state and local governments and private