

U.S. Climate Change Law and Policy in the Time of Trump and Beyond

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Abstract: As the world's second most profligate greenhouse gas ("GHG") emitter, the United States is one of the two keys to any successful global effort to limit global climate change to sub-catastrophic levels, which in turn is a prerequisite for efforts to achieve sustainable development worldwide. The other key is China, the world's most profligate GHG emitter. Yet meaningful, sustained progress toward limiting U.S. GHG emissions and toward U.S. cooperation with less developed countries such as China to help them to limit their own emissions remain elusive goals. Domestically, the Obama Administration's Clean Power Plan regulations and new Corporate Average Fuel Economy ("CAFE") standards for passenger cars and light trucks were steps in the right direction. They also paved the way for the executive agreement on limiting GHG emissions signed by U.S. President Barack Obama and Chinese President Xi Jinping in 2015 and for their joint effort to bring the Paris Agreement into being the following year. Donald Trump's surprise election as U.S. President in 2016 has undermined the promise of even these modest steps, however, by empowering further an ideologically radical minority within the U.S. political system. These traditional conservatives are mostly white, Christian evangelicals who are concentrated in the States of the South, Midwest, and Intermountain West. They remain hostile to nearly all laws or policies that would limit U.S. GHG emissions or that would require the United States to provide financial or technical assistance or to make other concessions to less developed countries such as China to help them to limit their own emissions. The predictability of these effects flows ultimately from the Calvinist moral content of American traditional conservatism. Although simmering tensions within the Republican Party inject some uncertainty into the task of making long term predictions, certain structural and other features of the U.S. Government likely mean that even the end of the Trump Administration will not eliminate the resulting barriers to progress in limiting GHG emissions in the United States or anywhere else. Even so, other structural features suggest that the efforts of traditional conservatives to roll back the existing U.S. GHG emissions and related regulations that would provide an indispensable foundation for reviving progress over the long term will be easier said than done. Still other structural features suggest that the most fruitful opportunities for long term progress will revolve less around the U.S. Federal Government than it will around the U.S. States.

Keywords: Climate change, traditional conservatism, United States, law, foreign policy

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As the world's second most profligate greenhouse gas ("GHG") emitter, the United States is one of the two keys to any successful global effort to limit global climate change to sub-catastrophic levels, which in turn is a prerequisite for efforts to achieve sustainable development worldwide. The other key is China, the world's most profligate GHG emitter. Yet meaningful, sustained progress toward limiting U.S. GHG emissions and toward U.S. cooperation with less developed countries such as China to help them to limit their own emissions remain elusive goals. Domestically, the Obama Administration's Clean Power Plan regulations and new Corporate Average Fuel Economy ("CAFE") standards for passenger cars and light trucks were steps in the right direction (see 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 2012; Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 2015). They also paved the way for the executive agreement on limiting GHG emissions signed by U.S. President Barack Obama and Chinese President Xi Jinping in 2015 (see U.S.-China Joint Announcement on Climate Change, 2014) and for their joint effort to bring the Paris Agreement into being the following year (see Paris Agreement, 2015). Donald Trump's surprise election as U.S. President in 2016 has undermined the promise of even these modest steps, however, by empowering further an ideologically radical minority within the U.S. political system. These traditional conservatives remain hostile to nearly any laws or policies that would limit U.S. GHG emissions or would require the United States to provide financial or technical assistance or to make other concessions to less highly developed countries such as China to help them to limit their own emissions. Although Donald Trump himself does not seem to profess any coherent political ideology, he has managed to assemble the most traditionally conservative presidential administration in memory, probably ever (cf. Peters, 2018). He also has managed to empower further the traditional conservatives who dominate the Republican Party in the U.S. Congress. These developments have had predictable effects on U.S. climate change and related laws and policies both domestically and internationally. The predictability of these effects ultimately flows from the Calvinist moral content of American traditional conservatism.

I. American Traditional Conservatism and Its Implications for U.S. Climate Change Law and Foreign Policy¹

A. Traditional Conservatism as a Category of Political Ideologies

American traditional conservatism is one of the three political ideologies that compete for dominance in the U.S. political system. Although the ideological labels used in social science surveys and public opinion polls can obscure as much as they reveal, no more than about a third of adult Americans are traditional conservatives (Saad, 2017). They are concentrated disproportionately in a roughly L-shaped band of States with relatively small populations from the Southeast through the Midwest and upper Intermountain West (cf. State of the States, n.d.).

Although American political scientists usually point to the eighteenth-century British statesman Edmund Burke as the father of traditional conservatism, it is much more useful to think of traditional conservatism as a category of distinct ideologies with shared features and of Burke's as an especially vivid exemplar. What distinguishes the different traditional conservatisms from each other is the different traditional moral teachings at their core. These differences account for the differences in how traditional conservatism is expressed through policy preferences in different societies.

B. The Shared Features of Traditional Conservatisms Everywhere

Traditional conservatisms everywhere rest on the same conception of human nature. According to this shared conception, human beings are not naturally rational enough to live virtuous lives without guidance from some external source other than the state. One of the consequences of this conception is the belief that morality is the most important political value because it provides human beings with the guidance that they need to live virtuous lives. This morality takes the form of the traditional moral teachings taught in the first instance by civil institutions. By extension, the state's proper role is to prevent society from degenerating into chaos by protecting and promoting those traditional moral teachings and the civil institutions that instill them in the first instance. The properly functioning state is thus an organic expression of the moral essence of the society out of which it emerges and of the traditional moral teachings that make that society what it is.

C. The Unique Moral Content of American Traditional Conservatism

¹ For a more detailed exploration of the topics covered in this section, see Barresi, 2011, from which the following has been summarized and adapted, except as supplemented with other sources *infra*.

The key to understanding the implications of American traditional conservatism for U.S. climate change law and foreign policy is to understand the traditional moral teachings at its core. These traditional moral teachings are rooted in Calvinism, the teachings of the radical sixteenth-century Protestant cleric John Calvin and his like-minded successors. All four waves of British immigrants who in the seventeenth and eighteenth centuries colonized what later became the thirteen original United States were Calvinists. Probably the most Calvinist of them all were the Puritans from East Anglia who in the first half of the seventeenth century colonized the New England region in what is now the extreme northeastern corner of the United States. These devout but relatively introspective Calvinists had the biggest impact on the subsequent development of American culture in general. The mostly Presbyterian Calvinists from North Britain who in the first three-quarters of the eighteenth century colonized the hilly country from what is now Western Pennsylvania south to Georgia, however, have had the biggest impact on American traditional conservatism. As these much more militant Calvinists and their biological and cultural descendants headed westward in the late eighteenth and nineteenth centuries, their religious beliefs shaped the cultures of what are now the States of the South, Midwest, and Intermountain West in which American traditional conservatives are concentrated.

Three Calvinist beliefs have played especially important roles in shaping American traditional conservatism. The first is the belief that the universe is merely a stage for a mortal struggle between God and the devil in which everyone and everything is on one side or the other. This struggle takes place not merely around human beings but inside them as well in the form of a struggle against the temptation to indulge in various physical pleasures. This Calvinist belief has led American traditional conservatives to believe that every political issue is a moral issue and that the state should regulate the behavior of individuals in spheres of life that proponents of the other two major American political ideologies regard as private matters, including sexuality, reproduction, and religious expression, for example.

The second Calvinist belief that has played an especially important role in shaping American traditional conservatism is the belief that every human being has two divine callings. The first is a general calling to give glory to God in this world. The second is a special calling to work hard in a profession. This second calling imputes a moral dimension to work and to wealth acquired through work. This Calvinist belief has led American traditional conservatives to conclude that the rich are morally good people because they made the good moral decisions that made them rich and that the poor are morally bad people because they made the bad moral decisions that made them poor. By extension, American traditional conservatives also believe that regulatory policies that unduly restrict the ability of the rich to engage in the behavior that made them rich, as well as fiscal policies that redistribute wealth from the rich to anyone else, are immoral. Environmentally protective regulatory policies, which almost always use tax dollars to constrain the industrial activity that historically has generated both wealth and pollution in equally large amounts, are immoral on both counts. Moreover, for American traditional conservatives, no amount of scientific evidence about the pernicious environmental effects of industrial activity is sufficient to remove the moral stain from regulatory policies designed to prevent those impacts. This conclusion follows from the traditionally conservative belief that human beings are not naturally rational enough to live virtuous lives without the guidance provided by traditional moral teachings. Science purports to be an expression of pure human rationality, which from an American traditionally conservative perspective necessarily impairs its probative value when its fruits suggest the wisdom of pursuing policies in conflict with Calvinist moral teachings.

The third Calvinist belief that has played an especially important role in shaping American traditional conservatism is the belief that God elects to admit only some people to Heaven for His own reasons such that no amount of good works performed by anyone on Earth is enough to earn that person salvation. This belief led the early Calvinists to spend their lives in an agonizing search for signs that they were among the elect. For them, the material rewards associated with success in a profession provided at least some evidence that they were among the elect. Thus, the Calvinist belief in election reinforced Calvinist beliefs about the moral dimensions of wealth acquired through work. This synergy in turn has reinforced American traditionally conservative beliefs about the moral superiority of the rich and the immorality of certain types of fiscal and regulatory policies.

D. The General Foreign Policy Implications

One way of categorizing the foreign policy orientation implied by American traditional conservatism is as internationally "revolutionist" -- a term coined by historian Martin Wight to denote one of the categories in his typology of international relations theories. International revolutionists have a perfectionist conception of human nature. Accordingly, they also believe that the morally regenerate have a duty to compel the reprobate to be good. By extension, international revolutionists also consider themselves to be a chosen people with a special mission, like

the Jews in the Old Testament of the Christian Bible. These foundational beliefs lead international revolutionists to believe passionately in the moral unity of the international community and to identify themselves with it. As a result, they also claim to speak in the name of that moral unity, to adopt its realization as the main goal of their foreign policy, and to use it as the standard against which to measure the validity of international law. Traditional conservatives in any society generally qualify as international revolutionists because of their conception of the nature and proper role of the state as an organic expression of the moral essence of the society out of which it emerges and as duty bound to promote the traditional moral teachings that provide human beings with the guidance that they need to live virtuous lives.

The Calvinist moral teachings at the core of American traditional conservatism reinforce the internationally revolutionist implications of traditional conservatism in general. One of the implications of these moral teachings is that international relations are as much a part of the universal struggle between God and the devil as domestic politics are. Consequently, every foreign policy issue, like every domestic political issue, has a moral dimension in which Calvinist beliefs are the measure of the good. Not coincidentally, John Calvin (1509-64) himself was a revolutionist in Wight's international relations sense, as were his early followers. One of them was Oliver Cromwell (1599-1658), the Puritan who briefly ruled England as Lord Protector in the mid-seventeenth century, not long after some of his co-religionists fled to the New England region of what is now the United States to escape persecution by the official Anglican Church.

Certain features of American nationalism encourage the internationally revolutionist tendencies inherent in American traditional conservatism. American nationalism is a complex belief system with a rich history. Perhaps its most salient feature is a unique national messianism derived historically from how the Puritans of New England implemented their Calvinist moral project. The Puritans were religious dissenters who believed that they were reenacting the Exodus of the Israelites from slavery in Egypt as retold in the Old Testament of the Christian Bible. They also believed that they could purify the Protestant branch of Christianity by undertaking a sacred errand into the wilderness of the New World. There they would do battle with and emerge victorious over the evil that dwelt there by building a "city on a hill," which would serve as an example to all humanity of how to live a proper Christian life.

As Americans spread westward in the eighteenth and nineteenth centuries to fulfill what they believed to be their "manifest destiny" to build a nation that would stretch from coast to coast, their quest to fulfill that destiny was fueled by these same Puritan beliefs about a divine mission, redemption, and wilderness. Over time, these beliefs lost much of their explicitly religious character and were absorbed into a budding American nationalism. They imbued that nationalism with three salient features. First, they gave rise to a belief in American exceptionalism as revealed by the fact that the American wilderness, the conquest of which had been necessary for the Puritans to fulfill their own divine mission, was the biggest and wildest in the world. Second, they convinced Americans that their nation was morally superior to all others because the vastness of this wilderness made its conquest redemptive on a similarly expansive scale. Third, they imbued American nationalism with a unique messianic component derived from the belief that the vast resources available for human use in the American wilderness showed that God had chosen the American nation for a superior destiny. In a 2016 survey, for example, fifty-seven percent of Americans agreed that "God has granted America a special role in human history" (PRRI, n.d.). For American traditional conservatives, the proper role of the state is to promote the Calvinist moral teachings at the core of their political ideology. Accordingly, the special role assigned by God to the American nation requires the propagation of those beliefs worldwide as the centerpiece of U.S. foreign policy.

E. Specific Implications for U.S. Climate Change Law and Foreign Policy

The specific implications of American traditional conservatism for U.S. climate change law and foreign policy flow mostly from its Calvinist moral content. As an initial matter, these beliefs make American traditional conservatives loathe to acknowledge anthropogenic global climate change as real and, if real, then as caused by human beings and, if caused by human beings, then as posing a serious enough threat to human well-being to warrant concerted action to slow, to stop, or to reverse it. No matter what science tells us about the reality, causes, and consequences of anthropogenic climate change, the Calvinist belief in the immorality of environmentally protective regulatory laws and policies because of their implications for Calvinist beliefs about wealth acquired through work leads American traditional conservatives to discount scientific rationality as a uniquely privileged means of revealing the truth about climate change.

Even to the extent that American traditional conservatives are willing to acknowledge anthropogenic climate change as real, as caused by human beings, and as posing a serious enough threat to human well-being to warrant concerted action to slow, to stop, or to reverse it, cooperating with less developed countries toward that end poses special moral challenges from an American traditionally conservative perspective. The most common measure of development is income expressed as per capita Gross Domestic Product ("GDP") (cf., e.g., Escobar, 1999, p. 382; Lyman, 2010). As less highly developed -- and, therefore, less wealthy -- countries than the United States as measured by per capita GDP (see Central Intelligence Agency, n.d.), less developed countries are morally stunted by definition, at least from an American traditionally conservative perspective. From that perspective, rich nations are morally good nations because they made the good moral decisions that made them rich and poor nations are morally bad nations because they made the bad moral decisions that made them poor. By extension, unduly restricting the ability of rich nations to engage in the activities that made them rich or requiring rich nations to transfer any of their wealth to poor nations so as to make them less poor is immoral.

Accordingly, any international agreement that would require the United States to reduce its GHG emissions so that less developed countries could pursue development strategies that would entail emitting more or that would require the United States to provide financial or technical assistance or to make other concessions to less developed countries to help them to limit their own emissions would be immoral in more than one sense. First, it would entail an undue restraint on the wealth-generating activities that made the American nation rich, which would be immoral in its own right regardless of the reason for the restraint. Second, it would amount to a massive transfer of wealth from the United States to less developed countries, which would be doubly immoral because it would punish a morally good nation for making the good moral decisions that made that nation rich while rewarding morally bad nations for making the bad moral decisions that made those nations less so (cf. Nebbe & Perkins, 2014; Sampathkumar, 2017).

This moral problem is especially acute when it comes to China. From an American traditionally conservative perspective, China's ongoing rise as an economic and political power on the world stage merely compounds the moral challenges. As nationalists almost by definition, American traditional conservatives are predisposed to pursue an internationally revolutionist foreign policy aimed at promoting their Calvinist beliefs worldwide, a pursuit that they view as both an expression of the moral essence of American society and a fulfillment of the messianic mission of the American nation. The mere fact of China's rise as a world power, especially to the extent that it has been associated with both official appeals to Chinese nationalism and official efforts to revive as the moral touchstones of the Chinese nation both "core socialist values" and Chinese cultural traditions officially scorned in an earlier era (see, e.g., Buckley, 2013; Tatlow, 2014; Xinhua, 2014; Xinhua, 2017), flies in the face of the Calvinist world view of American traditional conservatives and thus amounts to a frontal assault on their international moral project. China's increasingly assertive claims of sovereignty over disputed territories in its own region (see McDonald, 2012) and increasingly ambitious efforts to exert its economic and political influence in other parts of the world in ways and to a degree with few if any precedents in the long sweep of Chinese history (see e.g., Abi-Habib, 2018; Barboza, Santora & Stevenson, 2018; Larmer, 2017; Londoño, 2018) merely underscore the salience and magnitude of this perceived moral threat. The implications of these developments from an American traditionally conservative perspective is that China is a formidable but morally deficient force that must be opposed on all fronts rather than a potential partner in addressing issues of pressing international concern.

II. U.S. Climate Change Law and Foreign Policy in the Time of Trump

A. The Ascendancy of American Traditional Conservatives Before the 2016 U.S. Federal Elections

Donald Trump's surprise victory in the 2016 presidential election represents a new peak in the ascendancy of American traditional conservatives as the dominant force in the Republican Party nationally and through that party as a pivotal force in American national politics. Except for a brief period of one-party rule in the early nineteenth century known as the Era of Good Feelings, two parties have dominated American politics since the first parties began to emerge in the mid-1790s, just a few years after the ratification of the U.S. Constitution, although the names, constituencies, ideological orientations, and programmatic agendas of those parties have changed over time (see generally Clubb et al., 1980, pp. 19-45). The structure of the electoral process for filling seats in almost all legislative bodies at the federal, state, and local levels in the United States is primarily responsible for giving rise to and maintaining this two-party system (cf. Norris, 1997, pp. 299-302). This dynamic has two especially important implications for American party politics. First, it means that the parties that dominate the American political landscape at any given time are almost always coalitions of interest groups with overlapping ideological orientations and programmatic agendas (see Clubb et al., 1980, pp. 29-37). Second, it means that party politics in the United

States generally take the form of the dominant parties' efforts to expand their own coalitions by driving wedges between and breaking off elements of the other dominant party's (see, e.g., Tindall, 1971).

Since the mid-nineteenth century, the Democratic and Republican parties have dominated the American political landscape (see, e.g., U.S. House of Representatives, n.d.; U.S. Senate, n.d.). The current Republican Party is the direct descendant of an anti-slavery party with that name that emerged in the mid-1850s (see Rogers, 2011, pp. 175-92). The current Democratic Party is the collateral descendant of one of the United States' first two political parties -- ironically called the Republican Party -- which emerged in the mid-1790s as a party of decentralized governmental authority and agricultural interests, the dominant faction of which essentially was reborn under its current name during the turbulent party politics of the 1820s (see generally Shade, 1986).

Since the 1930s, the Democratic Party has been dominated by modern liberals (see Silverstein, 2007, pp. 85-86; cf. Hofstadter, 1948, pp. 337-42). As a result of their interrelated beliefs about human nature; the nature and political importance of liberty, equality, and social welfare; and the nature and proper role of the state, modern liberals generally support both redistributionist fiscal policies and environmentally protective regulatory policies.² To the extent that morality plays any significant role in modern liberalism, modern liberals' conception of the good is informed primarily by their expansive conception of individual liberty (cf. Barresi, 2008, p. 11), not Calvinist moral teachings.

From the 1890s through 1980, the Republican Party was dominated first by classical liberals, then by modern conservatives, who differ from classical liberals primarily in their willingness to acquiesce in a certain amount of modern liberalism in public policies to remain politically relevant.³ As a result of their interrelated beliefs about human nature, the nature and political importance of liberty, and the nature and proper role of the state, modern conservatives generally oppose both redistributionist fiscal policies and environmentally protective regulatory policies except when the latter are designed to address problems that pose direct, serious threats to the lives, liberty, or property of individuals. The pervasive, localized pollution problems that prompted the bipartisan enactment of most of the major U.S. environmental statutes from 1969 through 1980 generally fell into this category (see generally Kraft, 2000, pp. 21-27). Given their minimalist conception of the proper role of the state, modern conservatives generally believe -- as did their classically liberal forebears -- that the social and cultural issues that preoccupy traditional conservatives are private matters and therefore should not be the focus of public policies.

The beginning of the end of modern conservatives' dominance of the Republican Party nationally dates to 1980, which is when former California Governor Ronald Reagan mobilized white Christian evangelicals in support of his successful presidential campaign (see Silverstein, 2007, pp. 141-42). Among the characteristics that set Christian evangelicals apart from other Christians, at least in general terms, is that the former believe not only that they have acquired a personal relationship with the central figure in Christianity, Jesus Christ, as a result of having been "born again" into his teachings but also that they have a duty to propagate their faith by trying to convert nonbelievers (see National Association of Evangelicals, n.d.). Christian evangelicals are overwhelmingly Protestant (see Kurtzleben, 2015). Depending on the methodology used to identify them in survey research, they comprise from about a quarter to about a third of U.S. adults, with white Christian evangelicals who identify themselves as such comprising less than a fifth of U.S. adults (see Kurtzleben, 2015). In general, Christian evangelicals are concentrated in the same parts of the South, Midwest, and Intermountain West as traditional conservatives, which is not coincidental (see PEW Research Center, n.d.b). Nearly 40% of "conservative" U.S. adults are evangelical Protestants," (see PEW Research Center, n.d.a), whereas almost 70% of white evangelical Protestant adults identify themselves with or lean toward the Republican Party (see PEW Research Center, 2015). Accordingly, although white Christian evangelicals (as a religiously defined demographic group) and traditional conservatives (as a politically defined demographic group) are not the same thing, they overlap to such an extent in the American context that it is not possible to talk about the political impact of the one without also talking about the political impact of the other. This overlap is a function of the fact that both the theology of Christian evangelicals and the political ideology of American traditional conservatives are rooted firmly in Calvinist moral beliefs.

By successfully mobilizing white Christian evangelicals in support of his 1980 presidential bid, Ronald Reagan set in motion the transformation of the Republican Party nationally from a party dominated by modern

² For an elaboration of most of these points, see Barresi, 2008, pp. 10-13, from which this summary has been adapted.

³ For summaries of most of the points made herein within respect to both ideologies, see Barresi, 2008, pp. 9-10, 13-15, from which this summary has been adapted.

conservatives to a party dominated by traditional conservatives. By the mid-1990s, when Republicans acting under traditionally conservative leadership wrested majority control of the House of Representatives from Democrats for the first time in forty years, the transformation of the party was essentially complete.⁴ The Republican Party became even more traditionally conservative after the 2010 federal elections, which is when a wave of successful primary and general election candidates representing an even more traditionally conservative, largely white Christian evangelical insurgency within the Republican Party -- which called itself the "Tea Party" (see Cox & Jones, 2010; Zernike, 2010; Zernike & Thee-Brennan, 2010) -- shifted the center of gravity of American politics sharply to the right (see, e.g., Cohen, 2014).

B. The Ascendancy of American Traditional Conservatives After the 2016 U.S. Federal Elections

In 2016, Republicans won the presidency and vice presidency, retained a substantial majority of the 435 seats in the House of Representatives (albeit smaller than in the previous Congress), and retained a slim majority of the seats 100 in the Senate (albeit even slimmer than in the previous Congress) (see US Election 2016, n.d.). Their congressional victories were less surprising than their presidential and vice presidential wins, however, in part because Republicans currently benefit from structural advantages in congressional elections.

The Republicans' structural advantage in Senate elections is a function of a compromise reached by the delegates from the most populous States and the delegates from the least populous States at the convention that drafted the U.S. Constitution in 1787 about how the national legislature would be structured and how the States would be represented in it. In this Great Compromise, so called because of its pivotal role in making it possible for the deliberations to proceed further, the delegates agreed to create a bicameral legislature in which the seats in a House of Representatives would be allocated among the States on the basis of population and the seats in a Senate would be allocated equally among the States (see Bowen, 1966, pp. 185-87). One of the consequences of allocating the same number of seats to each State in the Senate is that voters in the States in which American traditional conservatives happen to be concentrated, which tend to be relatively less populous than the other States (see U.S. Census Bureau, n.d.), have a disproportionately large number of seats. As a result, Republicans currently find it easier than Democrats to win a majority of Senate seats, all else being equal.

The Republicans' structural advantage in House elections stems from *gerrymandering*, which is the practice of drawing the boundaries of legislative districts in ways designed to influence electoral outcomes (Ingraham, 2015). The States typically authorize their legislatures to draw the boundaries of legislative districts for purposes of both state and federal elections (see Ingraham, 2014). The U.S. Constitution requires that the seats in the House be reapportioned among the States every ten years to reflect the results of a census of the U.S. population (U.S. CONST. art. I, § 2, cl. 3). The redistricting that occurs in response to the results of reapportionment is the typical setting in which gerrymandering for partisan purposes occurs, although not necessarily the only one (cf. Blumenthal, 2013). The traditionally conservative, Tea-Party-assisted wave that flipped control of the House from the Democrats to the Republicans after the 2010 elections also engulfed many state governments, leaving the resulting Republican majorities in the legislatures of those States to gerrymander congressional districts during the redistricting that occurred in the aftermath of the 2010 census (see Cooper, 2010). The result has been to confer a structural advantage on Republican candidates for House seats ever since, which in 2014 and 2016 made it easier for Republicans to retain House majorities roughly comparable to that which they won in 2010 (see U.S. House of Representatives, n.d.).⁵

The results of the 2016 presidential and vice presidential elections were much more of a surprise (see, e.g., Victor, 2016). Ever since a constitutional amendment ratified in 1804 changed the form of the ballots used to elect the President and Vice President (compare U.S. CONST. amend. XII, with U.S. CONST. art. I, § 1, cl. 3 (repealed by U.S. CONST. amend. XII)), presidential and vice presidential candidates have run as teams, which as a practical matter means that the President and Vice President are always from the same party (see, e.g., Presidential Election History from 1789 to 2008, n.d.). One of the features of the process for choosing the President and Vice President that has not changed, however, as least as a matter of U.S. constitutional law, is the indirect manner in which they

⁴ For insider accounts of this episode and its aftermath, see Armev, 1995, pp. 129-45, and Delay with Mansfield, 2007, pp. 89-97.

⁵ In the 2018 mid-term elections -- mid-term elections are often a referendum on the President's party -- Republicans lost their majority in the House (see Watkins et al., 2018).

are elected.⁶ Strictly speaking, when voters cast their votes for President and Vice President, they are not voting for candidates to fill those offices per se but for candidates for the position of elector in the Electoral College that the U.S. Constitution empowers to choose the President and Vice President by majority vote. The U.S. Constitution allocates to each State a number of electors equal to the number of that State's seats in the House and Senate combined (U.S. CONST. art. II, § 1, cl. 2), and treats the District of Columbia as if it were a State for that purpose (U.S. CONST. amend. XXIII, § 1). In accordance with state party (and sometimes national party) rules, each political party in each State nominates a slate of elector candidates equal to the number of electors allocated to that State, often as a reward for loyal party service. Some States require their electors to vote in accordance with the results of the popular vote in that State. As a practical matter, electors who are nominated to serve as such as a reward for their loyal party service are unlikely to vote for some other party's presidential or vice presidential candidate, so it rarely happens.

How any given State's electors are chosen from among the elector nominees is a matter of state law. In forty-eight States and the District of Columbia, the elector candidates nominated by the party the presidential and vice presidential candidates of which win a plurality of the popular vote statewide are certified by the government of that State as the State's presidential and vice presidential electors. In Maine and Nebraska, two of each State's electors are chosen in that way based on the results of the statewide popular vote, whereas the others are chosen in the same way based on the results of the popular vote in each of the State's congressional districts. The formula in the U.S. Constitution for allocating electors among the States and the District of Columbia, together with the party-based system for nominating elector candidates that emerged later, have transformed the Electoral College from the deliberative body that the framers presumably intended it to be into a more or less mechanical means of reallocating the nationwide popular vote among the presidential and vice presidential candidates on a State-by-State basis (cf. Bowen, 1966, pp. 189-90).

This feature of the system has two consequences of special relevance to the results of the 2016 elections. First, it gives voters in States that are relatively less populous more influence in choosing the President and Vice President than they would have had on the basis of their population alone because of the way in which the U.S. Constitution allocates electors among the States (see National Archives and Records Administration, n.d.a). These less populous States are disproportionately the States in the South, Midwest, and Intermountain West in which American traditional conservatives happen to be concentrated (see U.S. Census Bureau, n.d.), which gives Republican presidential and vice presidential candidates a built-in advantage over their Democratic opponents. Second, it makes it mathematically possible for the presidential and vice presidential candidates who win the popular vote nationwide to lose in the Electoral College. The Electoral College has produced this result four times, in 1876, 1888, 2000, and 2016 (see Leip, n.d.). In 2016, the Democratic presidential and vice presidential candidates Hillary Clinton and Tim Kaine won the popular vote nationwide by almost 3 million votes out of nearly 129 million cast but lost to the Republican candidates Donald Trump and Mike Pence in the Electoral College by seventy-seven votes out of 538 (see *ibid.*). Fewer than 80,000 voters in three States -- Pennsylvania, Michigan, and Wisconsin -- decided the outcome of the Electoral College vote (see Bump, 2016). In these States and others, white, working class voters who had voted Democratic in 2012 but Republican in 2016 were primarily responsible for putting Donald Trump over the top (see Cohn, 2016).

Notwithstanding the pivotal role played by these working class voters, white Christian evangelicals -- who continued to vote Republican in overwhelming numbers (see Smith & Martínez, 2016) -- remain the indispensable constituency of the Republican Party nationwide. This fact has not been lost on Donald Trump. The Trump Administration has pursued Christian evangelicals' traditionally conservative policy priorities with a vengeance (see, e.g., Protes, Ivory & Eder, 2017; Weiland, 2018), even at the apparent expense of other important elements of the President's electoral coalition, such as the white, working class (see Goodman & Cohen, 2017). By choosing as his running mate Indiana Governor Mike Pence, a white, Christian evangelical who was one of the most traditionally conservative governors in office at the time and whose views on the reality, cause, and seriousness of anthropogenic climate change have been equivocal at best (see Schipani, 2016), Donald Trump foreshadowed the principal thrust of his administration's personnel and policy decisions, including with respect to climate change (see Mahler & Johnson, 2016; Martin, 2016).

⁶ For a more detailed explanation of this process, see National Archives and Records Administration, n.d.b, and the web pages to which it is linked, from which the following summary is drawn, except as supplemented with other sources *infra*.

By law, the President is entitled to fill more than 4000 posts in the executive branch of the Federal Government with his own appointees, about 1200 of which must be confirmed by the Senate before they may take office (see Appointments, 2018). In filling these posts, Donald Trump has managed to assemble the most traditionally conservative presidential administration in memory, probably ever (see Peters, 2018). Its traditionally conservative character is manifest not only at the highest levels of the executive branch agencies but also throughout their middle ranks. Although these political appointees have been recruited from many sources, the Heritage Foundation, which for decades has been among the most prominent and influential traditionally conservative think tanks in the United States, has been an especially important and influential source (see Mahler, 2017).

In any administration, the executive branch officials with the most influence over the formulation, implementation, and enforcement of the President's environmental policies are the Administrator of the Environmental Protection Agency ("EPA"), whose agency the Congress has charged with implementing most provisions of most federal environmental statutes, in part by promulgating regulations to flesh out the details of congressional policy (see U.S. Environmental Protection Agency, n.d.a); and the Attorney General, whose Department of Justice plays the lead role in enforcing those statutes and regulations through litigation, whether civilly or criminally (see U.S. Department of Justice, n.d.). The executive branch officials with the most influence over the formulation and implementation of the President's policies in related fields are the Secretary of the Interior, whose department manages the vast tracts of federally owned lands located mostly in the Western United States and offshore, including their equally vast forest, rangeland, and mineral resources, such as fossil fuels (see U.S. Department of the Interior, n.d.); and the Secretary of Energy, whose department primarily manages the United States' nuclear arsenal but also performs functions of relevance to non-nuclear forms of energy (see U.S. Department of Energy, n.d.). The executive branch official with the most influence over the formulation and implementation of the President's foreign policy is the Secretary of State, whose department serves as the foreign ministry of the Federal Government (see U.S. Department of State, n.d.). All but one of President Trump's initial appointments to these posts were traditionally conservative, white Christian evangelicals whose views on the settled science of climate change ranged predictably from equivocation to denial (see, e.g., Davenport, 2016a; Davenport & Lipton, 2016; Dreisbach, 2018; Eschliman, 2017; Holden, 2018; King, 2017; Ryan Zinke's Ratings and Endorsements, n.d.; Turkewitz, 2017; Weissert, 2015; Winston, 2015). The exception was his first Secretary of State, former Exxon Mobil CEO Rex Tillerson, who was not an evangelical or a traditional conservative and who not only accepted the settled science of climate change but also argued against the United States' withdrawal from the Paris Agreement (see, e.g., Davenport, 2017; Miller & Winston, 2016; Vladimirov, 2016). The hapless Tillerson soon ran afoul of President Trump, who fired him a little more than a year after his appointment (see Baker, Harris & Landler, 2018). He was replaced by Mike Pompeo (Harris & Kaplan, 2018), a former Tea Party congressman from the State of Kansas (*ibid.*) who is both a traditionally conservative, white Christian evangelical (see Burton, 2018) and a climate change skeptic (see Friedman & Davenport, 2018a).

By more than one measure, the Trump Administration holds the record for the highest rate of turnover of senior Administration officials in any President's first term (see Lu & Yourish, 2019), although it remains as traditionally conservative as before. President Trump eventually fired his first Attorney General, Jeff Sessions (see Baker, Benner & Shear, 2018), then nominated as his permanent replacement William Barr, a former Attorney General (1991-93) from the George H. W. Bush Administration (1989-93), whom the Senate confirmed (Benner & Fandos, 2019). Barr is a white traditional conservative, albeit a devout Catholic (see Bazelon, 2019; Peters & Benner, 2019), whose views on climate change are obscure. President Trump's first EPA Administrator, Scott Pruitt, eventually resigned under pressure from the White House amid numerous federal ethics investigations into his activities at EPA (see Davenport, Friedman & Haberman, 2018). President Trump's first Secretary of the Interior, Ryan Zinke, later resigned under similar circumstances (see Turkewitz & Davenport, 2018). President Trump's first Secretary of Energy, Rick Perry, left the administration later of his own accord (see Friedman, 2019d; cf. Haberman & Friedman, 2019a). In each case, President Trump nominated and the Senate confirmed the outgoing official's deputy as the new agency head -- Andrew Wheeler at EPA, David Bernhardt at the Department of the Interior, and Dan Brouillette at the Department of Energy (see Davenport, 2019b; Friedman, 2019a; Friedman, 2019d). These replacements' ideological orientations, religious beliefs, and to a lesser extent, views on climate change, are more obscure than those of their predecessors in office. Wheeler is a former coal industry lobbyist who has acknowledge climate change as real but also has criticized the United Nations Intergovernmental Panel on Climate Change as being overly political and who in an earlier phase of his career served as chief of staff to U.S. Senator James Inhofe (R-OK), a traditionally conservative, white Christian evangelical who has been among the most prominent anthropogenic climate change deniers in the Congress for years (see Davenport, 2018; Friedman, 2019a; cf., e.g., Inhofe, 2012). Brouillette is a former lobbyist for the Ford Motor Company who has questioned the seriousness of

the threat posed by global climate change and the merits of the Paris Agreement (see Friedman, 2019d). Bernhardt is a former lobbyist for the oil, gas, and agribusiness industries (Davenport, 2019a; Davenport, 2019b). In any case, there is every reason to believe that all three of these officials will continue to pursue the traditionally conservative policies -- including policies of relevance to climate change -- pursued by their predecessors (see Davenport, 2019b; Friedman, 2019a; Friedman, 2019d; cf. Friedman, 2019b).

The deep traditional conservatism of the Trump Administration has become manifest across a broad array of policies, including policies of relevance to U.S. climate change law and foreign policy. The payoff for President Trump, whose personal behavior often clashes with the Calvinist moral ideals of American Christian evangelicals, has been that they now are among his strongest and most loyal supporters (see, e.g., Brody, 2018; Dias, 2018).

C. The Impact of American Traditional Conservatives on U.S. Climate Law and Foreign Policy in the Time of Trump

The U.S. Constitution implicitly established the President as the United States' most important foreign policy actor by empowering him both to "make treaties" (see U.S. CONST. art. II, § 2, cl. 2) and to "receive ambassadors and other public ministers" (see U.S. CONST. art. II, § 3). It also designates the President as Commander in Chief of the U.S. armed forces and of the state militias (now called the National Guard) when called into U.S. service (U.S. CONST. art. II, § 2, cl. 1). Nevertheless, the U.S. Constitution gives to the Senate the power to ratify by a two-thirds vote the treaties negotiated and signed by the President (U.S. CONST. art. II, § 2, cl. 2) and to the Congress as a whole both the power to declare war and the power to call the state militias into U.S. service (U.S. CONST. art. I, § 8, cls. 11, 15). It also implicitly permits the Congress to constrain the President's foreign policy to some degree through statutes enacted pursuant to its power to legislate in certain other subject matter areas (see, e.g., U.S. CONST. art. I, § 8, cls. 1, 3, 5, 10, 18). Presidents nevertheless have a much freer hand in foreign policy than they do in domestic policy, where they are constitutionally much more constrained.

President Barack Obama's (2009-17) signature foreign policy achievements of relevance to climate change were the executive agreement that he and Chinese President Xi Jinping signed in 2015 (U.S.- China Joint Announcement on Climate Change, 2014) and the U.S. role in bringing about the Paris Agreement the following year (see Paris Agreement, 2015). In the executive agreement, President Obama announced the intention of the United States to reduce its GHG emissions to 26% to 28% below 2005 levels by 2025, and President Xi announced China's intention to reach its own GHG emissions peak by around 2030 if not sooner (U.S.-China Joint Announcement on Climate Change, 2014, ¶ 3). In the multilateral negotiations that produced the Paris Agreement, the United States and China worked together to craft an accord that would be acceptable to both developed and less developed countries but also would be designed to make substantial progress toward limiting the rise in global annual average temperatures to significantly below the 2° C above pre-industrial levels that scientists consider to be a threshold for avoiding the most catastrophic environmental impacts (see Davenport, 2015). In the end, 195 countries signed the agreement (Paris Agreement [Signatories & Parties, 2015]), which is the first international accord to require both developed and less developed countries to take concrete actions designed to limit their GHG emissions (Davenport, 2015). The United States insisted that the Paris Agreement be a political agreement, not a legal one, because the Obama Administration knew that Senate Republicans never would permit the ratification of a treaty limiting U.S. GHG emissions (see Davenport, 2015; cf. Chan & Eddy, 2015). Presidents Obama and Xi undoubtedly signed an executive agreement in 2014 rather than a bilateral treaty for the same reason (cf. Davenport, 2014). Unlike the treaty-making power, the President's power to make executive agreements with foreign chief executives is merely implicit in his power to conduct foreign affairs in general, which means that no Senate ratification is required (cf. U.S. CONST. art. II, § 2, cl. 2). It also means that the status of executive agreements as a matter of domestic law is ambiguous, although the U.S. Supreme Court seems to have concluded that their effect is similar to that of ratified treaties (see *U.S. v. Belmont*, 1937; *U.S. v. Pink*, 1942, pp. 233-34). In any case, there are powerful political incentives that discourage Presidents from abrogating executive agreements signed by their predecessors without very good reasons for doing so, lest foreign leaders conclude that the United States is an unreliable international partner.

Whereas President Obama's signature foreign policy achievements of relevance to climate change were aimed at reducing U.S. GHG emissions, President Trump's signature initiatives in that field have been aimed at abrogating or undermining those achievements. Within six months of his inauguration, President Trump announced his intention to withdraw the United States from the Paris Agreement (see Shear, 2017), thus acting on a stated policy priority of the traditionally conservative Heritage Foundation (see Peters, 2018). On the first day possible under the agreement's provisions, the Trump Administration formally initiated the year-long withdrawal procedure,

which would be complete the day after the 2020 presidential election (see Friedman, 2019c; cf. Paris Agreement, 2015, art. 28, §§ 1-2). Although President Trump has not announced any intention to abrogate the executive agreement between Presidents Obama and Xi, two of his administration's signature domestic policy initiatives would seem to undermine the ability of the United States to meet its GHG reduction commitments under that accord.

The first of these initiatives is EPA's effort to repeal the Obama Administration's Clean Power Plan, which would impose GHG emissions standards on fossil-fuel fired power plants for the first time (see Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 2015), and which negotiators from many countries credited with playing a key role in making the Paris Agreement possible (Davenport, 2015). The generation of electricity currently accounts for 28% of U.S. GHG emissions (U.S. Environmental Protection Agency, n.d.b). EPA's promulgation of the regulations known as the Clean Power Plan was the culmination of a sequence of events that began during the administration of Democratic President Bill Clinton (1993-2001), a modern liberal (see, e.g., Clinton, 1996), under whose leadership the United States had signed the Kyoto Protocol to the United Nations Framework Convention on Climate Change the previous year (see Cushman, 1998). In 1999, several environmental interest groups filed a rulemaking petition with EPA in which they asked the agency to regulate GHG emissions from new motor vehicles under the federal Clean Air Act (Kennedy, 1999). By the time EPA ruled on the petition, however, the White House was occupied by Republican President George W. Bush (2001-09), a traditionally conservative white Christian evangelical (see, e.g., Borger, 2005; Bush, 2004). As a candidate in 2000, President Bush had pledged to regulate CO₂ emissions under the Clean Air Act but reversed his position soon after taking office (Cook & Bruninga, 2001). In 2003, EPA denied the petition to regulate tailpipe emissions, citing in relevant part its own conclusion that the Clean Air Act's definition of "air pollutant" is not broad enough to encompass GHGs (see Najor, 2003a). A coalition of environmental interest groups and state governments then sued EPA (see Najor, 2003b) in a case that eventually reached the U.S. Supreme Court (see *Massachusetts v. EPA*, 2007). In 2009, the first year of the Obama Administration, the Court held that the EPA's interpretation of the statute's definition of "air pollutant" was too narrow (see *ibid.*, p. 532) and ordered the agency either to make the "endangerment" determination that, if in the affirmative, would require the agency to regulate GHG emissions under the statute or to offer reasons why the statute prohibited EPA from making such a determination (see *ibid.*, pp. 532-35). Later that year, EPA determined that GHGs do meet the "endangerment" criterion (Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 2009), thus triggering other statutory provisions, including provisions that required EPA to regulate CO₂ emissions from the fossil-fuel-fired power plants that are the focus of its Clean Power Plan (see, e.g., Childers, 2016; Gilhuly & Jensen, 2012). A coalition of hundreds of private companies, industry groups, and state governments then sued EPA to block the plan on the grounds that the agency had exceeded its statutory authority in promulgating it (see Davenport, 2016b). In 2016, in a highly unusual move, the U.S. Supreme Court ordered EPA to delay implementation of the Clean Power Plan until the lower federal courts had resolved the relevant legal issues (Liptak & Davenport, 2016). In March 2017, President Trump signed an executive order authorizing EPA Administrator Scott Pruitt to rescind the Clean Power Plan (Exec. Order No. 13,783, 2017, § 4). Seven months later, EPA proposed to repeal the plan (Repeal of Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 2017). Although some of the Trump Administration's traditionally conservative supporters urged EPA to go even further by reversing EPA's "endangerment" finding (see Plumer, 2016), the agency instead proposed to replace the Clean Power Plan with a much less ambitious alternative, the Affordable Clean Energy rule (see Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations; Revisions to New Source Review Program, 2018). This alternative became final in July 2019, to become effective in September 2019 (see Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 2019), but has been challenged in court by a coalition of state and local governments, on the one hand, and a coalition of electric utilities, on the other, in separate lawsuits (see Walton, 2019; Wisconsin Department of Justice, 2019).

The Trump Administration's other signature initiative with significant GHG emissions implications is its effort to roll back the Obama Administration's new tailpipe CO₂ emissions and fuel economy standards for passenger cars and light trucks (2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 2012), which were promulgated jointly by EPA and the U.S. Department of Transportation's National Highway Traffic Safety Administration ("NHTSA") under the Clean Air Act and the Energy Independence and Security Act of 2007, respectively (see *ibid.*, p. 73,479 n. 4). These new standards have the potential to reduce U.S. GHG emissions dramatically in a country where transportation currently accounts for 28% of GHG emissions (see U.S. Environmental Protection Agency, n.d.b). The CO₂ emissions

reductions that the tailpipe standards would require by 2025 would be equivalent to more than doubling the average fuel efficiency of new passenger cars and light trucks to 54.5 miles per gallon if compliance with those standards were achieved solely through fuel economy improvements, although EPA and NHTSA anticipate that automakers also will use other means (see 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 2012, p. 62,627 n.3). In August 2018, the Trump Administration proposed to replace the new tailpipe CO₂ emissions and fuel economy standards with a Safer Affordable Fuel-Efficient (SAFE) Vehicles rule that would freeze the standards at the levels currently required by 2020 (Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, 2018).

As part of this proposal, EPA and NHTSA proposed to withdraw from the State of California the waiver granted to the State by EPA in 2013 to enable California to establish its own GHG tailpipe emissions standards and related requirements, which California has done as part of its Advanced Clean Cars program (*ibid.*, pp. 42,499, 43,232-43,253). Given California's long history of addressing its own serious air pollution problems by regulating motor vehicle emissions before the Clean Air Act became law (see, e.g., *Concerns Aid Test of Smog Devices*, 1963), the Clean Air Act requires EPA to grant to that State waivers from the statute's general prohibition on state emissions standards for new motor vehicles so that California can establish standards more stringent than federal standards to meet "compelling and extraordinary conditions" (see Air Quality Act of 1967, §§ 208(a)-(b), 81 Stat. p. 501 (codified as amended at 42 U.S.C. §§ 7543(a)-(b))) and allows other States to adopt California's standards as their own without seeking EPA approval to do so (see Clean Air Act Amendments of 1977, § 177, 91 Stat. p. 750 (codified as amended at 42 U.S.C. § 7507)). In June 2018, Colorado announced its intention to join the District of Columbia and the thirteen other States -- mostly in the Northeast and Northwest -- that have adopted California's tailpipe standards as their own (Hand, 2018; see also Edelman, 2017). None of these jurisdictions are among those in which traditional conservatives are the most heavily concentrated (cf. *State of the States*, n.d.). Fourteen States, including California, as well as the District of Columbia, have sued EPA to block the revocation of California's waiver (Davenport, 2019c). Meanwhile, four of the world's biggest auto manufacturers reached an agreement with the State of California to meet standards only slightly less stringent than the Obama Administration's (Davenport & Tabuchi, 2019). The Trump Administration responded by initiating an antitrust investigation into the companies' participation in the agreement (see Tabuchi & Davenport, 2019). Three other automakers subsequently intervened in the litigation over revocation of California's waiver on the Trump Administration's side (see Tabuchi, 2019).

Although EPA's and NHTSA's proposed Affordable Clean Energy and SAFE Vehicles rules seem likely to pose the biggest threats to the Obama Administration's signature foreign policy achievements of relevance to climate change, other initiatives by the Trump Administration's departments of the Interior, Energy, and State, sometimes as facilitated by the mostly traditionally conservative Republican majorities in both houses of the Congress, seem calculated to exacerbate that effect, although not without some setbacks for the Trump Administration (see, e.g., Fountain & Friedman, 2017; Friedman, 2018; Friedman & Davenport, 2018b; Plumer, 2018a; Turkewitz, 2018). Together, these developments make clear that the era of U.S. efforts to limit GHG emissions that emerged briefly during the Obama Administration is over, at least for the duration of the Trump Administration. In the meantime, foreign countries' most likely source of American partners in their efforts to do so are the U.S. States, primarily in the Northeast and Mid-Atlantic regions, and on the West Coast, which are regions in which traditional conservatives are not heavily concentrated (cf. *State of the States*, n.d.). In the federal system established by the U.S. Constitution and refined further by numerous decisions of the U.S. Supreme Court, the States are semi-sovereign entities with powers that the Federal Government may not abrogate (see U.S. CONST. art. IV, art. VI, cl. 2, amend. X). In general, the States began to act to limit their own GHG emissions during the traditionally conservative George W. Bush Administration (2001-09) after it became clear that the Federal Government would not do so nationally (see, e.g., Barringer & Galbraith, 2008; cf. *The Regional Greenhouse Gas Initiative*, n.d.; *Western Climate Initiative, Inc.*, n.d.). During this period, a group of northeastern and mid-Atlantic States, on the one hand, and a group of western States, on the other, created regional GHG cap-and-trade programs, either just among themselves or with some of their provincial Canadian counterparts (see Barringer & Galbraith, 2008). The northeastern and mid-Atlantic States in the former group are in regions in which traditional conservatives are not heavily concentrated (cf. *State of the States*, n.d.). Although the western States in the latter group included some in which traditional conservatives are heavily concentrated (compare *Western Climate Initiative: Design Recommendations for the WCI Regional Cap-and-Trade Program*, 2008, with *State of the States*, n.d.), all U.S. States other than California later dropped out of the program (see *Program Design*, n.d.). California also has been especially active in efforts to reduce GHG emissions within its own borders in other ways (see *Advanced Clean Cars Program*, n.d.; *Climate Change Programs*, n.d.; *Zero-Emission Vehicle Program*, n.d.). In the aftermath of the Trump Administration's announcement of its intention to withdraw

from the Paris Agreement, the governors of seventeen States -- located mostly in the parts of the United States in which traditional conservatives are not heavily concentrated (cf. State of the States, n.d.) -- forged a bipartisan alliance to reduce GHG emissions within their own States consistently with the goals of that agreement (see Alliance Principles, n.d.; cf. Bromwich, 2017). In June 2017, Democratic California Governor Jerry Brown met with Chinese President Xi Jinping in Beijing to discuss their mutual concern about the challenges posed by anthropogenic climate change (Hernández & Nagourney, 2017). As merely semi-sovereign, sub-national entities in a federation under the U.S. Constitution, the States may not engage in international relations per se (U.S. v. Pink, 1942, pp. 233-34), although they may establish cooperative relationships with their sub-national counterparts in other countries (see, e.g., Hernández & Nagourney, 2017; Whetzel, 2007). They also may choose to pursue policies on their own that are aligned with or complement policies being pursued by foreign political actors at any level of government. Accordingly, it would be prudent for foreign countries to consider the U.S. States to be potential coordinating partners in efforts to limit GHG emissions, rather than potential cooperating ones.

III. The Prospects for Renewed Progress in U.S. Climate Change Law and Foreign Policy Beyond the Time of Trump

In general, the prospects for renewed progress in U.S. climate change law and foreign policy once the Trump Administration has passed into history are a function of two factors. The first is the extent to which the Trump Administration's own initiatives are likely to put the United States in a position where meaningful U.S. cooperation with less developed countries such as China to limit their own GHG emissions would be impossible politically given the reductions in U.S. GHG emissions below current levels that those other emitters likely would consider to be a meaningful *quid pro quo* for their own efforts to limit their GHG emissions. After ratification by the Senate (cf. U.S. CONST. art. II, § 2, cl. 2), treaties to which the United States is a party must be implemented through further legislation or by executive action undertaken within the boundaries of the authority granted to the President by the Congress in existing legislation or by the Constitution itself. Executive agreements, although they need not be ratified (cf. *ibid.*), are subject to similar constraints. Unfortunately, the framers of the U.S. Constitution designed a system of government in which radical policy change would be hard to achieve through legislation. They were especially concerned about preventing tyranny, which they defined as the gathering together of all governmental powers in the same hands, whether the hands of a single person, a minority, or a majority (Madison, 1961a, p. 301). To prevent it, they created a fragmented system of government based on the separation of powers among three branches (see *ibid.*; Madison, 1961b) and gave officials in each branch both the constitutional means (commonly known as "checks") and the personal motives (commonly known as "balances") to resist power grabs by officials in the other branches (see Madison, 1961b, pp. 321-22). Subordinate distributions of power within the basic separation of powers fragmented the system even further (see Madison, 1961b, p. 322). One of the most consequential illustrations of this fragmentation in action is the constitutional requirement that in order for a bill to become law, it must be passed by majorities in both houses of the Congress and signed by the President (see U.S. CONST. art. I, § 7, cl. 2) despite the fact that these different categories of officials are elected according to different schedules by different constituencies and therefore represent different interests (see U.S. CONST. art. I, § 2, cl. 1, § 3, cls. 1-2, art. II, § 1, cls. 1-2, amends. XII, XIV, § 2, XVII, cl. 1; see also, e.g., An Act in Relation to the Election of Representatives to Congress by Single Districts, 1862; cf. U.S. CONST. art. I, § 4, cl. 1), or it must be passed by a two-thirds vote in both houses of the Congress over the President's veto (see U.S. CONST. art. II, § 7, cl. 2). The U.S. Constitution also authorizes the House and Senate to make their own rules to govern their proceedings (U.S. CONST. art. I, § 5, cl. 2). These rules have fragmented the legislative process even further. One especially vivid example is a Senate rule that requires a vote of three-fifths of the senators to invoke cloture on any pending legislation or most other matters, thus ending debate and requiring a final vote on the measure being debated (see S.R. XXII(2)). The practical effect of this rule is to enable even a single, determined Senator to prevent legislation from coming to a vote by the full Senate by holding the floor indefinitely during the debate, either physically or in effect, until proponents of the measure grow tired of the delay -- a procedural tactic known as a *filibuster* (see generally Kearney & Heineman, 1997).

One of the most important consequences of this extreme fragmentation is to make it much easier to stop proposals for policy change than to ensure that they become law, especially to the extent that the change would be radical, as would be the policy change needed to reduce U.S. GHG gas emissions dramatically below the amounts that would be emitted otherwise (see, e.g., Falk, 2008). Accordingly, to the extent that reducing U.S. GHG emissions to the levels needed for less developed countries such as China to perceive those reductions to be a meaningful *quid pro quo* for their cooperation in limiting their own GHG emissions would require the United States to legislate radical policy change, then that cooperation is unlikely to be forthcoming because the requisite

legislation is unlikely to be enacted. The Trump Administration's efforts to roll back the Obama Administration's Clean Power Plan and new tailpipe CO₂ emissions and fuel economy standards seem calculated to put the United States back on a GHG emissions trajectory that would require legislation to create increasingly radical policy change over time.

Fortunately, the success of these Trump Administration initiatives remains in doubt. The success of either initiative would require the success of a formal rule-making under the federal Administrative Procedure Act ("APA") (Administrative Procedure Act, 1946), just like the formal rule-making that resulted in the Clean Power Plan and the new tailpipe CO₂ emissions and fuel economy standards themselves (see *Perez v. Mortg. Bankers Ass'n*, 2015, (135 S. Ct.) p. 1206). The APA established a multi-step rule-making process that requires a notice of proposed rule-making, including either the substance of the proposed rule or a description of the subject matter; an opportunity for public comment in writing, with the option of a supplemental opportunity for oral comment at public hearings; and the publication of the final rule, including a statement of its basis and purpose (APA, 5 U.S.C. § 553 (2018)). The final rule is subject to judicial review (see APA, 5 U.S.C. §§ 702, 704 (2018); cf. *ibid.* § 701(a)). The promulgation of environmental rules of any consequence are almost always challenged in court on some combination of substantive and procedural grounds, as were both the Obama Administration's Clean Power Plan and the tailpipe CO₂ emissions standards applicable to the passenger car and light truck model years prior to the ones to which the Obama Administration's new tailpipe CO₂ emissions standards apply (see, e.g., *Motion for Stay*, 2012). In reviewing any final rules promulgated by EPA as replacements for the Obama Administration's Clean Power Plan and new tailpipe CO₂ emissions and fuel economy standards, the federal courts would apply two standards of review to two different aspects of the rulemaking. In reviewing the agencies' interpretations of the relevant statutes, the courts would apply the doctrine developed by the U.S. Supreme Court in *Chevron U.S.A., Inc. v. NRDC* (1984). This doctrine requires courts to defer to an executive branch agency's interpretation of a statute as long as that interpretation is "reasonable" (see *ibid.*, p. 865), which seems to permit agencies to change their interpretations over time (see *ibid.*, pp. 862-64), thus perhaps permitting the way in which EPA changed its interpretation of the Clean Air Act to justify a key feature of its proposed replacement for the Clean Power Plan (see *Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations*, 2019, pp. 32,523-32,531). In reviewing the factual determinations underlying the rule change, however, the courts would apply the standard of review established by the U.S. Supreme Court in *Citizens to Preserve Overton Park v. Volpe* (1971, p. 416) and fleshed out in later cases (see, e.g., *Motor Vehicle Mfrs. Ass'n v. State Farm Auto Ins. Co.*, 1983, pp. 42-44). At least in general terms, this doctrine requires courts to defer to the factual determinations of executive branch agencies as long as those determinations are not "arbitrary and capricious" (see, e.g., *Garvey*, 2017). Agency rules that repeal existing agency rules as a means of implementing policy changes are subject to the same standard of review (*Motor Vehicle Mfrs. Ass'n v. State Farm Auto Ins. Co.*, 1983, p. 41). Although the U.S. Supreme Court has held that not every agency action that represents a policy change need be subjected to a standard of review more stringent than the original action (see *FCC v. Fox Television Stations*, 2009, p. 514), the details of the standard of review that applies to the change are not entirely clear (see *Garvey*, 2017, pp. 15-17). At a minimum, however, an agency must provide "a more detailed justification" than it would have had to have provided for a wholly new policy when a policy change "rests upon factual findings that contradict those which underlay its prior policy" (*FCC v. Fox Television Stations*, 2009, pp. 515-16). The reason for this requirement is that "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy" (*ibid.*, p. 516). This minimum requirement could pose a barrier to the success of the Trump Administration's efforts to replace the Obama Administration's Clean Power Plan and new tailpipe CO₂ emissions and fuel economy standards because it seems to require EPA and NHTSA to demonstrate that the factual conclusions that those agencies reached just a few years ago about the need for and impacts of those rules, as supported by the hundreds of pages of analyses included in the final rules themselves (see *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 2015, pp. 64,717-64,933; 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 2012, pp. 62,654-63,013), are no longer valid.

Meanwhile, even if the Trump Administration succeeds in replacing the Obama Administration's Clean Power Plan and new tailpipe CO₂ emissions and fuel economy standards, it is conceivable that the United States could meet or could exceed its obligations under the executive agreement between Presidents Obama and Xi, for example, because of a dramatic, ongoing shift away from the use of coal as a fuel used to generate electricity in the United States. This shift is the result of an equally dramatic drop in the prices of natural gas and renewable energy (see, e.g., *Marcacci*, 2017; *Plumer*, 2018b; *Plumer & Popovich*, 2018). The falling price of natural gas is the result of a revolution in gas extraction technology, which has made it possible to recover natural gas from shale deposits in

which it is found in abundance but from which it previously was very difficult and expensive to extract (see, e.g., Clemente, 2017). The fall in the price of renewable energy, which in the United States seems poised to outcompete natural gas in the near future (see Penn, 2018), is due to a number of factors (see, e.g., Dudley, 2018; Marcacci, 2018). The result has been a reduction in CO₂ emissions from the electric power sector of the U.S. economy by almost 40% since 2005 (see Carnegie Mellon University Institute for Energy Innovation, n.d.). Thus, the United States seems likely to be in a position where renewing meaningful cooperation with less developed countries such as China to limit GHG emissions would be possible politically despite the barriers to policy change posed by the United States' fragmented system of government, given the likelihood that the United States will be in *de facto* compliance with the executive agreement between Presidents Obama and Xi by the required date -- or even before the required date -- notwithstanding the Trump Administration's policies.

The second factor of special relevance to the prospects for renewed progress in U.S. climate change law and foreign policy once the Trump Administration has passed into history is the extent to which American traditional conservatives will be able to retain their political power nationally in the post-Trump era. That power currently is derived primarily from the status of white Christian evangelicals as the indispensable component of a Republican Party coalition big enough to win presidential elections and majorities of seats in one or both houses of the Congress, at least with the help of certain structural advantages in congressional elections and the Electoral College. There are signs, however, that this coalition is beginning to crack. Tensions between modern conservatives and traditional conservatives that revolve around the latter's expansive, morality-infused view of the state's proper role in regulating individual behavior in spheres of life that the former generally consider to be private matters have been latent since Ronald Reagan first mobilized traditionally conservative, white Christian evangelicals in support of his 1980 presidential campaign (see Silverstein, 2007, p. 143). Emerging tensions between both traditional and modern conservatives, on the one hand, and the white, working class voters who put Donald Trump over the top in the popular vote in key States, on the other hand, which revolve around the Trump Administration's fiscal and related policies, are of more recent vintage (see, e.g., Gabriel, 2018; Tavernise & Gebeloff, 2018; cf. Burns & Martin, 2018). These policies overwhelmingly have favored the rich (see, e.g., Goodman & Cohen, 2017; Thrush & Green, 2018). Whether the Republican Party's current coalition will remain intact for the duration of and beyond the Trump Administration and thus will remain available as a vehicle through which traditionally conservative, white Christian evangelicals can continue to dominate law- and policy-making at the federal level, including with respect to climate change, remains an open question.

Moreover, although the structural advantages that Republicans currently enjoy in Senate elections and the Electoral College are a function of the U.S. Constitution and thus are not likely to change anytime soon, the fate of the structural advantage in House elections created by gerrymandering is less certain. Although the U.S. Supreme Court recently held that gerrymandering for partisan purposes presents a non-justiciable political question over which the federal courts do not have subject matter jurisdiction under the U.S. Constitution (see *Rucho v. Common Cause*, 2019), plaintiffs have had some success in litigation challenging partisan gerrymandering on state constitutional grounds (see *League of Women Voters of Pennsylvania v. Pennsylvania*, 2018). Moreover, the voters in several States have adopted proposals that would require redistricting to be undertaken on a nonpartisan basis, with more such proposals likely to be on state ballots in future election cycles (see Lo, 2018; Moon, 2018).

Even if the Republican coalition were to collapse at the national level, however, and gerrymandering for partisan purposes were to be abolished nationwide, the traditional conservatives who currently pose such a formidable obstacle to progress in U.S. climate change law and foreign policy could continue to do so indefinitely, although perhaps not with as much success as before. The fragmentation of the legislative process in the Congress, especially to the extent that it continues to permit the Senate filibuster, would allow even a single, determined Senator to stop legislation aimed at renewing progress in U.S. climate change law and foreign policy, notwithstanding the political pressure that other Senators could exert to convince the recalcitrant Senator to relent. Thus, the cold wind now blowing on efforts to make progress in U.S. climate change law and foreign policy from the Trump Administration and its traditionally conservative allies in the Congress is likely to continue to blow from the executive branch, the Congress, or both in some form beyond the time of Trump, albeit perhaps more as a chilly breeze than as the frigid gale that has been howling during the Trump Administration itself. Whether this cold wind will be strong enough to blow off course efforts to renew the progress in U.S. climate change law and foreign policy that started during the Obama Administration once the Trump Administration has passed into history remains an open question.

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