



# Ambushed: The Kyoto Protocol, the Bush Administration's Climate Policy and the Erosion of Legitimacy

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The Kyoto Protocol has been ratified by 164 states and is now fully operational. However, the Bush administration's repudiation of the Protocol combined with the weakness of the targets raise a confronting question for students of legitimacy: is it possible for a regime to be legitimate but ineffective in solving the problem it is designed to address? I argue that effectiveness is an important component of the Protocol's legitimacy but that the parties have been reluctant to make an issue of effectiveness during the early phase of the Protocol's operation. However, the legitimacy of the Protocol is likely to wane, and the chronic international legitimacy crisis of the Bush administration's climate change policy is likely to become acute, as a result of poor performance. I conclude by suggesting what might constitute significant and timely adaptation that might resolve the US's chronic legitimacy crisis and the Protocol's waning legitimacy.

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## Introduction

Does the decision by the George W. Bush administration in March 2001 to repudiate the 1997 Kyoto Protocol give rise to a crisis of legitimacy for the Protocol or for the Bush administration's climate change policy? At first blush, the answer to this question would appear to be reasonably straightforward. Following Russia's long awaited ratification in late 2004, the Kyoto Protocol came into force in February 2005, bringing to fruition more than a decade of complex and harrowing negotiations that have produced a legally binding agreement for developed countries to reduce greenhouse gas (GHG) emissions in accordance with their differentiated mandatory targets. A significant majority of states have ratified the Protocol and it is now fully operational, placing the US (and Australia) out on a very long limb. On this provisional analysis, the Kyoto Protocol is riding high in the legitimacy stakes while the US



is suffering a major loss of international legitimacy in this particular foreign policy domain (as in many others).

While this conventional assessment is widely shared and plausible, it nonetheless raises a puzzle for those interested in understanding legitimacy crises. Specifically, the weakness of the Kyoto targets (exacerbated by the Bush administration's repudiation of its own Kyoto targets), poses in rather stark terms a fundamental question for students of legitimacy: is it possible to have an international regime that is legitimate but nonetheless mostly ineffective in solving the problem it is designed to address? Do we face the strange prospect of a legitimate regime presiding over a looming human and ecological tragedy?

I argue that effectiveness is an important component of legitimacy, but that intersubjective assessments of effectiveness vary according to different constituencies and contexts. Despite the warnings and criticisms of scientists and environmental non-governmental organizations (NGOs) about the ineffectiveness of the Kyoto targets, the parties have chosen not to make an issue of goal performance during this early phase of the Protocol's operation. However, questions of performance are likely to become increasingly important over time. While it is too soon to offer any final pronouncement, I argue that the legitimacy of the Kyoto Protocol is likely to erode, *and* the US chronic legitimacy crisis in this policy field is destined to become acute, over the next decade, as a result of the significant failure of *both* the Protocol and the US to stem rising GHG emissions.

The resolution of parallel crises demands political transformation at multiple levels. Nonetheless, I argue that the US is uniquely situated to set in train a virtuous cycle of multileveled transformations, both domestically and internationally, that will bring the means and ends of the Kyoto Protocol into closer alignment. I conclude by suggesting that the resolution of the impending environmental crisis, the US's own chronic international legitimacy crisis in this policy field, and the Protocol's looming legitimacy crisis are crucially dependent on radical domestic policy change in the US, which will set the stage for US international cooperation on climate change mitigation. However, this will require a greater meeting of minds between the US and the Kyoto parties over the core environmental justice norms of the climate change regime.

### Theorizing Legitimacy Crises

In the introductory paper to this special issue, Christian Reus-Smit defined a legitimacy crisis as a crisis in an actor's or institution's capacity to achieve its ends or to enlist norm compliance, owing to a significant loss in social recognition of its right or authority to act or rule in a particular realm of



political action. The term 'crisis' is understood to mean a critical turning point or phase (which may be short-lived or extended in time) where the actor or institution must either adapt or suffer a decline in its power to achieve its ends. Adaptation may take one of two forms. An actor or institution may seek to compensate for its loss of legitimacy simply by resorting to material levers (such as material inducement and/or coercion). However, such a strategy is costly and vulnerable to shifts in the self-interested calculations or material forms of resistance of those over whom the actor or institution seeks to exert influence or rule. Alternatively, an actor or institution may seek to recover social recognition so that the actor's decisions, or the institution's norms, rules and/or decision-making procedures, are accepted as rightful by the relevant political community to which they apply. Restoring legitimacy effectively means reconstituting the social basis of power, which provides a much more stable and lasting resolution to a legitimacy crisis than the resort to material levers.

Drawing on the medical analogy, legitimacy crises may be judged as acute or merely chronic, depending on the immediacy and severity of the threatened disempowerment. An acute crisis is one in which adaptation cannot be postponed if significant and rapid disempowerment is to be avoided. A chronic crisis is one in which adaptation is needed but is not urgent and therefore can be postponed, unless the situation deteriorates further. In either case, if adaptation occurs by resort to material levers, then it merely converts an acute crisis into a chronic one, which is something that the actor or institution can live with only if it continues to command sufficient material resources to induce or coerce compliance. A genuine resolution of a legitimacy crisis is one that *socially re-empowers* the relevant actor or institution to rule.

The notion of legitimacy as 'social recognition of rightfulness' of an actor, policy or institution may arise from social acceptance of (1) the appropriateness or normative validity of their decisions, rules or norms; (2) their expertise or special competencies (for example, scientific, religious); (3) the fairness of decision-making procedures (which may not be confined to democratic procedures); or (4) their effectiveness or performance, such as the successful delivery of policy outcomes or the achievement of institutional objectives. Fritz Scharpf has called this last element 'output legitimacy' (or 'government *for* the people'), which he distinguishes from 'input legitimacy' based on democratic accountability (or government *by* the people') (Scharpf, 1999). Assessments of output legitimacy depend on how different constituencies frame and evaluate the question of performance at different points in time.

While the issue of performance or effectiveness has been incorporated into many sociological understandings of legitimacy (notably, Beetham, 1991), there has been a curious division of intellectual labour in the study of international regimes that has created an analytical separation between



questions of legitimacy and effectiveness. While constructivists have led research into intersubjective beliefs about the rightfulness of regime norms, and the persuasive practices of norm entrepreneurs in the creation and evolution of regimes, neo-liberal institutionalists have grappled with the methodological challenges of devising *objective* measurements of regime effectiveness. Indeed, a good deal of the rationalist environmental regime research programme has been concerned with methodological debates about how regime performance might be objectively measured, either in terms of relative improvement (comparing performance to the counterfactual of no regime) or distance to a 'collective optimum' (determined by 'policy experts') (Wettstad, 2006). However, the problem with this unreconstructed rationalist perspective is that effectiveness is divorced from legitimacy, including intersubjective assessments of performance. Effectiveness is measured in terms of behavioural change; norm internalization is regarded as merely a desirable 'optional extra'.

In contrast, norm internalization is central to constructivist understandings of legitimacy. Yet the constructivist focus on the social construction of norms and identities, including social practices of persuasion, has sometimes obscured other bases of legitimacy, such as social approval of an actor's or institution's performance. Indeed 'output legitimacy' may compensate for lack of 'input legitimacy' if a political actor or institution succeeds in providing public goods (Scharpf, 1999). Likewise, the failure of political actors or institutions to deliver on policy promises or constitutional goals may undermine their legitimacy. Of course, performance failure might also signal a merely rhetorical rather than genuine commitment to such policies or goals. For example, some states might ratify a treaty in order to exert pressure on other states to do something, or to take advantage of special assistance provided by the treaty, rather than because they are committed to the treaty's goals or norms.

It is possible to integrate questions of output legitimacy with the normative and procedural dimensions of legitimacy discussed earlier if we bring a constructivist lens to the standard understanding of a regime as a set of 'implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations' (Krasner, 1983, 2). The notion of converging social expectations on principles, norms and rules (which are necessarily built upon scientific theories and shared understandings about causal relationships) includes the expectation that the means and ends of the regime are appropriately matched. To the extent that it becomes apparent that there is a significant disconnect between basic regime objectives and norms, on the one hand, and the agreed policy measures, compliance by the parties and/or environmental outcomes, on the other, then social expectations will be frustrated. Such a disconnect may be traceable to a variety of different causes, ranging from lack of genuine political commitment to the objectives and norms of the regime, lack of understanding of the



complexity of the problem, inappropriate policy measures or noncompliance stemming from lack of capacity or even incompetence.

However, we have seen that output legitimacy depends ultimately on social judgements about 'acceptable performance', which may vary according to constituency and context, and may not necessarily coincide with the 'objective' assessments of experts, including rational choice theorists. For example, the 'performance' of the Kyoto Protocol to date may be evaluated in terms of (1) merely the establishment of an agreed framework of action, against considerable odds; (2) rule compliance (such as whether the parties are likely to meet their targets for the first commitment period); or (3) goal delivery or problem solving (that is, ameliorating the problem of global warming). As we shall see, different constituencies tend to focus on different performance criteria, with the Kyoto parties focusing mainly on (1) and a lesser extent (2); NGOs and the Bush administration on (2), and NGOs and influential epistemic communities such as the Intergovernmental Panel on Climate Change (IPCC) focusing on (3). When there is widespread social recognition of performance failure, some form of adaptation is necessary to bring the means and ends of the regime back into alignment in order to restore confidence in it. This may take the form of a recalibration of the regime's basic objective or norms (so they are less demanding), an adjustment of policy measures, and/or further capacity building to facilitate achievement of the existing targets.

As environmental regimes increasingly penetrate into domestic societies they have become more dependent on recognition by, and the cooperation of, non-state actors if they are to remain 'socially empowered'. Thus, a regime may be considered *more* socially empowered to the degree to which it enjoys social recognition by not only states but also other actors (particularly economic actors) who are required to adjust their practices to realize the regime's objectives. The process of social acceptance (or criticism and/or rejection) is facilitated by specialized transnational public spheres circulating around the regime, as well as domestic public spheres (Nanz and Steffek, 2004). It is here that we find a connection between the sociological understanding of legitimacy or regime empowerment, and critical theory's normative project of empowerment through undistorted communication by all those affected by a proposed norm or decision.

How, then, does the foregoing framework help us to resolve our puzzle, namely, that the Kyoto Protocol appears to enjoy international legitimacy in the eyes of most states despite its ineffectiveness? Indeed, the Bush administration has claimed that its domestic and international climate change initiatives offer a better, and more 'practical', alternative to Kyoto, in part because they are based on a more 'realistic' calibration of means and ends. After probing these claims, I argue that the poor target compliance record to date provides grounds to question the depth and sincerity of most of the



parties' political commitment to the Kyoto Protocol's basic norms and objectives. However, it is still early days and the parties have chosen not to make an issue of performance during this preliminary phase of the Protocol's operation. Performance questions will nonetheless become more important over time and therefore we can expect the legitimacy of the Kyoto Protocol to decline as a result of performance failure by the parties and the absence of US participation. Moreover, the chronic legitimacy crisis of the Bush administration's policy stance is likely to intensify, primarily for reasons of abject performance of its own policy measures, but also because of its role in undermining the effectiveness of the Kyoto Protocol.

### **The Kyoto Protocol**

When the Bush administration announced its repudiation of the Kyoto Protocol in March 2001, it assumed that the Protocol would collapse because continuation of the process without the US was unthinkable (Depledge, 2005, 20). However, exactly the opposite has occurred. In less than 4 years after the Bush administration's repudiation in 2001, the Kyoto Protocol is now fully operational. Moreover, the threshold for entry into legal force (an indicator of the *minimum* level of state acceptance deemed necessary by the negotiating parties) has been vastly exceeded. At the time of writing, 164 states have deposited instruments of ratification (UNFCCC, 2006), although only 38 countries plus the European Union comprise the Annex B parties that are required to undertake mandatory emission reductions targets in the first commitment period. Only two states, the US and Australia, have defected.

Although it has its detractors, the Protocol is widely regarded in diplomatic circles as a significant achievement in view of the complexity of the issues and the enormity of the challenges facing the negotiators. Given the strong temptation for many states to defect, accepting modest targets in the first commitment period is regarded as better than no mandatory targets, or no agreement at all. The initial targets are understood as merely the first step in what is set to become a permanent process of negotiation in the 21st century. At Montreal in December 2005, the first meeting of the parties (MOP1) under the Protocol agreed to commence a crucial second round of negotiations for the next commitment period of 2013–2017, with the aim of agreeing on further and more stringent mandatory emissions reductions by developed countries. The US and Australia (along with Lichtenstein and Monaco) are the only states from the developed world that will not participate in these negotiations.

The primary heralded achievement of the Protocol, then, is that it establishes an internationally agreed normative framework and set of instruments for tackling climate change on an ongoing basis. Indeed, it has become 'the only



game in town' in the sense that there is no viable alternative being mooted, and the collapse of the Kyoto Protocol would set back the collective effort to protect the world's climate at a stage when the window for effective mitigation is rapidly closing. The Protocol also establishes principles for the distribution of benefits and burdens that command widespread agreement (except for the US and Australia). A centrepiece of the UN Framework Convention on Climate Change (UNFCCC) and the Protocol is the core environmental justice principle of 'common but differentiated responsibility' (Article 3). The principle acknowledges that the developed world should take the lead in tackling climate change because it has a greater responsibility for past global emissions, along with a greater capacity to absorb emission cuts than developing countries. It also acknowledges the specific development needs and special circumstances of developing countries, especially those that are particularly vulnerable to the impacts of climate change. In the Berlin mandate, which set the ground rules for the Kyoto negotiations, the parties agreed that only the developed world should take on legally binding emission reduction targets in the first commitment period, and that any measures taken by developing countries should be funded by developed countries. The principle of common but differentiated responsibility has survived a significant challenge from the US and is widely accepted not only by most states (especially from the developing world) but also by most non-state actors, including the scientific community and international aid and environmental NGOs.

Yet the strong support of most states for this principle belies a very unsteady political commitment to the practical task of achieving emission reductions. It is too early to offer a final evaluation of the issue of compliance with the Kyoto targets by Annex B countries, given that the first commitment period runs from 2008 to 2012, but provisional evaluations already point to a 'substantial emerging compliance problem' (Christoff, 2006, 839). According to Peter Christoff, only 16 Annex B countries are on track to meet their targets. However, 12 of these are post-communist states that will achieve their targets largely through economic contraction rather than deliberate policy initiatives. This leaves only four developed countries — France, Germany, Sweden, and the UK — that are more or less 'on track' towards their targets, although France's task is made easy by its heavy reliance on nuclear power, Britain has benefited from energy restructuring in the 1980s away from coal and towards gas, and Germany has 'benefited' from East Germany's stagnating economy following reunification (Christoff, 2006). The performance of the European Union's Emission Trading Scheme (ETS), which many regard as a test run for a global trading scheme, has also been suboptimal, largely due to the over allocation of permits by individual countries (Grubb, 2005). This performance record provides one significant indicator that political commitment to the Kyoto targets has so far been more rhetorical than substantial.



The legitimacy of the Kyoto Protocol from the standpoint of non-state actors varies considerably, according to constituency and context. For example, within the business community, responses have varied widely among different sectors and industries, from hostility and scepticism on the part of many fossil fuel corporations (particularly in the US, where they have bankrolled powerful public relations campaigns against the Kyoto Protocol), to support by the renewable energy industry along with industries preoccupied with weather-related risks, such as the insurance industry. The 1990s proved to be the hottest decade on record, and also the most expensive for the insurance industry, which faced record payouts for climate-related damage. Long-term data on large, climate disasters from the reinsurance industry also shows a sharp increase from the 1980s (Steffen, 2006, 13). Environmental NGOs have embraced the fundamental objectives and principles of the Protocol but many have criticized its policy measures and targets. For example, they have voiced concerns over the so-called 'flexibility mechanisms' in the Protocol (such as carbon trading and carbon sinks), which relieve the pressure on developed states to meet their commitments by reducing emissions at their source.

More tellingly, both climate change scientists and environmental NGOs have been the most vocal in drawing attention to the extreme modesty of the Kyoto targets relative to the scientific recommendations of what needs to be done to solve the problem. The IPCC has warned that a 60–80 per cent reduction in carbon dioxide emissions by 2050 is necessary to achieve the fundamental objectives of the UNFCCC, which is to achieve 'stabilization of GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system' (Article 2). The Kyoto targets promise an average cut of around 5 per cent by industrialized countries by 2012 (from a 1990 baseline), excluding the US and Australia, and we have noted that many states look like they will struggle to meet these modest targets. The targets mooted for the next commitment period are expected to remain well below what is required to fulfill Article 2 of the UNFCCC.

Indeed, the assessment of the IPCC is that global warming is already underway and unless there is a dramatic upward adjustment in GHG reduction targets, the harmful consequences predicted by the IPCC from further temperature increases will become a *fait accompli*. These include mass extinctions, water, energy and food scarcity, loss of reefs through coral bleaching, rising sea levels, coastal and infrastructural damage, and human death and suffering resulting from a growing incidence of 'extreme weather'. It is expected that the harmful consequences will flow from an increase in global average surface temperatures somewhere in the range of around 1.4–5.8°C by 2100. Increases of this magnitude over such a short time period are unprecedented. A warming of 4–6°C brought about an end to the last ice



age, but this took place over a period of 7,000–10,000 years rather than a mere 100 (Hare, 2005, 88). The IPCC's Fourth Assessment Report, which is currently under review by governments and due for public release in 2007, is expected to revise upwards its predictions of rising temperatures.

Despite the warnings of scientists and environmental NGOs, for a complex range of reasons, the fundamental mismatch between political undertakings and what is actually required to prevent further global warming has not led to any recalibration of the Kyoto targets for the first commitment period (although some parties are pushing for tougher targets in the *next* commitment period). The primary reason is that the Protocol has only just become operational and it is still in its teething stage. Political attention has remained focused on establishing a Kyoto rule-book and upholding and refining it in the face of US defection, rather than scrutinizing state performance under this rule-book, especially given that the commitment period is not until 2008–2012. At the same time, there has been little motivation by the parties (as distinct from the US) to submit their strong rhetorical commitment to the Protocol to the test of critical scrutiny, given that few developed states are making any real headway on their targets and developing states are not required to do anything. Most parties face a steep learning curve in working out how to reduce carbon emissions without compromising economic growth. As we shall see, a strategy of ecological modernization offers one route out of this dilemma, but this entails significant restructuring of the energy sector, not to mention significant changes to taxation, transport and industrial policy, that carry short-term political risks. This is exacerbated by the significant time lag between the production and dissemination of specialized scientific knowledge that is able to track the relationship between human practices and environmental consequences, and popular appreciation of such knowledge and consequences, which often does not gain political momentum until the effects become more palpable; by then the window for effective action has closed. This forestalls any widespread recognition of an acute crisis in 'output legitimacy' by domestic publics of the kind that would motivate Annex B states to take more concerted action now (rather than later).

The Kyoto Protocol's legitimacy honeymoon, however, cannot last forever. Issues of both target compliance and goal effectiveness are likely to become much more prominent in the negotiations for the second commitment period, especially following the publication of the IPCC's Fourth Assessment Report in 2007. Against a background of mounting scientific evidence of pervasive, serious and harmful climate change impacts, it will become increasingly harder for states to escape performance scrutiny or justify performance failure among themselves, and to their own domestic publics and international civil society. In the absence of a more concerted political effort to bring targets and policy measures into alignment with regime objectives in these negotiations, the



Kyoto Protocol is likely to become increasingly the subject not of social recognition but social ridicule and possibly despair.

In the meantime, non-participation by the world's biggest GHG polluter will continue to undermine the effectiveness of the Protocol, both directly and indirectly. The withdrawal of the US not only undermines the efforts of all those states that have agreed to mandatory reduction targets. It also changes the market structure under which emissions trading takes place. In particular, Russia and other 'economies in transition' have lost a lucrative market for their 'hot air'. The price of tradable permits will now be lower than they would have been with US participation in the market, which will make it easier for developed countries to meet their targets by purchasing permits rather than reducing emissions at source (Böhringer and Löschel, 2003). More significantly, in the absence of US participation, it is not clear whether China and other growing emitters in the developing world will start talking seriously about mandatory targets in the second commitment period. China has led the G77 in steadfastly holding the Kyoto parties to the terms of the Berlin mandate (Harris and Yu, 2005). Given that the US has the greatest responsibility of all, there is the risk that developing countries will decline to undertake mandatory emission cuts in the absence of significant and concerted mitigation on the part of the US. Yet without the active and timely participation of the world's two biggest aggregate emitters, the US and China, it is unlikely that the harmful consequences of global warming can be averted. In view of the strength of the basic environmental justice norm underpinning the UNFCCC and the Kyoto Protocol, the US will be expected to make the first move.

### **The Bush Administration**

While the efforts of the Bush administration to legitimate its withdrawal from the Protocol find some support within the US, they have attracted widespread international condemnation. Part of the US's legitimization strategy has been to portray itself as showing leadership in 'going it alone', in forging an alternative, more realistic and effective strategy for others to follow. For example, the Bush administration has criticized the Kyoto targets for being unrealistic and it has criticized European nations for failing to live up to their Kyoto commitments, claiming this as further evidence of the flawed nature of the Protocol. However, while the Kyoto targets adopted by most of the developed world are extremely modest when set against the scale of the problem, the US administration's efforts to pursue an alternative, mostly voluntary, technology-driven strategy that is claimed to be more effective than the Protocol are even more modest.

The centrepiece of the Bush administration's domestic climate change policy has been a proposal to reduce the GHG intensity of the US economy by 18 per



cent by 2012 (US Department of State, 2002). GHG intensity measures emissions per unit of GDP, which have been in general decline in most economies owing to general efficiency improvements. Indeed, the President's Council of Economic Advisers noted that US emissions intensity was forecast to fall anyway by 16–14 per cent by 2012, so 18 per cent was recommended as a 'stretch goal' (Pizer, 2004, 35). As Depledge (2005, 23) points out, the target is to be pursued only through voluntary initiatives and technology development, including voluntary reporting. In short, the Bush administration has avoided any imposition of aggregate limits on emissions. The lack of any serious compliance mechanisms also makes it difficult to gauge whether the Bush 'strategy' is likely to be successful in its own terms.

More significantly, the climate change strategy has been overshadowed by the Bush-Cheney National Energy Strategy, which is primarily concerned to step up oil exploration and drilling. The Bush administration's new *Energy Policy Act*, passed in 2005, offers huge subsidies to the oil and gas industries to encourage exploration, along with additional subsidies, low interest loans and research grants for the development of nuclear power plants (White House, 2005). The Bill also promotes increased use of ethanol and further investment in renewable energy sources such as wind power. However, there are no measures to increase fuel efficiency standards for cars or sports utility vehicles.

On the international front, the Bush administration's strategy has been succinctly described as creating 'bottom-up, ad hoc "coalitions of the willing" on specific issues' (Depledge, 2005, 24). This includes a wide range of bilateral and regional partnerships with individual countries. The most significant 'environmental coalition of the willing' is the Asia-Pacific Partnership on Clean Development and Climate, with Australia, China, India, South Korea and Japan. The six members of this pact, which are responsible for around half the world's carbon emissions, have entered into a 'nonbinding agreement' to tackle emissions by promoting the voluntary technological development, deployment and transfer of existing and emerging clean technologies (including research on carbon geosequestration) (DFAT, 2006; Fisher *et al.*, 2006). The pact does not contain any mandatory timeframes, targets or compliance mechanisms and the focus is on reducing emissions intensity rather than aggregate emissions. Indeed, a recent Australian study prepared for the inaugural meeting of the partnership in January 2006 in Sydney has shown that on a best-case scenario (assuming widespread *global* use of the new technologies promoted by the partnership), the initiative will bring down global emissions by 23 per cent by 2050 compared to a business-as-usual scenario. Yet global emissions would still *increase* by over 100 per cent from current levels (Fisher *et al.*, 2006).

Although the newly elected Canadian Prime Minister, Stephen Harper, announced in May 2006 that Canada is interested in joining the Asia-Pacific partnership, it has not prompted any defections from the Kyoto Protocol to



date. Indeed, there is disagreement within the partnership about its relationship to the Kyoto Protocol. While the US and Australia clearly regard the partnership as a preferable alternative to Kyoto, the remaining members of the partnership (all of which are Kyoto parties, and one of which — Japan — has mandatory targets) regard it as a complementary initiative.

In general, the US has not been successful in winning over detractors to its position by means of persuasion. Its two core arguments have been that (1) the 7 per cent cut in emissions negotiated by the Clinton-Gore administration at Kyoto would harm the US economy; and (2) the US would not accept mandatory emission reduction targets unless developing countries also accepted mandatory targets in the same timeframe (a position that echoes the Byrd-Hagel Resolution adopted by the US Senate in June 1997). The Bush administration had also sought to question the science of global warming but it has effectively shelved this line of argument since signing a communiqué at the Gleneagles G8 Summit in 2005 that acknowledged that ‘climate change is a serious and long term challenge’ and that ‘we know enough to act now’ (G8 Gleneagles, 2005). While there remains scientific uncertainty about the precise timing, severity and regional impacts of global warming, the Bush administration appears to have conceded that there are very few scientists who doubt the basic scientific hypothesis of global warming, and the seriousness of its predicted impacts.

As to the economic harm argument, there is no doubt that any concerted effort to wean the US economy from its heavy dependence on fossil fuels (especially oil) will raise the price of energy in the US and produce significant domestic and international economic repercussions, especially in terms of the competitiveness of US exports. Yet the reasoning behind the Bush administration’s stance — that climate change policies should be economically painless for Americans — is a recipe for minimal action and it has been unconvincing to the rest of the world. It ignores the much greater long-term economic, human and environmental costs of *not* taking action, as well as the new wealth and employment opportunities that can be generated from significant investment in low-carbon or non-carbon energy sources. Well before Kyoto, many OECD states, particularly in Western Europe, have recognized that a strategy of ecological modernization, kick-started by stronger domestic environmental regulation, can act as a spur to further environmental/technical innovation, which enhances national economic competitiveness and forces a virtuous cycle of continuous environmental improvement (Hajer, 1995).

The Bush administration’s insistence on developing country commitments reflects a concern that rapidly growing economies such as India, Brazil and, above all, China, would gain a significant competitive advantage over the US. China is the world’s second biggest aggregate emitter and the US had rightly



argued that the Kyoto Protocol will remain ineffective without Chinese participation. Indeed, China is expected to overtake the US as the world's largest aggregate emitter by 2020 (Harris and Yu, 2005, 46). Yet the US insistence on developing country commitments in the first commitment period is contrary to the principle of common but differentiated responsibility, which is now a cornerstone of the entire climate change regime. As we have seen, China has led the G77 in holding developed countries to the Berlin mandate. Indeed, this has emerged as one of the biggest international stumbling blocks in the climate change negotiations.

The problem with the Bush administration's 'developing country' argument is that while it has been quick to draw attention to China's high aggregate emission levels, it has conveniently and persistently downplayed the colossal size of its own aggregate emissions, which are more than the emissions of the second (China), third (Russian Federation) and fourth (Japan) highest emitters in the world combined (Depledge, 2005, 12). The US has also ignored the huge disparity in the history of emissions, and in current per capita emissions, between the US and China. The average American emits around eight times as much carbon dioxide as the average Chinese (WRI, 2001). Moreover, carbon dioxide emissions intensity in China has been declining due to a range of initiatives such as retrofitting, energy efficiency savings and the diversification of China's energy portfolio (Cohen and Egelston, 2003, 328–329). The Bush administration's refusal to recognize the disproportionately large carbon shadow it has cast over the world has intensified anti-Americanism, especially in the developing world where the consequences of global warming are expected to be more severe.

It is important to emphasize that the legitimacy crisis facing the US in this policy field arises not simply from its rejection of the Kyoto Protocol, although this is certainly lamentable for all those who prefer multilateralism to bilateralism or unilateralism. Rather, it is also the ineffectiveness of the US's proposed international and domestic policy alternatives. Had the Bush administration been able to demonstrate to the world that its approach was indeed *more effective* than the Kyoto Protocol, then the legitimacy tables would quite likely be turning now. That is, the greener states, NGOs and scientists would transfer their support from the Kyoto Protocol to the Bush administration's initiatives. In this policy domain at least, as public appreciation of the need for timely action grows, the effective provision of a global public good by unilateral means on the part of the most powerful state would deliver more legitimacy (of the 'output' kind) than a much less effective multilateral initiative that rested only on 'input legitimacy'.

Even so, international condemnation of the Bush administration's climate policy has not led to any major disempowerment because it is still able to act



unilaterally in pursuit of its own preferred approach to tackling climate change. As the most powerful state in the world, the US has more material capacity than any other state to resort to bribery or coercion to get its way. However, this capacity is not limitless and it has not been sufficient to induce or coerce large numbers of states to conform to US dictates. Material levers are cheapest and most effective when used to swing the votes of wavering parties in finely balanced negotiations. However, the opportunity for strategic behaviour of this kind has now well passed and the US's material preponderance cannot stretch to coercing or inducing a mass defection from the Kyoto Protocol. The Asia-Pacific Partnership may be regarded as the most significant example of 'adaptive behaviour' by the Bush administration, based mostly on material levers (in this case, the inducement of technology diffusion), but it has not passed muster as a more effective alternative to Kyoto. As an outsider to the Kyoto Protocol, the US is no longer able to influence directly the course of future negotiations, although it does remain a party to the UNFCCC and it is still entitled to attend the UNFCCC Conference of the Parties. For the moment, then, we may conclude that the US suffers from a chronic rather than acute legitimacy crisis.

### **Towards a Resolution**

The Bush administration has been unmoved by international criticisms of its stance towards the Kyoto Protocol because it believes that a majority of Americans would not accept rising energy prices, and it has the material means to project its preferred climate change policy into the international arena by building up 'coalitions of the willing' rather than persuade Americans to change course. Yet the key to the resolution of the US's chronic legitimacy crisis, as well as the Kyoto Protocol's looming legitimacy crisis, is just that: for Americans to change course.

The fundamental problem is that American capitalism has become dependent on cheap oil, made possible by significant subsidization of the oil and gas industries, and very low fuel taxes by comparison to most European countries. Successive US governments have been preoccupied with stepping up domestic oil production and securing foreign supplies (including by force where necessary) rather than managing and reducing domestic demand. Congress has blocked efforts to raise domestic oil prices, while the executive has played the major role in foreign petroleum policy, framing it as a matter of security and utilizing the full range of diplomatic, intelligence and military resources to secure an investment friendly climate in oil-rich countries (Goel, 2004). This supply-side rather than demand-side approach has made US compliance with its Kyoto targets extremely difficult.



Indeed, President Bush's 2006 State of the Union address recognized that 'America is addicted to oil, which is often imported from unstable parts of the world' (Bush, 2006). However, his response to US vulnerability has been to source oil from elsewhere and generally step up research and development in energy sources across the board, including fossil fuels, biofuels, nuclear power and renewables, rather than target alternatives to fossil fuels. The strategy primarily is technology driven and concerned to secure-supply rather than reduce-demand in order to maintain a cheap energy supply for America.

The Bush administration's approach needs to be effectively reversed if the US is to regain international legitimacy in this particular policy field (and more generally) and also protect Americans from the longer-term social, economic and environmental costs of global warming, not to mention the onset of 'peak oil'. This requires the development of an interlocking ecological security and ecological modernization strategy that seeks to move the US away from a carbon-based economy by gradually increasing the price of fossil fuels and increasing the availability of non-carbon energy sources. This strategy will need to force significant shifts in the investment patterns of the US oil industry, which has negligible investments in non-carbon energy sources compared to its European counterparts (Goel, 2004, 476).

Given that the US is the world's biggest economy, the international repercussions of such an interlocking policy shift would be enormous and positive for Americans and the rest of the world. It would reduce the immense environmental and security costs associated with the US's heavy reliance on imported oil. Many new initiatives towards ecological modernization are already taking place at the state and municipal level in the US, including regional carbon trading schemes (Rabe, 2004). Moreover, there has also been a gradual shift in Congressional thinking since the Byrd-Hagel resolution, with the number of proposed climate change-related initiatives introduced on the rise (Depledge, 2005, 25). The most significant of these was the narrowly defeated, bipartisan Lieberman/McCain 'Climate Stewardship Act' introduced in 2003, which sought to introduce a modest national emissions cap and trading system.

The pursuit of an interlocking domestic strategy of ecological modernization and ecological security would also make it possible for the US to reassess its posture towards the Kyoto Protocol, and particularly towards China. It might even facilitate a more general shift in security policy away from an excessive preoccupation with the possible threat posed by weapons of mass destruction, towards the more certain and widespread threat of global warming. However, the current US administration would have to overcome its aversion to environmental multilateralism and rethink its self-serving notion of international environmental justice. This would enable the US to ratify the Kyoto Protocol and take a major leadership role in the negotiations for the next



commitment period. This will also remove the major stumbling block in the way of future talks regarding developing country commitments. This is too much to expect from the Bush-Cheney administration. Indeed, according to James Speth, '[n]o president since Carter has given priority to global scale environmental challenges. The failure has been truly bipartisan' (Speth, 2004, 9). As Falkner (2005, 586) points out, unlike trade and monetary policy, environmental policy has never been central to US attempts to create an international order, but this will need to change if the Protocol is to achieve its objectives.

I have focused on how the US might 'adapt' in response to its own legitimacy crisis because it is also the single most important means of addressing the looming crisis in 'output' legitimacy of the Kyoto Protocol. However, the legitimacy of the Protocol will also depend on the remaining Annex B countries complying with their targets in the first commitment period, and accepting significantly more stringent targets in the next. As the self-appointed 'green leader' of the climate change negotiations, the European Union must play its part in leading by example and paving the way for developing countries to move towards a low carbon economy.

## Conclusion

The dim prospects for this suggested resolution of the emerging disconnect between the Kyoto Protocol's norms and goals, and its policy measures and outcomes, raise important questions about the capacity of multilateralism, and the system of sovereign states that it is designed to serve, to grapple with complex, global environmental problems such as human-induced climate change. Solving environmental problems requires moving beyond traditional multilateralism's liberal norm of state indivisibility, equality and reciprocity, to a rule-making framework that recognizes the vast discrepancies in the vulnerabilities, institutional capacities, and responsibilities of the world's 192 states.

The tragedy is that the modest efforts to produce a more 'complex multilateralism' of this kind have been resisted by the world's most powerful state. In its foreign, climate change, and energy policies, the US has acted unilaterally as a powerful state rather than multilaterally as a hegemon. Indeed, its energy policy is quasi-imperialist insofar as the US denies and overrides the agency of other states. Ironically, the US has sought to legitimate its rejection of the Protocol by enlisting the rhetoric of reciprocity (as against the Protocol's norm of 'common but differentiated responsibility'), by refusing to commit to mandatory targets in the absence of similar commitments from developing countries. As we have seen, this is widely regarded as a fig leaf to preserve the US's relative advantage in the world economy, especially *vis-à-vis* a rapidly growing China.



Unless some kind of recalibration in understanding takes place between the US and the Kyoto parties over the principle of common but differentiated responsibility, it is unlikely that the Protocol's looming legitimacy crisis can be averted. One way to resolve this impasse might be to work towards a more nuanced understanding of this principle. As the world's second largest aggregate carbon polluter, and soon to become the largest in coming decades, China cannot defer for too long a commitment to mandatory targets. Given its growing economic capacity and its role as leader of the developing world, nor can China regard its position as a developing country as equivalent to Burkina Faso or Bangladesh. Indeed, once the US takes on commitments, it becomes possible to direct attention to how the principle of common but differentiated responsibility might be applied *within* the developing country world by distinguishing between stronger and weaker economies. This would provide a principled basis for arguing that China should take the lead in the developing world by accepting some responsibility for phasing in mandatory targets to stem emissions in the second commitment period.

One of the reasons the US has become increasingly wary of the Framework Convention/Protocol approach to addressing environmental problems is because it has certain features that make it harder for powerful states to determine collective outcomes. The ongoing regular meetings create collective understandings and strong normative expectations that 'guide and constrain subsequent policy choices and legal development within the regime' (Brunée, 2004, 637). These understandings and expectations also make it harder for parties to extricate themselves from the negotiations and commitments. Further, the wealthiest states are invariably expected to make the biggest financial commitment, which means they lose discretion for unilateral aid and development assistance as the density of environmental regimes increases. As the sole superpower in the post-Cold War world, the US has taken full advantage of its greater range of exit options than any other state to avoid entanglement in these demanding and ever-growing international processes of consensus formation and compromise.

The idea that great powers have great responsibilities, including the provision and protection of global public goods, has more or less been prevalent for over two centuries, and powerful states have often seen things this way too (Brown, 2004, 6). However, the Bush administration, like many great powers, has preferred to reserve for itself the right to decide what global public goods are worth defending without serious dialogue with other states. The problem for the US, however, is that the social sources of power are increasingly transcending state borders in a globalized world and US unilateralism will be increasingly challenged by a combination of the functional demands of interdependence, longer-term power calculations, intensifying anti-Americanism and, ultimately, ecological 'blowback'.



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