



The Conservative Record on Environmental Policy

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There was no love lost for the Environmental Protection Agency during the 2012 Republican presidential primary season. The candidates sought to outdo one another in showing disdain for the EPA and steely opposition to new federal regulations. Michele Bachmann suggested in a TV interview that the agency be “renamed the job-killing organization of America,” while Newt Gingrich proposed shutting it down and starting over. The most conciliatory environmental posture any candidate adopted was to simply ignore the issue.

Consistent with the campaign’s tone, the 2012 GOP platform stressed the need to develop natural resources and rein in federal regulation, even identifying specific regulatory initiatives to oppose. Beyond broad statements about private stewardship, “balance,” and cooperation, the platform provided little guidance as to how the nation might sustain the last century’s environmental improvements, let alone enhance environmental protection.

But the Republican Party was not always so suspicious of environmental regulation. At the turn of the twentieth century, Republicans were among the foremost advocates of governmental intervention for environmental purposes. Teddy Roosevelt

believed that government ownership of forest land was necessary to prevent a timber famine and would foster sound ecological stewardship. After World

War II, most major environmental laws were adopted with broad bipartisan majorities in Congress. The lion’s share of the nation’s environmental regulatory infrastructure was erected during Republican administrations. Yet over the past several decades, the Republican Party has become increasingly hostile to environmental regulation, on the federal level in particular.

Judith Layzer, an associate professor of environmental policy in M.I.T.’s department of urban studies and planning, attributes the Republican Party’s anti-regulatory turn to the influence of “a conservative coalition

*Open for Business:
Conservatives’ Opposition to
Environmental Regulation*
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determined to free business of regulatory constraints.” As she tells the tale in her book *Open for Business*, this coalition was born in the 1970s and reached maturity in the past decade as it promoted and perfected an anti-regulatory narrative to counter environmentalist activism. *Open for Business* documents the growth of this movement, the spread of its counter-narrative, and its ultimate effect on environmental policy.

As Layzer sees it, “anti-regulatory conservatism dominated the Republican Party from 1980 to 2008,” receding “only briefly before reappearing with a vengeance in 2009, not long after President Obama took office.” Yet as her own account shows, Republicans contributed to the expansion of environmental regulation during this period: efforts by Republican officeholders to slow the growth of regulatory authority were only somewhat successful, and at times Republicans paved the way for renewed regulatory expansion. Though Layzer claims that “conservatives have been instrumental in blocking efforts to pass major new environmental legislation or increase the stringency of existing laws,” during the period she studies federal environmental regulations have become more stringent and, as we shall see, some major new environmental legislation has been enacted.

Prior to this period, it was a Republican, Richard M. Nixon, who

presided over the birth of the modern environmental regulatory state. He created the EPA by executive order and signed into law more major pieces of environmental legislation than any president before or since. Though his support for environmental measures may have been largely opportunistic, the regulatory architecture erected on Nixon’s watch largely remains in place and continues to provide the foundation for federal environmental regulation to this day.

But Nixon’s support for regulation did not make environmentalism a conservative cause. Largely a reaction to New Deal liberalism, postwar American conservatism was highly suspicious of centralized government authority, particularly outside the context of national security. Although American conservatives are motivated by a variety of impulses, Layzer writes, they nevertheless “share a skepticism about the ability of the federal government to solve social and economic problems” and “favor minimizing the regulatory burden on the private sector and devolving responsibility to state and local governments and private enterprises.” As such, conservatism was hostile to a progressive political program premised on the need for expansive government intervention in all manner of economic affairs. Conservatives were, from the outset of the modern environmental movement, skeptical of the need for extensive federal

regulation and suspicious of those who seemed to believe a new federal law or regulatory program was the answer to every ecological concern. In conservatism, modern environmentalism would not find fertile ground.

Out of conservative opposition developed an “alternative storyline” to the tales told by contemporary greens, Layzer says. Whereas the conventional environmentalist narrative told of an earth under siege from population growth, economic activity, and technological advancement, conservatives downplayed ecological concerns and elevated the threat posed by the growth of government, regulatory interventions in particular. The conservative complaint was that top-down environmental regulations were not merely overly prescriptive and inefficient, but that government interventions in the economy could be actively harmful and posed a threat to individual liberty.

Not opposed to environmental protection as an idea, conservatives and their political allies stressed the need for “balance” and warned that even the most well-intended regulations could have unintended consequences. At times these critiques were effective. Economists in particular were sympathetic to the view that market mechanisms could achieve environmental goals more efficiently than command-and-control regulations. Conservative critics also stressed

that many alarmist environmental claims did not stand up to scrutiny. Projections of environmental ruin as a result of exponential population growth were exposed as fanciful Malthusian nightmares. Neither a civilization-ending population explosion nor ecosystem-rendering “silent spring” ever materialized. Nonetheless, the expansion of federal environmental regulation continued apace throughout the 1970s. So, as Layzer notes, “by the end of 1980, environmentalism was firmly institutionalized throughout much of the U.S. government,” just as it had become “embedded in the public consciousness.”

Some business groups were willing to fund market-oriented critiques of command-and-control regulation, but the business community never formed a unified front against environmental regulation. From the outset, some industries and individual corporations recognized governmental intervention as an opportunity. Properly designed regulations, mandates, and subsidies can carve up markets, suppress competition, expand market share, and inflate profit margins for the well-connected firm. Thus many in the business community sought regulatory reforms that would work to their advantage more than they sought regulatory reform—or even regulatory relief—for its own sake. This has meant that critics of existing environmental regulation have sometimes had to contend both with

environmentalist groups and other advocates of environmental regulation and with business groups that benefit from such regulations.

The election in 1980 of Ronald Reagan created an opportunity for conservative opponents of environmental regulation—but it was an opportunity they missed. While the Reagan administration pursued deregulatory efforts in other areas, such as transportation, it made little progress scaling back the environmental rules adopted over the previous decade. That was due, in part, to a policy of neglect. Some environmental regulations may have gone unenforced, but they were not taken off the books. Prescriptive regulations were seen as obstacles to resource development and economic growth, but the Reagan administration largely believed that expending its political capital on this issue would be a waste.

Despite the best efforts of some early Reagan appointees, an unsympathetic Congress prevented any meaningful reforms. Indeed, as Reagan appointees resisted aggressive implementation of the environmental statutes adopted in the 1970s, Congress responded with ever more prescriptive legislation. In the end, as Layzer notes, the new environmental institutions “almost invariably prevailed” against anti-regulatory efforts; “as a result, the Reagan administration failed to relax or eliminate any of the nation’s environmental statutes.”

What success the Reagan administration had came in resisting some (though not all) efforts at regulatory expansion. But as would become all too common among conservative policymakers, the administration knew what to be against—costly new regulations, command-and-control in particular—but had little idea of what to be *for*. The administration embraced the nascent anti-regulatory narrative but failed to identify, let alone articulate, an alternative approach to the environment. A lone 1984 report by the Council on Environmental Quality extolled the importance of private property and the virtues of voluntary conservation, but little effort was made to expound upon a broader environmental vision—so Layzer can hardly be faulted for overlooking this report in her account.

George H. W. Bush pledged to be the “environmental president” and was true to his word, even if environmentalist lobbying groups would never admit it. Bush appointed a member in good standing of the Washington environmental establishment to head the EPA and signed several environmental bills into law, most notably the Clean Air Act Amendments of 1990, the most expansive and perhaps most expensive piece of environmental legislation in the nation’s history. He also backed controls on chlorofluorocarbons and acid-rain precursors, expanded regulation of wetlands, and supported the development of

alternative fuels. So many regulations poured out of federal agencies that *National Journal* labeled Bush the “regulatory president.” Nonetheless, environmentalist groups did not give him credit for his support of environmental regulations, and when, during the 1992 presidential campaign, he called for more “balance” in environmental policy, green groups never forgave him for his apostasy. (In light of these events, it is no wonder that Republicans tend to believe there is no point in pursuing environmentalist support; it seems that whatever policies a Republican endorses, environmentalists will clamor for more—and still support Democratic candidates come Election Day.)

The Clinton administration began with great aspirations for environmental policymaking. Vice President Al Gore had authored the bestselling environmentalist tract *Earth in the Balance* (1992) and the White House littered its appointments with committed environmental activists. Yet this Green Team had a hard time matching the regulatory accomplishments of its predecessor. President Clinton came into office with a Democratic Congress, and still saw his ambitious environmental agenda fizzle out. The administration’s first budget sought to increase grazing fees on federal lands and, more significantly, to impose a new energy tax. Neither could hold majority support.

When President Clinton came into office, the congressional Democratic leadership had hoped to present him with reauthorizations of several environmental laws, but these too were set aside when centrist Democrats bucked their leaders to join with all but the most liberal Republicans to support a set of regulatory reforms that would require cost-benefit analyses of new regulations, protect private property rights, and limit the ability of federal agencies to impose unfunded mandates on state and local governments. These three reforms were anathema to environmentalist groups, which dubbed them the “unholy trinity,” and the Democratic leadership opposed them. And yet because a substantial bipartisan majority in each house backed these measures, House Democratic leaders felt forced to put off consideration of any and all environmental bills, fearing that the more popular “unholy trinity” would pass as amendments piggybacking on those bills. At this point, the anti-regulatory narrative was truly ascendant—but it would not last.

After the Republican takeover of Congress in 1995, environmental protection became a more partisan issue. Legislative measures that had enjoyed overwhelming bipartisan support when Democrats were in charge were now identified as core elements of a GOP assault on environmental protection. It did not help that few Republican officeholders

felt comfortable talking about environmental issues other than to attack environmentalists as extremists. Republicans knew what they opposed—burdensome and prescriptive environmental regulations—but still had difficulty articulating a positive agenda. As Layzer notes, some GOP politicians spent more time wordsmithing their rhetoric with pollsters and focus groups than developing conservative alternatives to conventional environmental policies.

Unable to reform environmental laws directly, Layzer notes, congressional Republicans “resorted to more arcane mechanisms for achieving their anti-regulatory goals.” Specifically, the Republican Congress adopted “riders” on appropriations bills to limit what environmental regulatory agencies could do. This certainly was a stealthier way to restrain federal environmental regulation than amending the underlying environmental laws, but it was no way to meaningfully advance anti-regulatory goals. Layzer is correct that riders on EPA appropriations came to symbolize GOP hostility to environmental regulation, but fails to note the long history of this “arcane” technique. She ignores the use of appropriations riders by Democratic congresses to constrain Republican administrations and seems unaware that some of the riders adopted by Republicans were virtually identical to provisions that Congress had

passed when Democrats were still in control (such as a prohibition on spending funds to issue regulations on radon in drinking water or reformulated gasoline). Furthermore, appropriations riders are, by definition, temporary, limiting the use of appropriated funds for a single year without altering the underlying law. Thus they cannot be used to roll back regulatory requirements, let alone reform environmental law.

Meanwhile, the terms of the environmental debate were shifting. The Clinton administration’s moderate environmental rhetoric, emphasizing cooperation and “common sense” even as traditional environmental regulation continued to expand, disarmed much of the conservative anti-regulatory narrative. “Direct attacks on existing environmental laws backfired,” Layzer recounts. “In fact, they emboldened President Clinton, whose resistance in turn bolstered his popularity.” Environmentalists certainly did not get everything they wanted from the Clinton administration, but the overall trajectory of federal environmental policy remained the same, despite a growing consensus among independent experts and academics that the nation’s environmental laws were overdue for reform. (Groups like Resources for the Future and the Progressive Policy Institute urged significant changes in federal environmental laws to make them more flexible and market-oriented, and yet little was done.) Conservative

activism may have “helped cement a major rhetorical shift,” but it had little effect on environmental policy.

The election of President George W. Bush in 2000 created “the most prolonged opportunity for conservatives to challenge the environmental status quo,” Layzer writes. Yet here again, the opportunity was wasted. Despite howls of protest from environmentalist groups, the Bush administration did relatively little to roll back existing environmental rules. It barely even tried. At most, the Bush administration resisted the continued accretion of federal regulatory authority. Bush appointees slowed down a few regulatory initiatives, and at least temporarily mothballed others. The White House Office of Management and Budget under President Bush aggressively policed the initiatives of federal regulatory agencies, but it also encouraged some new regulatory measures when independent research suggested they could be particularly cost-effective. Through it all, every one of the major environmental laws remained on the books without meaningful change. Moreover, the most aggressive Bush administration efforts to reform environmental requirements—revisions to pollution-control requirements under the Clean Air Act—were rejected in federal court.

The Bush administration’s “greatest achievement” in combating environmental regulation, according to Layzer, “was preventing the enact-

ment of restrictive policies to curb greenhouse gas emissions.” But the politics of climate change are more complicated than Layzer’s analysis suggests. It is true that President Bush withdrew the United States from the Kyoto Protocol, the international treaty that sought to limit greenhouse gas emissions. And Layzer is correct to point out that many on the political right refuse to acknowledge the scientific evidence for a human contribution to global climate change and the risks posed by even a gradual warming of the atmosphere. Yet the opposition to binding limits on greenhouse gas emissions is not limited to those who question the underlying science. For example, the Senate voted unanimously in 1997 to oppose any international agreement that would adversely affect the economy or that failed to bind developing nations like China. When President Bush took office, there was little appetite in Congress for regulating such emissions at the federal level. Indeed, legislation expressly authorizing greenhouse gas regulation has still not been enacted to this day.

But this has not prevented the adoption of greenhouse gas regulations. After the Supreme Court’s 2007 decision in *Massachusetts v. EPA*, federal regulation of greenhouse gases became a near-certainty. In that case, a divided Court concluded that carbon dioxide and other greenhouse gases could be regulated as “pollutants” under the Clean Air

Act, even if some of the law's provisions would be difficult to apply. Under President Obama, the EPA is embarking on the most far-reaching series of regulatory initiatives in its history, developing rules to control carbon dioxide and other greenhouse gases from a wide range of sources, rewriting inapposite provisions of statutory text as necessary. So, in the end, the "greatest achievement" of anti-regulatory conservatism was, at most, a seven-year delay in federal regulation of greenhouse gases.

Despite their failure "to enact wholesale reform," Layzer writes, "conservatives have had a substantial impact on both policy and politics." She sees this influence manifest itself in several ways. Conservatives have "disseminated a compelling anti-regulatory storyline," "mobilized grassroots opposition," and "undertaken sophisticated legal challenges" to environmental laws. These activities, she writes,

have imparted legitimacy to a new anti-regulatory rhetoric, one that emphasizes distrust of the federal bureaucracy, admiration for unfettered private property rights and markets, skepticism about science, and disdain for environmental advocates.

But rhetoric can only accomplish so much. Layzer identifies few if any meaningful examples of conservative success at "weakening existing

policies." As the story she recounts makes quite clear, while conservatives may have been successful at slowing the rate of regulatory growth, and have occasionally stalled new regulatory initiatives, they have had minimal success at rolling back mandates already imposed.

Layzer also devotes relatively little space in her book to exploring conservative alternatives to conventional environmental regulation, but for this she cannot be blamed, as few conservatives have given the question much thought. Beginning in the 1980s, a handful of market-oriented economists and policy analysts began developing an alternative policy paradigm known as the New Resource Economics, which would later become known as "free-market environmentalism" (FME). This school of thought teaches that environmental problems are less the result of "market failure" than of government failure. Self-interest may drive some business owners to ignore environmental harms imposed on others, but creating a federal agency or enacting a regulatory statute will not make such problems go away. Federal bureaucrats, like all people, are influenced by incentives, and the incentives operating within the bureaucratic state are hardly conducive to the implementation and execution of sound policy. Proponents of FME urge that, instead of seeking to constrain markets and impose centralized regulatory controls, we should carefully

and creatively extend property rights and other market institutions to encompass ecological resources so that environmental values can be advanced through the marketplace. This approach to environmental policy gained adherents within academia and among conservative and libertarian think tanks, but has so far not had much direct influence on federal policy. For conservative politicians, the primary value of FME has been its critique of conventional environmental regulation. It has not—or at least not yet—resulted in a policy agenda that elected or appointed officials have been willing to embrace.

Unlike many other chroniclers of conservative opposition to modern environmentalism, Layzer avoids drawing an alarmist caricature of a greed-driven monolith fomenting environmental despoliation. Though she believes anti-regulatory conservatism has “influenced environmental politics and policymaking in discernible ways,” she generally refrains from exaggerating this influence. Layzer readily concedes that, despite what some direct-mail appeals and e-mail alerts might claim, Republicans in Congress and the White House did not “dismantle the existing regulatory framework” contained in the nation’s environmental law. Had she broadened her analysis, Layzer might have discovered policy areas in which conservative ideas have had slightly more effect, as in the use of property-based management systems for fish-

eries and the development of water markets in some Western states, but the overall conclusion would remain the same. Whatever influence conservative attacks on environmental regulation may have had, they have scarcely pruned—let alone dismantled—federal environmental regulation.

While Layzer adopts a relatively uncritical perspective on environmentalism and environmental regulation, she appears to have made a genuine effort to understand the subjects of her study. She recognizes that “the conservative movement is rooted in ideas—in particular, ideas about the importance of individual freedom and unfettered markets.” And she also rightly discounts “the existence of a ‘vast right-wing conspiracy.’” Nonetheless, she sees “a well-funded and relentlessly ambitious core of political operatives” that “has sought to craft, articulate, and disseminate ideas that will resonate among political elites and ordinary Americans.” She casually and repeatedly claims that the conservative movement is “well-funded” without ever contrasting the relatively meager budgets of right-leaning policy organizations that engage in environmental debates with those of the major environmentalist organizations. When the environmental movement was born, “conservative foundations had limited assets relative to their liberal counterparts,” Layzer notes. The same is true today, particularly in

the context of environmental policy. Further, most media outlets are far more sympathetic to the traditional environmentalist narrative than any anti-regulatory alternative. So to whatever else Layzer may want to attribute conservative success in recasting the environmental policy debate, outspending the opposition is not it.

Somewhat amusingly, though, Layzer blames the conservative anti-regulatory narrative for her students' reluctance "to describe themselves as 'environmentalists.'" Perhaps this does mark the triumph of a counter-environmental narrative. Or perhaps this simply reflects a growing awareness that portions of the environmental movement are quite extreme and that much environmental regulation imposes substantial costs for minimal benefit. If, as some seem to claim, being an environmentalist requires detesting business, distrusting technology, and questioning the foundations of modern civilization, it is no wonder that even some who fully support environmental protection are uncomfortable with the label. Indeed, Layzer notes that "most of the tools employed in the environmental policies of the 1960s and 1970s" (that is, command-and-control regulation) have "fallen out of favor, even within the environmental community." Yet in modern political discourse, support for such regulation is still used as a proxy for environmental concern.

Though extensively researched, Layzer's account is at times limited by a failure to consult or adequately consider source documents. This leads to occasional errors in her accounts of legislative proposals or legal decisions, as when discussing litigation challenging new federal air-quality standards promulgated by the Clinton EPA. In 1996, after EPA Administrator Carol Browner announced tighter standards for ozone and particulates, industry groups promptly challenged the rules in court. Initially, these challenges prevailed, as the U.S. Court of Appeals for the D.C. Circuit threw out the new standards on multiple grounds. As Layzer notes, the EPA appealed to the U.S. Supreme Court and ultimately prevailed in a unanimous decision authored by Justice Scalia. Yet she wrongly concludes that this decision completely overturned the lower court's decision. Contrary to her account, the D.C. Circuit's original conclusion that the EPA's ozone standard was "arbitrary and capricious" remained in place until the agency went back and reassessed the basis for its rule. Indeed, this portion of the D.C. Circuit's original judgment was not even appealed.

Layzer also accepts without critical analysis the environmentalist perspective on many substantive issues, suggesting that knee-jerk opposition to regulation is the only basis upon which one might oppose the regulatory initiatives of the EPA. The idea

that many regulations are ineffective, and that some even produce environmentally harmful results, apparently does not merit her attention. Nor does she ever explore why some environmentalist groups continue to defend regulatory programs that undermine environmental protection. Nonetheless, Layzer offers a more fair-minded treatment of the subject than so-called “anti-environmental” efforts usually receive, even (perhaps especially) from academics.

The rise of an anti-regulatory conservatism has certainly influenced the environmental debate, but what will it mean for the future of environmental protection? Layzer laments that “as the debate over the environment has become more vitriolic and polarized, the prospects for regulatory reform that might improve the working of environmental policy have faded.” This is true. There are few areas in which there is less trust across the aisle. Regrettably, Layzer does not do much to help. Equating opposition to regulation with opposition to environmental protection does not breed goodwill.

Layzer observes that “although most Americans still claim to be

sympathetic to environmental goals, resistance to government action in pursuit of those goals is widespread.” To Layzer this is a paradox. To others it may be evidence of a latent public understanding that there is more than one way to advance environmental values. Pursuit of a greener society need not come at the expense of individual liberty or economic growth. By tacitly accepting the conventional assumption that regulatory stringency is a measure of environmental protectiveness, Layzer simplistically assumes that those who would challenge conventional regulatory strategies are opposed to environmental protection in general. The problem for environmental policy is that too many conservatives accept this assumption as well.

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