

‘Mourning for America’

–
Donald Trump’s Climate Change Policy

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ISBN: 978-951-769-544-2

ISSN: 2342-3323

Language editing: Lynn Nikkanen

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All manuscripts are read and commented on by at least two other experts in the field to ensure the high quality of the publications. In addition, publications undergo professional language checking and editing. The responsibility for the views expressed ultimately rests with the authors.

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‘MOURNING FOR AMERICA’

DONALD TRUMP’S CLIMATE CHANGE POLICY

FIIA Analysis 8
October 2017

SUMMARY

Donald Trump projects slogans more than strategy, yet his administration has moved quickly and with vigour to dismantle existing climate policies in the United States. As this analysis underlines, a robust system of political checks and balances will constrain the domestic deregulatory agenda, although Trump’s actions may disturb the delicate balance of interests in international climate negotiations. A long view on the legal and political system of the United States – from the ideological foundations of American political reaction to the federal constitution and its Madisonian separation of powers – is necessary to understand whether the policy direction charted by the current administration can prevail.

At first glance, the scale of regulatory roll-back appears unprecedented. Procedural and judicial limitations on federal powers that long predate awareness of climate change may nonetheless afford existing climate action surprising resilience against deconstruction. Still, the cumulative effects of deregulation, budget cuts, and personnel choices will eventually impact the scale and speed of US decarbonization.

At the diplomatic level, severely diminished contributions to international climate finance will impact the political dynamic in international climate negotiations, while a disengaged US is likely to have an unsettling effect on the stocktaking and periodic review processes under the Paris Agreement. Some of these effects can be compensated by market forces and invigorated action by cities and states. Meanwhile, the underlying politics in the US remain as partisan as ever. Even if contemporary policy decisions prove to be temporary outliers, a sobering insight from this analysis is that science denialism and political opportunism will surface time and again in the US public debate on climate change.

The Global Security research programme
The Finnish Institute of International Affairs

Introduction: 'Mourning for America'

'We'll be mourning for America, an America
that was lost on Obama's watch.'

Donald J. Trump, *Time to Get Tough: Making
America #1 Again* (Regnery 2011)

Donald Trump's ascent to the presidency was met with disbelief and shock among those following climate change science and politics – both domestically and abroad. Viewed across a longer time horizon, however, it becomes clear that the strain of populism he entertains is nothing new in American history, nor for that matter in the history of Western politics. It resonates with a powerful nostalgia for bygone greatness that has gained influence time and again during the past two centuries, sounding a call to arms against political and economic decline as well as cultural decadence.¹

Trump and his allies have leveraged this narrative to mobilize an agenda premised on the reversal of a perceived national crisis, offering a return to an erstwhile, more hopeful world with their slogan of 'Making America Great Again'. Such wistfulness for a better past was also emblematic of Ronald Reagan's presidency, for instance, who famously invoked a narrative of rebirth to describe his first term in office – 'morning again in America' – and sought to realize his country's promise as a 'shining city on a hill'.²

This is an old story, especially pronounced in European modernity after the French Revolution. As Mark Lilla describes it, political nostalgia 'settled like a cloud on European thought after the French Revolution and has never fully

lifted'.³ The mass appeal of reactionary ideas has come in many waves, including early 19th century Germany and its Kierkegaardian mood; the traumatic wake of World War I and Oswald Spengler's influential *The Decline of the West*; and the reckoning with World War II and the horrors of the Holocaust. All of these periods have inspired narratives of cultural pessimism, in which a break in the history of ideas sets in motion intellectual and political decline, and a subsequent political project that suggests a return to an earlier, healthier order.

Reagan's vision was one of a city 'teeming with people of all kinds', a city 'with free ports' whose 'walls had doors and the doors were open to anyone'.⁴ By contrast, Trump's political machinery has charted a darker, distinctly nationalist future for the US, and in doing so is departing from the commitment of recent administrations – both Republican and Democratic – to global engagement and international trade. Still, if one reaches far enough into the American past, isolationism, and indeed the slogan 'America First', is not an unfamiliar theme, dating back to the struggle for independence, and periodically defining US foreign policy up until the first half of the 20th century. Its rhetoric remains remarkably current, with narratives of American primacy and a protectionist, inward-looking bias. And in a nation where ethnic diversity and segregation have lived side by side in an uneasy standoff since its earliest days, it is no surprise that even the racial undertones of Trump's populism join a longer American tradition of white nationalism, in which conceptions of 'the people' are tacitly narrowed to a 'people held together by common blood and skin color',⁵ focusing blame and

1 Mark Lilla, *The Shipwrecked Mind: On Political Reaction* (New York Review of Books 2016).

2 Ronald Reagan, 'Farewell Address to the Nation' (11 January 1989), <<https://reaganlibrary.archives.gov/archives/speeches/1989/011189i.htm>> accessed 28 March 2017.

3 Lilla (n. 1), p. 28.

4 Reagan (n. 2).

5 Gary Gerstle, *American Crucible: Race and Nation in the Twentieth Century* (Princeton University Press 2017), 4.

resentment on alternating groups of foreigners or minorities.⁶

Donald Trump's campaign and early presidency have been described as lacking a coherent programme or a set of policies, relying on identity politics and an unspecific, reactionary agenda. This naturally raises a number of questions. First, how does climate change, perhaps the greatest global challenge humanity has ever faced, feature in his actual policies? Second, the American judiciary system, political checks and balances, and constitutional limits on federal powers constrain the ability of any administration to enact its own agenda. How do these limitations play out in Donald Trump's vision for domestic climate policy? Third, what are the international implications of President Trump's actions?

Analyzing the populist messaging is not enough to answer these questions. Both law and politics – the ideological foundations and patterns of American political reaction, as well as the legal-political system and its separation of powers – need to be taken into consideration when assessing whether the policy direction charted by the current administration can prevail. Our analysis is structured as follows: First, we briefly describe the role of partisanship in US politics, focusing on how it has shaped the politics of climate change. The next section discusses efforts to roll back the climate legacy of the Obama administration, and the extent to which this project is constrained by legal obstacles and market forces. We then turn to the more speculative question of how an evolving US climate policy agenda will affect international relations. Lastly, we draw some conclusions.

6 See, for instance, Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (U of North Carolina Press 1998); see also Richard Hofstadter's seminal work, *The Paranoid Style in American Politics* (Alfred A. Knopf 1965).

Backdrop: Partisanship and climate politics on the American right

'This very expensive GLOBAL WARMING bullshit has got to stop.'

Donald J. Trump, Twitter, 2 January 2014

Two political developments stand out over the past half century which, although not without precedent, seem to have reached a point of confluence that falls beyond the bounds of historical experience. Environmental policy, currently spearheaded by the climate change issue, has been fundamentally affected by these twin tendencies of radicalization and polarization.

First, the social and economic policies espoused by past administrations – both Democratic and Republican – have contributed to record levels of inequality along a number of metrics,⁷ exacerbating the impacts of other drivers such as globalization, automation, and broader demographic trends.⁸ Together, these forces have altered the fabric of American society, sundering the economic realities of a vast majority of working families from those of the monied establishment. Meanwhile, a steady rise in the proportion of ethnic and religious minorities has incessantly eroded the traditional dominance of white protestant America, and with it the cohesive weave of values, ideals and beliefs that defined the cultural legacy of earlier generations.⁹ In the wake of this transformational dynamic, large segments of the white population are said to feel a profound sense of betrayal

7 US wealth has concentrated to a degree not seen for a century, with the wealthiest 0.1% of households owning more than the bottom 90%; Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* (2nd edn Princeton University Press 2016).

8 Robert J. Gordon, *The Rise and Fall of American Growth: The U.S. Standard of Living since the Civil War* (Princeton University Press 2016).

9 William H. Frey, *The Diversity Explosion: How New Racial Demographics are Remaking America* (Brookings Institution Press 2015).

and mourning for a way of life that now seems lost, replaced with a mass culture that prizes cosmopolitanism and racial diversity. Compelled by economic disenfranchisement, nativist sentiments, and fear of the unknown, this group – so the widespread diagnosis goes – has projected its political hopes onto a reactionary project, laying fertile ground for fringe political candidates such as Donald Trump.

Economic and cultural upheaval are not the only battlegrounds that have seen a compound change, however. A second factor has been what is often described as the growing dysfunction of government, which is, on closer assessment, the product of a complex medley of drivers. Among these is the ideological polarization and strategic partisanship evident across the political spectrum. The current situation is remarkably at odds with the Madisonian governing process set out in the constitutional charter and has become a recipe for ‘willful obstruction and policy avoidance’.¹⁰ Importantly, this radicalization of party politics has not been symmetrical. One party – the Republicans – has been described as ‘an insurgent outlier – ideologically extreme; contemptuous of the inherited social and economic policy regime; scornful of compromise; unpersuaded by conventional understanding of facts, evidence, and science; and dismissive of the legitimacy of its political opposition’.¹¹ Polarization is further amplified by certain idiosyncrasies of the US political system, such as an electoral college and Senate that tie votes to geography rather than population, partisan redistricting (gerrymandering), and a rollback of campaign

finance reforms. It also gains impetus from a growing body of partisan media outlets, such as talk radio, cable news, and social media, which attract and reinforce homogenous audiences with filtered views,¹² while mainstream media strive for evenhanded treatment of all viewpoints in what has been described as a pattern of ‘false balance’. None of these factors may be new, but their concurrence and intensity appear to defy precedent.

These forces have channeled the growing discontent of a large share of the electorate, precipitating an outcome that questions the establishment and gives voice to a widely held disdain for intellectual and political elites.¹³ No longer feeling represented by the traditional parties, such voters embraced Donald Trump with a passion shown for few other presidential candidates, and seem willing to tolerate a radicalization of government, even if it comes at the expense of science, civic discourse, and other norms and institutions of a functioning democracy.¹⁴ As such, therefore, the populism that has risen to power in Washington is fundamentally different from the traditional conservative mainstream, and draws support from an energized, uncompromising base.

Historically, America is widely credited with pioneering environmental policy in the 20th century, and some of the greatest strides were taken during conservative administrations. These include the extensive conservation

10 Thomas E. Mann and Norman J. Ornstein, *It's Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism* (expanded edn, Basic Books, 2016) xxiii.

11 Ibid. xxiv; tracing this asymmetry and the radicalization of the Republican Party to the Goldwater movement of the 1960s: Eugene J. Dionne jr., *Why the Right Went Wrong: Conservatism – From Goldwater to Trump and Beyond* (Simon & Schuster 2016).

12 Eli Pariser, *The Filter Bubble: What the Internet is Hiding From You* (Penguin Press 2011).

13 Akin to the concept of ‘de-subordination’ proposed by Ralph Miliband, ‘A State of De-Subordination’ (1978) 29 *Brit J Sociology*, 399; see also Michèle Lamont, *The Dignity of Working Men: Morality and the Boundaries of Race, Class, and Immigration* (Harvard U Press 2002).

14 Alan Johnson, ‘After These Days of Rage’ (*New York Times*, 9 November 2016) A1.

measures of Theodore Roosevelt Jr.,¹⁵ as well as the passage of landmark environmental legislation and the establishment of relevant federal agencies, such as the US Environmental Protection Agency (EPA), under Richard M. Nixon.¹⁶ Although compelled less by passion than political opportunism, Nixon was able to declare in his first State of the Union address that '[r]estoring nature to its natural state is a cause beyond party and beyond factions'.¹⁷ Still, the susceptibility of modern environmental policy – and notably of restrictions on pollution – to political partisanship was already apparent from the outset, with the Republican Party and its commitment to business interests and limited government invariably more inclined to oppose environmental action on ideological grounds.¹⁸

A widening gap between the environmental policy platforms of both parties became especially evident during the election season of 1980, in which Republicans displayed a 'determined

commitment to end the environmental tide'¹⁹ and incorporated the rollback of related regulatory constraints in their campaign platform. With his first budget proposal, Ronald Reagan foreshadowed contemporary events with a request for substantial cuts to EPA programmes and staff, provoking a massive partisan backlash and ultimately political embarrassment for his administration.²⁰ In 1982, a special report by the Republican Study Committee, a group of 150 conservative members of the House of Representatives, denounced the 'specter of environmentalism', which it saw as a threat to economic growth and a channel for environmental 'extremists' to further their broader political and social agenda; opposing environmental policy, it concluded, thus offered a political opportunity for the Republican party.²¹ It did not take long for the consensus underlying earlier environmental policy to give way to a strong partisan divide, with few other policy issues revealing greater differences between Democrats and Republicans.²²

If anything, this pattern of partisanship is even more pronounced in the context of climate change, where even empirical science has become politicized. After Lyndon B. Johnson first afforded the topic national visibility

15 Douglas Brinkley, *The Wilderness Warrior: Theodore Roosevelt and the Crusade for America* (2009) ch 15–26.

16 In addition to the EPA, Nixon approved the Council on Environmental Quality (CEQ) and established the National Oceanic and Atmospheric Administration (NOAA) at the US Department of Commerce; in all, he signed 14 major pieces of legislation protecting the environment. For an insider overview, see Russell E. Train, *Politics, Pollution, and Pandas: An Environmental Memoir* (Island Press 2003), ch 7–9.

17 Richard M. Nixon, 'Annual Message to the Congress on the State of the Union' (22 January 1970) <www.presidency.ucsb.edu/ws/?pid=2921> accessed 31 March 2017.

18 Riley E. Dunlap and Richard P. Gale, 'Party Membership and Environmental Politics: A Legislative Roll-Call Analysis' (1974) 55 *Social Science Q* 670.

19 Samuel P. Hays, *Beauty, Health, and Permanence: Environmental Politics in the United States, 1955–1985* (CUP 1989) 491.

20 For a detailed account, see Jonathan Lash, David Sheridan, and Katherine Gillman, *A Season of Spoils: The Reagan Administration's Attack on the Environment* (Pantheon Books 1984).

21 James Morton Turner, "'The Spectre of Environmentalism': Wilderness, Environmental Politics, and the Evolution of the New Right' (2009), 96 *Journal of American History* 123.

22 Riley E. Dunlap, Chenyang Xiao and Aaron M. McCright, 'Politics and Environment in America: Partisan and Ideological Cleavages in Public Support for Environmentalism' (2001), 10 *Environmental Politics* 23, 30.

in 1965 with a special message to Congress, the earliest major policy action – ratifying the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 – still enjoyed bipartisan endorsement.²³ Soon after, however, support for climate action began to erode, starting with the spectacular failure of William J. Clinton’s effort to pass a tax on the heat content of energy in 1993.²⁴ The polarization in the climate issue was catalyzed by the lobbying work of conservative charities such as the Cooler Heads Coalition, launched in 1997, calling climate science a hoax and environmentalists ‘global warming alarmists’.²⁵ Climate change was subsequently framed as a highly ideological issue, in which ‘big government’ is looking for greater authority to regulate every aspect of the economy and curtail individual liberty.

Substantial pressure from industry groups and labour unions sometimes occasioned resistance against climate action from both sides of the political aisle, as exemplified by a unanimous Senate resolution rejecting asymmetrical commitments in the international climate negotiations.²⁶ Still, positions on climate change were mostly divided along party lines, and became increasingly partisan in response to federal inaction and the withdrawal from the Kyoto Protocol during the administration of George

W. Bush, as well as the far more activist agenda of his successor, Barack H. Obama.

After years of American climate renitence under President George W. Bush, the consequential pivot under his successor, Barack Obama, helped align US policy with the climate ambitions of most other industrialized nations. But what may have seemed like a return to normalcy for observers outside the US can also be seen as a deviation from the norm, a pendulum swung to the other end of progressive climate action. It is important to recall that Congress remained staunchly split along partisan lines on climate action during President Obama’s first term, and, if anything, opposition from Congressional Republicans, conservative states, and entrenched interests only grew during his second term in response to his agenda of regulatory activism. Hence, in many ways, the stage was set for a renewed pendulum swing in US climate policy when Donald Trump took office. And while Trump has repeatedly defied his party’s establishment, both as a candidate and as President, his views on climate change are in alignment with the vast majority of fellow Republicans.

Unravelling the Obama legacy

‘[W]e’re putting a lot of people out of work. Our energy policies are a disaster.’

Donald J. Trump, 1st Presidential Debate, Hempstead, N.Y., 26 September 2016

As a candidate during the controversial election season, Donald Trump repeatedly vowed to overturn the climate legacy of his predecessor, citing doubts about the very existence of climate change,²⁷ and arguing that related policy

23 A rare supermajority in the Senate on 15 October 1992 backed the accession by George H. W. Bush, a Republican president.

24 On the defeat of the British Thermal Unit (BTU) tax in the US Senate, see Amy Royden, ‘U.S. Climate Change Policy Under President Clinton: A Look Back’ (2002) 32 *Golden Gate University Law Review*, 415, 419–20.

25 ‘A Two-decade Crusade by Conservative Charities Fuelled Trump’s Exit from Paris Climate Accord’ (*Washington Post*, 5 September 2017).

26 US Senate, 105th Congress, 1st Session, S. Res. 98 ‘Byrd-Hagel Resolution’ (25 July 1997), <www.national-center.org/KyotoSenate.html> accessed 1 April 2017.

27 On 6 November 2012, Donald J. Trump famously tweeted: ‘The concept of global warming was created by and for the Chinese in order to make U.S. manufacturing non-competitive’, followed by several tweets in 2013 and 2014 describing climate change as a ‘hoax’.

measures were harming the US economy and destroying jobs. Still, given that he had at one point expressed support for robust climate action,²⁸ it initially remained unclear as to what extent the conflicting remarks Trump made during the campaign would also shape his executive decisions once he had assumed office. A number of early policy steps, however, provide growing evidence of the policy vision of the new administration – a vision that is remarkably consistent with candidate Trump’s campaign rhetoric.

Many of the central pillars of this vision can be traced back to a campaign speech the candidate held before an annual petroleum conference in Bismarck, North Dakota, on 26 May 2016. On this occasion, he outlined the contours of his ‘America First Energy Plan’, which included immediate steps to rescind executive actions on climate change, lift restrictions on fossil fuel extraction, ‘cancel the Paris Climate Agreement and stop all payments of U.S. tax dollars to U.N. global warming programs’.²⁹ Likewise, his appointments to lead the transition at key government agencies suggested an uncompromising hostility towards environmental safeguards, and towards climate policy in particular. Fears that President Trump would undo years of progress on climate policy received further impetus when he announced his designated cabinet,

with a number of prospective members who have long ties to the fossil fuel industry or a track record of opposing government action on climate change.

A key theme in the Trump campaign held that overregulation was ‘strangling’ or ‘choking’ American economic growth and entrepreneurialism.³⁰ This narrative is a popular one within the Republican Party and has a history in conservative campaigns, namely in the Reagan era, but again, the reactionary dimension of Trump’s administration goes beyond previous initiatives. Arguments for deregulation are now levelled against Democrats and liberal elites, who, according to the populist narrative, do not care about workers and jobs, but are instead preoccupied with cultural identities, equality, and other ideological concerns of the coastal elites.³¹

During the presidential campaign, this theme of deregulation was repeatedly highlighted as a key solution for economic growth. Expectations of such growth are promised for the manufacturing and energy sectors in ‘Real America’, and this includes coal mining and use, which face stiff competition from natural gas and renewables. Big pipeline projects such as the Keystone XL and Dakota Access have their stimulus effects as fiscal policies, and also considerable appeal in Trumpian identity politics.

Faced with this sweeping agenda, many observers questioned whether Donald Trump

28 See, for instance, a letter addressed to President Barack Obama and the US Congress printed in *the New York Times* (6 December 2009) calling for a global climate deal at COP 15, signed by Donald Trump and three of his children: ‘We support your effort to ensure meaningful and effective measures to control climate change, an immediate challenge facing the United States and the world today’.

29 Donald J. Trump, ‘An America First Energy Plan’ (26 May 2016) <www.donaldjtrump.com/press-releases/an-america-first-energy-plan> accessed 29 March 2017. Most of these pledges are contained in a version uploaded to the White House website, ‘An America First Energy Plan’ <www.whitehouse.gov/america-first-energy> accessed 29 March 2017.

30 See e.g., Donald J. Trump, 1st Presidential Debate, Hempstead, N.Y., 26 September 2016.

31 ‘In truth, today’s Democrats aren’t much interested in the well-being of working stiffs. Instead, they are enraptured with new plans to advance identity politics, co-ed bathrooms, and #BlackLivesMatter. All the while, of course, keeping the border open and suppressing energy production and economic activity.’ See ‘The Ten Ideologies of America: As Donald Trump Overthrows the Old Order, a Look at the New’ (*Breitbart*, 20 March 2016).

the president would be able to follow through with the promises he had made as Donald Trump the candidate. During the first year of his presidency, however, the White House has already initiated a review or rescission of several federal climate policies, and also initiated a fundamental pivot in international climate engagement. If anything, therefore, the speed and scope of policy change has taken commentators by surprise. Still, the implementation of this deregulatory and isolationist agenda faces numerous challenges, from subnational and local activism to market forces; both the evolving policy roadmap and these obstacles are described in the following section.

Regulatory reform

An early harbinger of the regulatory reform agenda of the new administration was promptly unveiled on inauguration day, when the former White House Chief of Staff Reinhold R. Priebus issued a memorandum to all agencies ordering a regulatory freeze and halting all new or pending regulations.³² Among the rules affected by this memorandum are a number of energy efficiency and renewable fuel standards, along with several dozen other rules issued by the EPA and Department of Energy during the last months of the previous administration.³³ President Trump signed an Executive Order soon after requiring federal agencies to repeal at least two existing regulations for every newly issued regulation, and to do so in a way that ensures

32 White House, Office of the Press Secretary, 'Memorandum for the Heads of Executive Departments and Agencies' (20 January 2017) <www.whitehouse.gov/the-press-office/2017/01/20/memorandum-heads-executive-departments-and-agencies> accessed 29 March 2017.

33 See, for instance, the list compiled by the EPA, 'Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017' of 26 January 2017 (2017) 82(16) Federal Register 8499.

the total cost of regulations does not increase.³⁴ In order to regulate, the administration should duly rewrite existing regulation or axe an existing rule. Significantly, the benefits of new regulations may not be included in this calculation, a departure from traditional practice even during the Reagan administration, when benefits needed to exceed the cost.³⁵ If a climate policy initiative is projected to cost 100 million dollars, the utility calculus cannot count the savings on health, such as decreasing cases of asthma, into the equation. A subsequent Executive Order ensures observance of this agenda by establishing a Regulatory Reform Officer and Task Force in each agency.³⁶ Although these orders raise many questions and their legality is, in many cases, under dispute, they signal a strong commitment by the new administration to unravelling the framework of executive rules and interpretations iterated over the years by previous administrations.

Federal budget

In March the White House released its budget blueprint for 2018.³⁷ With an emphasis on national security and public safety, the budget blueprint proposes significant increases in defence spending, homeland security, and

34 Executive Order 13771, 'Reducing Regulation and Controlling Regulatory Costs' of 30 January 2017 (2017) 82(22) Federal Register 9339.

35 'Why Trump's Order to Cut Government Regulation Is Even Bolder than it Seems' (*Washington Post*, 13 February 2017).

36 Executive Order 13777, 'Enforcing the Regulatory Reform Agenda' of 24 February 2017 (2017) 82(39) Federal Register 12285.

37 Executive Office of the United States, Office of Management and Budget, 'America First: A Budget Blueprint to Make America Great Again' (16 March 2017) <www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/2018_blueprint.pdf> accessed 29 March 2017.

law enforcement as ‘a message of American strength, security, and resolve’. Extensive cut-backs to unrelated agencies and programmes would maintain budget neutrality and avoid increasing national debt. Among the agencies hardest hit by proposed expenditure cuts are the three agencies with substantial responsibilities for climate change: the EPA, the Department of Energy, and the Department of State. Specifically, the blueprint proposed shrinking the EPA budget by 31.4% to \$5.7 billion, the largest cut in relative terms to any federal agency, and a significantly larger cut than requested by Congressional Republicans.³⁸

In particular, the blueprint discontinues ‘funding for the Clean Power Plan, international climate change programs, climate change research and partnership programs, and related efforts’,³⁹ including a cut of 224 staff and 14 voluntary programs under the Climate Protection Program. For the Department of Energy, the budget blueprint requests \$28.0 billion, a 5.6% decrease, with decreases of 17.9% for the Office of Energy Efficiency and Renewable Energy, and the Advanced Research Projects Agency-Energy. Extensive cuts are also requested for the Department of State and associated international programs,⁴⁰ which would see their budget reduced by 28% to \$25.6 billion.

Citing the need to achieve an ‘appropriate U.S. share of international spending’ and ‘reduce or end direct funding for international organizations whose missions do not substantially

advance U.S. foreign policy interests’, the budget proposes eliminating ‘the Global Climate Change Initiative and ... [to] cease payments to the United Nations’ (UN) climate change programs’.⁴¹ Other relevant areas threatened with dramatic spending cuts are the National Oceanic and Atmospheric Administration at the Department of Commerce and subsidies for long-distance train services through the Department of Transportation.

In late May, the administration proceeded to release the full budget proposal for fiscal year 2018, upholding the proposed deep cuts already outlined in the blueprint.⁴² Not only does the proposal break down the requested cuts into greater detail, but it also extends the assault on programs and activities related to climate change. Entire regulatory frameworks, such as the Greenhouse Gas Reporting Program requiring large stationary emitters to report their greenhouse gas emissions, would be eliminated along with the attendant administrative capacity. While the Congressional approval process – which had not yet concluded at the time of writing – will inevitably introduce significant changes, the proposals out of the White House have left little doubt about the administration’s priorities and its expressed objective of ‘focusing funding to redefine the proper role of the Federal Government’.⁴³

38 See the critical assessment by former EPA Administrator Christine Todd Whitman, ‘I Ran George W. Bush’s EPA – and Trump’s Cuts to the Agency Would Endanger Lives’ (*The Atlantic*, 31 March 2017) <www.theatlantic.com/politics/archive/2017/03/trumps-epa-cuts-budget/521223> accessed 31 March 2017.

39 Executive Office (n 50) 41.

40 These include the US Agency for International Development (USAID) and the International Programs at the Department of the Treasury, *ibid.* 33.

41 Specifically, the budget blueprint eliminates all US funding related to the Green Climate Fund and precursor climate investment funds, see Executive Office (n 50) 33.

42 Executive Office of the United States, Office of Management and Budget, ‘Budget of the U.S. Government: A New Foundation for American Greatness Fiscal Year 2018’ (23 May 2017) <<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/budget.pdf>> accessed 29 May 2017.

43 Executive Office (n 50) 5.

Transportation sector

In 2016, after years of falling greenhouse gas emissions from electricity generation, the transportation sector became the single largest source of emissions in the US.⁴⁴ It also became the first target of executive climate action during the administration of President Obama, when the EPA and other authorities issued joint greenhouse gas emissions standards for passenger cars and light trucks manufactured between 2012 and 2016. A second phase would require passenger cars and light trucks manufactured between 2017 and 2025 to achieve a fleet average of 54.5 miles per gallon by 2025,⁴⁵ contributing to a projected reduction of greenhouse gas emissions by 2 billion metric tons.⁴⁶

The Trump administration announced in March that it would reinstate a midterm evaluation of the standards, signalling its intention to review whether these are excessively burdensome relative to the greenhouse gas emission reductions

and fuel savings they would achieve.⁴⁷ Observers predict that the standards will be ‘substantially relaxed’ in view of a changing vehicle fleet following a period of low gasoline prices.⁴⁸

Energy sector

Several measures adopted at the outset of the new administration share one central objective: to reduce the regulatory burden on oil, gas and coal production. Collectively, they recalibrate the balance of environmental and economic interests in the energy sector, as repeatedly pledged during the election campaign. As early as February, the Interior Department suspended and then, in April, formally proposed repealing a revised accounting system to govern how oil and gas produced from federal leases is valued.⁴⁹ Reforming the valuation methodology was expected to increase royalty payments. President Trump took another step towards regulatory reform in March when he signed an Executive Order directing the EPA and the US Army Corps of Engineers to revisit a federal rule that narrows the scope of federal safeguards for surface waters, lessening the permitting and compliance requirements for

44 Energy Information Administration (EIA), ‘Monthly Energy Review March 2017’ 184–5 (28 March 2017) <www.eia.gov/totalenergy/data/monthly/archive/00351703.pdf> accessed 29 March 2017.

45 Equalling an average industry level of approximately 163 grams/mile of carbon dioxide (CO₂) in model year 2025, see DOT NHTSA and EPA, ‘Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles: Phase 2; Final Rule’ of 16 August 2016, 40 CFR Parts 9, 22, 85, 86, 600, 1033, 1036, 1037, 1039, 1042, 1043, 1065, 1066, and 1068, 49 CFR Parts 523, 534, 535, and 538 (2016) 81(206) Federal Register 73478.

46 EPA Office of Transportation and Air Quality, ‘Regulatory Announcement EPA-420-F-12-05’ (1 August 2012) <<https://nepis.epa.gov/Exe/ZyPDF.cgi/P100EZ7C.PDF?Dockey=P100EZ7C.PDF>> accessed 29 March 2017.

47 White House, Office of the Press Secretary, Press Release of 15 March 2017 <www.whitehouse.gov/the-press-office/2017/03/15/president-donald-j-trump-buy-american-and-hire-american-united-states> accessed 29 March 2017.

48 Jason P. Britt, ‘President Trump Orders EPA Review of Corporate Average Fuel Economy Standards’ (*Dashboard Insights*, 20 March 2017) <www.autoindustrylawblog.com/2017/03/20/president-trump-orders-epa-review-of-corporate-average-fuel-economy-standards> accessed 29 March 2017.

49 Department of the Interior, Office of Natural Resources Revenue, ‘Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform’ of 1 July 2016, 30 CFR Parts 1202 and 1206 (2016) 81(127) Federal Register 43338.

coal mining and oil and gas production.⁵⁰ Less than a month after inauguration, Congress reversed rules on surface coal mining debris, the ‘Stream Protection Rule’ that had been issued by the previous administration to avoid ‘material damage to the extent technologically and economically feasible’.⁵¹

When it came to infrastructure, the new administration approved two controversial projects, the Keystone XL and the Dakota Access pipelines, after ordering an expedited authorization process within days of the inauguration. Both projects remain highly politicized due to their potential impacts on water resources and the climate, as well as alleged violations of indigenous and tribal rights. Litigation against the approval decisions is already underway.⁵²

Climate change

While each of the foregoing actions has ramifications for US energy and environmental policy, an Executive Order signed on 28 March 2017⁵³ is arguably the single measure most sweepingly aimed at overturning the regulatory

legacy on climate change left by the previous administration. The adoption of this order had been repeatedly postponed due to the political setbacks around healthcare legislation and the scrutiny of foreign ties within the administration. Titled ‘Promoting Energy Independence and Economic Growth’, it expressly identifies as its objective ‘to promote clean and safe development of ... energy resources’ while ‘avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation’.⁵⁴ During the signature ceremony, President Trump described its aims in more provocative terms as ‘putting an end to the war on coal’ and ‘ending the theft of American prosperity’.⁵⁵

In terms of substance, the Executive Order consists of a number of directives to executive departments and agencies aimed at suspending, revising, or rescinding regulations. It goes on to detail a process requiring agencies to immediately review and identify ‘all [...] agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources’. It further solicits each agency to submit within specified timelines a plan for this review as well as, subsequently, a report describing recommended actions.

Additional provisions throughout the Executive Order direct agency heads to review or withdraw a number of specific actions. Environmental concerns are only mentioned incidentally in all this, with the promotion of ‘clean air and clean water’ acknowledged as a policy objective, but only ‘to the extent permitted by

50 Executive Order 13778, ‘Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule’ of 28 February 2017 (2017), 82(41) Federal Register 12497.

51 Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), ‘Stream Protection Rule’ (20 December 2016) 81(244) Federal Register 93066.

52 See, e.g., *Northern Plains Resource Council et al. v Department of State et al.*, Complaint for Declarative and Injunctive Relief filed with the US District Court for the District of Montana, Great Falls Division [30 March 2017] <www.sierraclub.org/sites/www.sierraclub.org/files/blog/Complaint%20filed%202017%2003%2030.pdf> accessed 31 March 2017.

53 Executive Order 13783 of 28 March 2017, ‘Promoting Energy Independence and Economic Growth’ (2017) 82(61) Federal Register 16093.

54 Executive Order 13783 (n 77) Sec. 1(a).

55 White House, ‘Remarks by President Trump at Signing of Executive Order to Create Energy Independence’ (28 March 2017) <www.whitehouse.gov/the-press-office/2017/03/28/remarks-president-trump-signing-executive-order-create-energy> accessed 30 March 2017.

law’ and ‘while also respecting the proper roles of the Congress and the States concerning these matters’. While the political intent of the order is to roll back climate policy measures of the previous administration, the word ‘climate’ is only mentioned in the context of the regulations and reports to be rescinded.

At the heart of the Executive Order are provisions to reverse the Clean Power Plan.⁵⁶ Its importance to former President Obama’s regulatory strategy on climate change is reflected in his statement during the announcement ceremony that the Clean Power Plan was ‘the single most important step that America has ever made in the fight against global climate change’⁵⁷ – a statement that stands in stark contrast to President Trump’s assessment during the release of his Executive Order, according to which ‘[p]erhaps no single regulation threatens our miners, energy workers, and companies more than this crushing attack on American industry’.⁵⁸ Instructed to ‘immediately take all steps necessary to review’ the regulations and any related rules and guidance for consistency with the general objective of ‘avoiding regulatory burdens’, the EPA was mandated with suspending, revising, or rescinding the guidance, ‘if appropriate’ and ‘as soon as practicable’.

Based on the foregoing review, the Administration announced a proposed rulemaking in early October 2017 which rejects the Clean Power Plan for ‘setting guidelines ... that can only realistically be effected by measures that

cannot be employed to, for, or at a particular source’, such as ‘generation shifting’ and ‘actions taken across the electric grid.’⁵⁹ Because it considers this a violation of its authorities under federal law, the EPA proposes to repeal the Clean Power Plan, adding that it ‘has not determined whether it will promulgate’ a replacement rule and, ‘if it will do so, when it will do so and what form that rule will take.’ Predictably, the announcement was met with public outcry, particularly its omission of a timeline for elaborating a replacement rule.⁶⁰ Following publication of the proposed repeal, the EPA will be required to accept and review public comment, and once the repeal takes effect it will likely be the target of vigorous judicial action. As long as the endangerment finding remains in place, moreover, the agency remains under an obligation to limit greenhouse gas emissions from stationary sources.

The limits of the regulatory roll-back

As outlined in the preceding section, executive climate action taken so far by the current administration focuses strongly on unravelling policies set in place by the previous administration. Still, repealing the climate legacy of Barack Obama will not be an expeditious and straightforward process, even where those policies were implemented by way of agency regulations rather than statutory legislation. Alternative pathways exist to undo the current climate policy framework, and each is subject to detailed procedural requirements and

56 EPA, ‘Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule’ of 3 August 2015, 40 CFR Part 60 (2015) 80(205) Federal Register 64661.

57 White House, ‘Remarks by the President in Announcing the Clean Power Plan’ (3 August 2015) <<https://obamawhitehouse.archives.gov/the-press-office/2015/08/03/remarks-president-announcing-clean-power-plan>> accessed 29 March 2017.

58 White House (n 79).

59 EPA, ‘Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units’ (Draft, 9 October 2017) <<https://static101.nyt.com/news/cpprepeal.pdf>> accessed 9 October 2017.

60 Jennifer A. Dlouhy, ‘Trump to Argue Obama’s Clean Power Plan Violates U.S. Law’ (Bloomberg, 5 October 2017) <<https://www.bloomberg.com/news/articles/2017-10-05/trump-is-said-to-argue-obama-s-clean-power-plan-violates-law>> accessed on 9 October 2017.

constraints. Alternative pathways exist to undo the current climate policy framework, and each is subject to detailed procedural requirements and constraints.

Procedural inertia

While Congress has made extensive use of a power to ‘disapprove’ regulatory action taken during the previous session,⁶¹ it has only played a secondary role in reverting US climate policies to date, and will likely be even less influential during the remainder of President Trump’s time in office. Senate cloture and filibuster rules require a high voting threshold of 60 votes to move most types of legislation to a Congressional vote,⁶² provided the Senate does not invoke a procedure that allows overriding rules or precedents by a simple majority of 51 votes.⁶³ Despite pressure from the White House, the Senate has not yet exercised that option, narrowing prospects for substantive legislation.

Where regulations are currently subject to pending litigation, as is the case with the Clean Power Plan, the administration effectively has an additional venue to stall or repeal climate regulations. Within months of its release, the Clean Power Plan became the most heavily litigated federal environmental regulation in

US history.⁶⁴ In theory, the new administration could ask the court to vacate the Clean Power Plan or simply decline to defend it, obviating the lengthy procedure needed to rescind the rule by way of executive action. But judicial precedent suggests a motion to vacate would be denied,⁶⁵ and the interveners in support of the rule would also likely continue to defend the rule. Indeed, a coalition of 17 states, six municipalities and the District of Columbia had already registered their opposition to the foregoing motion.⁶⁶ Instead, the EPA requested that the court hold the case in abeyance while it reconsiders the Clean Power Plan, a request that the court has granted.⁶⁷

Absent congressional or judicial repeal, the administration itself can overturn past measures through executive action. A majority of the Executive Orders described in the previous section direct federal agencies to review and, if appropriate, initiate proceedings to suspend, revise or rescind various guidelines, orders

61 104th Congress, H. R. 3136, ‘Contract with America Advancement Act of 1996’ (28 March 1996) Pub.L. 104–121, Sec. 251: Congressional Review of Agency Rulemaking, U.S. Code Title 5 Part I Chapter 88 802(a).

62 US Senate, Rules of the Senate, ‘Precedence of Motions (Rule xxII)’: ‘three-fifths of the Senators duly chosen and sworn’.

63 A controversial procedure, known as the ‘constitutional’ or ‘nuclear option’, which has rarely been invoked and is considered vital to protect bipartisanship in the Senate; for background, see Betsy Palmer, ‘Changing Senate Rules: The “Constitutional” or “Nuclear” Option’ (*Congressional Research Service*, 26 May 2005) <<http://research.policyarchive.org/176.pdf>> accessed 29 March 2017.

64 Samuel Kernell, Gary C. Jacobson, Thad Kousser, and Lynn Vavreck, *The Logic of American Politics* (8th edn, CQ Press 2018) 83.

65 A district court ruling in *National Parks Conservation Association v Salazar*, Case No. 1:09-cv-00115 (12 August 2009) held that vacatur was not appropriate absent a merits ruling, significant new evidence, or the agreement of all parties, and that otherwise it would ‘wrongfully permit the Federal defendants to bypass established statutory procedures for repealing an agency rule’ under the Administrative Procedure Act (APA), see *idem*. 4–5.

66 US Court of Appeals for the D.C. Circuit, *State of West Virginia et al., v EPA et al.*, No. 15–1363 (and consolidated cases), ‘State and Municipal Respondent-Intervenors’ Opposition to Motion to Hold Proceeding in Abeyance’ (5 April 2017).

67 US Court of Appeals for the D.C. Circuit, *State of West Virginia et al., v EPA et al.*, No. 15–1363 (and consolidated cases), Order granting further abeyance (8 August 2017).

and regulations adopted during the previous administration. Where the administration decides to suspend, revise or rescind existing regulations, as in its proposed repeal of the Clean Power Plan, it has to adhere to an established procedure. Under the Administrative Procedure Act and issue-specific statutes such as the Clean Air Act, proposed rules suspending, revising, or rescinding existing rules have to be published for notice and comment,⁶⁸ a protracted process that can require three to six months to complete and result in considerable public input.⁶⁹ What follows is the preparation of a final rule, with any necessary revisions, along with development of appropriate responses to public comments, continued stakeholder engagement, and legal and policy review of the rule, adding up to two more years to the process. A less onerous process applies to actions that did not go through formal notice and comment proceedings, such as Executive and Secretarial Orders, guidelines, and reports, all of which can be revoked with immediate effect by executive fiat.

While the ability of federal agencies to revisit existing regulations, including the authority to reconsider and rescind or revise past decisions, has been affirmed with ample judicial precedent, such action must be supported by a ‘reasonable explanation’ and demonstrate that ‘there are good reasons for the new policy’.⁷⁰ In

effect, ruling on a regulatory reversal during the presidency of Ronald W. Reagan, the Supreme Court required that ‘[a]n agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance’.⁷¹ This is generally interpreted to mean that the agency must examine the relevant data and articulate a satisfactory explanation for its action, building a robust record of scientific, economic, and other supporting information.

In its proposal to repeal the Clean Power Plan, the EPA focused on a pivotal concept in the Clean Air Act, the ‘best system of emission reduction’, drawing on statutory language, legislative history, and prior agency practice to argue that the preceding administration had exceeded its federal authority when it required measures beyond the regulated sources themselves for compliance. Additionally, the proposal relies on an analysis of avoided compliance costs and foregone benefits, using changed definitions and metrics to conclude that a repeal would result in net savings.⁷² While the underlying economic and legal reasoning will certainly be challenged, the agency has probably satisfied the requirement of providing a ‘reasonable explanation’ and ‘good reasons for the new policy.’

Still, as long as the endangerment finding for greenhouse gas emissions adopted during the previous administration remains in place – and despite recent steps by the EPA Administrator Scott Pruitt to orchestrate a ‘balanced’ debate on climate science, which some have interpreted as preparations to review the

68 79th Congress, S.7, ‘An Act to Improve the Administration of Justice by Prescribing Fair Administrative Procedure’ (11 June 1946) Pub.L. 79–404, 60 Stat. 237, U.S. Code Title 5 Part I Chapter 5 § 553.

69 In the case of the Clean Power Plan, for instance, the EPA received 4.3 million public comments, see EPA, ‘Fact Sheet: Clean Power Plan by the Numbers’ (3 August 2015) <www.epa.gov/sites/production/files/2015-08/documents/fs-cpp-by-the-numbers.pdf> accessed 29 March 2017.

70 See US Supreme Court, *Federal Communications Commission (FCC) v Fox Television Stations, Inc.*, 556 U.S. 502, 515 (S. Ct. 28 April 2009).

71 US Supreme Court, *Motor Vehicle Manufacturers Association of the United States Inc. et al. v State Farm Mutual Automobile Insurance Co. et al.*, 463 U.S. 29, 42 (S. Ct. 24 June 1983), para (a). See also Merrick B. Garland, ‘Deregulation and Judicial Review’ (1985), 98 *Harvard Law Review* 507.

72 EPA (n 59).

endangerment finding, few consider its withdrawal likely – the EPA would have to establish new emission guidelines. Only if a federal court rules that the EPA lacks the authority to regulate greenhouse gas emissions from existing sources – an argument cited by several petitioners in litigation⁷³ – would a rescission without replacement be legally admissible.

Moderate voices in the administration as well as a majority of private sector constituencies have therefore called for a new rule that is narrower in scope and offers greater compliance flexibility, but avoids a protracted legal battle about EPA authority to regulate greenhouse gases. Even weakened standards would have to be justified with reasoning based on the provisions of the Clean Air Act or risk being considered ‘arbitrary and capricious’.⁷⁴ More conservative voices and several close White House advisers, meanwhile, have repeatedly insisted on a full repeal, and also called for the endangerment finding to be withdrawn, effectively challenging the scientific consensus on climate change.⁷⁵ As with other elements of the president’s agenda, either process will likely be slow, contentious, and accompanied by litigation.

Finally, the administration could seek to undermine the effect of President Obama’s regulatory legacy by refusing to enforce compliance obligations. In that case, however, the regulations would remain in full force, affording stakeholders and other persons the standing to initiate judicial proceedings – for instance a citizen suit under Section 304(a) of the Clean Air Act – against the relevant agency or alleged violators to enforce those obligations. Also, while laxity

in the enforcement of environmental rules has definitely been used as a political strategy under earlier administrations, it has practical limitations, as most companies in affected sectors will still follow the law and protect their public reputation. A casual approach to enforcement will therefore only afford partial relief to compliance entities, and entail new and undesirable uncertainty.

The limits of federal climate policy

For all the discussion about the scope of regulatory rollback facing US climate policy, it is also important to note the constitutional limits on federal powers in the area of climate change, as well as the role of market dynamics in driving the reduction of carbon emissions.

Under the US Constitution, both the federal and state governments enjoy some exclusive powers in the areas of energy and environmental policy, and exercise other powers in common. As a result, climate legislation and executive rule-making in the US form a dynamic and evolving tapestry of federal, state and local action,⁷⁶ with a periodically shifting locus of progressive climate ambition.⁷⁷ Many policies that are driving emission reductions across North America, such as binding mitigation targets, renewable portfolio standards, and energy efficiency standards, have been adopted at the state level, while federal policy – with the exception of international diplomacy – arguably played only a limited role until well into President Obama’s first term. Previously, the US had no federal climate targets, and between periods of federal inaction and time lost over failed attempts to pass federal climate legislation, progressive

73 US Court of Appeals for the D.C. Circuit, Docket for *State of West Virginia et al. v EPA et al.*, No. 15–1363 (and consolidated cases) (D.C. Cir., 23 October 2015).

74 Administrative Procedure Act (APA) (n 93) § 706(2)(A).

75 Lisa Friedman, ‘As Trump Takes Aim at Obama’s Clean Power Plan, a Legal Battle Looms’ (*New York Times*, 29 September 2017), A13.

76 For an overview, see Michael Mehling and David J. Frenkil, ‘Climate Law in the United States: Facing Structural and Procedural Limitations’ in Erkki J. Hollo, Kati Kulovesi and Michael Mehling (eds), *Climate Change and the Law* (Springer 2013) 480–81.

77 Barry Rabe, ‘Contested Federalism and American Climate Policy’ (2011), 41 *Publius* 494.

states and municipalities inevitably rose to fill the policy vacuum.

Greenhouse gas emissions in the US have declined significantly in recent years, dropping 11.2% between 2005 and 2015,⁷⁸ even as many federal climate policies have yet to exert a noticeable effect. Outpacing overall emission abatement, emissions from electricity generation are currently at their lowest level since 1993, another major trend unforeseen only a few years ago. Over two-thirds of those reductions are ascribed to fuel switching from coal to natural gas, a result of falling gas prices made possible by the rapid growth in supply from increasingly efficient hydraulic fracturing practices.⁷⁹ A corollary of this competition between coal and gas is the falling demand for coal, which has declined 27% since 2005 and significantly weakened the coal mining industry, along with its employment potential.⁸⁰ Adding to the competitive pressures facing coal is another sector in which innovation and scale

are rapidly lowering prices: renewable energy.⁸¹ In 2016 alone, the US saw the installation of nearly 15 GW of new solar photovoltaic generating capacity, outpacing any other source of new generation.⁸² With deployment increasingly independent from policy support, movement by many US states to expand their renewable energy mandates, and public investment in research and development continuing in other parts of the world even as the US might cut back federal funds, the global market for renewable energy is unlikely to lose momentum.

However, it would also be misguided to dismiss the role of federal action in limiting emissions. Projections by the Energy Information Administration for 2017 illustrate the difference in coal consumption in the US to 2040 with and without the Clean Power Plan or a similar regulation (Figure 1).

Although less tangible, the signalling effect of federal policy direction in shaping the expectations of the private sector can be critical for sound strategic planning and investment choices compatible with the long time horizon of decarbonization. Taken together, the various ways in which federal policy nonetheless affects US emissions have prompted analysts to project that the regulatory rollback pursued by the Trump administration will slow down emission reductions from 21% to 14% below 2005

78 EPA, 'Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2015' 10 (15 February 2017) <www.epa.gov/sites/production/files/2017-02/documents/2017_complete_report.pdf> accessed 29 March 2017.

79 Energy Information Administration (EIA), 'U.S. Energy-related Carbon Dioxide Emissions in 2015 are 12% Below Their 2005 Levels' (9 May 2016) <www.eia.gov/todayinenergy/detail.php?id=26152> accessed 29 March 2017.

80 Coal had seen a steep decline in jobs across its supply chain well before the Obama administration began implementing climate regulations, see e.g. Drew Haerer and Lincoln Pratson, 'Employment Trends in the U.S. Electricity Sector, 2008–2012' (2015), 82 *Energy Policy* 85. <www.eenews.net/assets/2017/03/27/document_gw_04.pdf> accessed 29 March 2017.

81 The central role of natural gas in displacing coal was even affirmed by a study commissioned by the Department of Energy that many observers saw as a political manoeuvre to defend coal and undermine support for renewable energy, see US Department of Energy, Staff Report to the Secretary on Electricity Markets and Reliability (August 2017) <https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf>.

82 Solar Energy Industries Association (SEIA) and GTM Research, 'U.S. Solar Market Insight 2016 Year in Review' (9 March 2017) <www.greentechmedia.com/research/subscription/u.s.-solar-market-insight> accessed 29 March 2017.

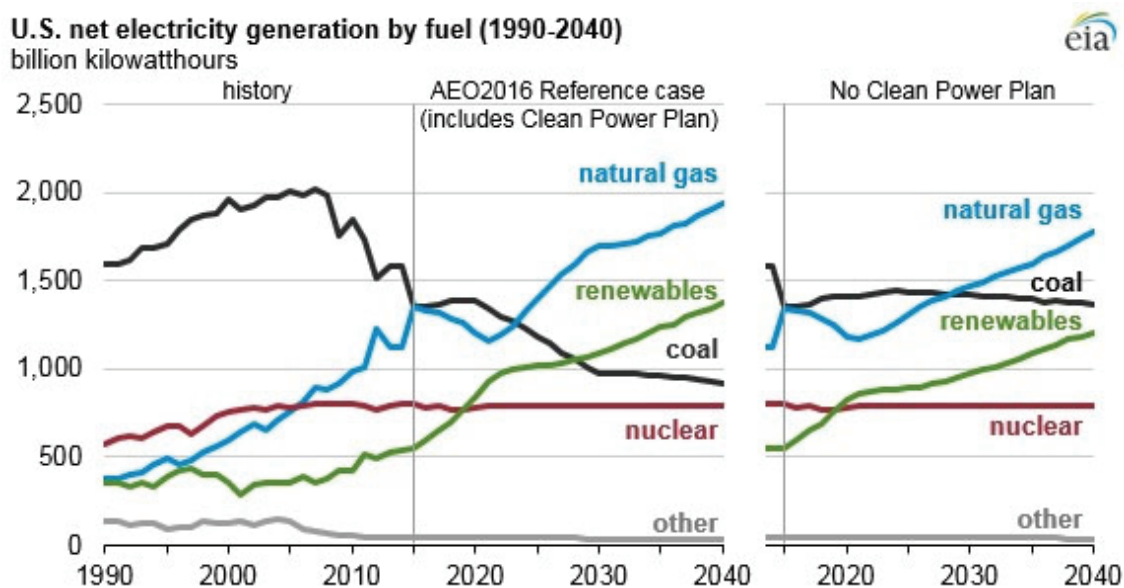


Figure 1. Coal is projected to maintain its current role in electricity generation unless Clean Power Plan, or a similar set of policies, is put in place (Source: U.S. Energy Information Administration, Annual Energy Outlook 2017).

emissions by 2025.⁸³ Another recent assessment saw less immediate effects, but pointed out that ‘the Trump effect really begins to bite into the U.S. emissions reductions in 2025’.⁸⁴

Factoring in the risk that future administrations will reinstate any carbon constraints withdrawn by the Trump administration, it is unsurprising that utilities mostly expect a sustained transition to renewable energy and natural gas, and are planning their investment

decisions accordingly.⁸⁵ Regulatory relief from the reform agenda of the current administration may make some coal companies economically more viable, and may help delay the retirement of older thermal generation capacity. Increased exports of liquefied natural gas may also result in higher domestic prices, temporarily reversing some of the fuel switching effects observed in recent years.⁸⁶ Should that trend amplify over time, rules like the Clean Power Plan and the New Source Performance Standard might have played an important, but ultimately hypothetical, role as hedges against a coal revival driven by evolving market fundamentals. This does not negate the argument that federal climate

83 John Larsen, Kate Larsen, Whitney Ketchum, Shashank Mohan, and Trevor Houser, ‘Trump’s Regulatory Rollback Begins’ (27 March 2017) <<http://rhg.com/notes/trumps-regulatory-rollback-begins>> accessed 29 March 2017.

84 Climate Advisers, ‘Trump BackTracker’ (June 2017) <<http://www.climateadvisers.com/trumpbacktracker>> accessed 12 June 2017.

85 Utility Dive, ‘State of the Electric Utility Survey 2017’ (28 March 2017) <https://s3.amazonaws.com/dive_assets/rfpsys/SEU_2017.pdf> accessed 29 March 2017.

86 Energy Information Administration (EIA), 2 ‘Short-Term Energy Outlook (STEO)’ (11 April 2017) <www.eia.gov/outlooks/steo/pdf/steo_full.pdf> accessed 11 April 2017.

regulations have *so far* played a subordinate role to market dynamics and state or local action in driving recent emission reductions. For international observers, however, that may provide little consolation.

From climate leader to wavering laggard

'[The Paris Agreement] is a bad deal for America. It's an "America second, third or fourth" kind of approach.'

Scott Pruitt, Fox News, 13 April 2017

The annulment of domestic regulations such as the Clean Power Plan can also impact the political dynamics of international climate cooperation. Although it is too early to fully appreciate the international repercussions, this section briefly considers the issue of US leadership and global climate politics.

The ideological drivers that shape US involvement in global governance are similar to those that are at play domestically. The ideology of the so-called Alt-Right and its figurehead Stephen K. Bannon, the former Chief Strategist of the White House, has been repeatedly laid out in media outlets such as Breitbart News, the right-wing nationalist website Bannon helped establish and once again runs. The editorial positions of Breitbart News have been closely aligned with Donald Trump's campaign rhetoric, conveying a specific narrative. According to Daniel Kreiss,⁸⁷ the central theme to emerge in Breitbart News reporting during and immediately after the election was a narrative of 'taking back our country'. Domestic aspects of this project have tended to take centre stage – it is on the home front here where Donald Trump's electoral base, the 'fly-over states', the 'deplorables' and 'real America', have

taken aim at Democrats, the mainstream media, minorities, establishment Republicans, and Washington insiders. Importantly, however, these targets also include cosmopolitanism and globalism, represented by international organizations such as the UN and the WTO, as well as multinational corporations. Inevitably, the suspicions harboured against international cooperation have also extended to climate change, and perhaps most importantly, to the UNFCCC and its Paris Agreement.

In this philosophy of retrenchment, cosmopolitanism should be replaced with a system that empowers ordinary people over coastal elites and international institutions.⁸⁸ Nigel Farage, one of the key figures of the Brexit movement in the United Kingdom, has highlighted this international dimension of the right-wing populist agenda. During a recent trip to the US, he opined that 'Steve [Bannon] is the person with an *international* perspective on all of this. He's got a good feel for the direction that he wants to see across the West'. The parallel narratives of the Brexit campaign in the UK and the Trump campaign in the US have been highlighted by many analysts. Trump himself tweeted after the Brexit vote that '[t]hey took their country back, just like we will take America back'.⁸⁹

The Paris Agreement: In or out?

On the campaign trail, Donald Trump repeatedly claimed that he would 'cancel' or 'rip up' the Paris Agreement. Several of his closest advisors, including Stephen Bannon and Scott Pruitt, have also been outspoken in their support of abandoning the Agreement. Pruitt has called it 'a bad deal' because 'China and India, the largest producers of CO₂ internationally, got

87 Kreiss, Daniel, 'Trump, Breitbart, and the rejection of multicultural democracy' (Vox, 20 January 2017), <<http://www.vox.com/the-big-idea/2017/1/30/14431544/trump-breitbart-rejection-multicultural-democracy>>.

88 'Bannon Vows a Daily Fight for "Deconstruction of the Administrative State"' (Washington Post, 23 February 2017).

89 'Donald Trump on Brexit: They Took Their Country Back; We Will Take America Back' (Breitbart, 24 June 2016).

away scot-free'.⁹⁰ Research commissioned by conservative groups showing that the US would suffer substantial economic losses if it remained in the Paris Agreement was widely cited by those pressuring the president to withdraw; conservative media outlets joined the debate by publishing countless articles claiming that climate change is a hoax; and Bannon himself took on the role of pressuring President Trump to convert his campaign promises into policy actions. By contrast, more moderate forces within the administration, such as Secretary of State Rex W. Tillerson and Secretary of Defense James N. Mattis, expressed support for remaining in the Paris Agreement, noting the importance of retaining a 'seat at the table'.⁹¹

After a protracted and suspenseful process involving several meetings and announcements of an imminent decision, President Trump, speaking from the Rose Garden, finally announced his decision to withdraw on 1 June 2017.⁹² Drawing on a narrative of 'America First', and with barely any mention of climate change, the president cited his concern about 'the wellbeing of American citizens' as justification for abandoning 'a deal that punishes the United States' and threatens to leave 'millions and millions of families trapped in poverty and joblessness'. Isolationist reaction reverberated throughout the speech, with remarks such as 'I was elected to represent the citizens of Pittsburgh, not Paris' and his emphasis on protecting 'the United States from future intrusions on the United States' sovereignty'. Intriguingly,

however, the president expressed openness to renegotiating the Agreement, provided it creates a 'framework that is fair' and where the burdens and responsibilities are 'equally shared' around the world, conditions which have not been further specified since the original announcement.

With this announcement, the administration ended speculation about the scope and timing of a US withdrawal from the climate regime. Rather than withdrawing from the UNFCCC or merely weakening or ignoring the US mitigation pledge, the administration has formally declared that it will exercise the process detailed in Article 28 of the Paris Agreement, which allows parties to pull out at 'any time after three years' from the date on which the Agreement entered into force for them, with effect 'upon expiry of one year from the date of receipt ... of the notification of withdrawal'.⁹³ As the Paris Agreement entered into force for the US on 4 November 2016, the earliest date by which the latter could notify its withdrawal is 4 November 2019, allowing the withdrawal to take effect no earlier than 4 November 2020, after the next US elections and right at the end of President Trump's current term in office.

For the time being, the US has communicated its intention to remain involved in the negotiations on further implementation of the Paris Agreement. While the US 'intends to exercise withdrawal provisions when it is able to do so', it is also identifying 'suitable terms for re-engagement' and 'protecting ongoing U.S. interests and preserving future policy options'.⁹⁴ For example, Security Adviser

90 'New EPA Chief Calls Paris Climate Accord a "Bad Deal"' (*The Hill*, 26 March 2017).

91 'Tillerson Does not Deny Climate Change - But Dodges Questions about Exxon's Role in Sowing Doubt' (*Washington Post*, 11 January 2017).

92 The White House, Office of the Press Secretary, 'Statement by President Trump on the Paris Climate Accord' (1 June 2017) <<https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>> accessed 5 June 2017.

93 See Decision 1/CP.21, Adoption of the Paris Agreement, Annex, UN Doc. FCCC/CP.2-15/10/Add.1 (29 January 2016) Art. 28 (1) and (2).

94 Guidance and talking points issued by the State Department to its embassies on 4 August 2017, obtained and published by Reuters, see <http://live.reuters.com/Event/Live_US_Politics/1051797571> accessed 14 September 2017.

H. R. McMaster recently noted that staying in the Paris Agreement was possible ‘if there’s an agreement that benefits the American people, certainly’.⁹⁵ What would the so-called suitable terms for re-engagement be? Several key players such as China, the EU and Canada have recently responded that opening up the Paris Agreement was not possible.⁹⁶ ‘Re-engagement’ sounds like a euphemism for submitting a weaker US pledge – and hope for some other concessions, perhaps enabling climate finance or technology transfer to promote coal investments as well.

Although weakened under the Trump Administration, the State Department – whose Secretary Tillerson had advocated for staying in the Paris Agreement – will continue to lead the US delegation during these negotiations. As former UNFCCC Executive Secretary Christiana Figueres has noted, it is difficult to foresee whether continued US engagement in the international climate process will be helpful or disruptive, as there would be ‘advantages and extraordinary disadvantages’ for other countries if the US decided to leave.⁹⁷

Although the Paris Agreement provides a legal framework, much of its operational details have yet to be fleshed out. Negotiators thus have important rule-making work to accomplish. During the presidency of George W. Bush, the US delegation was widely perceived as a difficult partner at international climate negotiations. Based on that experience, consensus among big emitters and other North-South

compromises would be easier to achieve without the US ‘preserving policy options’ at the negotiating table. Either way, the US is creating a precedent by either lowering or completely ignoring a national contribution under the Paris Agreement.⁹⁸ At the very least, such downgrading violates the spirit of the Paris Agreement, and the idea of a ‘virtuous cycle’ of ever more ambitious pledges. A breach could thus upset the carefully balanced architecture of the Agreement,⁹⁹ and impact the prospect of raising what is currently still an inadequate level of collective climate ambition. With the US effectively out of the Agreement, the likelihood of other countries ratcheting up their pledges may have become more remote.¹⁰⁰

What is more, the bottom-up model of the Paris Agreement is based on a cycle of pledge and review. Its ‘success hinges on review’, as David Victor has noted; and here a voluntary and proactive role for the US would have been of critical importance. Under the previous administration, the US had already volunteered to carry out a peer review of its fossil fuel subsidies together with China – a process that will now in all likelihood be abandoned. As anyone observing the UNFCCC negotiations can confirm, compulsory international scrutiny is difficult to agree upon, as countries quickly fear threats to their national sovereignty. Without leadership, Victor argues, the review process will probably ‘follow narrow and bureaucratic

95 Nicki Zinc, ‘Trump could keep US in climate accord with deal ‘that benefits the American people’: Adviser’ (ABC News, 17 September 2017).

96 Shawn McCarthy, ‘U.S. will not seek Paris Accord revamp amid 34 countries’ call to action on climate change’ (The Globe and Mail, 16 September 2017).

97 Alister Doyle, ‘Threatened U.S. Pullout Might Help, not Hobble, Global Climate Pact’ (Reuters, 27 March 2017).

98 See Luke Kemp, ‘Better Out than In’ (2017), 7 Nature Climate Change 458–460.

99 Lavanya Rajamani, ‘The US and the Paris Agreement: In or Out and at What Cost?’ (10 May 2017) <<https://www.ejiltalk.org/the-us-and-the-paris-agreement-in-or-out-and-at-what-cost/>>.

100 Jason Bordoff, ‘Withdrawing from the Paris Climate Agreement Hurts the US’ (2017), 2 Nature Energy 17145.

UN rules' and be 'impotent'.¹⁰¹ China has a long history of arguing against rigorous transparency measures in the UN climate talks, and without US leadership, Chinese cooperation on transparency may be lost.¹⁰²

It is also worth noting that the US currently contributes a significant share of international climate finance made available by wealthy countries for the developing world – of the \$10.3 billion pledged to the Green Climate Fund, \$3 billion has been pledged by the US, but only about one-third of this pledge has actually been delivered. In his remarks accompanying the decision to withdraw from the Paris Agreement, President Trump expressly mentioned the aim of 'ending the implementation of the nationally determined contribution and, very importantly, the Green Climate Fund, which is costing the United States a vast fortune'. A leaked cable by the State Department also confirms that the US will not honour its pledge,¹⁰³ something that could have repercussions by making further North-South compromises more difficult in the UNFCCC negotiations. Taken together, these factors will make it very difficult to sustain the momentum of progress that accompanied the adoption of the Paris Agreement.

International repercussions

One implication that will invariably emerge in light of the domestic climate policy reversal is that the US will not honour its pledge of reducing its emissions 26 to 28 percent below 2005

levels by 2025.¹⁰⁴ Coupled with the US decision to abandon the Paris Agreement, this may empower opponents of climate action in other key countries.

At this point, it is difficult to speculate on how and when other countries might react to the foregoing announcements by the US. Common sense would suggest that the withdrawal of the largest historical emitter should undermine the case for domestic climate action elsewhere, but as several experts have pointed out, most governments are likely to keep their current pledges, which are not seen to be overly ambitious anyway. Absent US leadership on climate change, some nations might even seek to fill some of the ensuing void: Europe may be too preoccupied with internal crises to resume its earlier role as a champion of international climate policy ambition,¹⁰⁵ but emerging nations such as China might perceive a stronger role in the process as a strategic opportunity.¹⁰⁶ This view, however, assumes that the progressive, internationalist worldview prevails against competing factions in Beijing, an assumption that may prove overly optimistic.

For the time being, it appears unlikely that other countries will follow the US and completely withdraw from the Paris Agreement, but that does not mean that the course taken by the Trump administration will remain without

101 David Victor, 'How Trump Could Reverse U.S. Climate Cooperation' (*Brookings*, 17 November 2016) <<https://www.brookings.edu/blog/order-from-chaos/2016/11/17/how-trump-could-reverse-u-s-climate-cooperation>>.

102 Bordoff (n. 100).

103 See <http://live.reuters.com/Event/Live_US_Politics/1051797571> accessed 14 September 2017.

104 United States, 'US Nationally Determined Contribution' (3 September 2016) <<http://www4.unfccc.int/ndcregistry/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf>> accessed 29 March 2017.

105 Michael Mehling, Kati Kulovesi, and Javier de Cendra de Larragán, 'Climate Law and Policy in the European Union: Accidental Success or Deliberate Leadership?' in Erkki J. Hollo, Kati Kulovesi and Michael Mehling (eds), *Climate Change and the Law* 509–520 (Springer 2013).

106 David Victor, 'Trump: China Could Take Lead on Climate' (2016), 539 *Nature* 495.

international consequences. One of the most relevant countries in this regard is arguably India, which is known to look closely at the actions of the US, and often plays the moral card during international negotiations.¹⁰⁷ At the Conference of the Parties in Marrakech in late 2016, India was described as maintaining a ‘strategic quiet’ on various policy issues.¹⁰⁸ India is one of the major emitters, an emerging economy undergoing an economic transition with rising energy needs for continued development and urbanization. Expanding use of coal and renewable energy are both important policy goals, and air quality and climate protection are also of increasing concern. India’s international engagements reflect these motivations.

It is amid these circumstances and a contentious debate on the respective weight afforded to mitigation and adaptation in Indian climate policy that the international context can affect domestic dynamics. If others are perceived as taking action, the progressives are empowered to push for stronger climate policies, emphasizing the co-benefits. If it becomes evident that the wealthy US is free-riding, however, the more defensive or ‘realist’ mindset will gain traction. One Indian analyst pointed out that US withdrawal renders the targets of the remaining countries ‘meaningless’,¹⁰⁹ while another scholar noted that Trump’s order ‘would give the Indian government political space to delay

some of its climate commitments’.¹¹⁰ Similar dynamics are also at play in India’s northern neighbour, China. As noted by some analysts, Trump’s actions ‘may empower business and political interests within China that still oppose climate action’.¹¹¹

But more optimistic voices have also been raised. Prominent Indian commentators such as Chandra Buschan¹¹² and Sunita Narain¹¹³ have argued that US withdrawal from the Paris Agreement enables the rest of the world to renegotiate a ‘stronger agreement’, which would include notions such as ‘equitable allocation of the carbon budget’. As the Paris Agreement is a finely balanced and hard-won package, however, it is difficult to see how such a renegotiation could be successful.

Bilateral relations between the US and China during Trump’s presidency are likely to be characterized by further emphasis on zero-sum competition and economic nationalism, as well as geopolitical tensions concerning, inter alia, North Korea, Iran, and the South-China Sea. During President Obama’s second term, the US and China played a central role in laying fertile ground for the Paris Agreement through their bilateral climate efforts, including joint announcements of emission-cutting goals and policies.¹¹⁴ This cooperation benefitted the global negotiations, and arguably enabled the

107 Antto Vihma, ‘India and the Global Climate Governance: Between Principles and Pragmatism’ (2011), 20(1) *Journal of Environment and Development* 69–94.

108 ‘The Future of India’s Climate Diplomacy: Trump, China and Other Factors’ (*Climate Diplomacy*, 22 December 2016).

109 ‘What Does Donald Trump’s Victory Mean for Climate Change Agreement’ (*News18*, 9 November 2016) <<http://www.news18.com/news/world/what-does-donald-trumps-victory-means-for-climate-change-agreement-1310222.html>>.

110 ‘Trump Signs Executive Order Unwinding Obama Climate Policies’ (*New York Times*, 28 March 2017).

111 *New York Times* (n. 110).

112 Chandra Bhushan, ‘Why the US Should Quit the Paris Agreement’ <<http://www.downtoearth.org.in/news/why-the-us-should-quit-the-paris-agreement-56473>>.

113 Sunita Narain, ‘Revenge of the Rich’ <<http://www.cseindia.org/content/revenge-rich>>.

114 Andrew Restuccia and Michael Crowley, ‘The Climate Deal that Almost Wasn’t’ (*Politico*, 11 December 2014).

two countries to go further with their national contributions than they would otherwise have done.

Finally, President Trump has demonstrated a distinct drive to promote fossil-fuel trade and projects abroad. He has already personally engaged in energy diplomacy, discussing fossil fuel trade with, for example, Heads of State of India, South Korea, and Ukraine, while also demanding that various cabinet officials make oil, gas, and coal exports a priority.¹¹⁵ A significant issue is whether and how hard the US will push for multilateral development banks to finance fossil fuel projects such as coal power plants in developing countries. A pressing case is the Green Climate Fund. The leaked State Department cable from August is worrisome in this regard, citing greater flexibility, developing countries' energy needs, economic growth, and a 'full range of power projects'.¹¹⁶ According to the cable, the relevant agencies are 'in the process of reviewing policies to ensure alignment with the President's energy goals and priorities'.¹¹⁷

Conclusions

Although the factors underlying the ascent of Donald Trump and his political worldview are unusual in their timing and ferocity, they all have deeper roots in the historical sediment of US politics. What remains is a complex kaleidoscope of actors, actions, and constraints. America's official position on climate change has become clear during the first year of Donald Trump's presidency. Although he tends to project slogans rather than strategy, his administration has moved quickly, consistently, and

with vigour to dismantle existing US climate policies. At first glance, the scale of regulatory roll-back is unprecedented.

Still, the deregulation project faces severe obstacles, both judicial and political. A system of checks and balances and federal allocation of powers that long predates the climate change debate may afford existing climate action surprising resilience against an ideological assault. Pending a legislative amendment or judicial determination that relieves the administration of its statutory obligation to regulate greenhouse gas emissions, for instance, the EPA will arguably find itself in a vulnerable position whenever it seeks to weaken or repeal existing executive rules, and could be forced to offer a reasoned argument as to why the growing body of scientific evidence on the reality and impacts of climate change nonetheless justifies scaling back action. Other federal agencies are bound by similar mandates, such as the Department of Transportation with its requirement to issue fuel economy standards under federal energy legislation. In all cases, challenging the legal basis would require overturning established case law of the Supreme Court or overcoming a filibuster with a supermajority in the Senate.

More likely, executive efforts to reverse climate regulation will have the effect of delaying progress, which translates into lost time for climate mitigation and adaptation, and a temporary reprieve for those opposing action. An inevitable companion of these delays is regulatory uncertainty, the natural antagonist of strategic investment decisions, such as those required to achieve long-term decarbonization of the economy. In the long run, for instance, the role of coal power may not decline as quickly as it would have done with the Clean Power Plan or similar federal regulations. While less dramatic than an outright reversal of climate action, delays and uncertainty represent a tangible setback.

Unable to fully reverse the disputed climate legacy of his predecessor, Donald Trump's deregulatory activism may well be remembered

115 Michael T. Clare, 'Carbon-Pusher-in Chief: Trump's fossil-fueled foreign policy' (Energy Post, 4 August 2017).

116 Reuters (n. 94).

117 Reuters (n. 94).

for its symbolic bluster and populist rhetoric. However, the cumulative effects of these actions will have implications for the trajectory of US greenhouse gas emissions. Furthermore, measured against the level of policy ambition needed to achieve meaningful decarbonization in the US, which would not only require strict enforcement of existing climate regulations, but also their rapid acceleration and expansion across all areas of the economy, it becomes clear that the delays, the policy uncertainty, and the weakening or selective withdrawal of agency actions and capacities could be devastating. They are far removed from the required trajectory of climate policy – a course even President Obama was unable to maintain. When considering the inordinate amount of time, effort and resources invested in elaborating some of the regulations and orders that are now being challenged, the scale of this setback becomes evident. Some changes, moreover, such as severely curtailed agency budgets and staff capacities, may have a lasting impact beyond the current administration and could initially constrain the ability of more progressive successors to rebuild a robust climate policy framework.

Second, this analysis has also focused on the American political pattern and its current implications on climate and energy policy. Following the recent election, a single party now holds the presidency and controls the 115th Congress, having majorities in both the House of Representatives and the Senate. Republicans also hold a majority of governorships and state legislatures, affording them a concentration of power that will enable greater transformational change than in many prior decades. And Donald Trump, effectively the leader of the Republican Party, brings a brand of nationalist populism that sets him apart from recent predecessors. While climate policy has long been an issue that elicits open hostility among many conservatives, the new president and his cabinet have been described as a ‘triumph of

climate denial’,¹¹⁸ dispensing with any remaining hesitation to oppose climate action – and even the acknowledgment of climate science – on political grounds. As the impacts of a warming atmosphere become increasingly evident in the US, and droughts, forest fires, or extreme weather events such as hurricanes Harvey and Irma cause greater damage year after year, surveys have shown growing concern about climate change. But still, the underlying politics remain as partisan as ever. A darker message of this analysis is therefore the deep polarization over climate change and the cyclical pattern of US politics.

Partisan opposition and a polarized discourse are the norm in US climate politics, and have reached a current peak that may recede, but not disappear, under future administrations. Even if contemporary policy decisions prove to be temporary outliers, science denialism and political opportunism will surface time and again in the US debate about climate change. For the time being, President Trump seems intent upon using the reversal of climate policy progress under his predecessor as a means of advancing his declared objective of ‘deconstructing the administrative state’, as his former Chief Strategist Bannon once framed it.¹¹⁹ Donald Trump’s very presidency validates the argument that large segments of the electorate are deeply uncomfortable with secular, progressive America, its meritocracy, and its growing diversity and internationalism – a liberal outlook on which climate change is a perceived part.

118 Clare Foran, ‘Donald Trump and the Triumph of Climate-Change Denial’ (*The Atlantic*, 25 December 2016) <www.theatlantic.com/politics/archive/2016/12/donald-trump-climate-change-skeptic-denial/51035> accessed 29 March 2017.

119 Philip Rucker and Robert Costa, ‘Bannon Presses “Deconstruction”’ (*Washington Post*, 24 February 2017), A1.

In the end, America's Madisonian model of government will ensure that climate progress can continue, even if it is less visible and more heterogeneous than it was during the last administration. Still, the power to define foreign policy rests with the executive branch, and that comes with numerous opportunities for obstruction, as exemplified by tensions in the Ministerial Meetings of the Group of Seven (G7).¹²⁰ Severely diminished contributions to international climate finance will have an impact on the political dynamic in international climate negotiations, and a disengaged US may well have a chilling effect on the stocktaking and periodic review processes under the Paris Agreement.

For over two decades, US commentators have theorized about the shortcomings of multilateral diplomacy and conventional rulemaking,¹²¹ calling for less rigid, less centralized approaches to international climate cooperation. And yet, the Paris Agreement – with its purportedly more accommodating architecture – has still failed to retain the participation of the largest cumulative emitter in history. Although conceptually appealing, the assumption that greater flexibility would promote broader and, over time, deeper climate engagement clearly failed to anticipate the nationalist entrenchment of the current White House occupant. Donald Trump and his worldview do not trifle with subtleties of regime architecture. His overarching project, one that is shared by large segments of the electorate, is more sweeping in scope: it is about 'taking the country back' from a perceived cultural and economic decline, a decline which many blame on globalization and cosmopolitanism.

That said, it is worth noting that even this administration has chosen to withdraw from the Paris Agreement in full adherence to the procedures set out in the treaty itself, evidencing the normative force afforded to international law even by a defecting party. And that, coupled with the important role played by domestic procedural and judicial constraints, may give hope to those who still believe in a world based on the rule of law, where ends do not justify all means; where political extremes are tempered and their proponents held accountable by a system of lived, legitimate norms that both predate and will continue to exist well beyond the disruptive impulse of the moment.

120 Andrew Restuccia, 'Trump's Climate Demands Roil U.S. Allies' (*Politico*, 11 April 2017) <www.politico.com/story/2017/04/trump-fossil-fuels-g7-tension-237129> accessed 12 April 2017.

121 See e.g. David G. Victor, 'How to Slow Global Warming' (1991), 349:6309 *Nature* 451.