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U.S. ENVIRONMENTAL POLICY MAKING:
Institutions and Processes Which Prevent Consensus

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The twisting path of U.S. environmental policy has recently puzzled both foreign and domestic observers. How can such observers account for the isolated positions on environmental policy taken by President George Bush at the 1992 UNCED conference in Rio de Janeiro? While all other advanced industrial countries were willing, in Rio, to embrace a newly negotiated global treaty on biodiversity, and while most others would have been willing to embrace a much stronger treaty on climate change (one containing a specific timetable for quantified emissions cuts), the U.S. held back. Why this lagging international posture in 1992, from the same U.S. government which, in the past, often has taken a global lead in the embrace of costly and effective measures to help protect the natural environment?[1]

Bush's international isolation in Rio was even more

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[1]Bush made precisely this claim in his speech to the Earth Summit: "[W]e come to Rio proud of what we have accomplished and committed to extending the record on American leadership on the environment. In the United States, we have the world's tightest air-quality standards on cars and factories, the most advanced laws for protecting lands and waters, and the most open processes for public participation [in the making of environmental policy]". New York Times, June 13, 1992, p. 5.

remarkable, because it grew out of a parallel measure of domestic political isolation at home. Bush's position on climate change and biodiversity at Rio was not a position favored by the majority of elected members of Congress; it was not a position favored by a majority of the American people (in an New York Times/CBS News Poll taken during the conference, only 28 percent of those surveyed supported the President's position on biodiversity); it was not even the position favored by official head of the U.S. delegation to the conference: EPA Director William Reilly. The President's position was not supported -- then or now -- by his Democratic rival Bill Clinton. Moreover, it was not even consonant with positions which Bush himself had earlier taken (either in his 1988 campaign, when he promised to be the "environmental president", or at his first G-7 economic summit meeting in Paris in July 1989, where he personally insisted that global environmental issues receive heavy emphasis). As a final curiosity, the foot-dragging U.S. position on climate change in Rio was not even an accurate reflection -- according to Bush and Reilly -- of what the U.S. intended to do, in future years, on greenhouse gas emissions.[2]

It is easy to imagine the confusion that foreign observers must feel over such matters. Are the policy pronouncements of a President to be taken seriously or not? When President Bush, in August 1990, took an initially isolated position inside the U.S.

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[2]While not accepting the specific targets and timetable favored by the EC, Bush and Reilly said that the U.S. would in all likelihood, before the year 2000, achieve and even surpass the emissions cut standard being promoted by the European Community. See "Now, With Treaty on Climate signed, All Promise to Cut Gasses Even More," New York Times, June 13, 1992, p.4.

government on the difficult question of military action against Iraq ("This will not stand"), he was able, in the end, to prevail. Despite popular anxieties and not a few protests, despite partisan opposition in Congress, and despite considerable misgivings even within the Pentagon, the President eventually shaped U.S. policy to his own will. In the case of international environmental policy, and Bush's isolation at Rio, will the same pattern of Presidential dominance prevail?

U.S. environmental policies are dramatically different from foreign security policies. Presidential prerogatives are well established in the area of security policy, but White House control over environmental policy -- which is traditionally considered a domestic rather than a foreign policy matter -- is much more difficult to establish and maintain. It is the original design of the U.S. domestic policy making system that ensures this result.

While the domestic policy making process in many countries (including Japan) is frequently able to generate social and political consensus, the Constitution of the U.S. was originally crafted, by its authors, for the explicit purpose of <u>preventing</u> policy unity or consensus at the Federal level. The framers of this Constitution mistrusted centralized authority, and intentionally designed a system in which policy institutions would have to fight against one another for power. This original design is still working today, especially in the area of environmental policy: Congress challenges the Executive, agencies inside the Executive branch challenge each other, state and local governments challenge Federal authorities in Washington, well organized private

citizen groups challenge governmental authority at all levels -- and the final resolution of all these challenges frequently must await an entirely separate form of adversarial action, inside slow-moving state and Federal court systems.

This fragmented institutional setting naturally blocks the formation of a single, government-wide policy consensus. Pronouncements by individual U.S. government officials (even senior officials like the President) are therefore not a reliable indication of what the system as a whole will eventually decide to embrace. How can foreign governments (including the Government of Japan) prepare themselves to conduct official relations on environmental policy with such a highly fragmented and changeable U.S. policy system? Understanding the internal institutional sources of fragmentation and change is one way to begin.

I. Formal Institutions that Block Continuity and Consensus

Several years ago the U.S. celebrated, with pride, the 200th anniversary of its Federal Constitution. While most of this pride is justifiable, it has been correctly noted (by, among others, H. Ross Perot) that this pre-industrial age U.S. Constitution remains in some ways poorly adapted to the pace and the scale of modern political life. To the extent that modern societies require central governments capable of decisive, unified, and accountable domestic policy actions, the U.S. could be accused of still trying to live in the 18th Century.

The U.S. Constitution was drafted by individuals who wished to place strict limits on the power which their new Federal

Government might enjoy over the existing governments of the 13 original states, and likewise over citizens directly. To this end, they intentionally weakened the new Federal Government by dividing it against itself (Federal powers were to be shared among three substantially independent branches; the President was to be elected separately from Congress; and Congress itself was to be divided into two separate legislative bodies), and they empowered this weak new government in Washington to perform only a minimum number of obviously nation-wide functions (foreign policy, monetary policy, tariff policy, war powers, etc.), while continuing to reserve most traditional governmental actions to the separate states.

The onset of rapid U.S. industrial development, by the middle years of the 19th Century, had rendered parts of this original U.S. Constitutional design obsolete. The Federal Government was obliged to take on vast new powers over the domestic economy, and also over the governments of the separate states. To make this possible, Constitutional language either had to be stretched in its meaning (all internal economic activity had to be understood as "interstate commerce"), or formally amended (for example, to permit the raising of larger Federal revenues through a graduated personal income tax). By the middle years of the 20th Century, especially following President Franklin Roosevelt's energetic response to both the Great Depression of the 1930s and to the Second World War, this evolving empowerment of the national government in Washington was largely complete.

Although it has become a dominating source of public authority, the Federal government in Washington has remained,

however, badly divided against itself. In the area of environmental policy making, in fact, the U.S. government has probably become more internally divided in recent years. Within the Executive branch, the 1970 creation of an Environmental Protection Agency did not result in any unification of executive policy making functions in that one agency. Many such functions remained in the hands of traditionally more powerful Cabinet level agencies, such as the (frequently anti-environmental) Departments of the Interior, Agriculture, and Commerce. When a new Cabinet-level Department of Energy was subsequently created, in 1977, institutional authority over Federal policies affecting the environment was further fragmented. In Congress, meanwhile, prospects for unity also remain blocked, especially since the "democratizing" reforms of 1974, which gutted the old seniority system and greatly reduced the power of committee chairs. Order and hierarchy are unknown inside Congress today; subcommittees have proliferated, and the jurisdictions of these subcommittees frequently overlap.

II. Informal Institutions that Block Continuity and Consensus

Within this internally divided formal institutional structure, policy continuity and consensus are further diminished by the activities of a number of informal institutions and groupings -- including the two major U.S. political parties, a large and active community of environmental NGOs (non-governmental organizations), and also an adversarial-based U.S. legal system. Consider each of these in turn.

Political Parties and the Role of Electoral Competition

The U.S. Constitution makes no formal provision for the operation of political parties; the authors of the Constitution criticized parties as "factions," and tried to block their formation on a national scale. It did not take long, however, for strong national parties them to form (the first was the Federalist Party, formed -- ironically -- to promote ratification of the Constitution itself).

In theory, strong national parties can be a unifying force, especially in systems built around "plurality winner take all" single-member electoral districts. The plurality rule tends to discourage the emergence of third parties and hence reduces the likelihood of an unstable minority or coalition-based government.[3] In the area of environmental policy, specifically, it tends to prevent the emergence of "green party" candidates (there are none of any significance in the U.S.). The two dominant U.S. parties must compete for votes at or near the center of the political spectrum, in order to stand any chance of winning office. This tends to reduce programmatic differences between the two national parties, and -- other things equal -- make them a source of

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[3]An important exception to the "plurality winner take all" rule is the Electoral College, which must produce a majority to select a President. Third party Presidential candidates are nonetheless discouraged in the U.S., because states seend their Electors to the College on a "plurality winner take all" basis, and also because a three-way deadlock in the Electoral College throws the decision into the House of Representatives, which is dominated by Democrats and Republicans. It was therefore realistic for H. Ross Perot to abandon his 1992 third party presidential campaign. He could not have won the office simply by producing a deadlock in the Electoral College, and he would have had to come in first in a significant number of states even to do that well.

national policy continuity and consensus.

Other things are not, however, equal. When turned loose to operate inside the badly divided institutional structure of the U.S. Federal Government, the two national parties frequently become a source of aggravated discontinuity and internal disagreement. The U.S. Government is not a parliamentary system. The majority party in Congress does not automatically control the Executive branch of government. Congress and the President are separately elected, and are frequently under the control of different parties. Over the past four decades, this "divided government" outcome has been the rule rather than the exception: in only 15 of those 40 years has the party of the President also been the party controlling the House of Representatives. In such circumstances, partisan rivalry becomes a dis-unifying rather than a unifying force.

Divided government in the U.S. results, to some extent, from the differing policy preferences of the Republican and Democratic parties. The Democratic Party is traditionally more comfortable spending money on social benefit programs. The voters take a schizophrenic view of such programs: they naturally like the idea of tax dollars being spent <u>in their own district</u>, but are suspicious of the tax burden that would result from implementing such programs <u>nation-wide</u>. As a consequence, when they vote for their district representative in Congress, they tend to vote for a big-spending, big-government Democrat, but when they elect officials to nation-wide office, however, they tend to vote for a low-tax, small-government Republican. The result, for 25 out of

the last 40 years, has been a Republican-controlled executive confronting a Democratic-controlled Congress.

The resulting policy disunity is particularly extreme, because all of the senior officials in the U.S. Executive branch (roughly 3000 in all) are "political appointees," selected by the President and his Cabinet on a partisan basis.[4] These political appointees perform the executive functions assigned in most other industrial democracies -- including Japan -- to senior career administrators.[5] The temporary "in and out" career pattern of these political appointees creates a more participatory policy process, but the resulting discontinuities are severe: each time the Presidency changes hands, thousands of appointed officials leave the most important positions inside the U.S. executive branch, and thousands of inexperienced officials take their place.

The consequences of divided government for U.S. environmental policy are profound, since the two parties frequently take distinctive positions on environmental issues, derivative of the positions they take toward private business enterprise. The Republican Party, traditionally a friend of business, is typically more reluctant to impose environmental regulations. The Democratic Party, which does not cultivate close ties to business, and which is comfortable with a more interventionist regulation of the economy, usually takes the lead in advocating environmental initiatives.

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[4]Branch separation is preserved even here; Members of Congress, even if they are from the President's own party, cannot simultaneously be appointed to a position in the Executive.

[5]Roger B. Porter and Raymond Vernon, Foreign Economic Policymaking in the United States, Cambridge: John F. Kennedy School of Government, 1989, p. 3.

On those rare occasions (recently, at least) when Democrats have controlled the White House as well as the Congress, the U.S. Government has been more capable of a unified tightening of environmental regulations. During the brief administration of Democratic President Jimmy Carter (1977-81), a number of strong environmental policy initiatives were taken (these were additionally motivated, to be sure, by the unusually high energy prices that prevailed at the time).[6]. Under more typical circumstances, however, with Republican presidents such as Ronald Reagan or George Bush controlling the Executive, unity with Democratic Congress is almost impossible to achieve, and the prospects for any significant tightening of U.S. environmental policy are greatly diminished.

This tendency toward divisive deadlock was most obvious after Reagan replaced Carter in the White House in 1981. Reagan had vowed to lift regulatory burdens from private enterprise, especially those that had originally been motivated by environmentalists. Under Reagan, the budget of the U.S. Council on Environmental Quality was cut by 75 percent, and its professional staff was largely disbanded. Reagan's first Interior Secretary (James G. Watt) was an outspoken champion of private development, and worked hard to open up the nation's natural resources to commercial exploitation. Reagan's first EPA head (Anne Burford) allowed many laws and directives from the Carter era

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[6]Henry P. Caulfield, "The Conservation and Environmental Movements: An Historical Analysis", in James P. Lester, ed., Environmental Politics and Policy, Durham: Duke University Press, 1989, p.46.

to go unenforced or not implemented.[7]

The Democrats who still controlled Congress, however, refused to follow the President's lead. Pointing to Watt and Burford as negative examples, they actually increased their overall support for aggressive environmental policies.[8] The result, especially during Reagan's first four year term, was an acrimonious and frequently paralyzing standoff on environmental policy, between "greens" in the Democratic Congress and "browns" in the Republican-controlled Executive branch.

Under President Bush, the influence of such partisan factors was at first briefly softened, by a combination of economic and circumstantial factors. When Bush ran for the Presidency, in 1988, the U.S. economy was in its sixth straight year of expansion, so domestic workers and industries alike were momentarily less fearful of new environmental regulations. Moreover, a remarkable sequence

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[7]Internationally, Reagan withdrew a Carter executive order which had restricted U.S. exports of hazardous materials; he argued against hazardous chemical transport controls in the OECD; and his representatives in the U.N. several times cast the lone dissenting vote in the General Assembly, on questions ranging from a hazardous materials resolution (which passed 146 to 1) to a World Charter for Nature (which passed 111 to 1). The Reagan administration also attempted to reduce or eliminate U.S. funding for a variety of international environmental programs, including UNEP, the UNESCO-sponsored Man and the Biosphere Program, and the World Heritage Convention. See Lynton K. Caldwell, "U.S. Interests and the Global Environment," Occasional Paper No. 35 (Muscatine, IA: Stanley Foundation, 1985), p. 18.

[8]According to ratings compiled by the League of Conservation Voters, while Republicans in the House were slightly reducing their frequency of support for environmental legislation (from 34% in 1973-78, down to 33 percent in 1981-84), Democrats were increasing their frequency of support (from 58 percent in 1973-78, up to 68 percent in 1981-84. See Jerry W. Calvert, "Party Politics and Environmental Policy," in Lester, ed., Environmental Politics and Policy, p. 167.

of environmental disasters (Chernobyl in 1986, a discovery in 1987 that stratospheric ozone loss had been underestimated, then a 1988 summer drought and heat wave in North America) had greatly enhanced popular environmental concern. Bush found it convenient, under these circumstances, to promise during the campaign to be the "environmental president." He neatly preempted his Democratic opponent, Michael Dukakis, by pointing to the filth in Boston's harbor.

For approximately two years into his first term, President Bush in fact did a good job of living up to his pledge. The economy was still growing, and public opinion continued to favor strong environmental action (in March 1989, immediately following the Exxon Valdez oil spill in Alaska, 80 percent of the American people believed the environment was so important that requirements and standards should be set "regardless of cost").[9] Accordingly, Bush allowed EPA Director Reilly to take a surprisingly strong legislative and regulatory lead. The Clean Air Act was significantly tightened[10]; the Administration announced a 10 year

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[9]New York Times, June 11, 1992, p. 13.

[10]The new 1990 Clean Air Act required a 35 to 60 percent cut in various smog-causing auto tailpipe emissions in all new cars by 1996; a phase-in of alternative fuel cars, through a pilot program in California; a cleaner-burning gasoline in areas with the worst smog problems. The new law also required that sulfur dioxide and nitrogen oxide emissions from electric power plants be reduced by half before the end of the century, it placed a "best available technology" requirement on industries to control toxic chemical emissions, and it imposed on the U.S. steel industry new restrictions on emissions from coke ovens. The administration estimated -- conservatively -- that these new restrictions would cost U.S. taxpayers, industry, and consumers an additional $25 billion a year. See Robert L. Paarlberg, "Ecodiplomacy: U.S. Environmental Policy Goes Abroad," in Kenneth Oye, Robert Lieber, and Donald Rothchild, eds., Eagle in a New

moratorium on oil-drilling off the Massachusetts, Florida, and California coasts; a record number of new environmental regulations was written (Bush's first two years saw more new government regulations than in the entire decade of the 1980s); EPA collected more money in fines from polluters than in the previous 17 years of the agency's existence; and the staffing and funding of EPA itself increased by more than 20 percent.

Beginning in the summer of 1991, however, Bush rather suddenly abandoned this strong environmental record, and began taking positions more nearly resembling the Reagan-era standard. For example, he proposed eliminating development restrictions on half the nation's wetlands (after promising "no net loss of wetlands" in the 1988 campaign); he authored a flurry of new proposals designed to make coal, timber, oil, water, and land more available to industry and agriculture; he overrode a strict interpretation of the Endangered Species Act to allow the cutting of old-growth timber in Oregon, while his Interior Secretary proposed to change the Act to provide more regular consideration for job loss trade-offs; and he allowed companies to increase toxic air pollution above authorized levels without notifying the public.[11] To lead this new backlash against environmental regulation, he established a more powerful White House Council on Competitiveness (headed by

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World: American Grand Strategy in the Post-Cold War Era (New York: Harper Collins, 1992), p. 225.

[11]Democratic Representative Henry A. Waxman, of California, accused Bush of "carving the heart out of the Clean Air Act" with this final loophole, which he described as "written for political purposes". "Industries Gaining Broad Flexibility on Air Pollution", New York Times, June 26, 1992, p. 1A.

Vice President Dan Quayle), which was given authority to challenge any governmental regulation which allegedly burdened industry. Then in January 1992, at the suggestion of the Quayle group, he announced a complete "moratorium" on new regulations.[12] Later in 1992, when Bush assumed his uncompromising positions at UNCED conference in Rio, he was only giving international expression to this rather sudden internal turnaround on environmental policy.

Why the sudden turnaround? The first reason was a discovery, in the summer of 1991, that the U.S. economy was not yet coming out of the recession which it had fallen into one year earlier. Bush, anticipating his re-election campaign in 1992, felt he could no longer afford any environmental protection measures that burdened short term economic growth. Specific constituencies were also a consideration. In order to win in the Western and Mountain states in 1992, Bush would have to provide some response to an increasingly restless coalition of mining, timber and grazing interests (the leaders of what was called the "sagebrush rebellion" of the 1980s), plus a newer group of private landowners, farmers and coal companies who were opposed to categorical resource protection policies on private lands (they called themselves the "wise use" movement).

These traditionally Republican constituencies began demanding more Reagan-like policies out of the White House, and Bush got the message. The link to partisan politics was sometimes painfully obvious: just prior to the 1992 Michigan primary, Bush announced a

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[12]"Environment Laws Are Eased by Bush As Election Nears", New York Times, May 20, 1992.

relaxation of auto pollution controls.[13] Bush's temporary political need to satisfy these anti-environmental interests became even more compelling for a brief time in the spring and early summer of 1992, when H. Ross Perot threatened to turn the 1992 campaign into a three-way race. In such a race, Bush felt even more compelled to "move right" on environmental issues, to protect his political base.

Even Bush's decision to attend the Rio Conference in June 1992 could be traced, in part, to an election-year calculation. The President's domestic political advisors, led by his campaign manager Robert M. Teeter, told the President it would be advisable for him to go to Rio, so as to establish some basis from which he could later attack Bill Clinton's flawed environmental record in Arkansas (the Boston harbor strategy revisited).[14] And in Rio itself, the role that domestic politics was playing in the President's performance was more than obvious. Tommy Koh of Singapore, chair of the conference's main working session, was heard to remark at one point, "This will teach the United Nations not to hold a conference in an American election year".[15]

Anticipating that Bush was going to try to have it both ways on the environment (a strong rightward shift in substance, balanced by a symbolic attack on Clinton's poor environmental record in Arkansas), the Democrats countered in July by selecting Senator Al

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[13]"Car Makers Given Break on Curbing Fumes at Gas Pump", New York Times, March 14, 1992, p. 1.

"Bush Likely to Go to Ecology Talks", New York Times, May 7, 1992, p. 1.

[15]"Lessons of Rio", New York Times, June 14, 1992, p. 10.

Gore (D-Tenn.) as Clinton's running mate. Gore was the author of a best-selling book on international environmental policy (Earth in the Balance, Houghton Mifflin, 1992), and the most visible Democratic critic of Bush's Rio performance.

Gore did not, however, attempt to sell the voters with a direct environmental appeal. Instead, he advocated higher U.S. environmental standards as a key to international "competitiveness": if the U.S. was not willing to compete in the development of cleaner, high-technology products, that market as well would soon be lost forever to Germany and Japan. Bush immediately counter-attacked by arguing that some of Gore's preferred environmental policies (for example, higher auto fuel efficiency requirements) would only destroy jobs in the U.S. economy. Both the Democrats and the Republicans, in 1992, were therefore repackaging their standard environmental policy views (regulation versus deregulation) in an improbable new rhetoric of "jobs" and "competitiveness", designed to appeal to voters in the second year of a recession.

If the Clinton-Gore campaign succeeds in November 1992, U.S. national and international environmental policy will once again undergo a significant transformation. The first change will probably be a termination of the "back-door" industry access to regulation writing that was recently made available, in a surprisingly non-accountable fashion, through Vice President Quayle's Competitiveness Council.[16] At EPA, top political

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[16]In July 1992, the Democratic-controlled House of Representatives actually voted 236 to 183 (a strict party line split) to deny further funding to the Council. "Divided House Bars

management would shift back into the hands of a party much less fearful of adverse business reactions to environmental regulation, and less likely to fall into partisan confrontations with Congress (because Democrats will still control the House). Carter-era attitudes (and probably not a few Carter-era officials) will be given a turn to take the lead again, and policy directions will shift across a broad front. As for Gore's likely authority over environmental policy as Vice President, it could be considerable. If a President Clinton were to give him as much room to operate inside the Executive branch as Carter gave to his Vice President (also a former Senator, Walter Mondale), Gore would be well positioned to help tighten U.S. environmental policy by at least as much as his predecessor, Vice President Quayle, helped weaken it.

The Role of Environmental NGOs

Internal partisan division is further heightened, within the U.S. political system, by the activity of environmental non-governmental organizations (NGOs). These citizen based voluntary organizations -- such as Greenpeace, The Nature Conservancy, the Environmental Defense Fund, the Natural Resources Defense Council, Sierra Club, National Audubon society, Wilderness society, and the World Wildlife Fund -- doubled in membership in the 1980s (this was partly a non-governmental reaction to Reagan's first term governmental abandonment of the environmental agenda).

These environmental NGOs are influential because they are well

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Funds for Quayle Competitiveness Council," Washington Post, July 2, 1992, p. A6.

funded and enjoy a highly participatory popular base. By one account, the top twelve U.S. environmental NGOs have a combined operating budget of more than $300 million, and a donor base of nearly 13 million citizens.[17] That is about $250 million more than the Republican and Democratic parties command, and about 10 million people more in terms of donor base.

Environmental NGOs attempt to play several different roles. A few (such the World Resources Institute, or World Watch Institute) are structured as environmental policy "think tanks," and devote their resources to producing alternative, non-official policy studies and prescriptions. Others (such as the Sierra Club, the Environmental Defense Fund, and World Wildlife Fund) are general purpose, large membership national environmental lobby organizations, professionally staffed and often well housed in large headquarters offices in Washington and New York, and organized for the explicit purpose of influencing Congressional legislation. Legislators are influenced by these groups not so much through direct financial contributions, as through activities and membership newsletters which engender publicity and maintain public accountability, issue by issue. Environmental NGOs in the U.S. also come in a third form: issue-specific, direct-action, local grass-roots organizations (for example, the Oregon-based Native Forest Council, or the Redwood Coast Watersheds Alliance), which accuse the big national organizations of devoting too much

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[17]This is the estimate of California Representative William E. Dannemeyer, cited in Edward C.Krug, "Save the Planet, Sacrifice the People: The Environmental Party's Bid for Power," Imprimis, Vol. 20, No. 7 (July 1991), p. 2.

time and too many resources to fund-raising and membership building, and not enough to effective action.[18]

Whatever the differences among these environmental NGOs, their net impact on the policy process is to heighten divisions and differences, rather than to build consensus. While some of these organizations accept contributions from business firms (the National Audubon Society's acclaimed "World of Audubon" television documentaries are in fact financed by the General Electric Company, which has been at the top of the EPA's list of companies with the most superfund toxic waste sites)[19], their membership and fund raising appeals are based primarily upon a profound suspicion of private business, and of those politicians who are comfortable negotiating and compromising with business firms.

There is, in U.S. society, a deep popular strain of anti-establishment and anti-corporate sentiment available for such groups to exploit. For example, one bipartisan private survey reported, in August 1990, that only 15 percent of the American people were prepared to trust what "government" scientists told them, and only 6 percent were willing to trust scientists from private industry. Meanwhile, 68 percent implicitly believed what they heard from political activists such as environmental NGOs, and 67 percent agreed with the statement, "Threats to the environment are as serious as environmental groups say they are."[20]

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[18]"The War Among the Greens," Newsweek, May 4, 1992, p. 78.

[19]"Pushed and Pulled: Environment Inc. is on the Defensive", New York Times, March 29, 1992, p. D1.

[20]Cited in Krug, "Save the Planet. . .", p. 3.

The private media in the U.S. also contribute heavily to the credibility of these environmental NGOs. Competing fiercely for audience shares, the private media (especially the broadcast media) are naturally attracted to the sensational depictions of environmental threat, of corporate greed, and of official malfeasance which NGO spokespersons regularly provide. U.S. television networks admit that they like to present environmental news in dramatic rather than analytic form. Mr. Donald Hewitt, creator of the long running CBS newsmagazine show "60 Minutes" (the single most successful program in the history of commercial television), explains that his news show doesn't try to analyze topics: instead it presents "stories".[21]

While the environmental NGOs are well funded and broadly based, and while they enjoy abundant media support and privileged access to a few key "environmentalist" (mostly Democratic) members of the U.S. Congress, they do not as a consequence dominate the policy process. Especially in times of sluggish economic growth, non-environmentalist private industries (making arguments that regulation will cost "jobs and growth") will carry more lobbying clout, issue by issue, than the environmentalist NGOs. Industry lobbyists are usually not so public in their efforts to shape policy; their favored point of access recently has been Vice President Quayle's Council on Competitiveness, which holds its

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[21]As Hewitt explains it, "I've had producers come to me and say, 'We've got to do something on acid rain.' I say, 'Hold it. Acid rain is a topic. We don't do topics. Find me a guy whose life has been changed by acid rain. . . Now, you have a story.' " Terry Ann Knopf, "The Man Who Makes 60 Minutes Tick", Boston Globe Sunday Magazine, June 14, 1992, p. 21.

meetings behind closed doors and off the record. Dozens of regulations on industry -- in the area of wetlands protection, testing and marketing of genetically engineered crops, and the storage and disposal of hazardous waste -- have recently been weakened through the efforts of this Council.[22] Even within Congress, however, industry lobbyists can be highly effective by targeting individual members from districts that would stand to lose jobs, or entire industries, if a new regulation were to go into effect.

Even the "greenest" members of Congress are vulnerable to this tactic. Senator Max Baucus, a pro-environmental Democrat from Montana (who received an award from the Sierra Club in 1991, for blocking a Bush initiative to open the Arctic National Wildlife Refuge to oil drilling), was willing, in 1992, to co-sponsor a Senate bill that opened one million acres of virgin wilderness -- in western Montana -- to timber cutting, mining, and drilling. Baucus said he had to be mindful, in the current recession, of his own state's "economic needs".[23]

Given the recently depressed condition of the U.S. economy, private industries have also been learning to fight back against the environmental NGOs by borrowing some of the more open, populist tactics that were pioneered by those NGOs. In the knowledge that "citizen groups" will enjoy more credibility with the American people and the media, private U.S. industries opposed to

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[22]"Administration's Regulation Slayer Has Achieved a Perilous Prominence", New York Times, June 30, 1992, p. A19.

[23]"Pushed and Pulled, Envir ..ment Inc. is on the Defensive," New York Times, March 29, 1992, p. D1.

environmental regulation have recently learned how to stimulate the creation of such groups -- usually with promises of generous financial donations. The Western States Public Lands Coalition, organized to fight stricter mining laws, is dominated by mining industry executives. Alliance for America, a coalition 125 different groups opposed to tighter environmental controls, is partly built around small citizen organizations, but it also responds to top leaders from the U.S. timber industry. The Blue Ribbon Coalition, which is fighting to gain more citizen access to public lands, gets much of its money from two deeply interested Japanese companies that make off-road vehicles -- Honda and Kawasaki.[24] The tactics used by these new (and partly industry-inspired) anti-environmental NGOs are the proven techniques of their adversaries: threats of lawsuits, newsletters with ominous overtones, published manifestos ("The Wise-Use Agenda"), and highly effective direct-mail membership recruitment and fund-raising to well targeted audiences. A potentially significant payoff came to these groups in the summer of 1992, when the U.S. Supreme Court ruled 6-2 that the state of South Carolina was obliged to compensate a property owner for the "regulatory taking" of two beach front lots on which he had been prohibited from building. If this same logic were applied to owners of wetlands properties, many of the gains made by environmentalists in that area could suddenly be reversed.

These new anti-environmental NGOs can take at least part of

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[24]"Fund Raisers Tap Anti-Environmental Sentiment", New York Times, December 19, 1991, p. A18.

the credit for President Bush's post-1991 abandonment of his previously significant environmental agenda. So long as the U.S. economy remains weak, these new groups will probably strengthen, and their principal environmentalist adversaries (groups like the National Wildlife Federation, the Wilderness society, the Sierra Club, and Greenpeace have all reduced staff in the past year, due to fund raising difficulties) will be on the defensive. When the U.S. economy recovers, however, the balance of power within the NGO community will no doubt shift back in a pro-environmental direction. Whatever the shifting balance of influence, moreover, the permanent reality will be a policy process influenced by NGOs which prefer the language of conflict and confrontation to the language of consensus or compromise.

The Role of the Legal Community

We have argued, so far, that environmental policy consensus tends to be blocked inside the U.S. political system by the formal structure of government institutions, by the dynamic of partisan competition, and by the adversarial and frequently polemical behavior of NGOs. Because of the resulting contention, quite often the only way to secure a public settlement of disputes is to go to court. It is the U.S. legal community, then, that often has the last word on environmental policy content.

Lawyers tend to make U.S. environmental policy. Scientists, engineers, economists -- even politicians -- are often reduced to playing a secondary role. The elected members of Congress who enact environmental legislation (and their staff, who do the real work) are mostly lawyers. The executive agency bureaucrats who

write the regulations implementing this legislation are mostly lawyers. When private industries hire lobbyists to seek exemptions from these regulations, or to seek a relaxation of the legislation, they either hire their own lawyers, or they talk to sympathetic lawyers inside the government (the executive director of Vice President Quayle's Competitiveness Council is a lawyer, as is Quayle).[25] When environmental NGOs attempt to fight against industry lobbyists, they mostly do so by mobilizing their own lawyers (some top environmental NGOs, such as the Environmental Defense Fund and the Natural Resources Defense Council, have always focused more on litigation than on legislation).[26] When private citizen groups want to block the construction of a nuclear power plant or the creation of a hazardous waste disposal site, they also hire lawyers and go to court. When state or local governments wish to block an environmental policy action at the Federal level, they send lawyers to court; the Federal Government then enlists its own lawyers in self defense.

In the end, it will be a panel of specially empowered super-lawyers (judges) that will decide the issue. In 1992, for example,

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[25]Mr. David McIntosh, executive director of the Council, authored the memorandum that persuaded President Bush not to sign the biodiversity treaty in Rio. He is a 34 year old attorney, whose prior government experience was in the Justice Department and in the Reagan White House. "Administration's Regulation Slayer has Achieved a Perilous Prominence", New York Times, June 30, 1992, p. A 19.

[26]More recently, non-environmental groups have learned to litigate successfully. Late in 1991, a coal company in Wyoming argued successfully in Claims Court that the Department of Interior had impaired the value of its holdings through environmental restrictions. The company won a $150 million settlement. "Environment Laws Face a Still Test from Landowners," New York Times, January 20, 1992, p. 1.

it took the Supreme Court of the United States to provide something like a final judgment on whether a 1989 Federal law, the "Northwest Timber Compromise," permitted limited timber harvesting in certain old-growth forests which provide habitat for an endangered species, the northern spotted owl. Environmentalists had filed lawsuits challenging the government's position. The Supreme Court's opinion, written by Justice Clarence Thomas, rejected these challenges and sent the case back to a lower appeals court for further hearings.

Often, the making of U.S. environmental policy bounces back and forth between lawyers in courts, lawyers in Congress, and the legal staffs of lawsuit-minded NGOs. In 1992, for example, the U.S. Court of Appeals for the Ninth Circuit in San Francisco, responding to a Natural Resources Defense Council (NRDC) lawsuit, upheld a strict interpretation of an antiquated thirty-five year old clause in U.S. pesticide law (the "Delaney Clause"), which bans even the smallest traces of certain pesticide residues in processed foods. This one court decision could eventually restrict the use of up to 35 different commercial chemicals, on up to 80 different U.S. farm crops.[27] The EPA was surprised by the decision, and uncertain as to whether it could or should attempt to enforce such a sudden shift in regulatory practice. In reaching the decision, the Court anticipated the next step in the process: "If there is to be a change," said the Court, "it is for Congress to direct".[28]

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[27]An attorney for the NRDC called the ruling "the Brown v. Board of Education of the pesticide world."

[28]"Court Puts Delaney in Lap of Congress," The Food and Fiber Letter, July 20, 1992, p. 4.

Even while the court was deliberating, two bills to repeal the Delaney Clause were pending in Congress.

What is the harm in allowing courts and lawyers to dominate U.S. environmental policy making? A first risk is that laws will be written as much for the purpose of generating litigation, as for environmental protection. For example, the 1980 Federal Superfund law, which was supposed to lead to the speedy cleanup of more than 1200 hazardous waste sites across the U.S., was written to require that the cleanup cost at each site be divided among those who originally dumped the wastes. The result, over the past dozen years, has been an exhausting series of court battles, between thousands of different private companies and organizations, to establish precise legal liabilities. In one case in 1991, when Detroit's Big Three auto firms were presented with a $40 million bill for cleaning up a toxic-waste site in Metamora, Michigan, they responded by sending their best lawyers after more than 200 other parties -- including in one case a local Girl Scout troop -- whom they had suspected of also using the site.[29]

The principal beneficiaries in these legal battles are the lawyers that must be hired to wage them. A recent RAND Corporation study of Superfund claim settlements shows that, between 1986 and 1989, ten times as much was spent by insurers for litigation fees and related costs, as for actual site cleanup.[30] In 1989 alone, insurance companies spent $410 million on legal costs, disputing

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[29]"The Toxic Mess Called Superfund", Business Week, May 11, 1992, p. 32.

[30]"Little of Superfund Settlements Go to Cleanup", New York Times, April 26, 1992, p. 27.

whether their policies should covered the cleanup. With that amount of money, an additional 15 sites could have been cleaned up. As it is, fewer than 5 percent of the 1200 toxic waste dumps on EPA's Superfund priority list have been completely cleaned up in the twelve years that the program has been in operation.

Environmental policies written and implemented primarily by lawyers can malfunction in other ways as well. By training, the legal community is not sensitive to economic costs. When lawyers draft legislation on write regulations they seldom try to balance environmental policy goals against social costs. The 1990 Clean Air Act, for example, requires that gasoline be reformulated after 1995 so as to burn super-clean. The result could be an unjustifiable escalation in adjustment costs to consumers. Prior to this new requirement (between the 1970s and 1995), hydrocarbons in U.S. auto emissions will have fallen in a cost-effective fashion, from 9 grams per mile to just 1.5 grams per mile. Between 1995 and 2000, however, the Clean Air Act will require, in nine heavily polluted cities, a further reduction in hydrocarbon emissions that will not be cost effective: costs per ton of hydrocarbon reduction will increase twenty-fold (from $10,000 per ton up to $200,000 per ton). Particularly if these super-clean standards then come to be generalized to regions of the country that are not heavily polluted, society will be left paying billions of dollars annually, to make only the most marginal environmental gains.[31]

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[31]Peter Passell, "Clean Air, At What Price?", New York Times, November 27, 1991, p. D2.

Cost-insensitive environmental regulations such as these have placed a considerable burden on U.S. economic efficiency in recent years. The Council on Environmental Quality estimates that domestic environmental protection measures cost the U.S. economy $115 billion in 1990, or about 2.1 percent of GNP, with roughly 60 percent of this cost paid by private firms (then passed on to consumers).[32] One obvious way to reduce these costs is to move away from "command and control" policies based on legal regulation, and instead toward "incentive" policies (provided in the form of "green" tax credits, "pay-as-you-throw" fees, or "tradeable" pollution permits). These incentive schemes promise equally rapid pollution-reduction, but at lower social and economic cost. This is because the self-motivated pollution reductions will be undertaken by efficiency-seeking individuals and companies at those points where costs are lowest, rather than imposed indiscriminately from above by cost-insensitive judges or administrators.[33]

U.S. environmental law has begun to move, slowly, in this incentive-based direction, ever since the successful initiation, in 1982, of an EPA program to reward refineries that succeeded in reducing lead in gasoline ahead of schedule. More recently, a tradeable permit scheme has been enacted for reducing acid-rain and for protecting stratospheric ozone. Still, these changes have not come easily. Environmental NGOs have attacked these initiatives as

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[32]Council on Environmental Quality, Environmental Quality: 21st Annual Report (Washington, D.C.: US GPO, 1991), p. 51.

[33]Robert Stavins and Bradley Whitehead, The Greening of America's Taxes, (Washington, D.C.: Progressive Policy Institute, 1992).

providing companies with "licenses to pollute", and most in the regulation-minded legal community have remained mistrustful.

So long as regulation-minded lawyers continue to dominate the making of U.S. environmental policy, opportunities will also be missed to innovate new technologies for "pollution prevention." Whereas other governments (including Japan) have launched ambitious technology research initiatives designed to reduce pollution through the innovation of new manufacturing processes, the U.S. Government continues to focus primarily on more costly and less innovative remedial approaches, built around "end of the pipe" legal regulation. Some in the U.S. environmental community have come to recognize this serious policy failing[34], but the lawyer-dominated U.S. political system is not likely to embrace, as quickly as it should, a shift away from regulation, toward more forward looking, innovation-based, investment-driven policy solutions.[35] Lawyers are good at telling society that it should "do less"; they are poorly trained to show potentially innovative societies how they can "do better".

II. Illustrative Case Studies

The fragmented, non-consensual U.S. environmental policy process being described here can be illustrated to good effect through a brief review of recent case studies. Two cases are

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[34]James Gustave Speth, "Needed: An Environmental Revolution in Technology", Background paper prepared for a Symposium: Toward 2000:Environment, Technology and the New Century, June 1990.

[35]Office of Technology Assessment, "OTA Project Description: American Industry and the Environment: Implications for Trade and U.S. Competitiveness", (Washington, D.C.: OTA, July 25, 1991).

selected here because they have international dimensions which make them of particular interest to Japan: the politics of dolphin protection under the U.S. Marine Mammal Protection Act (MMPA), and the politics of U.S. "global warming" policy.

Dolphin Protection Under the MMPA

Originally enacted in 1972, the U.S. Marine Mammal Protection Act (MMPA) was amended at the initiative of environmentalists (mostly Democrats) in Congress in 1988 to require a ban on imports of tuna caught with purse seine-nets in the eastern tropical Pacific, unless the country involved had a dolphin protection program (dolphins are accidentally killed by purse-seine nets) and a dolphin take rate comparable to that of the U.S.[36]

This 1988 Congressional amendment to the MMPA became U.S. law, but the Bush Administration did not want it to become U.S. policy, since it potentially violated GATT rules against trade discrimination on the basis of production processes, and since it was certain to provoke unwanted diplomatic conflicts, not only with countries still fishing for tuna with purse-seines in the east tropical Pacific, such as Mexico, but also with many other "intermediary" processors of the tuna caught in this fashion (including Japan), who might also be subject, under the MMPA, to an embargo on their final sales into the U.S. market. Accordingly, the Bush Administration, for its first two years in office, opted not to enforce the law.

Environmental NGOs (led in this case by the California-based

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[36]Marine Mammal Protection Act amendments of 1988, codified in 16 U.S.C. 1371(a).

Earth Island Institute) were not happy with this under-enforcement of the MMPA, and went to court. In 1990, these private groups won a series of court cases which eventually forced Bush's Secretary of Commerce to certify that certain countries were not complying with the dolphin protection standards of the MMPA. As a consequence, the U.S. went ahead to ban imports of tuna and tuna products harvested by fishing fleets from Mexico, Venezuela, and Vanauatu.[37] Then in a later court ruling in January 1992, a secondary embargo was imposed against 20 "intermediary" nations thought to be engaged in the "laundering" of banned tuna.

The Bush Administration went forward with the required embargo, but it did so hoping that an international backlash would oblige Congress to revise the more extreme provisions of the law. Mexico planned to create this backlash, by requesting in January 1991 that the U.S. ban be declared illegal under GATT. In August 1991, a GATT panel ruled in Mexico's favor.

When this 1991 GATT ruling against the MMPA was fed back into the U.S. political system, however, it produced an unintended effect: an environmental and Congressional backlash against GATT and against Mexico.[38] Environmental NGOs and Democrats in Congress believed that they had sent a message to the Administration, in the previous spring (during the "fast track" authority extension

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[37]George H. Mitchell, Jr., and J. Patrick Adcock, "Rules, Deals, and Falling Chips: Executive Branch Strategies Regarding the International Ramifications of Environmental Legislation", unpublished manuscript, Fletcher School of Law and Diplomacy, May 15, 1992.

[38]"GATT Ruling Spawns Environmentalist, Congressional Backlash", Inside U.S. Trade, September 6, 1991, p. 1.

debate), that Mexico's poor environmental record would have to improve before any further steps toward free trade -- for example, in the North American Free Trade Agreement -- could be tolerated. The Administration felt the heat of this Congressional reaction, concluded reluctantly that the law could not be significantly changed, and so it began instead seeking concessions from Mexico.

Long and difficult negotiations were undertaken with Mexico, finally leading to a provisional agreement in March 1992. Congress, however, embarrassed the Bush Administration (and angered the Salinas Government), by rejecting Mexico's concessions as still inadequate. The rejection came from Congressman Gerry Studds, a close friend of the environmental NGOs who were pushing the issue, and also Chair of the House Subcommittee that would have to take the lead in amending the MMPA.

So desperate was Mexico to secure eventual Congressional approval of NAFTA, however, that President Salinas personally authorized additional concessions. Negotiations resumed, and in June 1992 a new bilateral agreement was reached that was finally acceptable to Congressman Studds and the NGOs: this new agreement would effectively end the killing of dolphins by Mexican tuna fishermen by 1999.[39]

In this one case, we find an illustration of most of the distinctive U.S. environmental policy process features that were earlier emphasized: institutional fragmentation worsened by

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[39]The agreement also will revoke U.S. tuna fishing permits in the Eastern Tropical Pacific, a feature that was not at all pleasing to the U.S. tuna industry. "U.S., Mexico Near Pact on Lifting Tuna Ban", Journal of Commerce, June 15, 1992, p. 1.

partisan division between Congress and the Executive, independent initiatives taken by single-minded environmental NGOs, and important intermediate policy outcomes determined by court judges, based on politically insensitive, narrow legal calculations.

The end result of the process -- an agreement by Mexico to move more swiftly toward "dolphin safe" fishing practices -- can nonetheless be judged an environmental policy success. Whether this tortured process would have produced the same outcome with a country more powerful than Mexico (or even with a Mexico less eager to secure Congressional favor for NAFTA), would be a more difficult question to answer.

Global Warming

Environmentalists found it relatively easy to prevail in the dolphin protection case, because they did not confront any serious internal citizen or industry opposition.[40] They were mostly asking foreigners to make adjustments, so as to measure up to dolphin protection standards already achieved in the U.S.[41]

In the case of U.S. global warming policy, environmentalists have faced a more difficult assignment: overcoming significant internal resistance to higher industry (and consumer) prices for fossil fuels. That resistance has come from three principal

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[40]The only domestic industry group opposing the Studds bill was the tiny American Tunaboat Association (ATA).

[41]In this sense, they were pursuing what i have described elsewhere as a "convenient" (as opposed to a "committed") form of international environmentalism. Robert L. Paarlberg, "Ecodiplomacy: U.S. Environmental Policy Goes Abroad", in Oye, Lieber, and Rothchild, Eagle in a New World (New York: Harper Collins, 1992).

directions: from the fossil fuel industries themselves (coal and oil producers), from a key transportation industry (the auto industry) which depends upon cheap fossil fuels, and also from the many ordinary citizens (those who heat their homes with oil, those who drive autos long distances to work) who are heavy end-users of fossil fuels. So far, environmentalists inside the U.S. political system have not won any significant victories against this much stronger wall of resistance.

Environmental NGOs and their (mostly Democratic) friends in Congress have been just as active in this case as in the Dolphin case. In 1988 alone, 32 separate pieces of legislation related to global warming were introduced in Congress, and nine different Congressional committees conducted 28 days of hearings on the issue.[42] The end result, however, was no significant new constraint on U.S. fossil fuel consumption. This was because principal jurisdiction over policy in this area still lies with the energy committees of the House and Senate, which are dominated by members from the states and districts in the U.S. that produce oil, coal, and natural gas.[43]

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[42]Many of the details of this global warming case are borrowed from an early draft of an excellent new review of U.S. policy in this area authored by Michael T. Hatch, at the Center for Science and International Affairs at Harvard University. Hatch's study, entitled "Domestic Politics and International Negotiations: the Politics of Global Warming in the United States", will eventually be published in _____. I am grateful for permission to use some of his findings here.

[43]In the Senate, 60 percent of the membership of the Energy and Natural Resources Committee comes from coal states. The Chair, Bennet Johnston of Louisiana, is from an oil and gas state. The Chair of the House Energy and Commerce Committee is Representative John Dingel of Michigan, a champion of the automobile industry. See Hatch, "Domestic Politics and International Negotiations. . .",

On the global warming issue, significant support for environmentalism has come, at times, from within the Executive branch, specifically from a group of more activist officials inside EPA (initially led by John Hoffman, EPA's head of strategic studies). Responding in part to study requests from environmentally concerned members of Congress, EPA has on numerous occasions attempted to argue, from its position within the Executive branch, that the time has come to move beyond studying the issue, to embrace some modest first steps (such as higher fuel efficiency standards for new cars, improved residential heating efficiencies, and possibly fees on fossil fuel use) that would yield significant new CO2 emissions reductions. EPA has so far been blocked, however, by more powerful actors inside the Executive branch, including most conspicuously several of the President's top White House advisors (Chief of Staff John Sununu, OMB Director Richard Darman, and Council of Economic Advisors Chair Michael Boskin).[44]

Global warming policies have been blocked inside both branches, so far, because they remain institutionally subordinate to U.S. energy policy, and because of the strong "supply side" bias found on energy policy in both the industry-influenced Bush administration (recall that George Bush started his own career as a Texas oil man), and the industry-dominated Congressional energy committees. In proposing new energy legislation to Congress early

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p. 35-38.

[44]"Europeans Accuse the U.S. of Balking on Plans to Combat Global Warming", New York Times, July 10, 1990, p. A10.

in 1991 (at a time of heightened "energy security" fears linked to the Gulf War, and also at a time when the U.S. economy was clearly heading into a recession), Bush opted to focus almost entirely upon the need for more energy production (he called for opening the Arctic National Wildlife Refuge to oil and gas exploration), while offering little or nothing on the side of conservation. The White House committee that had earlier been set up by Bush to deal with global warming issues was never even given a chance to review this "National Energy Strategy" proposal.[45] Environmentalists in Congress, who viewed the supply-side bias in this energy strategy proposal as a disaster, had their hands full simply defeating the Arctic Wildlife Refuge measure; they were so much on the defensive, inside the energy committees handling the legislation, that they were unable, in the end, even to secure a modest increase in auto fuel efficiency requirements.[46] The Senate Commerce Committee passed a measure which would have required an increase in fuel efficiency over the next decade, from the current level of 27.5 miles per gallon up to a level of 40 miles per gallon, but the U.S. auto industry, reeling during the economic recession from low sales and massive layoffs, was able to lobby successfully against the measure, the White House threatened a veto, and sc nothing on increased fuel efficiency made it into the final bill.[47]

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[45]Hatch, "Domestic Politics and International Negotiations. . .", p. 33.

[46]"Energy Bill Passed in House by Wide Margin", New York Times, May 29, 1992, p. 1.

[47]"New Energy Bill Held Unlikely Soon", New York Times, November 12, 1991, p. D9.

Those outside the energy committees and the White House who want the U.S. to embrace a stronger policy on global warming have been forced, given this internal blockage, to embrace an unusual and indirect strategy of seeking to create circumstances under which U.S. policy might be influenced from the outside (through an application, by foreign governments, of what the Japanese would recognize as gaiatsu).

It was the Reagan Administration, in 1988, which inadvertently created the opportunity to pursue this strategy, by proposing creation of a new intergovernmental body, the Intergovernmental Panel on Climate Change (IPCC). Reagan's hope, at the time, was to take the international discussion of climate change out of the hands of private scientific and NGO "experts", who were calling for urgent action, and place it safely in the hands of governments.[48] Reagan thus put the U.S. Government in charge of the IPCC working group that was specifically tasked with developing policy alternatives.

This strategy backfired when most of the other industrial country governments that were brought into the IPCC process -- particularly Germany -- began advocating stronger national and international policy actions. Previously having been on the defensive only against private international experts, the U.S. Government was now increasingly on the defensive against important allied governments. Germany, the Netherlands, France, and Britain all announced specific goals and timetables for greenhouse gas

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[48]Hatch, "Domestic Politics and International Negotiations", p. 19.

emissions reductions, and at one IPCC meeting after another, the U.S. found itself in an uncomfortable position of isolation.

Environmentalist critics in Congress, the press, and the U.S. NGO community were able to use this isolation to good effect, eventually embarrassing the Administration into joining negotiations for a "framework" treaty on global warming.[49] The Bush administration joined these negotiations with great reluctance and with heavy reservations, and managed in the end (in part by threatening not to send the President to Rio) to keep the framework treaty free from any specific timetables or quantitative commitments. Still, the framework treaty is likely to be just the first step in what could become a far more involving and ambitious process. So isolated was Bush at the signing of this treaty in Rio, and so at pains was he to restore his respectability on the issue, that he went out of his way, at that conference, to lay down a challenge to the other industrial country leaders present: he called for a "prompt start" on meeting the objectives of the new treaty, and proposed a meeting in January 1993 to monitor and compare progress on greenhouse gas reductions.

By that time, if Bush is re-elected and if the economic recession is behind him, he may be in a better position to propose new U.S. steps on climate change. One possible step, a carbon tax, might by then be an attractive option, if only for its revenue-boosting potential. It would not be surprising to see Bush campaign <u>against</u> such energy tax proposals prior to November 1992,

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[49]Hatch, "Domestic Politics and International Negotiations", p. 23.

only to embrace them if he is successfully re-elected (since he will never have to run for re-election again). If this happens, international pressures will have played a role. If Clinton is elected in November 1992, higher fossil fuel taxes are to be expected even sooner -- and even without international pressures.[50]

This global warming case, like the Dolphin case, illustrates some important characteristics of the U.S. environmental policy making process. It illustrates the tendency toward internal division, in this case a division within both Congress and the Executive. It illustrates the importance of partisan differences and of the presidential electoral cycle. And it also illustrates the limited ability of environmental NGOs to prevail, when pitted directly against the superior power of entrenched industrial and citizen preferences.

IV. Conclusions

We have reviewed several features of the U.S. environmental policy making process which tend to prevent the formation of continuity and consensus. It is worth observing, at the end of this discussion, how thoroughly "un-Japanese" U.S. policy making is, because of these consensus-blocking features.

Whereas the U.S. government is built around sharply divided and separately elected executive and legislative bodies, the

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[50]Clinton has not endorsed significantly higher energy taxes during the campaign, but Gore has favored such steps in the past, Democratic candidate Tsongas had previously advocated a 50 cent increase in Federal gasoline taxes as an explicit step against global warming, and H. Ross Perot's widely discussed policy platform had included this measure as well.

Japanese government, in accordance with more standard parliamentary practice, joins these two governing functions into one. Whereas the U.S. executive process is dominated by short term political appointees, Japan (like most of the rest of the industrial world) relies on a more professional cadre of long-term career administrators. Whereas national politics in the U.S. government is built around sharp two-party competition, national politics in Japan remains dominated by one ruling party. Whereas Japan's ruling conservative LDP party is comfortable with the concept of active governmental involvement in the planning and management of the national economy, all in a manner highly supportive of private industry, the more conservative Republican party in the U.S., while definitely supportive of private industry, remains ideologically hostile to public management and planning. Ironically (and somewhat perversely), it is the anti-industry Democratic party in the U.S. which is more favorably inclined toward public management and planning. Whereas environmental policy questions in the U.S. are constantly being raised and reformulated by independent and nationally visible NGOs, in a tone which is frequently hostile to private industry, in Japan there are no comparably well funded and well organized national environmental NGOs.[51] Whereas environmental policy in the U.S. tends to be made and implemented by lawyers, and hence built around adversarial litigation, environmental policy in Japan is more often made by individuals

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[51]Susan J. Pharr and Joseph L. Badaracco, Jr., "Coping With Crisis: Environmental Regulation", in Thomas K. McCraw, ed., America Versus Japan, Boston: Harvard Business School Press, 1986, p. 258.

with technical skills in non-adversarial fields such as science, engineering, economics, or public administration.

Given these important institutional and procedural differences, it should not be surprising to find U.S. environmental policy characterized by internal division, inconsistency, and inability to embrace long-term commitments, and to find Japan's environmental policies characterized by just the opposite: consensus, consistency, and long-term predictability.

But which policy making style produces the better result? For the narrow and traditional purpose of generating tight controls over industrial pollution, some have argued that the U.S. system, for all its flaws, actually does a better job. Susan Pharr and Joseph Badaracco assert that, in Japan, governmental unity and consensus on environmental questions is too often an outgrowth of simple deference toward industry.[52] Japan's "advisory council" system, when used within ministries to develop a business-government consensus on environmental questions, may do a better job of conflict management than of environmental protection. It is in some ways parallel to the process of non-democratic, non-accountable environmental deregulation recently pursued within Vice President Quayle's industry-dominated "Competitiveness Council."

In the pursuit of effective environmental policy, private industry certainly must be on board, but it should not be allowed to set the pace. The costly new investments that private industry

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[52]Susan J. Pharr and Joseph L. Badaracco, Jr., "Coping With Crisis: Environmental Regulation", in Thomas K. McCraw, ed., America Versus Japan, Boston: Harvard Business School Press, 1986, pp.229-260.

must make, in order to develop a next generation of cleaner technologies, can't be left to occur in a political vacuum. The pace of such investment is optimized when market pressures to innovate are supplemented and strengthened by public policies which internalize environmental "externalities." Concern for these externalities has to be expressed through a well-functioning political marketplace. Industry must be pushed by public policy to improve its environmental performance.

This political "pushing" process will at times be marked by conflict and collision. Pharr and Badaracco point out that Japan actually made its most rapid environmental progress during an unusual period, in the 1970s, when the normal politics of consensus briefly gave way -- because of direct citizen protest -- to a politics of adversarial relations between government and business.[53] Perhaps too often, in recent years, Japan has reverted to a political process which avoids open environmental policy conflict by stifling popular participation. Environmental NGOs are weak in Japan because they are routinely denied access to information.[54] Without nationally organized constituency groups, and without strong backing from mobilized elements in the public and the media, Japan's Environment Agency thus remains weak as well. If, under these circumstances, Japan's powerful, conservative, one-party dominated administrative class wishes to go slow on environmental protection, either at home or abroad, the

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[53]Pharr and Baradacco, p. 252.

[54]Alan S. Miller,"Three Reports on Japan and the Global Environment", Environment, vol. 31, no. 6, July/August 1989, p.28.

public (except in highly localized situations) may have little recourse.

None of this is to celebrate the more conflicted quality of the U.S. policy process. Business needs to be pushed from the outside, but not by government policies which change direction so often as to discourage new investments, or by policies which focus so heavily on regulation-driven pollution abatement as to discourage the process of incentive-driven, investment-driven pollution prevention. For the purpose of pushing forward the "greening" of private industry in problem areas (such as fossil fuel consumption) where innovation lead times are long, and where large front-end investments are necessary, Japan's performance (for example, MITI's "New Earth 21" program) has won deserving praise.[55]

In the end, perhaps both countries have something to learn from a comparative examination of these environmental policy making processes. The U.S. has much to learn from Japan's superior capacity to discover and express social consensus, and from its greater ease with managing business-government cooperation. Japan, however, should also be alert to what it can learn from the more highly conflicted environmental policy making processes at work in the U.S. What these processes lack in beauty, they sometimes make up in social participation and -- in some cases -- environmental effectiveness.

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[55]Much of this praise has come from environmentally concerned representatives of the private sector, with first-hand knowledge of what industry needs from government to speed the eco-innovation process. See, for example, Stephan Schmidheiny (with the Business Council for Sustainable Development), Changing Course, Cambridge: MIT Press, 1992, p. 89.