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Over the past two decades and in one area of global policy concern, a shift in global leadership can be observed such as some would see as likely to become typical in a more polycentric 21st century. In this instance, the shift of global leadership is from the United States to the European Union in the domain of climate po-

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licy. This change in leadership was not result of any contest and has not be marked by rancour. Instead, it reflected domestic conditions in both the US and the EU, which led the one to abandon the customary leadership role it exercised in the latter half of the 20th century and enabled the other to assume leadership in this domain of global policy concern.

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Climate Change

Global Leadership

Transatlantic Relations

Introduction

A polycentric world, such as the 21st century promises to be, will likely experience transfers of global leadership in many domains from the previous dominant power, the United States (US), to others. Such a transfer has occurred in climate policy as symbolized by the dominant roles played by the US and the European Union (EU), respectively, at the Conferences of Parties held in Kyoto in 1997 and in Durban in 2011. At the former, Vice-president Al Gore of the United States dramatically flew to Kyoto during the last days of the negotiation to deliver a public speech to urge the delegates to be more flexible in agreeing to a document that would lay the foundations for collective action with respect to climate change (Gore 1997, New York Times 1997). Fourteen years later in Durban, the dramatic moment was that of the EU Commissioner for Climate Action, Connie Hedegaard, huddled with a recalcitrant Indian head of delegation cajoling her to sign on to a new global climate governance framework while the US delegate benignly watched (Harvey 2011).

This transfer of leadership did not result from any contest between the parties. The US effectively abdicated its leadership role and the EU has assumed leadership as much by default as by any assertion of that role. The transfer has been as unmistakable as it has been unheralded, but what marks it as especially noteworthy is the lack of rancour accompanying the transfer. In fact, it could be said even that transatlantic relations have improved as a result of the transfer. At least in this domain and among knowledgeable participants, Americans no longer regard European pretensions and lack of action with dismissive disdain, while Europeans no longer indulge the subtle anti-American caricature that attributed the climate problem to the “American way of life.”

This paper will analyze the conditions in both the US and Europe that led to this quiet transfer of global leadership. The paper is based on the author’s close observation of climate policy over the past twenty years while at the Massachusetts Institute of Technology (MIT) and the European University Institute (EUI).

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1. A Decade of Increasingly Hollow US Leadership

A flashback to the beginning of international negotiations on climate at the Rio Conference in 1992 would reveal a typical post-World War II (WWII) scene. The nations of the world were assembled under United Nations (UN) auspices to address a global problem of increasing seriousness. The negotiations displayed the usual to-and-fro with the US being the leader, able to shape the resulting Framework Convention to its liking, while the European Union and its then constituent nations were in a state of disarray and unable to prevail with their agenda (Jordan and Rayner 2010). Less noticed at the time, because few could imagine otherwise, was that the UN Framework Convention on Climate Change (UNFCCC) was transmitted to the US Senate for its consideration and consent three months later and its ratification was agreed without controversy in less than a month (US Senate 1992). Only in retrospect is it noteworthy that this constitutional prerequisite for treaty ratification occurred despite a Republican President in the White House, George H.W. Bush (*père*), and a Senate controlled by the opposition Democratic Party.

Five years later, at the negotiations on the Kyoto Protocol, the external semblance was the same. The US played a large role and succeeded in shaping the negotiated document to its liking, again in the face of European opposition, but the domestic follow-up was totally different. Split government continued to prevail in Washington, only now the President, William J. Clinton, was a Democrat and the Republicans controlled the Senate. An external observer could have been excused for thinking this would not matter since the US had a long-standing and well-known tradition of bipartisanship in international affairs. However, there was no transmittal of the Kyoto Protocol to the Senate, not to mention consideration or vote, as there had been for the UNFCCC. To the external world, the pretense was that in due time the Protocol would be submitted, but it was plain for all to see that if this were done, Senate consent for ratification would not have been given. The reasons for this impasse provide a foretaste of things to come. As a result, the US position of leadership became increasingly hollow and it would be abandoned with the advent of a new President, George W. Bush, the son of the President who had exercised the customary US role at the beginning of the decade of the 1990s.

The fundamental cause of this hollowing out of the US position as a leader in global climate policy was the abandonment of bipartisanship in environmental matters and to a lesser extent in foreign affairs. The change explains the often misconstrued Byrd-Hagel resolution (US Senate 1997), which stated the conditions for Senate ratification of the Kyoto Protocol and has assumed almost iconic status among both opponents and advocates of climate action as an expression of the forces arrayed against US involvement in international efforts to address climate change. Ironically, this resolution was completely bipartisan for reasons that had nothing to do with climate policy. Its import is far more limited but no less significant in embodying the centrality of a constitutional issue and the misunderstandings that seem to have arisen during the 1990s.

The constitutional issue is that treaties negotiated by the executive branch of the government, can be ratified only “by and with the advice and consent” of the Senate, which ultimately and formally requires a favourable vote by two-thirds of the Senate (US Constitution: Art II, sec 2). The Senate’s rejection in 1919 of the Treaty of Versailles that formally ended World War I (WWI) because of provisions concerning the League of Nations is the definitive demonstration of this constitutional prerogative, as well as of the dangers of the executive getting too far out in front of the Senate’s “advice.”

With this constitutional background, two features of the Byrd-Hagel resolution deserve note. First, the usual manner by which the Senate advises the executive when treaty negotiations are contemplated is discreet back-

channel consultation, not resolutions voted on the floor. Second, the vote on the resolution was unanimous (95-0) with 45 Democrats sitting in the 100 member Senate. Central to both of these features is the view that the administration had exceeded if not ignored the Senate's earlier advice in the negotiations at the Conferences of the Parties (COPs) preceding the one in Kyoto where the protocol was to be negotiated.

The Byrd-Hagel resolution is quite specific in noting the discrepancy between the Berlin Mandate,¹ to which the administration subscribed in 1995 at COP-1 in Berlin, and the UNFCCC, which the Senate had ratified three years earlier. The preamble of the resolution notes that²

- 1) "the UNFCCC calls on all signatories to take actions to limit greenhouse gas (GHG) emissions,
- 2) "the Berlin Mandate exempts non-Annex I parties, and
- 3) "the Administration has voiced its support for the Berlin Mandate as a first step before addressing developing country commitments."

The resolution then goes on to express "the sense of the Senate" that the

"US should not be a signatory to (any agreement negotiated at Kyoto) or thereafter, which would mandate new commitments to limit or reduce GHG emissions for the Annex I parties unless (it) also mandates new specific scheduled commitments to limit or reduce GHG emissions for Developing Country Parties within the same compliance period." (US Senate 1997:I(1))

A more explicit rejection of the Berlin Mandate (and of the Kyoto Protocol that was to embody it) would be hard to imagine. The Byrd-Hagel resolution, agreed in July 1997 four months prior to the Kyoto COP, was a clear statement of the conditions for ratification. That the unanimous vote supporting the resolution included 41 Democrats (out of 45), including several who were outspoken advocates of taking action to address climate change (for instance, Senators Ted Kennedy of Massachusetts and Barbara Boxer of California), indicates clearly that the Senate's constitutional prerogative was being asserted, not sentiment for or against taking action to address climate change at either the international or national level.

As records eventually become available, history will be able to determine whether indeed the administration had exceeded its instructions and understandings with the Senate at Berlin. Alternatively, it is conceivable that the opponents to action on climate change had found a technical discrepancy that could be exploited and framed in a manner that would not permit any senator to demur.

What had clearly changed is the political context. COP-1 in Berlin was held in March-April 1995, scarcely three months after control of both chambers of Congress had passed out of the hands of the President's party to the Republicans, as a result of the 1994 mid-term elections. Moreover, that control of Congress, as well as the occupant of the White House, was reaffirmed in the election of 1996. One can as easily imagine that in early 1995 the executive presumed too much of the newly Republican-controlled Senate Foreign Relations Committee as one can suppose that that same newly reconstituted Committee did not adequately or completely advise the executive in the few months in which it had been seated. Probably there is an element of truth to both; however, by 1997 relations between the Democratic administration and the Republican Congress had become such that the normal, discreet back-channel communication concerning positions the US might take in international negotiations no longer prevailed and the highly public instruction was given.

1 The Berlin Mandate divided the UNFCCC signatories into those listed in an Annex I (generally industrialized economies and those of the former Soviet Union) and all others and mandated a process to eventuate in a protocol to be agreed at COP-3 in Kyoto two years later whereby Annex I signatories would assume specific quantitative limitations on their greenhouse gas emissions.

2 The reader is referred to THOMAS, the electronic repository of all US legislation maintained by the Library of Congress, for details on votes and procedures (US Senate 1997).

It was also becoming evident that the environmental movement was becoming increasingly identified with the Democratic Party, and vice versa. A Republican president, George Bush (Sr.), had negotiated both the 1990 Clean Air Act Amendments and the US ratification of the UNFCCC in the usual manner with large bipartisan votes in favour, but he had received no environmental support in the 1992 election. Analysts and historians can argue whether Republicans drew the conclusion that the environmental movement had become an irrevocably Democratic constituency, like trade unions, with nothing for any Republican to gain politically by advocating or voting in favour of environmental proposals. In any case the bipartisan collaboration that had previously characterized environmental issues was breaking down.

Another factor complicating the prospects for ratification was that compliance with the Kyoto Protocol would require more than executive action alone could deliver. For many domains in which treaties apply, the required actions are entirely within the capability of the executive to deliver (think: weapons testing, disarmament). Consequently, the US could effectively observe the provisions of the treaty even if ratification was not yet forthcoming. Such was not the case for climate, which would have required an accompanying suite of legislative and regulatory actions that would enable the US to meet what at the time was viewed as a 30 percent reduction of 2010 emissions from they were expected to be.³ In this case, there was little discussion of what the accompanying legislative or regulatory actions would be notwithstanding a less noticed proviso of the Byrd-Hagel resolution that any proposal for ratification be accompanied by

“a detailed explanation of any legislation or regulatory actions that may be required to implement the protocol ... [and] an analysis of the detailed financial costs and other impacts on the economy.” (US Senate 1997:I(2))

To many who were sympathetic to the Kyoto Protocol, ratification without the accompanying measures would be hollow and simply set up a future embarrassment. And, to those less favorably disposed to what the Kyoto Protocol would have required, ratification was only the first step to domestic action and a step more easily blocked than the required legislation or regulatory actions.

The Byrd-Hagel resolution effectively undercut the position of Vice-President Gore in his dramatic flight to Kyoto and his pep talk to negotiators, but that would have been little evident to outside observers not informed of constitutional intricacies and domestic developments in the US, and generally willing to give the benefit of doubt to any US administration. For the remainder of the Clinton administration, pretence and sustained ambiguity concerning ratification were to prevail. Sending the Kyoto Protocol to the Senate for its two-thirds consent to ratification would have made the situation clear to all and no purpose would have been served by doing so.

It was also politically convenient domestically for both the Democratic administration and the environmental movement to suggest that the problem was the Republican controlled Senate. As 2000 approached, all attention was given to the upcoming presidential and congressional elections the outcome of which, it was hoped, would bring the vice-president, who was so prominently associated with the issue, to the Presidency with a Congress that would be more amenable to ratification. The outcome was of course something else: Republican control of the executive branch and an evenly split Senate. On March 13, 2001, less than two months after the inauguration of the new president, George W. Bush ended the pretence of eventual US ratification by respon-

3 Although the GHG emission limitations negotiated in the Kyoto Protocol were relatively undifferentiated (6 to 8 percent below 1990 levels for the major industrial economies), the real measure of the difficulty and cost of meeting those goals was the difference from what emissions were expected to be in 2010. Since the growth of emissions was expected to be much higher in the US and Canada than in Europe due to population and GDP growth, the prospective costs were much greater for these two nations than for Europe. In the event both withdrew from the Kyoto Protocol, the US before and Canada after ratification.

ding to an inquiry from four Senators that, while taking the issue of climate change “very seriously,” he opposed the Kyoto Protocol and by implication would not submit the Kyoto Protocol to the Senate for ratification. (Bush 2001) With this announcement, the US effectively abdicated leadership of global climate policy. (Revkin 2001) The most that can be said for US leadership in the final years of the Clinton administration is that pretence and sustained ambiguity delayed the inevitable until a time when another global player was able to assume leadership.

2. Europe Rises to the Occasion

The turn of events in the US posed a dilemma for Europe. The European Union, as represented by its then fifteen member states and the Commission, strongly supported the Kyoto Protocol as an instrument of international law to address climate change. However, the European position theretofore had been notably cool to the emissions trading provisions that had been introduced into the Protocol at American insistence with the broad support of the Umbrella Group, a coalition of nations including not only the US but also Canada, Japan, Russia, the Ukraine, Norway, Australia and New Zealand.⁴ The US withdrawal from the Kyoto Protocol could have been seen as clearing the way for the European position, broadly supported by developing nations, to restrict trading except for one small but very important technical detail. The provisions for entry into force of the Protocol (Article 25) required that signatories constituting 55 percent of aggregate 1990 greenhouse gas emissions of Annex I parties ratify the document. The US accounted for 32 percent of those emissions and the rest of the Umbrella Group, 36 percent. Russia alone accounted for 17 percent of those emissions so that, in the absence of US ratification, the Kyoto Protocol would enter into force only if Russia ratified, or absent Russia, nearly all of the remaining Umbrella Group.

The choice before the European signatories was stark. If their favoured international framework for addressing climate change was to survive, the emissions trading provisions favoured by the Umbrella Group would have to be embraced fully. The alternative would be to let the Protocol fail and to blame the Americans. That this latter option was not chosen is a tribute to the diplomacy of the then EU15, which quickly mounted a diplomatic initiative to dissuade other Umbrella Group members from following the US example, or at least not to act precipitously until agreeable implementing provisions could be worked out. In the two succeeding COPs, COP-6bis in Bonn in June 2001 and COP-7 in Marrakech in December 2001, implementing provisions for trading were agreed that were more accommodating than anyone would have thought likely prior to the US rejection. As a result, all other members of the Umbrella Group except Australia eventually ratified the Kyoto Protocol which entered into force on February 16, 2005. Viewed from the perspective of the earlier debate over the Kyoto Protocol’s implementing provisions, the *volte-face* in the European position with respect to emissions trading was almost as unthinkable as the US withdrawal, although neither should have been surprises to observers closely following domestic developments in the US and Europe. Those in the US have been explained above; we turn now to the enabling conditions in Europe, growing domestic support for emissions trading and an increasing desire and ability to act in a unified manner.

Emissions trading was never as out of favour in a number of important member states as the positions taken by the EU in UNFCCC negotiations would have suggested. Business interests led prominently by BP, the British oil company, openly advocated emissions trading as a preferred alternative to the previously proposed carbon tax. The United Kingdom (UK), the Netherlands, Denmark, and Sweden advocated reliance on emissions trading

⁴ For this and subsequent references to specific features of the Kyoto Protocol, the reader is referred to UNFCCC (2013).

and the UK and Denmark had adopted small domestic CO₂ trading schemes. As early as 1998, the Commission was discussing the role that emissions trading could play in the EU's implementation of the Kyoto Protocol (European Commission 1998); and in March 2000, the Commission put forward a Green Paper on Emissions Trading that proposed that emissions trading would have the leading role in implementation and kicked off a serious discussion of the possibility (European Commission 2000). The Green Paper was a remarkable document not only in the suggestion of a leading role for emissions trading, but in the thoroughness and competence of the legal and economic analysis contained therein. It was followed up in October 2001 by a legislative proposal to establish an EU Emissions Trading Scheme (ETS) (European Commission 2001), which was adopted in 2003 and went into effect at the beginning of 2005 (European Community 2003).⁵

The Green Paper and the subsequent adoption of the EU ETS also reflected a number of internal developments. First, with the close of the 1990s, the possibility arose that the EU might not be able to meet its Kyoto obligations as the effect on GHG emissions of removing coal subsidies in the UK and the inclusion of the East in a reunified Germany wore off. It was also evident that something more than exhorting member states to augment their separate efforts would be needed to avoid such an embarrassment (Jordan and Rayner 2010:66, European Commission 1999). Secondly, a relatively small cadre of Commission officials and like-minded persons in some member-states became convinced not only of the merits of emissions trading, based in part on the US experience with SO₂ trading, but also of the institutional feasibility of avoiding the embarrassing rejection of the Commission's earlier, Rio-inspired carbon tax reform (Skjaerseth and Wettestad 2008). Fiscal matters required unanimity among the member states whereas environmental matters required only a qualified (super-) majority vote in the European Council. Finally, for proponents of a single market, the prospect of other member-states following the example of the UK and Denmark in setting up what would become disparate, uncoordinated trading systems would make a mockery of the single European market in one area where it made eminent sense.

Aside from these internal developments, the broader political context was becoming more enabling with respect to common EU-wide action. In the climate domain, the failure of the EU's proposed carbon tax only reinforced the caricature that the EU was good on pronouncements but poor on action. And the European disarray at COP6 in The Hague in late 2000 had been severely embarrassing to all. Climate seemed to be no different than foreign and defence affairs where a common position was seen to be impossible and the US had demonstrably been the indispensable actor in the EU's own backyard when crises arose in the former Yugoslavia. Still, the 1992 Maastricht Treaty had laid the groundwork for some important advances towards greater integration, most notably the adoption of the common currency in the years 1998-2002. At the same time, notions of "soft power" at which Europe saw itself as excelling, in contrast to the "hard power" being flexed by President Bush in Iraq and elsewhere, beckoned.

The US rejection of the Kyoto Protocol presented an almost made-to-order occasion to demonstrate just such a capability for common action. In the event, this emerging ability (and the accompanying desire) to act in a more unified manner combined with the increasing internal embrace of emissions trading to allow the EU to rise to the occasion, to save the Kyoto Protocol, to assume global leadership of climate policy, and most surprising for many to implement a trading system that dwarfed anything the Americans had done, effectively capping and reducing EU CO₂ emissions, and thereby putting paid to the canard that EU policy was all words and no action.

It must be said that there was no contest for the leadership position. The US had simply vacated the field. And, although President Bush had suggested in his 2002 Clear Skies speech that there was a better way to reduce emissions (an intensity-based approach instead of absolute caps), he also reaffirmed the US commitment to the UNFCCC and explicitly stated that the "US would not interfere with the plans of any nation that chooses to ratify

⁵ See chapter 2 of Ellerman, Convery, and Perthuis (2010) for a more complete discussion of the history of the development of the EU ETS.

the Kyoto Protocol” (Bush 2002). There are no reports that the US attempted to dissuade other Kyoto signatories from ratifying and all except Australia did so.⁶ Thereafter, as the parties to the Kyoto Protocol worked on its implementation, the US was a passive observer.

The EU greatly burnished its leadership position in the decade of the 2000s through its internal focus on the implementation of the EU ETS. Between Marrakech (2001) and Copenhagen (2009) little of importance happened in the international negotiations and all attention focused on the burgeoning carbon market created by the EU ETS. Unlike the ill-fated carbon tax proposal of the 1990s, the proposed trading system was adopted unanimously (despite requiring only a super-majority) by the EU15 in late 2003 to start in 2005. Moreover, it would apply as well to the East European member states that joined the European Union in 2004 and 2007. Despite initial teething problems, the EU ETS was an impressive achievement that included some 11,000 installations in 27 member states, and effectively capped European CO₂ emissions (Ellerman et al. 2010). It gave birth to a sizeable carbon market and non-trivial carbon price that drew worldwide attention.

Among the most important features of the EU ETS was the ability to use Kyoto Protocol sanctioned offsets for compliance up to a specified limit. This option, created by the Linking Directive adopted in 2004, made the European carbon price available to developers of carbon reduction projects throughout the world and thereby extended its effect far beyond the borders of the EU member states (European Community 2004). In response, projects reducing GHG emissions by more than a billion tons of CO₂-equivalent were undertaken. Although these credits could also be used by governments to meet their obligations under the Kyoto Protocol, there can be no doubt that the price created by the EU ETS was the main driver for these projects.

During this first decade of the 21st century, the tone of what might be termed green politics in Europe changed significantly, especially with respect to its attitude toward the US. In the 1990s and extending at least to COP-6 in the Hague (Dec 2000), climate politics in Europe and on the international stage displayed more than a touch of what has at times been described as watermelon green, that is, green on the surface but only as a cover for the old socialist critique of the capitalist system and especially the present-day embodiment of those values, the US, who was by this view “le plus grand pollueur du monde.” At least in the rhetoric, European climate policy seemed to amount to little more than keeping the rest of the world from adopting “the American way of life” (as if Europe had not gone a long way down that road in the post-WWII period). No event better symbolized this point of view than throwing a pie in the face of the American lead negotiator, Frank Loy, at COP-6. This act had little substantive impact in the negotiations but it only added to the embarrassment of European delegates who were already distraught enough over the disarray in the positions of European member states at The Hague, not to mention the circus-like atmosphere that seemed increasingly to pervade international climate negotiations (IISD 2000).

Nothing reflects better the change in tone than the subsequent embrace of emissions trading. Radical as emissions trading may have been seen as a regulatory instrument in Europe, it was not the one favored by radical greens. As things became more serious under the double impetus of the failure at The Hague and the galvanizing US rejection of the Kyoto Protocol, European climate policy took a notably pragmatic turn. Subsequent international negotiations were decidedly less media-worthy and, far from stigmatizing the US, the EU proceeded to adopt the very type of market-based trading system pioneered by the Americans and introduced by the US into the Kyoto Protocol over earlier European objections.

⁶ Australia was later to ratify the Kyoto Protocol and Canada to withdraw, both as a result of changes of government.

Moreover, the attitude to the US became remarkably non-judgmental and even hopeful as a new and more climate-friendly administration took over in Washington in 2009. If the new administration and Congress were to enact a similar cap-and-trade programme, the two systems on each side of the Atlantic could be linked thereby laying the basis for an international trading system. At the very least, the adoption of a similar system in the US would be a powerful endorsement of the approach adopted and now championed by the EU. One might even have envisaged the US re-assuming a leadership position in global climate policy. For one thing, a cap-and-trade programme in the US would have created a market three times as large as the EU ETS.

3. The Lost Opportunity for Resumed US Leadership

It is hard to imagine now how likely the prospects of climate legislation seemed as 2008 ended and 2009 began. In the preceding Congresses while President Bush was in office, the Senate (controlled by Republican Party) had been the focus of early preparatory legislative activity. Senators John McCain, the future Republican presidential candidate, and Joe Lieberman, the vice-presidential candidate on the Democratic ticket in 2000, were the driving forces behind early legislative proposals and Senate resolutions that prepared the ground. After the 2006 mid-term elections, in which the Republicans lost control of both the Senate and the House of Representatives, action quickened as other Senators proposed bills and the relevant committee staff started to think seriously about cap-and-trade legislation. In the momentous election of 2008, climate legislation was not an issue, but both presidential candidates were advocates of addressing climate change concerns more forcefully than the stance taken by President Bush. Things looked even better after the election when the party that had come to style itself as the environmental champion now occupied the White House in addition to controlling both Houses of Congress with even larger majorities. In the Senate, that majority reached for a while the filibuster-proof number of sixty. The story of how these hopes were dashed is one of partisanship leading to strategic and tactical errors, less than full presidential commitment, and unfavourable economic circumstances.

While the necessary preparatory work was being undertaken in the preceding Congresses, the way to failure of climate legislation in the Barack Obama administration was also being prepared by the increasingly partisan approach to environmental issues that had first become evident during the Clinton administration and flared into full view in the Bush administration. For this part of the story, we must go back to President Bush's "Clear Skies" speech in February 2002 (Bush 2002). In response to accumulating evidence concerning the effects of fine particulates, tropospheric ozone, and mercury, it advanced what may well be the last Republican initiative on an environmental issue. The speech proposed legislation that would significantly increase the stringency of the existing SO₂ and NO_x cap-and-trade programmes and establish a similar programme for mercury emissions. It also answered a question that had been lingering since the rejection of the Kyoto Protocol a year earlier, namely: what was the climate policy of the new Bush administration?

Viewed from a climate perspective, the proposed policy would clear America's skies of conventional pollutants first, while relegating climate to secondary status as an issue for which "the science is more complex, the answers are less certain, and the technology is less developed." Climate was recognized as a problem, to the consternation of many opponents of action, but one that posed a "different set of challenges and required a different strategy." In the political context of that time, the different strategy meant something other than the legislatively mandated cap-and-trade programme that was proposed for the three more conventional pollutants. Instead a non-binding intensity target (18 percent reduction by 2012) was advanced, as well as various voluntary measures and funding for clean energy programmes. The climate part of the proposed policy was described as "(setting) America on a path to slow our greenhouse gas emissions and, as the science justifies, to stop and then to reverse the growth in emissions."

In what was becoming emblematic of the hardening partisan positions on environmental issues, the proposal was immediately rejected by environmental groups and most of the Democratic Party, despite being thoughtful, coherent, and even bold with respect to the three conventional pollutants. At the time, four-pollutant (4P) bills were being proposed (with carbon dioxide being the fourth P) and the Clear Skies proposal essentially adopted three of the P's, but also included some changes to the Clean Air Act that were much desired by industry but not welcomed by the environmental movement.⁷ Whether a deal could ever have been struck in which CO₂ would have been included in exchange for the desired changes in the Clean Air Act will never be known. Faced with the lack of legislative action, the Bush administration turned to an equally bold regulatory solution for the 3 Ps which remains in limbo to this day because of subsequent litigation and judicial rulings.⁸

The then common assumption that control of the White House and both Houses of Congress by the Democratic Party would lead to passage of climate legislation proved to be faulty political analysis. Democrats had argued for so long and fervently that "Bush was the problem" that they had come to believe it and consequently failed to recognize the regional nature of the problem.⁹ It is perhaps accidental that the cultural fault line between the liberal "coasts" and the conservative "heartland" corresponds to regions little dependent on coal and those that are, but the political and party alignment cannot be so neatly described. Importantly the industrial and coal-dependent Midwest is represented in both the Senate and the House by a considerable number of Democrats. While these Midwestern senators and representatives were generally not opposed to climate change legislation, they were never as enthusiastic about it as their coastal colleagues, and in the Senate, they came to form the "Gang of 16" who continued to have reservations about the legislation (Romm 2008). The number is significant. The Democratic majority in this Congress varied between 57 and 60 (depending on deaths, resignations, and by-elections) so that all of the votes of the Midwestern Democratic senators would have been needed (plus a couple of Republican votes, depending on the timing) to gain the super-majority vote of 60 that increased partisanship now required for all major issues. Moreover, without the support of these senators, even a simple majority consisting of Democrats alone would not have been possible. If climate change legislation were a partisan issue, as it had become common to believe, the issue would have been decided. With a significant minority of Democrats from the industrial heartland expressing serious concerns, it was never a sure thing.

Increased partisanship played a large part not only strategically in misjudging the regional politics of climate change legislation, but also in the tactics. Previous large-scale environmental legislation had always enjoyed large majorities requiring significant bipartisan support. For example, the last grand environmental legislation, the Clean Air Act Amendments of 1990 had passed with majorities of 89 percent and 95 percent respectively in the Senate and the House. Twenty years later, a similar spirit of achieving compelling, grand majorities did not exist. Instead the strategy of the party in control (whichever it was) had become to concede as little as possible to obtain 50 percent +1 votes (or 60 percent +1 in the Senate). The mood of the time is conveyed by a phrase, "elections have consequences" (Thiessen 2010). This has always been true but rarely if ever was it spoken publicly as legislators sought to address problems in a way that would still favour the controlling party (perhaps not as fully as some members of that party might have liked) but with such a compelling majority that that the issue was decided definitively, without continued contesting of the issue and later revisiting should the vagaries of politics shift control to the other party.

7 The most important of these were changes to the New Source Review provisions which governed how much maintenance could be conducted on an existing plant before it would be considered a new source and therefore subject to the uniform, national New Source Performance Standard, which is generally more stringent than the state-imposed emission limits otherwise applicable to existing generating plants.

8 The regulatory solutions were the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). Both relied on innovative interpretations of the Environmental Protection Agency (EPA) administrator's discretion and both were subsequently overturned by judicial rulings. The CAIR proposal was replaced by the Cross-State Air Pollution Rule under the Obama administration but this regulation too has been overturned by judicial ruling and sent back to the administrator.

9 Both advocates and opponents found it convenient to assert that President Bush would veto climate legislation. In fact, no such statement was ever made by the president or a representative of the administration.

A pertinent example of the new attitude is the climate legislation containing the proposed US cap-and-trade system that passed in the House of Representatives. The vote in favour was narrow (219-212) and highly partisan with 211 of the 219 majority from the Democratic Party. Significantly, 44 Democrats mostly from Republican-leaning or coal-mining districts in the Midwest and South voted against the bill. Moreover, the bill was sponsored by two prominent Democrats from the “coasts” (representatives Henry Waxman of California and Ed Markey of Massachusetts) in marked contrast to the precursor Senate bills in earlier Congresses, which always had bipartisan sponsorship. Even without bipartisan sponsorship, had one of the Democratic sponsors been from a coal state or the industrial Midwest, at least a nod to the regional concerns, if not something more substantive, would have been conveyed. The question that can never be answered, other than speculatively, is whether a House bill that would have gained significant Republican support would have fared better in the Senate where the procedural conditions favouring narrow party-line votes were absent.

A final issue to be assessed in the failure of climate change legislation in the US is the degree of commitment of the new president to climate legislation. There can be no doubt that President Obama supported the legislation and would not have vetoed any climate legislation that Congress sent to his desk. The question is the extent to which the president was willing to use the political capital he enjoyed in these first two years to move the legislation along. The evidence is mixed (Lizza 2010). The president is reported to have intervened as needed to corral the needed Democratic votes in the House. At the same time, a Republican senator who was willing to go out on the limb to support the legislation ceased his efforts reportedly when persuaded, after meeting with the president, that he was insufficiently committed. The successful passage of the healthcare reform legislation (by narrow majorities in both branches of Congress) naturally leads to an assumption that healthcare reform had higher priority, although it is argued that the administration was equally committed to both and that the politics worked for one but not the other.

A more insidious influence on the administration’s commitment to climate legislation was its attitude towards a regulatory alternative. The administration made no secret of its view that, should the Senate not pass cap-and-trade legislation, the administration would use what it claimed its authority under the Clean Air Act to pursue a regulatory alternative. And in fact, the Waxman-Markey bill that passed the House explicitly recognized this alternative by exempting all facilities under the cap-and-trade programme from any Clean Air Act regulation concerning greenhouse gases. Any doubts about the presence of this alternative were removed, the day after the 2010 mid-term elections returned control of the House of Representatives to the Republicans, when the president famously remarked, in response to a press question about the outlook for climate legislation, that “there are other ways to skin the cat” (Obama 2010). The presence of this alternative in the administration’s thinking cannot be debated. Whether it led to the withholding of always limited political capital at critical junctures in the Senate deliberations, or even came to be preferred, is considerably more speculative.

In addition to the effects of partisan thinking, tactical errors, and presidential commitment, conditions were not favourable. The Great Recession that started in the final months of the Bush Presidency and drew most of the attention of the new president in his first year was not a favourable context for considering legislation that would have imposed costs on the American economy in order to address a problem of the global commons. Moreover, as the excesses of the credit-fuelled boom and subsequent crash became more evident, and particularly the role of important segments of the financial sector, market-based solutions lost much of the halo effect that they had enjoyed previously. In fact, as evidenced by several legislative proposals, there was a positive distrust of the trading part of cap-and-trade due to the inevitable role of the financial intermediaries, who were seen as a major contributor to the current economic problems.

After the failure of climate legislation in the Senate in 2010, there have been no further legislative proposals despite the usual practice, notwithstanding reversals, of taking up difficult legislative proposals in successive Congresses in search of a consensus. In this instance, with the partisan divide fully hardened, the Democratic administration turned exclusively to the regulatory option, while the Republicans in Congress have turned to legislative threats and initiatives to limit the regulatory authority of the EPA or, that failing, funding for implementation of such regulations. Whatever one thinks of the prospects for successful implementation of a regulatory approach, it is no less fraught with difficulties than a legislative approach. There is an immediate political advantage in being able to announce bold regulatory initiatives, but few can sustain the interest to follow the subsequent guerrilla fighting through the underbrush of administrative procedures, regulatory rulings, litigation, and finally judicial decisions that await all but the most mundane regulatory actions. The experience with the preceding Bush administration's similar resort to a regulatory alternative for the failed Clear Skies legislative proposal provides a glimpse of what can happen.

Interest in emissions trading in the US has virtually disappeared. It has disappeared completely at the federal level with all attention focused on the problematic regulatory approach. There is some discussion of a carbon tax in the context of the fiscal problems faced by the US, but nearly all of the rhetoric and political effort devoted to climate focuses on regulation and subsidies for renewable energy and various conservation measures. The mention of climate by re-elected President Obama in his inaugural address and 2013 State of the Union address only illustrates the point. Notably, in the State of the Union address, where specific proposals would be made, the President urged Congress to enact a "bipartisan, market-based solution" with a gracious nod to the earlier efforts of Senators McCain and Lieberman, but then added theatrically, "But if Congress will not act soon [...] I will" (Obama 2013). The further comments directed at the development of new clean technology indicate that the conflation with energy/industrial policy continues (Ellerman 2011).

In the states, which were previously cited as setting the example for the federal government, the situation is little better. California is going ahead with its legislatively mandated trading system, but the several other states that were going to join in the Western Climate Initiative have backed out. The Regional Greenhouse Gas Initiative created by ten Northeastern states continues, but the number is now nine after New Jersey abandoned the system not long after a Republican was elected governor of the state. The Midwestern Greenhouse Gas initiative has disappeared completely. To the extent that climate receives any attention at the state level, it is devoted to mandates for renewable energy in the electricity system.

4. The Sequel

With the failure of climate legislation in the US and the subsequent loss of interest in trading as a climate instrument, Europe stands alone in providing global leadership. It soldiers on, of course, but what has been most remarkable about this leadership in the last few years is the quiet pursuit of bilateral and even unilateral moves to develop and shape a global system based on the European example. This is not to say that the UN framework has been abandoned. Far from it, but it is no longer the sole, or perhaps even the primary, forum for developing global policy. This evolving stance reflects the pragmatic mix of realism and vision that marks any real leader. In this case, the vision is a global regime for addressing climate change and the realism that is born of accepting the world as it is and starting from there to work towards the ultimate goal.

Among other things, it has had to be recognized that the UN framework as it has been developed to date will not work. Copenhagen was an enormous disappointment for Europe and an affirmation that, despite all the

talk about trans-national forces, the nation-state remains the relevant actor. Also, with the rise of East Asia as a source of greenhouse gas emissions, the distinction drawn at Rio, reaffirmed at Berlin, and institutionalized at Kyoto between industrialized and developing countries has become outdated. Significantly, the issue that produced the scene at Durban, referenced at the beginning of this paper, was not about the extension of the Kyoto Protocol, which both Europe and India favoured, but India's agreement to a new process to develop a multinational framework, now called the Durban Platform, that would include meaningful commitments by at least the major emitting developing country signatories of the UNFCCC. In fact, the Berlin Mandate, which had so irked the US Senate more than a decade earlier and had been the underlying premise of the existing international framework, was being abandoned by none other than the European Union. Moreover, the calls for extension of the Kyoto Protocol came not from Europe but from those who would not be called upon to do much, if anything. Europe would not oppose these calls, but its priorities had moved well beyond this outdated distinction.

With the UN providing a potentially helpful but uncertain basis for a global policy, the EU has not hesitated to initiate unilateral actions to move towards its vision. The most notable recently is the agreement between the EU and Australia to establish mutual recognition between each other's GHG emission trading regimes. This arrangement is completely outside the UN process although both parties are supporters of that process and both will be part of the extended Kyoto Protocol agreed recently at the COP in Doha. The arrangement is far more significant for the development of a global trading regime to address climate change effectively and efficiently than the largely symbolic value of the extended Kyoto Protocol.

Equally significant is the extent to which EU member-states and the Commission itself are engaged in technical discussions with China on the development of their pilot CO₂ trading systems and with South Korea in the development of their trading system. One might wonder where else China and South Korea might look for experience in developing CO₂ trading systems, but Europe has seized the opportunity, as any realistic but visionary leader would, and one can see faint outlines of an eventually linked European and an East Asian trading complex consisting of Australia, China, and South Korea.

Finally, with respect to the UN framework, the EU has not hesitated to use its power as the only real source of demand for internationally traded offsets to reshape that industry. The authority to certify offsets was delegated to UN institutions and procedures at the beginning of the EU ETS, but the Commission has not been shy in intervening to close off certain types and sources of offsets, not so much in response to perceived abuses, as in an effort to "graduate" projects into more comprehensive and ambitious trading partners under the label of "new market mechanisms."

This broadening of the field of action beyond the UN framework can be traced in the legal documents establishing and amending the EU ETS. The initial ETS Directive, agreed in 2003, allows for the possibility of mutual recognition with other trading systems, but only with signatories to the Kyoto Protocol (European Community 2003:Art. 25). The amended Directive, agreed at the very end of 2008, changes these provisions to delete mention of the Kyoto Protocol and to widen the field to encompass sub-national entities and to allow for direct bilateral arrangements independently of whatever UN agreement may exist (European Community 2009:Art. 1:27).

Conclusion

One feature that is consistent in the stories told here of the US and Europe is the extent to which domestic conditions underlie global leadership. The position of leadership that the US initially exercised in the global policy arena, in climate when it emerged as in other fields, was the traditional one accorded to and enjoyed by the US in the aftermath of WWII. Climate is but one small area of international policy, but in this domain the US position as leader was progressively made hollow during the 1990s by domestic developments until at the end it depended on the vagaries of an election in 2000 that was decided by extraordinary means and, as subsequently determined, by the narrowest of margins. Even so, a different outcome in this election would have only prolonged the pretence that the US would ratify the Kyoto Protocol; it would not have changed the reality. As would be demonstrated later, the same internal development: the collapse of a bipartisan approach on environmental issues, would doom future attempts to enact legislation even when the constitutional issues surrounding treaty ratification were not involved.

Meanwhile, internal developments enabled Europe to assume a position of leadership that, in this domain, is now globally recognized. Had the reality of non-ratification of the Kyoto Protocol by the US been widely recognized three years earlier, say in 1998 instead of 2001, it is at least conceivable that Europe would not have been able to assume leadership. The intervening years provided the space for enabling domestic developments that made possible the *volte-face* on emissions trading, the subsequent salvaging of the Kyoto Protocol, and more importantly taking the substantive domestic actions that give substance and meaning to global leadership. Extrapolation of the experience in climate policy to other domains in which the US exercises leadership, or where others may assume that role, is not warranted, but the experience in this domain reveals the extent to which global leadership rests on enabling (or disabling) domestic developments.

Although climate does not figure among the traditional hard domains of international relations, this transfer of global climate policy leadership presents a model of how such transitions may occur in other domains if the 21st century turns out to be as polycentric as now seems likely. The lack of rancour in this transfer is remarkable. One party has found responsibility thrust upon it by events beyond its control and responded appropriately. The other party seems almost relieved that it does not have to take a leadership role in this domain and it certainly has not contested the outcome. No doubt the transfer was made easier by the common cultural heritage and shared values between the two parties and by what some might argue are the small stakes at issue. Nevertheless, it remains a remarkable development that would not have been imagined as little as twenty years ago.

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THE PROJECT

In an era of global flux, emerging powers and growing interconnectedness, transatlantic relations appear to have lost their bearings. As the international system fragments into different constellations of state and non-state powers across different policy domains, the US and the EU can no longer claim exclusive leadership in global governance. Traditional paradigms to understand the transatlantic relationship are thus wanting. A new approach is needed to pinpoint the direction transatlantic relations are taking. TRANSWORLD provides such an approach by a) ascertaining, differentiating among four policy domains (economic, security, environment, and human rights/democracy), whether transatlantic relations are drifting apart, adapting along an ad hoc cooperation-based pattern, or evolving into a different but resilient special partnership; b) assessing the role of a re-defined transatlantic relationship in the global governance architecture; c) providing tested policy recommendations on how the US and the EU could best cooperate to enhance the viability, effectiveness, and accountability of governance structures.

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